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Legal Services Revisted

Lewis F. Powell Jr.

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SEP 30 1976

*File in
my legal
Legal Services
talk in
Atlanta*

LEGAL SERVICES CORPORATION

A Presidential Program of the Annual Meeting of
The American Bar Association

Tuesday, August 10, 1976

LEGAL SERVICES FOR THE POOR: LOOKING AHEAD

Stuart-York Room
Hyatt Regency Hotel
Atlanta, Georgia

Bill McClellan's introduction

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Administrative Headquarters
202 Old York Road, Jenkintown, PA 19046
(215) 885-3815
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F. WILLIAM MCCALPIN: I bid you welcome to this program jointly sponsored by the Standing Committee on Legal Aid and Indigent Defendants of the ABA, the NLADA and the LSC entitled "Legal Services for the Poor - Looking Ahead". If this program had been presented a decade or even half a decade ago it would have been difficult then to foresee what has actually transpired.

Who could have foretold that the \$6,000,000 effort of 1964 would become the \$125,000,000 program of 1977 or that the politically volatile and besieged OEO LSP would be transformed into the independent, professionally sponsored and directed LSC?

But just as the seeds of those remarkable developments had already been planted at those days, so the events of the years ahead may be perceived at a careful look at what exists today in the world of legal services for the poor. It is the intent of this program to take that kind of look at where we have been and where we are so that we may perceive where we are headed.

We are particularly fortunate today to be able to add a different and unusual dimension to our perspective. The bar and the government of England were years ahead of us in their approach to providing legal services for those who could not afford to pay for them. Our platform is graced today with a distinguished and eloquent English jurist long associated with the cause of legal aid in his country who will describe their program for us. But that must wait a moment until we lay the scene in our own country.

It is all too rare that there comes to the fore in our society a man of keen intellect, consummate tact, impeccable integrity, with a clear perception that the course of human events has reached a crossroad and the

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wisdom and the fortitude to take the right path. It is even more rare when that man is endowed with the gifts that make him a leader of men. Such a man is Lewis F. Powell, Jr.

His earned degrees were awarded with honors and distinction. And five institutions have bestowed upon his degrees per noris cousa (Phonetic). He has served his local community and his state as chairman or president of boards of education at both levels, and as chairman and member of commissions which wrote a charter for the city of Richmond and a constitution for the state of Virginia. In four years of military service he rose from lieutenant to full colonel.

But it is in the law that we know him best. His present high position is but the most recent step in the career of a trial lawyer who early served his profession as Chairman of the Junior Bar Conference of the American Bar Association; who has served as President of the American Bar Association, the American College of Trial Lawyers, and the American Bar Doundation; and who has an honorary bencher of Lincoln's Inn.

Yet it is not for these distinctions that he

was invited to address us today. Rather, it is because he is the man singly most responsible for bringing the legal profession of the United States into the modern world of legal aid. As President of the American Bar Association, he clearly saw the potential of the Economic Opportunity Act of 1964 for the poor who thirsted for justice and for a profession willing to respond to a leader's call to action. He drafted and led the adoption of the historic resolution of February, 1965 which ever since has been the cornerstone of ABA's support for legal aid.

Not only did he lead the legal profession into seeing and discharging this fundamental obligation, but by persuading initially hostile forces of government of the good will and cooperation of our profession, he formed and welded an alliance unique in American history which continues to this day. In truth, here is an incomparable, towering figure of the legal profession in his and any generation.

It is a proud privilege for me to express the profound gratitude of our profession, the lawyers and clients of legal aid, and the American nation to this

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man. And I present to you The Honorable Lewis F. Powell, Jr., Associate Justice of the Supreme Court of the United States.

(Applause)

THE HONORABLE LEWIS F. POWELL, JR.: Mr. Chairman, Lord High Chancellor, other distinguished members of the panel, ladies and gentlemen. Bill McCalpin, I thank you very much for your gracious and obviously generous introduction. I feel at home in this audience and with this subject. Many in this room are old friends of mine. Many of us worked together years ago to launch the program that Bill McCalpin mentioned.

As a matter of fact, it was 11 years ago that I had the privilege of speaking at the National Conference of Law and Poverty, a conference sponsored by the Department of Justice and the then relatively new office of Economic Opportunity. We were barely past the threshold of a new legal services program initiated by Sergeant Shriver and his innovative associates at the OEO and formally endorsed by the American Bar Association in February of 1965. The program was in the launching stage. There was hope, some euphoria, and much enthusiasm. But

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*As delivered*LEGAL SERVICES REVISITED

A decade ago - eleven years,
to be exact - I spoke at the
National Conference on Law and Poverty
— ~~a~~ ~~That~~ Conference, sponsored by
the Department of Justice / and the
Office of Economic Opportunity,
~~was attended by several hundred~~
~~persons from widely diverse~~
~~associational backgrounds.~~

then
We [^] were barely past the
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1965,

of 1965, / the program was in a launching stage. ^{There was hope, some} ~~of~~ [↑] euphoria, ~~hope~~ and ^{much} [↑] enthusiasm. ^{But} the practical problems of implementation lay ahead of us. The time / nevertheless / was an exciting and inspiring one, ~~and~~ I was proud then - and now - to have had a part in the launching.

← I ~~now~~ ^{to-day} repeat some of the ^{elementary} ~~truths~~ ^{truths} that I ^{mentioned} ~~said~~ at the Conference eleven years ago:

Equal justice under law is not merely / a caption on the facade of the Supreme Court. It is perhaps the most inspiring ideal of our society. It is one of the ends for which our entire legal

system exists.

system exists. And, / central to that system / is the precept that justice not be denied / because of a person's race, religion or beliefs.

~~Also~~ It is ^{equally} fundamental that justice should be the same, / in substance and availability, / without regard to economic status.

This, of course, is our ideal. But we have long known / that attainment of the ideal of equal justice / is not an easy task. This requires a sensitivity to the need, / and the willingness by the appropriate government bodies / and ^{by} our profession / to persist in making the ideal a reality.

A truism, sometimes overlooked,

is that our system of justice requires participation by lawyers.

is that our system of justice requires participation by lawyers. When an individual confronts the state, / or needs access to the courts, / the assistance of counsel usually is necessary to assure that justice is done. ~~It hardly need be said, therefore, that~~ When justice is denied / because of the unavailability of counsel, / the system itself - as well as the individual - suffers.

And Confidence in, and respect for, the rule of law ^{*also inevitably*} are diminished.

The foregoing observations, / with which few would disagree, / are as pertinent today / as they were when I made them to the National Conference on Law and Poverty.

And despite the magnificent *efforts that have been made in the intervening years*

efforts that have been made in the intervening years /- efforts inspired/ and led /by many of you in this audience - far too many persons remain unable to obtain equal access to justice.

Since Gideon v. Wainwright and Argersinger, it is fair to say/ that long strides have been made /to assure this equal access in criminal cases.

The progress is less discernible on the civil side. Too many citizens /still are prevented by their poverty /from obtaining the assistance of counsel in civil litigation /and especially when the need for redress of civil grievances /is perceived.

*Putting it
differently*

Putting it differently, the gap between the need for counsel / and the availability of counsel / has been narrowed / but certainly ^{it} has not been closed.

Until that goal is achieved, the ideal in which we all believe / is short of attainment.

* * * *

But it would be a mistake / to denigrate the degree of progress / that has been achieved. Some of the highlights of this progress may be illuminating.

The first legal aid society was established by German immigrants in New York City about a century

ago.

ago. The ~~ABA's~~ ^{ABA's} involvement with legal aid programs / began in 1920.

Charles Evans Hughes, and other bar leaders of the time, initiated a program of oversight / and support / of local legal aid activities. Their stated purpose / was to ensure that each program was "well-officered / and ~~constantly~~ rises to the full height of ~~the~~ opportunity."

By 1922, the ABA could identify 33 legal aid societies and bureaus in this country. By 196~~4~~ / their number had grown to 248 legal aid offices / and 152 defender services.

Thus the commitment of the organized bar to the assuring of equal justice has been a long and

But it had become apparent by the mid-1960s

~~But it had become apparent~~ 8.

'commendable one even though the progress has seemed agonizingly slow..

^
^ But ~~By 1964,~~ it had become apparent, by the mid-1960s, that the largely voluntary / and unreimbursed services of private lawyers / simply could not satisfy the meritorious legal needs in ~~this~~ ^{our} country.

When I assumed the presidency of the ABA in ~~that~~ ¹⁹⁶⁴ year, the need was sufficiently compelling to cause me to give it top priority.

I urged "an acceleration and broadening of efforts to assure the availability of legal services, / in both civil and criminal cases, / to all who need them."

Unknown to me at the time,

~~thought was being given,~~
thought was being given,

thought was being given /- inspired in significant part by the writing of Jean and Edgar Cahn /- to a role by government.

The history of the origin of the cooperation between the ABA, ^{NLADA} and the Office of Economic Opportunity / has been documented in Earl Johnson's fine book. But this is not the occasion to review this history, / as interesting as it is to those of us who participated at the time.

The key action by the organized bar was taken in February 1965 / when the ABA's House of Delegates unamiouly adopted a resolution agreeing "to cooperate with the Office of Economic Opportunity / and other appropriate groups / in the development

*and implementation
of programs*

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The Committee
was charged
broadly with
addressing the
need for

and implementation of
of program

and implementation of programs / for expanding availability of legal services to indigents and persons of low income."

The OEO's Legal Services Program was initiated shortly thereafter with broad support from the National Legal Aid and Defender Association, the National Bar Association, and the ABA.

Also in 1965, ~~and upon my recommendation,~~ the ABA created a special Committee on the Availability of Legal Services, ~~to study broadly and imaginatively the problem of~~ better access to legal services / by both the poor / and ^{by} middle income Americans.

*I had in mind
the perceptual
~~comment of~~
observation of*

I had in mind the perceptive observation of Professor Elliott Cheatham, made in his 1963 Carpentier Lecture at Columbia.

He noted - ^{using} ~~in~~ "industrial terminology" - that the product of the legal profession is superior, but its distribution ^{to the ~~consumer~~} is woefully inadequate.

Professor Cheatham commented that we have stressed "improvement of the quality of service," but neglected "methods by which legal services may be broadened to all in need of them."

Bill McAlpin, here with us today, chaired the new Committee, and has given it inspired leadership over the years.

*The entire cause
of ~~legal services~~ providing
Legal Services*

* * * * *

The entire cause of providing legal services / has made notable progress over this decade. But it became evident that structural changes in the implementation of the Federal program were necessary.

A paramount consideration was the insulation of legal services / from political pressures and intervention. This prompted a successful movement, / again strongly supported by the bar organizations I have mentioned, / for the establishment of an independent Legal Services Corporation.

Recognizing this need, Congress - in legislation adopted in 1975 - established such a Corporation. ~~and~~

It declared

declared / that access to justice is a basic right / and one that should be free from political considerations.

I had the pleasure of swearing in the members of the governing Board of ^{the} Legal Services Corporation, and ^g can say without reservation that it is a representative / and highly qualified Board.

I also commend the Board on its fine staff, and particularly the selection of Tom Ehrlich as President, and Clint Bamberger, Jr., as Executive Vice President. This assures the quality of leadership the Corporation deserves.

While these developments are heartening, the problem of adequate funding continues to be most pressing.

ABA President Walsh

ABA President Walsh has urged the Congress to grant increased funding for the Corporation. And President-elect Stanley, ~~in~~ testifying on behalf of an increased appropriation, stated:

Congress must ultimately favor those programs /that have the broadest impact and significance on our citizens. We believe ~~that, based on these criteria,~~ the legal services program deserves a very high priority.

* * *

Now /a word in closing: Under the Anglo-American system of justice, the ideal of individual liberty has been preserved realistically /for more

people /for perhaps the longest sustained period in history.

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*people for justice
the largest number
remains in justice*

people / for perhaps the longest
 sustained period in history. Yet,
 as this audience knows better than
 most, the disparity between our
 ideals and / their fulfillment ^{for all people /} is ~~not~~
 insignificant. ^{remains ~~to be~~ far too} ^{great.}

We are clear as to the goal.

 ~~The task of attaining it is the~~
 responsibility of the ^{new} Corporation, / of
 government, / of the social service agencies,
 and especially that of the ~~organized~~
~~bar and every individual private~~
~~lawyer~~

legal
 profession.