Law Day Address

By THE HONORABLE ROBERT F. KENNEDY
United States Senator from New York

A Talk Delivered by Senator Kennedy, then Attorney General of the United States, at the Law School on Law Day, May 1, 1964

Law Day is a day which is set aside for all of us to reaffirm our faith in a government of law. We lawyers can celebrate it in two ways: by speeches which praise the law and, by implication, ourselves; or by using it as an occasion to examine the problems which beset our society and whose resolution should challenge us as lawyers.

Tonight I wish to do the latter.

We meet here today at a great law school in the heart of a great metropolitan center. In the area surrounding this school there live thousands and tens of thousands of people who are daily coping with—or failing to cope with—the problems which beset an urban and industrial society. In this area are problems of crime and delinquency, of education and over-crowded housing, and all the other problems which accompany poverty.

This is not a unique area. These are not unique problems. They are the problems of an urban and industrial society.

And because law does not exist in a vacuum, they are the problems which law faces today in the United States.

I think the solution to these problems should be a challenge to all of us—and particularly to young people who are now embarking upon professional careers. I am deeply concerned over whether, as a profession dedicated to the rule of law, we are meeting—or even seeing—the challenge which the peculiar character of our urban society is daily making. We concentrate too much on the traditional stuff of the law—on lawsuits, courts, and formal legal learning—too little upon the fundamental changes in our society which may, in the final analysis, do much more to determine the fate of law and of the rule of law as we understand it.

No single set of experiences has brought this point home to me more forcibly than the contacts I have had with juvenile delinquency.

The Justice Department's traditional concern is with law enforcement. But in coping with an ever mounting trend in young offenders, law enforcement is a small part of the total picture. In formulating our program on juvenile delinquency it quickly became clear to us that the emphasis could be not upon law violations and law violators, but upon the causes of violation. To put it differently, youth offenses are not the illness to be dealt with. They are merely symptoms of an illness that goes far deeper in our society.

To arrive at this conclusion one need not be a sociologist, or a social worker or a planner. One simply needs to walk the slums of Washington, or New York, or Chi-
chicago, or through the communities of Appalachia, and talk with the young people.

For many of these young people law violation is not the isolated outburst of a social misfit. It is part of a way of life where all conventional routes to success are blocked and where law abidingness has lost all meaning and appeal.

You cannot look into their eyes or look up and down the asphalt jungle or the desolate hollows in which they live without sensing the despair, the frustration, the futility and the alienation they feel. One is strongly impelled to do something, to make some gesture that says: "People do care; don't give up."

Surely the answer to this problem is not simply to provide more and better juvenile courts, more and better juvenile institutions or more and better lawyers in the process to prosecute or defend young people who then return to the same desolation which caused their difficulty in the first place.

What is needed are programs which deal directly with the causes of delinquency. These are programs to impart skills, to instill motivation, to create opportunity. These are programs which urge young people to stay in school. These are summer job programs for high school students. These are programs to provide decent recreational facilities.—These are, in short, programs which indicate that all young people do count in this society.

The model programs developed through the President's Committee on Juvenile Delinquency all involve expanding our concept of law enforcement—from detection, punishment and treatment—to prevention. We seek to help communities build programs which deal not with law violation but with eliminating its underlying causes. The idea of social action programs rather than simply programs of law enforcement is not a new one. But it is an idea which threatens to leave the lawyer behind—to cut him adrift from day-to-day involvement with the major social issues of our times. Let me tell you why.

The lawyer helps to frame the legislation for the programs dealing with these problems; he writes the grants to agencies to carry on these programs. He preserves the form, ignores the substance, and then he goes his way.

As a profession, we have conveniently—perhaps lazily—abdicating responsibility for dealing with major social problems to other professions—to sociologists, educators, community organizers, social workers, psychologists.

Rarely, if ever, do the best lawyers and the best law firms work with the legal problems that beset the most deprived segments of our society. With some outstanding exceptions, that work is done—if it is done at all—by the members of the bar who have least prestige, who are likely to be poorly trained and who are themselves engaged in a struggle for economic survival.

There remain whole areas of the law where no more than a handful of lawyers go to assist those most in need of legal help. How often does one find the needy represented by counsel in dealing with social welfare agencies, unemployment compensation review boards, or school and welfare officials, finance companies, or slum landlords?

In the realm of criminal law we are now beginning to fulfill our professional responsibility. To the indigent, we are witnessing a series of steps toward fairer representation for those without funds. No small portion of the credit is due to your own Professor Allen who headed our committee which has made an excellent report on the problems of the poor in obtaining equal justice in the federal courts.

That report has spurred efforts on both the state and federal level. To these efforts must be added full recognition of the monumental work of the legal profession. Law schools have contributed much and should contribute more. Legal aid societies, often staffed in part by law students, have done extremely worthy work. This University's program, sparked by Dean Levi, provides a notable example of public service, community concern, and intellectual inquiry.

But these efforts are in large part due to the Supreme Court's decision in Gideon v. Wainwright, which made representation by counsel mandatory in criminal proceedings. All these efforts notwithstanding, the fundamental question remains: Should there ever have been a need for the Gideon decision? Did we need a Constitutional determination to tell us our professional responsibilities?

Lawyers could ask themselves similar questions about other problems which are central to our society but which
exist on the fringes of the law. The social protest of the American Negro is not, as such, a legal problem. But the voluntary Lawyers' Committee for Equal Rights under Law, for example, has generated the effective assistance of many lawyers, normally devoted to more formal legal pursuits, in the cause of civil rights.

There is a great need for America to live up to its political promise of civil rights for all its citizens. But there is a parallel need for America to live up to the economic promise of social rights, of social—and thus equal—justice under law.

The place to start is to ask ourselves what is our responsibility in dealing with those problems which stem from poverty—from that phenomenon of massive privation to which our nation is now awakening and to which our legal profession must now respond.

We, as a profession, have an obligation to enlist our skills and ourselves in the unconditional war on poverty to which President Johnson has summoned all of us.

And in asking where do we begin, we must first recognize that poverty is not simply a condition of want.

In the final analysis, poverty is a condition of helplessness—of inability to cope with the conditions of existence in our complex society.

We know something about that helplessness. The inability of a poor and uneducated person to defend himself unaided by counsel in a court of criminal justice is both symbolic and symptomatic of his larger helplessness.

But we, as a profession, have backed away from dealing with that larger helplessness. We have secured the acquittal of an indigent person—but only to abandon him to eviction notices, wage attachments, repossession of goods and termination of welfare benefits.

To the poor man, “legal” has become a synonym simply for technicalities and obstruction, not for that which is to be respected.

The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away.

It is time to recognize that lawyers have a very special role to play in dealing with this helplessness. And it is time we filled it.

Some of the necessary jobs are not very different from what lawyers have been doing all along for government, for business, for those who can pay and pay well. They involve essentially the same skills. The problems are a little more difficult. The fees are less. The rewards are greater.

First, we have to make law less complex and more workable. Lawyers have been paid, and paid well, to proliferate subtleties and complexities. It is about time we brought our intellectual resources to bear on eliminating some of those intricacies.

A wealthy client can pay counsel to unravel—or to create—a complex tangle of questions concerning divorce, conflict of laws and full faith and credit in order to straighten out—or cast doubt upon—certain custody and support obligations. It makes no kind of sense to have to go through similarly complex legal mazes to determine whether Mrs. Jones should have been denied social security or Aid to Dependent Children benefits. To put a price tag on justice may be to deny it.

Second, we have to begin asserting rights which the poor have always had in theory—but which they have never been able to assert on their own behalf. Unasserted, unknown, unavailable rights are no rights at all.

Lawyers must bear the responsibility for permitting the growth and continuance of two systems of law—one for the rich, one for the poor. Without a lawyer of what use is the administrative review procedure set up under various welfare programs? Without a lawyer of what use is the right to a partial refund for the payments made on a repossessed car?

What is the price tag of equal justice under law? Has simple justice a price which we as a profession must exact?

Helplessness does not stem from the absence of theoretical rights. It can stem from an inability to assert real rights. The tenants of slums, and public housing projects, the purchasers from disreputable finance companies, the minority group member who is discriminated against—all these may have legal rights which—if we are candid—remain in the limbo of the law.

Third, we need to practice preventive law on behalf of the poor. Just as the corporate lawyer tries to steer company policy away from the antitrust, fraud, or securities laws, so too, the individual can be counselled about leases, purchases and a variety of common arrangements whereby he can be victimized and exploited.

Fourth, we need to begin to develop new kinds of legal rights in situations that are not now perceived as involving legal issues. We live in a society that has a vast bureaucracy charged with many responsibilities. When those responsibilities are not properly discharged, it is the poor and the helpless who are most likely to be hurt and to have no remedy whatsoever.

We need to define those responsibilities and convert them into legal obligations. We need to create new remedies to deal with the multitude of daily injuries that persons suffer in this complex society simply because it is complex.

I am not talking about persons who injure others out of selfish or evil motives. I am talking about the injuries which result simply from administrative convenience, injuries which may be done inadvertently by those endeavoring to help—teachers and social workers and urban planners.

These are not unusual tasks. Lawyers do them all the time in every major field of law.
An English Visitor’s View of the Law School

By GUENTHER TREITEL
Fellow of All Souls; Lecturer in Law, Magdalen College; Visiting Lecturer, The University of Chicago Law School, 1963–64

In giving my impressions of this Law School, the first and most important thing I want to say is that my year here has been a most exciting and enjoyable one. I attribute this mainly to three things. First, to the library, which offers facilities far better than those of any single law library now open in England. Secondly, to the students whom I have found lively, intelligent and pleasant to teach. Thirdly, to the faculty: their kindness and patience in innumerable discussions have done more than anything to make this such a rewarding year for me, and I should like to take this opportunity of thanking them.

My impressions of the Law School may be most interesting to you at the points of contrast between this School and Oxford. Of course one must bear in mind that this is a graduate professional school, while at Oxford we teach a law course to undergraduates which does not lead them to, or even very near to, a professional qualification. This may account for some of the differences between the two places, such as differences in the curricula. But even so, there are two differences between this School and Oxford which are so striking that I should like to say something about each of them. They are teaching methods and examinations.

In Oxford the principal method of teaching is still the individual tutorial. A student writes a weekly essay on some quite broad topic. He then reads it out to his tutor who criticizes it, discusses the topic generally, and tries to answer any questions which the student may ask. We also use the straight lecture, with no audience participation at all. Seminars have come into vogue as a method of teaching those who stay on to do graduate work; they are not commonly held for undergraduates. We attach great importance to the undergraduate’s own reading for his tutorial essay. The number of hours of formal instruction which he is expected to attend is rarely more than eight a week. The number which he actually attends is of course much smaller. Lectures are truly voluntary.

I have not found it at all easy this year to make the transition from teaching single students in tutorials to teaching up to 140 students in a case class. I have enjoyed teaching by this method, partly because of the many utterly unexpected things which have happened to me in classrooms here. I have also been impressed by the ability which it develops in students to analyze cases, and by the skill which it fosters in oral discussion. In these important

1 We hope soon to rival it in Oxford, where a new Law library, built with the aid of a very generous grant from the Rockefeller Foundation, was opened in October, 1964.