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Welcoming Remarks—April 6, 2000

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Abstract

The speaker welcomes the attendees, who come from fourteen different countries, and outlines five common characteristics that unite those present. First, there is a significant number of people in our societies who live below the poverty line and who routinely have their legal needs overlooked. Second, the attendees recognize that basic human needs are protected by legal rights, and legal assistance and access to justice are necessary to vindicate those rights. Third, the resources currently available to help the poor address their legal needs are woefully inadequate in almost all of the countries represented. Fourth, those meeting today share a common commitment to find new ways to effectively address the legal needs of the poor. Finally, all share a belief that each can learn something from, and contribute to, other conference participants.

WELCOMING REMARKS

APRIL 6, 2000

SPEAKER: Michael A. Cooper, *President, The Association of the Bar of the City of New York*

Good afternoon. My name is Michael Cooper, and I am the President of this Association. It is my privilege to welcome you to this opening, plenary session of a three-day conference on access to justice for poor people.

You have traveled to this meeting hall from fourteen different countries to discuss this subject. What is it that has persuaded you to come thousands of miles, from such distant lands as Australia, Japan, South Africa, and Chile, to exchange experiences and views on the delivery of civil legal services to poor people? What do we have in common that leads us to believe that a global forum on access to justice issues is a worthwhile endeavor?

The answer, I suggest, has five elements. First, however different the economies of our countries may be, each has a significant population of poor people. One of the great ironies and paradoxes of our time here in the United States is that during the recent years of continuous economic growth and prosperity, with more and more individuals accumulating great—and, in some cases, almost unimaginable—wealth, a significant stratum of our society continues to live in poverty.

The New York Times, in an article this past December, ran a feature story under the following caption: “Poverty Rate Persists in City Despite Boom.” The article reported that 1.8 million New York City residents, a full one-quarter of the population, live below the poverty line. That number is as great as, or perhaps greater than, the number living below the poverty line during the last recession, in the early 1990s. The prevalence of poverty in the United States is not confined to New York City. The U.S. Bureau of the Census reported four years ago that the share of total household income of the poorest one-fifth of our country’s population had declined fifteen percent over the previous two decades.

Now, I cannot cite statistics for each of the countries represented at this conference, but I am confident that each has a

population of poor people of at least sufficient number that their legal needs cannot be overlooked.

The second characteristic we share is the fact that the basic needs of our respective populations of poor people—needs such as shelter and food, family unity, medical care—are protected by legal rights, the enforcement of which normally requires the services of a lawyer. The poor tenant threatened with eviction, the family that is denied subsistence benefits, the physically disabled individual who cannot enter a public place of accommodation because it does not accommodate a wheelchair; each needs legal assistance in dealing effectively with the people who threaten or infringe their rights.

The third element in this equation that brings us here is that the resources available to address the legal needs of the poor, at least those that are currently being devoted to addressing those needs of the poor, are woefully inadequate to the task. That is true of both governmental and private resources.

Speaking only of the United States, the Legal Services Corporation, the principal federal source of funds for civil legal services to the poor, has seen its funding by Congress decline during the past decade both in actual dollars, and, of course, even more when adjusted for inflation. And, Congress has imposed severe restrictions on the freedom of LSC grantees to handle certain kinds of matters.

Funding of civil legal services is also provided in New York by the State and the City, but these funds are made available reluctantly, belatedly, unpredictably, and in amounts that are far too low. To make matters worse, state funding is a political football. I should interject that I learned this, to my dismay as well as outrage, in my efforts chairing a Commission appointed by Chief Judge Kaye to try to find sources of permanent funding. When I went to Albany, the Senate said, "Don't speak to us, go to the Assembly;" the Assembly said, "If the Governor proposes it, we'll pass it in fifteen minutes;" and of course, the Governor tells you to go back to the Legislature.

The Senate and Assembly each year jockey to include their respective favorite items in the State budget, and legal services providers are left to receive the scraps off the table. They have had to curtail their programs and cut back on staff as a direct consequence of inadequate funding. I look forward to learning

whether you have been more successful than we have in persuading your respective governments to fund legal services; and, if you have, what we can learn from your success.

The private bar in New York City and elsewhere in this country devotes many thousands of hours to doing volunteer *pro bono* work, frequently in collaboration with Legal Services staff programs. The Administrative Board of the New York Courts passed a Resolution last year exhorting lawyers in private practice to devote at least twenty hours a year to *pro bono* volunteer work, and the bar of this state has been very generous in its response. There is undoubtedly more that the private bar can do to support legal services, by way of both monetary contributions to legal services providers and increasing the number of volunteer hours, but it is simply impossible in this country—and, I suspect, in most other countries as well—to expect volunteer lawyers to fill the entire gap between needs and resources.

The final two traits we share that have brought us together in this meeting hall today are a common commitment to find new ways, and to improve existing ways, of effectively addressing the legal needs of the poor, and a belief that each of us can learn something from—and hopefully contribute, in turn, to—other conference participants.

While the challenge of providing legal services to the poor is global, approaches and resources differ widely from country to country. In fact, one impetus behind the convening of this conference is the fact that the United States, the wealthiest of nations, appears to lag far behind many other nations in the resources, public and private, that are devoted to civil legal services to the poor.

In calling for an expanded constitutional right to counsel in civil matters, United States District Judge Robert Sweet noted, in a lecture given from this very podium three years ago, that:

England has recognized a common law right to counsel in civil matters since the 15th century; France, Germany, Switzerland, and other European countries recognize a statutory or constitutional right to counsel; and the European Court of Human Rights has interpreted the European Convention on Human Rights to require that Member Governments provide counsel to the poor in civil cases where representation by a lawyer is necessary to afford effective access to the courts. Judge Sweet in that

address cited an article by one of our conference participants, Earl Johnson, Jr., Associate Justice of the California Court of Appeals.

These European examples stand in contrast to the willingness of courts and legislatures of this country to recognize a right to counsel in only a very small category of civil cases, at least so far. Many other nations have been more generous in funding legal services for the poor than has the United States. I can give you an example that is really quite close to home. The funding provided by Ontario and some other Canadian provinces has greatly exceeded on a per-capita basis the funding provided in this country, despite the similarities of our legal system.

Unfortunately, the news from abroad is not all good. There are reports that governmental funding of civil legal services to the poor is being cut in a number of countries. As the welfare state shrinks, other nations are looking to *pro bono* legal services as a potential means of providing additional resources. However, we in the United States, who probably have the most extensive experience with *pro bono* services, are increasingly recognizing that private lawyers acting as volunteers can play only a supporting role, albeit a critical supporting role, in providing civil legal services to those who cannot afford to pay counsel.

In short, this conference is being convened at a difficult time for legal services. It is a time when new approaches must be explored and we must all learn from one another. This is a working conference. It will be short on speeches and consist primarily of panel discussions and breakout sessions.

There is one additional feature of the conference that I would like to mention. During breaks at various times over the next two days, Fordham Law School students will be conducting a survey of conference participants. They will be asking you questions about legal services organizations, funding, and initiatives in your respective home countries. I hope you will answer their questions frankly and fully. The survey results will be communicated to you and should help to extend the impact of this conference beyond this Saturday.

A conference such as this does not simply happen. It requires careful planning and presents a host of logistical problems. Fortunately, the Association has not had to shoulder that burden unaided. We have four co-sponsors: the Global

Public Service Law Project of New York University School of Law, New York Lawyers for the Public Interest, the Public Interest Law Initiative in Transitional Societies of Columbia Law School, and the Stein Center for Law and Ethics at Fordham Law School. The Planning Committee was co-chaired by James Brumm, Chair of the Association's Task Force on International Legal Services; Allan Gropper, the principal author of the 1996 Civil Justice Crisis Plan adopted by the Association; and Joan Vermeulen, Executive Director of New York Lawyers for the Public Interest.

Maria Imperial, the Executive Director of the City Bar Fund, who supervises the many public service and *pro bono* programs of the Association, has made major contributions to the preparations for the conference. And finally, the Secretary of the Planning Committee, who assisted many of you in making travel arrangements and finding lodging in New York City, is Dennis Cariello, the Association's Presidential Fellow.

I thank you all deeply for participating in the conference. I hope you will leave here believing that you have profited by attending.

Now I will turn the microphone over to Philip Alston, Chair of the Department of Law at the European University Institute in Florence, Italy, who will moderate the opening plenary session.