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COUNSEL FOR THE INDIGENT DEFENDANT †

TOM C. CLARK

ALMOST 100 years ago Orestes Brownson delivered his learned public address marking the beginning of St. John's College. Established by the Vincentian Fathers, it has developed into one of the great universities of our day. The School of Law, itself over forty years old, now has one of the largest enrollments in the nation. During those two score years many of the men of St. John's have distinguished themselves in our profession. This is so because they have been trained here at St. John's in the traditions of courage and loyalty so necessary under our constitutional system of individual liberty. Some countries, because they have not possessed a bar of strength and independence, have lost their liberties. We of the older generations remember it well.

Today we should focus our attention on the undergraduates. We are honored to have a large representation from the Senior Class here with us. I notice from your catalogue that St. John's offers opportunities to achieve a professional education that will enable men and women to take an effective role in the life of their community. And one of the particular objectives is to shape the students' wills so that they do good and recognize their fellow men as creatural equals.

I would like to direct our thoughts to this last idea—"creatural equals"—insofar as the administration of justice

† An address delivered at the Eleventh Annual Homecoming of the St. John's University School of Law on April 2, 1966.

is concerned. We are disturbed, as was Judge Learned Hand, with the rationing of justice; and we are today endeavoring to implement his commandment: "Thou shalt not ration justice." We know, as did he, that "if we are to keep our democracy" we must improve our system of criminal justice.

We have been making some progress in the procedural field since 1956, when *Griffin v. Illinois* established that the states must furnish criminal defendants with a transcript of the record for purposes of appeal. In 1963 came *Gideon v. Wainwright*, which added the requirement that counsel be appointed for indigent criminal defendants. *Douglas & Meyes v. California* enlarged this right to include at least one appeal. Now we are faced with the question of the stage at which counsel is required in a prosecution. As a result, the assigned-counsel problem facing the courts is reaching almost insurmountable proportions. Our problem is further complicated by the fact that in many cases adequate representation of indigents is not presently afforded. Over a hundred defender organizations now operate in the United States, four-fifths of which are supported by public funds. The largest and most distinguished, of course, is the National Legal Aid and Defender Association. But the typical assigned counsel versed in criminal proceedings devote as little time to the indigent's case as possible. Some of the remaining counsel have had no experience in the technicalities of criminal law and want no part of it. The balance are young and with no courtroom experience.

There is nothing more important in our system of government than the effective administration of criminal justice. Its fairness is a fundamental principle which underlies all of our civil and political institutions. History teaches us that every civilization is judged by the justness of its criminal procedures. What about your community? Does the indigent defendant have the benefit of counsel? If so, is it equivalent to that available to a defendant who can pay a fee? Do assigned counsel devote enough time to their tasks?

Are they appointed early enough to effectively protect the defendant's rights? Is there an opportunity for investigation to guarantee adequate representation? These are questions that search the souls of men today.

The practice of criminal law has been degraded for half a century. Today it is at such a low level that few good legal minds will enter upon it. Indeed, in most metropolitan areas you can count the top criminal law practitioners on the fingers of one hand and in some places lose a finger or so.

And we must say the law schools have aided and abetted in this deterioration. You have six of them in New York City. I dare say that most, if not all, merely require the study of one course in criminal law, and sometimes for only one term of 4-5 months during the freshman year. Moreover, from what my law clerks tell me, over the past 17 years, the law schools have generally downgraded the practice of criminal law. The professors suggest a specialty such as tax, labor relations, antitrust, and the like. And this is not all. The average lawyer in the practice keeps away from the criminal law like the plague. It hurts his practice, he says. The public associates him with his clients.

I have a healthy respect for the criminal law practitioner and his devotion to the law, not to cutting corners. He is the backbone of the adversary system—and it is the genius of the judicial process. We all know that the effective representation of opposing interests is a better lie detector than a polygraph. Still the tribe of advocates is a diminishing one. This is highly regrettable because lawsuits make the law and good advocacy wins lawsuits. A lawyer who has never been in the courtroom is not equipped to solve the difficult legal problems that lawyers face every day. Courtroom experience alone can furnish that grasp of legal processes so necessary to legal counselling.

For this reason it is most encouraging to learn of your law school's participation in the joint program of the law schools designed to aid in furnishing counsel for indigent

defendants in criminal cases. The State of New York has paved the way for its success by permitting the members of the senior class of each of your law schools to take part in the representation of indigent defendants. And the six law schools of the City have submitted rules to the appellate division for its operation. The plan contemplates that students may participate in the trial of misdemeanors under the supervision of counsel assigned by the Legal Aid Society. On the civil side of the docket these students may appear in cases not involving over \$300.

This program could be developed into one of the most important instruments in legal education. It offers the opportunity for a period of internship to every student before graduation. This will be an invaluable aid to him as a practitioner. Moreover, it will develop advocates and much more skillful ones besides. This will in time eliminate one of the causes for the public dissatisfaction with the practice of law—namely, the ineffective and disreputable lawyer that may be engaged in the criminal practice.

I hope that you may interest more lawyers in your project. In Houston, Texas, all of the 3,500 lawyers are actively engaged in the program to supervise the work of the student lawyer. The courts must depend upon the advocate and I hope that the appellate division will require every lawyer to assist this program in some capacity. In that way the project will bring more lawyers in contact with the administration of criminal justice. We hear much of the increasing crime rate throughout the country. The more lawyers we can interest in this project, the more ideas and suggestions will be generated towards the solution of this problem. Furthermore, the more lawyers that become acquainted with criminal law procedures, the more chance we will have to improve these procedures. And, finally, personal contact with criminal defendants, jails, and police procedures will lend a better understanding of their problems.

The real compensation of a lawyer is in the satisfaction of a job well done. It is his privilege and obligation to assure a competent administration of justice so that no man shall suffer in the enforcement of his legal rights for want of a skilled protector—able, fearless and incorruptible. The whole lawyer is not one who merely represents a client for a fee. He is one who is dedicated to the welfare of his community and his fellow man. He gives advice and counsel to the unfortunate; he strives to impress upon all people the blessings of constitutional democracy, of human dignity, of tolerance and respect for one another as creatural equals. He, therefore, plays an active role in communal affairs and in molding public opinion; he believes in his government and has respect for constituted authority; above all he recognizes the supremacy of the law, knowing that law and order are the only sure protectors of liberty. Your program is a forward step in preparing the lawyer to meet the great responsibility that is his in the preservation of our democratic way of life.

And so I salute St. John's. The joint program of the law schools of this community can well become the pilot project for the nation. It is my hope that it will afford a crowning example to all who address themselves to the effective administration of justice.

Let the motto of every student—of every lawyer—joining the project be:

Let me but be the lawyer to the poor;
To defend the defenseless, befriend the friendless,
Redeem the outcast and through my plea
Bring protection to those without a protector; and
Give me strength and understanding that my service may be
good;
My counsel true;
And my advocacy fair.
And may my reward be
That good report of my fellow man
And the blessing of my God.