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AMERICAN COLLEGE OF TRIAL LAWYERS

MARCH 22, 1976

GOOD MORNING. I AM SO PLEASED TO BE HERE. I CAME FROM ST. JOHN'S ISLAND THIS MORNING. THE WATER TAXI IS QUITE AN EXPERIENCE. I THOUGHT FOR A MOMENT THAT I HAD FOUND THE BERMUDA TRIANGLE.

BUT, THE CAPTAIN OF THE BOAT WAS VERY FRIENDLY. HE SHOWED ME HOW TO ADJUST MY LIFE JACKET. THEN HE LOANED ME HIS BOOK TO READ ON THE WAY OVER -- IT WAS CALLED "JAWS".

SO, WHEN I SAY I AM PLEASED TO BE HERE -- YOU KNOW THAT IS AN UNDERSTATEMENT.

I WAS ALSO IMPRESSED WITH THE LATIN SUB-TITLES FOR THIS MORNING'S SESSION. HAVE YOU NOTICED THEM?

AT FIRST I THOUGHT I WAS READING A RECIPE FOR CARRIBEAN CONCH (KONK) CHOWDER -- PRO-SPICE, ADD-SPICE AND RE-SPICE. BELIEVE ME, I'VE HAD MEXICAN PEPPERS THAT WOULD TASTE LIKE A WATER CHASER AFTER THE CHOWDER WE HAD DOWN HERE SATURDAY NIGHT.



BUT, MY REMARKS THIS MORNING ARE DISTINCTLY LESS SPICY AND MORE PRO-SPICE -- FOR IN KEEPING WITH THE THEME OF THIS SESSION, I THOUGHT IT MIGHT BE USEFUL TO TAKE A BICENTENNIAL VIEW OF THE EXTENT TO WHICH LITIGATION CAN OR SHOULD PLAY A ROLE IN THE FORMULATION OF NATIONAL POLICY.

AS MEMBERS OF THE LEGAL PROFESSION, HOW SHOULD WE VIEW THE CURRENT MUSHROOMING OF LITIGATION AS THIS NATION ENTERS ITS THIRD CENTURY? DOES IT ENDANGER OR ENHANCE THE PROSPECTS OF PROTECTING AND MAINTAINING THE VALUES OF OUR DEMOCRATIC SYSTEM?

HAVING SPENT ALMOST ALL OF MY ADULT LIFE AS A LITIGATOR, I CAN TELL YOU FROM PERSONAL EXPERIENCE THAT THE PROCESS OF LITIGATION LOOKS VERY DIFFERENT TO THE COURT AND THE LITIGATOR THAN IT DOES TO THE FEDERAL AGENCY WHOSE PROGRAM IS INVOLVED IN THE LITIGATION.

LET ME ILLUSTRATE WITH A PERSONAL, BUT NOT UNCOMMON, INCIDENT.

LAST YEAR, ONE WEEK AFTER I CAME TO HUD, THE FEDERAL DISTRICT COURT IN CHICAGO ENTERED AN ORDER TO SHOW CAUSE WHY I SHOULD NOT BE HELD IN CONTEMPT FOR FAILURE TO PRODUCE A VOLUMINOUS QUANTITY OF DOCUMENTS. I DID NOT KNOW THAT I HAD FAILED TO PRODUCE ANY DOCUMENTS, NOR THAT THE DEMANDED PRODUCTION WAS PROCEEDING, NOR THAT THE HEARING WAS CONTINUED.

IN FACT, I DID NOT FIND OUT ABOUT THE ORDER UNTIL SEVEN MONTHS LATER WHEN THE COURT ACTUALLY HELD THE HEARING AND THE NEWSPAPERS WERE REPORTING THAT THERE WAS A REAL POSSIBILITY THAT I MIGHT FIND AN IMMEDIATE RESPITE FROM MY HECTIC SCHEDULE IN THE QUIETUDE OF A CHICAGO JAIL.

THANKS TO SOME FAST ACTION AND HARD WORK OF MY STAFF AND THE CIVIL DIVISION, WE MANAGED TO LOCATE THE REMAINING DOCUMENTS AND THE UNWANTED VACATION IN CHICAGO WAS AVOIDED.

I RELATE THIS ANECDOTE TO EMPHASIZE THAT WHERE YOU STAND ON THE ROLE OF LITIGATION MAY WELL DEPEND ON WHERE YOU SIT. THUS AFTER THE PAST ONE YEAR AND 13 DAYS, IT IS INEVITABLE THAT THE VIEWS I EXPRESS ARE HUD-ORIENTED.

HUD CURRENTLY IS PARTY TO SOME 3,000 SUITS. THE GREAT MAJORITY OF THESE CASES INVOLVE FORECLOSURE ACTIONS AND ROUTINE QUESTIONS OF FACT AND COMMERCIAL LAW THAT DO NOT DIFFER GREATLY FROM SIMILAR ACTIONS BROUGHT IN THE PRIVATE SECTOR. THEY HAVE LITTLE OR NO EFFECT ON DEPARTMENTAL POLICY.

BUT, AN EVER-INCREASING NUMBER OF CASES ARE BEING FILED AGAINST HUD WHICH CHALLENGE ITS ADMINISTRATIVE AND POLICY DECISIONS. WE HAVE BEEN CHALLENGED:

- FOR THE IMPOUNDING OF FUNDS FOR HOMEOWNERSHIP SUBSIDIES;
- FOR FAILING TO PROVIDE OPERATING SUBSIDIES TO APARTMENT BUILDINGS;
- FOR REFUSING TO IMPLEMENT A STANDBY PROGRAM TO ASSIST HOMEOWNERS IN DANGER OF FORECLOSURE;
- FOR ESTABLISHING ALLEGEDLY INADEQUATE PROCEDURES TO PROTECT TENANTS AGAINST IMPROPER EVICTIONS;



- FOR APPROVING RENT INCREASES;
- FOR REFUSING TO REHABILITATE RATHER THAN TO DEMOLISH PARTICULAR DWELLINGS;
- FOR APPROVING PARTICULAR SITES FOR THE CONSTRUCTION OF APARTMENTS;
- FOR REFUSING TO PAY FOR THE REPAIR OF ALLEGEDLY DEFECTIVE CONDITIONS FOUND IN FEDERALLY-INSURED HOMES;
- AND, FOR MANY OTHER ABUSES TOO NUMEROUS TO LIST HERE.

TODAY, A WHOLE HOST OF ISSUES ARE BEING RAISED BY INDIVIDUALS WHO OWN, BUILD, FINANCE, LIVE IN, WANT TO LIVE IN, OR OBJECT TO HOUSING BUILT WITH HUD SUBSIDIES OR INSURANCE, OR WHO OBJECT TO THE MANNER IN WHICH LOCALITIES ARE INTENDING TO USE COMMUNITY DEVELOPMENT FUNDS OBTAINED THROUGH HUD.

THIS LITIGATION DOES HAVE A SUBSTANTIAL EFFECT -- FOR BETTER AND FOR WORSE -- ON THE MANNER IN WHICH THE DEPARTMENT WORKS. BUT, IT MAY NOT BE PROVIDING THE RELIEF OR EVEN THE OUTLET FOR PROTEST THAT MANY OF THE PLAINTIFFS ARE SEEKING.

SINCE 1968, THE JUDICIARY HAS BEEN FAR MORE WILLING TO QUESTION ADMINISTRATIVE CHOICES THAT ONCE WERE VIEWED AS FALLING WITHIN THE SOLE DISCRETION OF THE DEPARTMENT.

THIS PHENOMENON IS EXPLAINED BY A NUMBER OF FACTORS:

- URBAN DISCONTENT AND RIOTS OF THE 1960'S WHICH MADE THE COURTS AND THE GENERAL PUBLIC MORE AWARE OF GHETTO CONDITIONS AND THE IMPORTANCE OF PROVIDING A "SAFETY VALVE" OR POINT OF ACCESS FOR THOSE AFFECTED;
- ENACTMENT IN THE 1960'S OF A BROAD RANGE OF URBAN AND LOW INCOME HOUSING PROGRAMS, WHICH AFFECTED THE LIVES AND ASPIRATIONS OF A GREAT NUMBER OF PEOPLE AND ELICITED STRONG REACTIONS;
- THE CONTINUED DECAY OF URBAN AREAS;
- THE CONTINUED CONCENTRATION OF MINORITY GROUPS IN OUR CORE CITIES;

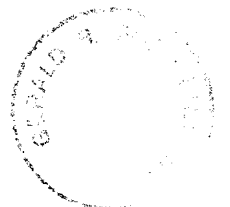
- THE RISING EXPECTATIONS OF POOR PEOPLE FOR A BETTER LIFE -- FOOD, HOUSING, EDUCATION, HEALTH CARE -- AND FOR A FULL AND FAIR OPPORTUNITY TO HAVE THEIR COMPLAINTS HEARD;

- GREATER AVAILABILITY OF LEGAL SERVICES FOR CITIZENS, PARTICULARLY THE POOR, AFFECTED BY GOVERNMENT ACTION;

- LIBERALIZATION OF CLASS ACTION AND STANDING RULES MAKING THE COURTS MORE ACCESSIBLE TO CITIZENS SEEKING TO CHALLENGE GOVERNMENT ACTION;

- GREATER COMPLEXITY OF GOVERNMENT PROGRAMS SEEMINGLY GIVING RISE TO MORE INCIDENTS OF AMBIGUITY OR INEQUITY;

- SHARPER CONFLICTS BETWEEN THE EXECUTIVE AND LEGISLATIVE BRANCHES PRODUCING MORE LEGITIMATE COMPROMISE AND RESULTING IN AN INCREASING NUMBER OF BASIC QUESTIONS ON WHICH A JUDICIAL REFEREE IS NEEDED.



THESE FACTORS COUPLED WITH THE DEMISE OF OTHER AVENUES OF REDRESS FOR INDIVIDUAL FRUSTRATIONS HAVE BROUGHT MORE AND MORE CASES INVOLVING GOVERNMENTAL POLICY INTO COURT.

EVEN A QUARTER CENTURY AGO, PARTICULARLY IN OUR OLDER URBAN COMMUNITIES, THE LOCAL POLITICAL ORGANIZATION PROVIDED THE CITIZEN WITH A POINT OF ACCESS TO GOVERNMENT BUREAUCRACY. A LATE SOCIAL SECURITY CHECK, A SOUGHT-AFTER PUBLIC JOB, A GOVERNMENT LOAN WERE GRIST FOR THE ORGANIZATION MILL -- FOR IT HAD ACCESS TO THE INCUMBENT WHO WOULD NEED THE ORGANIZATION'S HELP TO WIN FUTURE ELECTIONS.

BUT, THE ERA OF THE LOCAL POLITICAL ORGANIZATION HAS WANED. TODAY, THE PHENOMENON OF THE MEDIA CANDIDATE WITH MASSIVE CONSTITUENCIES IS VERY MUCH WITH US. THE COURTS NOW PROVIDE THE MOST AVAILABLE MEANS OF MAKING THE GOVERNMENT LISTEN.

THUS, RESORT TO LITIGATION HAS INCREASINGLY BEEN THE TOOL FOR CITIZENS SEEKING REDRESS.

ON THE PLUS SIDE, IT FORCES THE EXECUTIVE BRANCH TO FACE ISSUES IT MIGHT HAVE PREFERRED TO DELAY OR TO OVERLOOK.

AND, IT INDUCES THE EXECUTIVE TO TAKE GREATER CARE IN INTERPRETING AND IMPLEMENTING LEGISLATIVE MANDATES.

ALSO, IT ENCOURAGES THE PREPARATION OF SOUND ADMINISTRATIVE RECORDS TO SUPPORT DISCRETIONARY DECISIONS IN THE RECOGNITION THAT THEY MAY BE USED IN LITIGATION.

SIMILARLY, IT ENCOURAGES THE CONSIDERATION OF ITEMS LIKELY TO CONCERN THE LITIGATOR AT THE TIME THAT PROGRAM PROCEDURES ARE BEING DRAFTED.

BUT, IT ALSO HAS MINUSES.

IT CAN HOBBLE AN AGENCY SO THAT IT CANNOT EQUITABLY IMPLEMENT A PROGRAM.

IT CAN AFFECT THE CREDIBILITY OF THE COURTS BY CASTING THEM IN THE ROLE OF PROGRAM ADMINISTRATORS MANDATING OR INITIATING PROGRAMS OF CONSIDERABLE COMPLEXITY.

AND, FINALLY, IT PUTS THE DEPARTMENT IN AN ADVERSARY POSITION SO THAT A COURT VICTORY -- PROCEDURAL AS WELL AS SUBSTANTIVE -- TENDS TO BE REGARDED AS A VINDICATION OF THE CHALLENGED POLICY AND THUS REINFORCES IT.

BUT, FAR MORE IMPORTANT, IT SEEMS TO BE INCREASINGLY CLEAR THAT THE THOUSANDS OF PROTESTORS WHO CHALLENGE THE DECISIONS OF HUD, HEW, AND A HOST OF OTHER FEDERAL AGENCIES ARE SEEKING AID THAT CANNOT IN THE LONG RUN BE PROVIDED THROUGH THE JUDICIAL BRANCH OF GOVERNMENT.

I SUBMIT THAT THE DILEMMA OF THIS GATHERING VOX POPULI PITTED AGAINST THE REASONABLE, JURIDICAL LIMITS OF OUR DEMOCRATIC SYSTEM POSES A FUNDAMENTAL CHALLENGE TO OUR TRADITIONAL INSTITUTIONS -- BECAUSE, IN FACT, OUR IDEALS AND OUR TRADITIONS ARE NOT AUTOMATICALLY ACCEPTED BY LARGE AND DIVERSE GROUPS OF AMERICANS -- PARTICULARLY THOSE WHO BELIEVE THAT OUR ACCEPTED INSTITUTIONS DO NOT SERVE THEM FAIRLY.



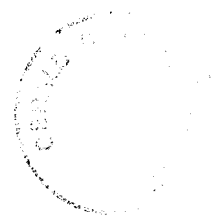
EIGHT YEARS AGO THE AMERICAN ASSEMBLY OPENED ITS REPORT ON "LAW AND A CHANGING SOCIETY" BY STATING:

"OUR CHANGING SOCIETY NOW FACES CHALLENGES TO PUBLIC ORDER AND TO THE REALIZATION OF AMERICAN IDEALS GREATER THAN ANY SINCE THE CIVIL WAR -- THE CLUSTER OF PROBLEMS KNOWN AS THE URBAN CRISIS."

IT SEEMS TO ME THAT A KEY ISSUE ON OUR COLLEGIAL CALENDAR -- AS WE VIEW OUR BICENTENNIAL PROSPICE -- IS THE NEED TO PROVIDE REALISTIC REDRESS TO URBAN PROTESTORS. WE CANNOT CLOSE OUR EYES TO THE PROBLEM -- IT IS WITH US, AND, IT IS CRITICAL TO THE FUTURE OF OUR SOCIETY.

MY PREMISE IS THAT THIS PROBLEM BREAKS INTO TWO DISTINCT PARTS:

- GRIEVANCES THAT ARE SUSCEPTIBLE TO SOLUTION THROUGH TRADITIONAL JUDICIAL PROCEEDINGS, AND
- GRIEVANCES THAT ARE NOT.

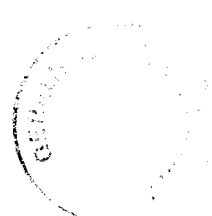


EVEN WITH THE FIRST CATEGORY, WE HAVE IN THIS COUNTRY A CRISIS OF MAJOR PROPORTIONS. WE HAVE SO BURDENED OUR JUDICIAL SYSTEMS, STATE AND FEDERAL, THAT THEY ARE HAVING SERIOUS TROUBLE HANDLING THOSE DISPUTES WHICH THEY ARE BEST EQUIPPED TO RESOLVE. IF THEIR EFFECTIVENESS IS TO BE PRESERVED, IT IS PATENTLY OBVIOUS THAT WE HAVE TO DO SOME LARGE-SCALE PRUNING.

WE HAVE, I BELIEVE, OVER-INDULGED OUR DESIRE TO SETTLE EVERY DISPUTE AND EVERY SOCIAL SHORTFALL WITH THE TRAPPINGS OF FORMAL TRIAL PROCEEDINGS.

OUR CRIMINAL SYSTEM ALREADY SHOWS CRACKS -- AND MANY RESPECTED LAW ENFORCEMENT OFFICERS CHALLENGE THE LEGAL PROFESSION TO DEVELOP INNOVATIVE IDEAS TO REDUCE THE BURDEN ON LAW ENFORCEMENT AND ON THE COURTS.

SERIOUS STUDIES QUESTION THE NEED FOR THE FULL APPLICATION OF OUR CRIMINAL LAWS TO SOME OF THE SO-CALLED VICTIMLESS CRIMES. EMPIRICAL STUDIES WITH THE CASUAL DRUNK AND THE ROUTINE TRAFFIC OFFENDER SUGGEST THAT THESE MATTERS DO NOT NEED THE PROTECTIONS AFFORDED BY OUR CRIMINAL SYSTEM AND THAT DIFFERENT PROCEDURES CAN BE DEVELOPED FOR THEM TO RELIEVE THE BURDEN THEY PLACE UPON OUR COURTS.

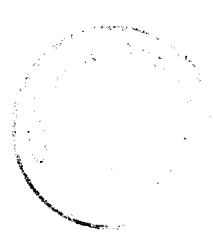


EXPERIMENTS WITH OTHER OFFENSES GIVE HOPE THAT RECIDIVISM CAN BE REDUCED, THAT FIRST-TIME OFFENDERS CAN BE DETERRED FROM REPEATED CRIMINAL ACTIVITY THAT SO BURDENS OUR CRIMINAL SYSTEM.

SEVERAL AREAS OF THE COUNTRY ARE EXPERIMENTING WITH PROJECT MISDEMEANANT, WHERE LAY COUNSELLORS GIVE SPECIAL ATTENTION TO FIRST-TIME OFFENDERS IN THE HOPE OF CATCHING THEM IN TIME.

ANOTHER EXPERIMENT INVOLVES DIVERSION COUNSELING. HERE THE CRIMINAL TRIAL OF THE FIRST-TIME OFFENDER IS DELAYED, WITH HIS OR HER CONSENT, AND COUNSELING IS PROVIDED BEFORE PROSECUTION. IF THE COUNSELING SUCCEEDS, THE CRIMINAL CHARGE IS DISMISSED, AND SOCIETY IS SPARED THE COST OF YET ANOTHER TRIAL. DIVERSION COUNSELING MAKES PARTICULAR SENSE IN VIEW OF THE FACT THAT IT IS OFFERED ONLY TO THOSE PERSONS WHO, IF CONVICTED, WOULD MOST CERTAINLY BE PLACED ON PROBATION.

IN THE CIVIL FIELD, STATE LAWS AND PROPOSALS PROVIDING FOR NO-FAULT DIVORCES AND NO-FAULT RESOLUTION OF TRAFFIC ACCIDENTS ALSO CONSTITUTE USEFUL EXPERIMENTS IN THE EFFORT TO REDUCE CASELOADS.



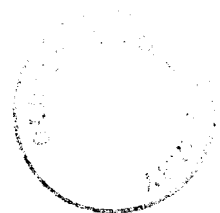
WHETHER ANY OR ALL OF THESE PARTICULAR IDEAS ARE SOUND IS NOT NOW THE ISSUE. RATHER THESE IDEAS SHOULD BE SEEN AS THE TYPE OF EXPERIMENT THAT WE MUST CONSIDER IN ORDER TO MAINTAIN A FUNCTIONING JUDICIAL SYSTEM TO COPE WITH OUR LITIGATION EXPLOSION.

WHEN I REFLECT UPON THE THOUGHT THAT THIS ORGANIZATION AND OTHERS HAVE BROUGHT TO THIS PROBLEM, AND SEE HOW FAR WE MUST GO TO ACHIEVE A SOLUTION, I HAVE REAL CONCERN AS TO THE LIKELIHOOD OF FASHIONING A SOLUTION FOR THE SECOND PART OF MY THESIS:

WHAT DO WE DO TO RESPOND TO THE MILLIONS OF INDIVIDUALS WHO SEEK AN OUTLET FOR THEIR COMPLAINTS AND FRUSTRATIONS?

SOCIETY NEEDS A SAFETY VALVE TO LET OFF THE STEAM OF THEIR PROTEST -- AND THEY NEED -- IN MORE CASES THAN WE YET REALIZE -- MEANINGFUL RELIEF TO THEIR INDIVIDUAL COMPLAINTS THAT ARE NOT, AND I SUGGEST, CANNOT BE PROVIDED THROUGH TRADITIONAL PLAINTIFF VERSUS DEFENDANT ADVERSARY PROCEEDINGS.

LET ME GIVE YOU TWO EXAMPLES.

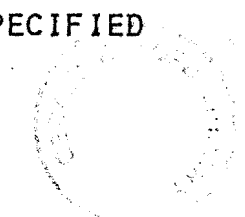


LAST FALL, I WAS ENGAGED IN WHAT MIGHT BEST BE DESCRIBED AS A BROUHAHA WITH ABOUT 800 ANGRY HOMEOWNERS IN CHICAGO WHOSE MORTGAGES FOR THE MOST PART WERE HUD-INSURED. THEY FEARED THE LOSS OF THEIR HOMES BY REASON OF FORECLOSURE AND THE DETERIORATION OF THEIR NEIGHBORHOODS RESULTING FROM THE DECAY THAT SETS IN WHEN A HOUSE STANDS EMPTY THROUGH THE LONG MONTHS IT TAKES TO COMPLETE FORECLOSURE AND RESALE.

THEY WERE DEMANDING THAT HUD -- IN EFFECT -- CHANGE THEIR MORTGAGE CONTRACT -- TO PROHIBIT LENDERS FROM FAST FORECLOSURES, TO REQUIRE LENDERS TO PROVIDE DEFAULT COUNSELING AND TO MANDATE THAT LENDERS ACCEPT PARTIAL PAYMENTS.

AT THAT MEETING I TRIED TO EXPLAIN THAT ONLY A FEW WEEKS EARLIER HUD HAD ISSUED INNOVATIVE NEW GUIDELINES GOVERNING LENDERS TARGETED TO THESE PRECISE CONCERNS.

FOR EXAMPLE, WE PROVIDED THAT IT WOULD BE GROUNDS FOR HUD TO STOP DOING BUSINESS WITH A LENDER WHICH FORECLOSED BEFORE THE BORROWER WAS AT LEAST THREE MONTHS BEHIND IN HIS PAYMENTS, FORECLOSED WITHOUT CONTACTING THE BORROWER FIRST, OR REFUSED TO TAKE PARTIAL PAYMENTS UNDER SPECIFIED CIRCUMSTANCES.

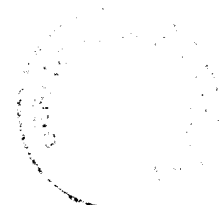


THEIR REACTION WAS STRIDENT SCORN. I WAS PUZZLED UNTIL I SPOKE A DAY TO TWO LATER WITH A QUIETER REPRESENTATIVE. THEN IT BECAME APPARENT TO ME THAT WHAT THEY WANTED WAS NOT STRICTER GUIDELINES TO GOVERN LENDERS BUT INSTEAD THE RIGHT TO PLEAD THE SUBSTANCE OF OUR NEW GUIDELINES AS A BAR TO A FORECLOSURE SUIT. THEY WANTED THE LEGAL FOOTING TO CHALLENGE IN COURT EACH FORECLOSURE ACTION BROUGHT AGAINST THEM.

THEY WERE NOT INTERESTED IN THE ENUNCIATION OF BROAD POLICY AND WERE NOT CALMED BY THE ANNOUNCEMENT THAT HUD WOULD STOP DOING BUSINESS WITH MORTGAGE COMPANIES WHICH PRECIPITOUSLY FORECLOSED.

THE FACT THAT IT WAS THEN PUBLIC KNOWLEDGE THAT WE HAD COMMENCED DISCIPLINARY ACTIONS AGAINST A GROUP OF LARGE MORTGAGE COMPANIES BECAUSE OF THEIR ABUSES WAS FOR THE ANGRY 800 IN CHICAGO, AND I SUSPECT FOR THE HUNDREDS OF THOUSANDS SIMILARLY SITUATED, AN IRRELEVANT FACTOR.

BUT CAN WE SERIOUSLY CONSIDER THE CREATION OF NEW LEGAL RIGHTS, ENFORCEABLE IN FEDERAL COURT WHICH PERMIT EVERY SUCH HOMEOWNER TO ARGUE TO A COURT WHY HE OR SHE SHOULD BE RELIEVED OF HIS MORTGAGE CONTRACT?



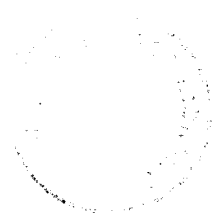
EVEN IF THE JUDICIAL SYSTEM COULD STAND IT, CAN THE ECONOMICS OF THE INDUSTRY SURVIVE SUCH AN ONSLAUGHT?

THE SECRETARY OF HEW HAS EVEN GREATER PROBLEMS.

LAST JUNE HIS DEPARTMENT ANNOUNCED THAT IT WAS PROPOSING TO SHIFT ITS CIVIL RIGHTS ENFORCEMENT EFFORTS INCREASINGLY TOWARDS A SYSTEMATIC AND AWAY FROM A COMPLAINT-ORIENTED APPROACH.

HEW'S PROPOSAL WAS COMPELLED, IN PART AT LEAST, BY THE TEN-FOLD INCREASE IN INDIVIDUAL COMPLAINTS MAKING IT INCREASINGLY DIFFICULT FOR THE DEPARTMENT TO BE RESPONSIVE, DESPITE SUBSTANTIAL STAFF INCREASES.

THEIR PROPOSAL MET WITH OVERWHELMING OPPOSITION FROM VIRTUALLY EVERY ORGANIZATION IN THE CIVIL RIGHTS FIELD. LAST WEEK THE DEPARTMENT WITHDREW THE PROPOSAL, STATING THAT IT WOULD ATTEMPT TO INVESTIGATE AND RESOLVE EACH COMPLAINT SUBMITTED TO IT WHILE NOTING THAT IT WOULD BE EXTREMELY DIFFICULT TO COPE WITH THE BACKLOG AND RISING VOLUME OF FILINGS. IT DECLARED THAT IT WOULD SEEK PUBLIC PARTICIPATION IN THE DEVELOPMENT OF NEW APPROACHES TO CIVIL RIGHTS ENFORCEMENT.



THESE EXAMPLES ILLUSTRATE THE DILEMMA. HAVING CREATED INCREASING EXPECTATIONS, HAVING PLEDGED BILLIONS OF DOLLARS EACH YEAR TO SECURE BETTER FOOD, DECENT HOUSING, QUALITY EDUCATION, PROPER MEDICAL CARE -- AND MORE EFFECTIVE LEGAL SERVICES -- HOW DO WE RESOLVE DISPUTES THAT ARISE OUT OF OUR ADMINISTRATION OF THOSE GRANTS?

WE ARE ADDRESSING THE GROWING SOCIAL AND ECONOMIC PROBLEMS OF GROUPS. BUT, WE SHOULD BE MORE CONCERNED THAT OUR "MASS SOLUTIONS" WILL ERODE OUR UNIQUE RELIANCE ON THE INDIVIDUAL AND OUR PROTECTION OF INDIVIDUAL RIGHTS.

WHERE IN OUR SYSTEM DO WE PROTECT THE INDIVIDUAL'S RIGHT TO DISSENT FROM OUR GROUP POLICIES, TO PROTECT THE APPLICATION OF THEM TO HIM WHEN THEY MEAN THE DIFFERENCE BETWEEN A HOME OR NONE, BETWEEN A GOOD EDUCATION OR A LESSER ONE, ADEQUATE NOURISHMENT OR HUNGER OR HEALTH?

HAVE WE CREATED GROUP RIGHTS WITHOUT REMEDIES?

I SUGGEST THAT THE FIRST STEP TOWARD FINDING AN ANSWER IS TO CONCEDE THAT THE COURTS ARE OF ONLY MINOR USE IN SOLVING THIS PROBLEM AND THAT THE PROBLEM IF LEFT TO THE COURTS COULD LITERALLY SWAMP THE SYSTEM.

SECOND, WE MUST IN THE DEVELOPMENT OF OUR SOCIAL PROGRAMS PROVIDE A RECOGNITION OF OUR INABILITY AT THE FEDERAL LEVEL TO FASHION NATIONWIDE REMEDIES FOR LOCAL PROBLEMS.

TO QUOTE FROM LAST YEAR'S REPORT OF THE AMERICAN ASSEMBLY ON "LAW AND A CHANGING SOCIETY":

"EVERY EFFORT SHOULD BE MADE TO REDUCE UNWARRANTED REGULATION OF HUMAN AFFAIRS BY GOVERNMENT. . . . WITHIN BROAD NATIONAL POLICY GUIDELINES, RESPONSIBILITY FOR THE DEVELOPMENT AND IMPLEMENTATION SHOULD BE PLACED AT THE MOST FEASIBLE LEVEL PERMITTING EFFECTIVE CITIZEN PARTICIPATION."

THE BLOCK GRANT AND THE REVENUE SHARING FUNDS THAT THE FEDERAL GOVERNMENT GIVES TO CITIES ARE RESPONSIVE TO THIS POINT. TO THOSE WHO FEAR THAT LOCAL GOVERNMENTS MAY DISTORT NATIONAL POLICIES, I REPLY THAT NATIONAL GOVERNMENT CANNOT ADEQUATELY RESPOND TO LOCAL PRIORITIES AND INDIVIDUAL DEMANDS.

ONE LOOK AT THE 96,000 UNITS OF HOUSING THAT HUD HAS TAKEN BACK SHOULD BE A FORCEFUL REMINDER THAT THERE IS A BETTER WAY.

THIRD, EACH OF OUR MAJOR FEDERAL DEPARTMENTS MUST RESPOND MORE DYNAMICALLY TO INDIVIDUAL COMPLAINTS -- WE MUST BE MORE "CONSUMER RESPONSIVE" IN DEVELOPING OUR PROGRAMS.

BEFORE I WENT TO CHICAGO LAST FALL, I HAD PUBLICALLY STATED THAT WE WOULD CREATE A TOUGH OFFICE OF CONSUMER AFFAIRS -- ONE THAT WAS NOT JUST A TOKEN TO "CONSUMERISM". I RETURNED WITH AN ABSOLUTE DETERMINATION TO DO SO.

WE NOW HAVE AT HUD, A NEW OFFICE OF ASSISTANT SECRETARY FOR CONSUMER AFFAIRS AND REGULATORY FUNCTIONS WHICH WILL NOT JUST LOG IN COMPLAINTS. THIS OFFICE WILL:

- HELP US DESIGN OUR POLICIES WITH A CLEAR UNDERSTANDING OF HOW THEY AFFECT CONSUMERS;
- PROVIDE CONSUMERS WITH THE OPPORTUNITY TO PRESENT THEIR VIEWS BEFORE ANY PROGRAM IS LOCKED INTO FINAL DESIGN;

-- AND, PROVIDE CONSUMERS WITH ACCESS TO RELEVANT BACKGROUND MATERIALS SO THAT THEIR VIEWS CAN BE FACTUALLY SUPPORTED.

I WANT REAL CONSUMER INPUT BEFORE WE FORMULATE POLICIES SO THAT WE DEFUSE THE KIND OF ANGRY REACTION THAT GROWS WHERE THERE HAS BEEN INADEQUATE COMMUNICATION.

TO THIS SAME END WE ARE PROVIDING AN ADMINISTRATIVE COMPLAINT SYSTEM COVERING OUR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM. WE HAVE FOUND THAT THIS APPROACH GIVES US THE CHANCE TO RESOLVE THE ISSUE BEFORE IT REACHES THE COURT.

ACTIONS OUTSIDE THE EXECUTIVE BRANCH CAN HELP TOO. WE HAVE TRIED TO WORK WITH CONGRESSIONAL STAFFS TO OBTAIN GREATER CLARITY IN ENACTMENTS TO AVOID AMBIGUITIES WHICH CAN GIVE RISE TO LAWSUITS.

OUR TRIPARTITE SYSTEM OF GOVERNMENT HAS ACCOMMODATED TREMENDOUS CHANGES OVER THE PAST 200 YEARS.



DEMOGRAPHICALLY WE HAVE GROWN FROM 4 TO 215 MILLION PERSONS, OUR BIRTH RATE HAS DECLINED FROM 55 PER 1,000 TO 15 PER 1,000 PERSONS, OUR LIFE EXPECTANCY HAS INCREASED FROM ABOUT 40 TO OVER 70 YEARS, OUR AVERAGE HOUSEHOLD SIZE HAS DROPPED FROM ABOUT 6 TO ABOUT 3 PERSONS.

ECONOMICALLY WE HAVE CHANGED FROM A PREDOMINATELY RURAL NATION IN WHICH 95 PERCENT OF THE POPULATION LIVED IN RURAL AREAS TO A PREDOMINATELY INDUSTRIAL NATION WHERE 75 PERCENT OF OUR POPULATION LIVE IN URBAN AREAS.

MY GOOD FRIEND, MURRAY SCHWARTZ -- FORMER DEAN OF THE UCLA LAW SCHOOL -- SUMMED UP OUR BICENTENNIAL CONDITION WHEN HE SAID: "WE ARE AN AGING, URBAN, INCREASINGLY NON-WHITE POPULATION, WITH SMALLER FAMILIES AND FEWER CHILDREN -- A FAR CRY FROM THE POPULATION WHICH RATIFIED THE CONSTITUTION OF THE UNITED STATES AND THE BILL OF RIGHTS."

WE MIGHT ALSO ADD THAT WE HAVE MORE AND MORE TO DO -- AND LESS AND LESS TO DO IT WITH -- AS WE INHERIT THE SKIMPY REMAINS OF ALL THAT HAS BEEN CHOPPED, DUG OR PUMPED FROM OUR ENVIRONMENT IN THE ENSUING YEARS.



YET, AS WE ENTER OUR THIRD CENTURY, WE ARE NO LESS PROUD -- THAN OUR FOREBEARS -- OF OUR SYSTEM OF GOVERNMENT THAT HAS GUARANTEED ALL AMERICANS GREATER INDIVIDUAL FREEDOMS (ECONOMIC, SOCIAL AND POLITICAL) THAN ANY SYSTEM SO FAR DEvised BY HUMANKIND.

IF THE PROSPICE BEYOND THIS BICENTENNIAL YEAR SEEMS BLURRED AND BURDENED BY THE VAST COMPLEXITIES OF A NEW AGE OF CIVILIZATION, NOW IN ITS INFANCY -- WE KNOW, AT LEAST, THAT WE HAVE THE WIT, THE WILL AND THE INCENTIVE TO MEET AND BEST OUR GRAVEST CHALLENGES.

IF WE DID NOT, THIS COLLEGE OF LEADERSHIP WOULD HAVE NO PLAUSIBLE REASON TO CONVENE.

I AM PRIVILEGED TO HAVE BEEN A PARTICIPANT.

AND NOW, WITH YOUR PERMISSION -- AND YOUR NEEDED "GODSPEED" -- I MUST GET BACK TO THAT BOAT, MY LIFE JACKET, AND "JAWS".