# Department of Justice



Address by

Attorney General Robert F. Kennedy

to the

Academy of Trial Lawyers
of Allegheny County

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I am happy to be here with you this evening because I have always had great respect for trial lawyers as leaders of the legal profession.

I am aware, as is every student of American history, of the sterling leadership that the trial bar has contributed to our nation and to the crucial issues of every period. The courtrooms have been our great training grounds for leadership from the days of John Adams to the present.

As trial lawyers you have an insight not necessarily shared by all members of the legal profession: you see how the law works in actual practice. You see what the law is as well as what it is supposed to be, and for that reason you have a better understanding of the problem I'd like to discuss with you tonight.

I refer to the problem of the bail system as it exists in the United States today -- a classic example of law having an entirely different effect from its apparent purpose.

You may recall that the institution of bail originated in medieval England. Our Bill of Rights, in the Eighth Amendment, prohibits excessive bail; and the right to bail is guaranteed in the Judiciary Act of 1789 and in the constitutions or statutes of all but seven states. The decisions of most appellate courts somehow give the impression that our system of bail preserves one of the most valuable rights of freedom. That is what the law appears to be.

But you know from your experience in the courts that it just doesn't work that way. Through most of the United States today the bail system is a cruel and illogical institution which perpetuates injustice in the name of the law.

In actual practice, control is frequently in the hands of bondsmen rather than the courts. The system is subject to widespread abuse. It involves the wholesale restriction of freedom, impairment of the defendant's chances at trial and millions in needless detention costs at all levels of government.

I know that your Academy has a record of demonstrated concern for improving the quest for justice in your courts. I offer this then as a challenge to you as leaders of the legal profession and as American citizens:

Our bail system today needs thorough study, the most searching reexamination and drastic revision. This work has really just begun; men of judgment and purpose are needed to carry it forward in every community.

Let's take a look at some of the facts.

As you know, the bail system determines whether someone accused in a criminal proceeding is released or jailed before trial. Usually, the amount

of bail is set by a judge or a committing magistrate. Then if the defendant is able to post bond in the bail amount or pay a bondsman to post it for him he is released. If not, he is detained in jail.

The theory of the bail system -- the only justification recognized for it by the courts -- is that a bail bond is necessary to insure the appearance of the defendant at trial.

In actual practice, the bail system measures human freedom by financial ability. In the words of a recent report:

"Those who go free on bail are released not because they are innocent but because they can buy their liberty. The balance are detained not because they are guilty but because they are poor. Though the accused be harmless, and has a home, family and job which make it likely that -- if released -- he would show up for trial, he may still be held. Conversely, the habitual offender who may be dangerous to the safety of the community may gain his release."

As citizens in an age of reason, this may be offensive to us. As members of a profession concerned with the protection of human rights we may be shocked. But a close examination of the bail system reveals that it is shot through with other illogical and inconsistent features.

It is one of the basic premises of the bail system, for example, that the higher the bail, the greater the likelihood that the defendant will appear in court. But since almost all bail requirements are met by a commercial bail transaction, it is the bondsman rather than the defendant who bears the risk in most cases.

The defendant's stake in appearing is limited to the collateral -- if any -- which the bondsman may have required him to put up in order to get the bond. If the bondsman does not require collateral, the defendant ordinarily has no financial stake in complying with the terms of the bond. And this is a matter which the court does not decide or even know in most instances.

Whenever there is a commercial bail transaction, of course, it is the bondsman who assumes the paramount role in determining the defendant's freedom. The bondsman is an independent businessman who is free to reject a prospective client for any reason without regard to the consequences to the defendant.

As Judge Skelly Wright said in a recent opinion: "Professional bondsmen hold the keys to the jail in their pockets . . . . The court and the commissioner are relegated to the relatively unimportant chore of fixing the amount of bail."

There are many examples of how the bondsman's right to reject any application may conflict with the interests of a defendant. Bail in a "nominal" amount may be too small for a bondsman to bother with. As a business judgment, the bondsman may prefer professional criminals who know the rules over amateur offenders who may panic. The professional criminal rarely has the difficulty of making bail that many poor people experience.

Here in Pittsburgh you might be familiar with the recent charges that jail officials have received a cut on bond premiums. It may not be great consolation to you to know that similar charges have been made in most major cities.

There are other abuses of the bail system every bit as flagrant as this petty graft. Far too often bail is used to give defendants "a taste of jail" or to coerce them in some other way. Too often simple mistakes have resulted in gross unfairness.

Because of the importance of time and money in the practice of your profession, I know that you will have a keen appreciation of what the bail system actually costs us. Just a few of the figures will illustrate.

Last year alone Federal prisoners spent 600,000 man days in jails awaiting trial at a cost of $2 million to the Federal Government. In the city of New York in 1962, nearly 60,000 prisoners spent an average of 30 days each in pretrial detention. At $6.25 per man per day that cost the city more than $10,000,000 for that one year.

There are comparable figures for every large city. A substantial part of their facilities and budget are devoted to the detention in jails of prisoners who are presumably innocent and awaiting trial. And beyond that their welfare budgets are paid to the families of wage earners that they have thus imprisoned.

But the cost in human resources, the tragic loss in the lives of many individuals is far greater. The man who goes to jail for failure to make bond is treated in almost every jurisdiction just like the convicted criminal serving a sentence. His home may be disrupted, his family humiliated and his chance of making a living permanently taken away.

Recently in Los Angeles a man accused of a minor crime waited 207 days in jail because he did not have the money to get out. At his trial a jury found him not guilty.

Here in Pennsylvania a defendant accused of driving without a license and unable to raise a $300 bond spent 54 days in jail awaiting trial. The maximum penalty for the offense with which he was charged was 5 days.

In Glen Cove, N. Y., Daniel Walker was arrested on suspicion of robbery of a delicatessen. He couldn't raise the $10,000 bail or the bondsman's fee. He spent 55 days in jail. His wife had to move in with her parents, his car

was repossessed, his credit destroyed. Later, he was found to be the victim of mistaken identity. When freed, it took him four months to find another job.

And remaining in jail may have substantial effect on any defendant's ability to make a proper defense. He is severely restricted in the contribution he can make to the pretrial investigation and in conferences with his attorney. The experience in jail may affect his demeanor and attitude in the courtroom and as a witness.

If he is convicted the defendant who has lost his job and been removed from his family will have much less chance for probation than one who has kept his job, earned money and maintained his family ties.

All available data indicated that the defendant held in jail until his trial is severely disadvantaged when compared with the defendant who is released. The jailed defendant is far more likely to be convicted and far less likely to receive probation if he is convicted.

In a Philadelphia study only 52% of bailed defendants were convicted compared with 82% of those jailed. Among the convicted, only 22% of the bailed defendants got prison sentences compared with 59% -- almost three times the rate -- from the group that had been jailed. In the District of Columbia another study of those convicted revealed that 25% of those who had been on bail were released on probation against only 6% of those who had been kept in jail.

Now you might well ask yourselves, if the bail system is as bad as I've said it is, why hasn't someone done something about it. And that is not an easy question to answer.

It is not because the defects haven't been known. In 1927, nearly 40 years ago, Arthur Lawton Beeley published a thorough study of the bail system in the city of Chicago which parallels most of our findings of the present day. But from then until ten years ago when the University of Pennsylvania Law School did a study of bail in Philadelphia very little was done.

I suppose there has been a failure to recognize the problem for what it is. You may have heard the story of the man who was obsessed with the idea that he was a corpse. His family and friends finally sent him to a psychiatrist and for more than two hours he explained to the psychiatrist how he knew he was actually a corpse. Finally the psychiatrist asked: "Will you acknowledge that a corpse cannot bleed?" and the man said yes, that he did know that was so. Then the psychiatrist leaned over and pricked the man's finger with a pin and a drop of blood appeared. The man looked down at his finger and whistled softly to himself. "Well I'll be darned," he said, "a corpse can too bleed."

Beginning with the Philadelphia bail study ten years ago, however, some significant progress has been made. It was followed by the extensive

Manhattan Bail Project in New York and a bail study conducted by the Junior Bar Section in Washington, D. C.

The current efforts to remedy the defects of the bail system came together last week at the National Conference on Bail and Criminal Justice, a three-day conference in Washington, D. C. Jointly sponsored by the Department of Justice and the Vera Foundation, the conference was attended by scores of judges, defense attorneys and law enforcement officials from throughout the nation.

Chief Justice Warren addressed its opening session. The meetings were devoted to exploring practical methods to avoid the unnecessary detention of thousands of accused persons each year while still protecting society from those who are really dangerous.

Some of the proposed alternatives to bail are still in the idea stage; others have been tried for long periods with remarkably satisfactory results. I would like to tell you about one of the most notable experiments: the Vera Foundation's Manhattan Bail Project

This project was begun in the fall of 1961 with a grant of $115,000 from the Ford Foundation. It was staffed by law students from New York University. The staff interviewed felony defendants paying particularly close attention to those factors which would make the defendant a good parole risk.

Currently it has been found that 65% of the defendants interviewed can be recommended for release on their own recognizance before trial. The project has been so successful to date that 70% of its recommendations are accepted by the court and almost 80% are agreed to by the District Attorney's office.

Of the 2,195 defendants paroled in this way through April 8, 1964, only 15 failed to show up in court. This is a rate of 7/10 of 1%, well below the no-show rate for those out on bail and impressive enough to make the project an unqualified success. The point was proved.

In the Department of Justice we are making a wholesale reevaluation of bail practices. We began a little over a year ago by instructing all U. S. Attorneys to recommend the release of defendants on their own recognizance in every practicable case.

With this one step we have tripled -- from 6% to 18% -- the rate of release of defendants without bail. In four judicial districts more than 65% of the defendants are so released. And we have found that the percentage of those who failed to appear has remained just about the same -- about 2-1/2% -- as those required to post bail.

We are also undertaking an experimental study of other approaches. I hope within the next year we can expand in the U. S. Attorneys' offices the experimental use of a summons in lieu of arrest, a procedure now the subject of an extensive study in New York City.

In the work already done on revision of the bail system there have been invaluable contributions by many individuals and groups. The press has been vitally important. Bar associations and law schools have played key roles.

This leads me to the specific challenge I would propose for you. The progress made to date has no more than scratched the surface. In this as in so many other problems, the essential effort must be made at the community level, and by that I mean the organization of a community bail project.

There are now nearly twenty such local projects throughout the country -- they have quadrupled since one year ago. But before the problem is licked there must be hundreds, and large metropolitan areas like Pittsburgh are of prime importance.

We have talked about the problem, and in closing I would suggest three steps that a bail project for this metropolitan area might take initially:

First, collect the facts. There is a whole mythology of bail and misconceptions are widely held. Knowing how it actually works in your community is the essential starting point to correction.

Second, let the public know. There are many who have no occasion to think of the bail system, let alone its abuses. But this is a matter of legitimate public concern, and public knowledge can provide broad public support for efforts at reform.

Third, start now. From the experience already gained much can be done now without legislation. The same procedures now employed in New York and in parts of the Federal system can be used to effect the safe release of hundreds now unnecessarily detained in your jails.

There is great work to be done in the cause of securing better justice in our courts. In the field of bail reform particularly the rewards are indeed rich for those who take the lead at this time. So much can be accomplished.

I am hopeful that with your leadership, and that of others like you throughout the nation we can move ahead without delay. Until we have improved the administration of justice, until our laws bear evenly on all, rich and poor alike, we cannot be satisfied that we have achieved the American dream.

Thank you.