



Department of Justice

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ADDRESS BY ATTORNEY GENERAL ROBERT F. KENNEDY
TO THE CRIMINAL LAW SECTION
OF THE AMERICAN BAR ASSOCIATION
AMERICANA HOTEL
NEW YORK CITY
2 p.m., August 10, 1964

Mr. Bellows, Mr. Freund, and members of the Criminal Law Section:

It is an honor to appear before such a distinguished group of attorneys, a group which has done so much -- and can do so much more to bring our society closer to the ideal of criminal justice. It is a particular pleasure to come here at the suggestion of a man who has been both a symbol and a generator of the concern our society should devote to this subject -- James V. Bennett.

I knew of Jim Bennett's reputation as a man of rare compassion, intelligence and skill when I came to the office of Attorney General. Working with him, since then, I have repeatedly learned how fully that reputation is deserved. He has made the Federal Bureau of Prisons a proud and able service and he has made a great contribution to the entire field of criminal justice. Now that he is about to retire as Director of the Bureau of Prisons, after nearly 28 years, he richly deserves our warmest tribute.

As I approach the end of four years as Attorney General, this is a time for me to do a little looking back, also, on the work of the Department of Justice in the area of criminal law and criminal justice. Because of what I saw as counsel of the Senate Rackets Committee, one of my principal concerns when I became Attorney General was the rapid growth of racketeering and organized crime, particularly in the labor-management field.

The concept of racketeering as big business dates back at least as far as 1929 when one well-known citizen declared:

"The American system of ours, call it Americanism, call it capitalism, call it what you like, gives each and every one of us a great opportunity if we only seize it with both hands and make the most of it."

While that philosophy may be spotless, its author was Al Capone. And in the 35 years since then, too many "independent businessmen" have sought literally to make the most of it.

My predecessor, Attorney General William Rogers, began an effort against organized crime and proposed legislation to enlarge the Federal Government's ability to act. In this administration, we sought to enlarge on that base and to build an effective anti-racketeering campaign.

We secured passage of three previously proposed anti-crime measures and four new ones. We quadrupled the size of our organized crime force and established units in the field. And we developed a new system of cooperation among the 26 different Federal Law Enforcement Agencies.

The impact of these efforts cannot easily be measured. Racketeering continues and will always continue and the strength of any program is not what has been done, but what continues to be done. We know, however, that the number of convictions we have secured -- for public corruption, narcotics, gambling, labor-management offenses and other types of racketeering -- has increased more than seven times.

The growing corrosion of labor-management relationships was particularly disturbing. We now have prosecuted officers and employees of 54 different unions as well as 30 businessmen and firms. To date, juries have convicted 110 officers, members or associates of one union, the Teamsters, for bribery, extortion, embezzlement, fraud, and other charges.

This record was compiled because of the energy and resourcefulness of many men in many agencies and it is a record of which I -- and they -- are proud. In the past three years, the FBI, with which the principal investigative responsibility rests, has greatly increased the number of agents assigned to penetration of the rackets. The information and momentum gained in the past three years should carry this whole effort forward in future years.

A second major concern of mine -- and of many others in the Department of Justice -- when I became Attorney General was with the way poor or penniless defendants were treated in our courts. This was not a new problem. It was in the 18th Century that Oliver Goldsmith observed, gloomily, "Laws grind the poor, and the rich men rule the law."

And in the United States, thoughtful men have sought to insure equal justice for the poor man ever since a group of German immigrants in New York began the first Legal Aid Society, in 1876.

So the problem is not new. What is new, however, is the spirit in which we approach it now. We live in a time of growing concern all over the country that the scales of our legal system measure justice, not wealth.

And it has been my hope that we could bring new energies to this momentum and find solutions to the problem.

Thus, early in 1961, I appointed a group of distinguished legal figures to a Committee on Poverty and the Administration of Federal Criminal Justice, chaired by Professor Francis Allen. One of the important areas this committee dealt with was the fairness both to the defendant and to the attorney, of appointing unpaid counsel to represent indigent defendants.

There have been experiences all over the country like that of the young Detroit attorney, in practice for himself, who was appointed to a case which took 10 weeks to try. By the end of that time, he had to spend all his weekends selling real estate to try to cover his office expenses.

A system which regularly makes such demands of lawyers is unfair to the legal profession. It is unjust to the indigent defendants whom it is intended to benefit. Several recent studies show that the thousands of defendants with appointed counsel enter guilty pleas much more often than those with their own attorneys. They stand less chance of getting the charges against them dismissed. If they go to trial, they have less chance of acquittal. And, if convicted, they have less chance of securing probation.

The Allen Committee proposed answers to this problem of representation and these proposals were embodied in legislation sent to Congress by President Kennedy. That legislation -- the Criminal Justice Act of 1964 -- was passed by both the House and Senate last Friday and it will shortly be signed into law by President Johnson.

We can share in satisfaction and pride at the enactment of this unparalleled legislation. Proposed by the administration, its enactment owes much to the tireless efforts of you of the A.B.A. It is a great step forward. It is also a great challenge.

Now, it is up to the Bar in every community to see that this act becomes more than a pay bill for attorneys. It is up to the Bar to establish standards insuring that appointed attorneys now will not merely be compensated, but that they will provide competent defense.

And even with such execution of the Criminal Justice Act, it cannot, even at best, solve some of the other difficult problems faced by the poor in the courts. One of the plainest of these problems is bail. Its legitimate purpose of insuring that defendants appear for trial has been distorted into systematic injustice. Every year, thousands of persons are kept in jail for weeks and even months following arrest. They are not proven guilty. They may be innocent. They may be no more likely to flee than you or I. But they must stay in jail because, bluntly, they cannot afford to pay for their freedom.

Countless cases illustrate the point. Daniel Walker of Glen Cove, New York, was arrested on suspicion of robbery and spent 55 days in jail for want of bail. Meanwhile, he lost his job, his car was repossessed, his credit was destroyed, and his wife had to move in with her parents. Later, he was found to be the victim of mistaken identity and released. But it took him four months simply to find another job.

The lesson, in short, is that the present bail system exacts an incalculable human price. And it is an unnecessary price. Repeated recent studies demonstrate that there is little -- if any -- relationship between appearance at trial and ability to post bail. The pioneering work of the Vera Foundation here in New York has disclosed that only 1 percent of persons released on recognizance have failed to appear for trial. This compares with a 3 percent default rate for those out on bail.

We have been deeply concerned about the effect of bail on the poor man. The Allen Committee looked into the question extensively. It recommended that release on recognizance be increased wherever possible at the Federal level and we have followed that recommendation.

In March, 1963, shortly after receiving the Committee's recommendations, I instructed all United States Attorneys to recommend that every possible defendant be released without bail. In the first year afterwards, such releases tripled. The default rate, 2.5 percent, is about the same as that for those released on bail.

We are expanding this effort. So is Congress. Senators Ervin of North Carolina and Johnston of South Carolina held hearings on Federal Bail Reform Legislation last week. But even at best, reform of the Federal Bail System affects only a relatively small number of defendants. The much larger problem is that of bail in state and local courts and we have sought to provide advice and assistance to them.

One of the results of our effort was to sponsor, with the Vera Foundation, The National Bail Conference, held in Washington last May. Many of you know about it -- or even attended. This three-day conference attracted 400 judges, prosecutors, professors, defense attorneys, police officials, and even bail bondsmen from all over the country.

The conference has set in motion a widespread awakening to the need for bail reform. Requests for information and assistance have poured in to us, and programs or plans are now in motion in dozens of cities. But even this is only a beginning. These projects need informed assistance and the responsibility of the Bar is large.

All these problems -- such as competent representation and an unjust bail system -- require the wholehearted involvement of the legal profession. Starting with law students and reaching to the topmost ranks of our largest law firms. As we see ourselves as leaders in the arena of public affairs,

as officers of our courts, and as agents of justice, so it is our clear responsibility to work for solutions to these problems -- and the larger problems which underlie them.

I say "Our responsibility" advisedly, because I do not believe it is the responsibility of private attorneys alone. I believe that the Department of Justice must play an important role. In George Orwell's world of the future, the Ministry of Hate was called the Ministry of Love and the Ministry of War was called the Ministry of Peace. It must be our purpose in government, with your help, to insure that the department over which I preside is more than a Department of Prosecution and is, in fact, the Department of Justice.

Our continuing and increasing efforts on behalf of the poor defendant are a beginning. But there remains much work -- and great work -- to be done. These efforts need to be continued systematically. They need to be enlarged in the Federal System. They need to be explained and displayed to local law enforcement authorities. And there are other concepts which need to be explored -- such as the use of the summons instead of arrest.

Thus, I am pleased to announce to you the establishment of a new office within the Department of Justice, to deal with all these concerns, and to announce the appointment of Professor James Voremberg, of the Harvard Law School, to head this office.

Professor Voremberg is an authority in this field. He will continue his teaching duties at Harvard, but he will be assisted by a staff of full-time attorneys in this new office. We intend that this office will deal with the whole spectrum of the criminal process, from arrest to rehabilitation. We intend that it will deal with social problems that affect the criminal process, such as narcotics, or juvenile delinquency, or the right of privacy. We want it to be a voice inside the Department and a forum outside the Department. Perhaps above all, it is our hope that this Office of Criminal Justice will be only the first step in dealing with what I believe is one of the most aggravating problems of criminal law, the wide -- and widening gulf -- between law enforcement officials on the one side and other legal figures concerned with protecting the rights of the individual on the other.

Differences of opinion between these schools are not only helpful, but desirable, for the dialogue can be creative. But there is little creativity in the present dialogue.

For years now, the dispassionate figure of blind justice has been treated to a singular debate between the two schools. One side expresses its logic in such phrases as "coddling of criminals" or "knee-jerk sob sisters." Then, in ringing rebuttal from the other side, come such phrases as "savage police brutality" or "hanging judge."

The heat of this debate might be entrancing if it were not for the urgency of the problems which it obscures. The present problems of the field of criminal law are deep and serious. The application of criminal law to an increasingly concentrated, complicated urban society affects the lives of every citizen. But because the debate has become so emotionally polarized, there is no common ground for communication or understanding.

There are those quick to criticize the police -- without even attempting to comprehend their large responsibility and the difficult conditions under which police often must work. And there are dedicated police officials who believe that the courts are letting them down by erecting all kinds of technical hurdles that interfere with law enforcement.

This inability for those on one side to understand the problems of the other side is typified in a story told by Herbert J. Miller, the able and energetic Assistant Attorney General in charge of our Criminal Division. He was at a meeting of a committee recommending changes in the criminal rules. One of the changes, supported by most members of the committee, would have compelled the Government to disclose the names of any informers prior to trial. When he went to the next meeting, Miller took along pictures of the sadistically-beaten corpses of 15 informers in narcotics cases whose identity had been discovered by the defendants. The rule change proposal was withdrawn.

I mean no criticism of prosecutors or professors or policemen or of either side of this debate. But I do mean to condemn the emotional obstacles all of us have allowed to develop, obstacles which block intelligent -- and perhaps even fruitful -- appraisal of the problems. I became familiar with these obstacles soon after becoming Attorney General, in connection with wire-tapping. Wire-tapping is a subject of the deepest concern to me. I do not believe in it. But I also believe we must recognize that there are two sides to the argument.

We sought to do so in the Department of Justice by proposing revision of the present law on wire-tapping. That law is widely acknowledged to be ineffective. It is not preventing widespread and indiscriminate wire-tapping, nor is it aiding law enforcement. Our effort was to bridge the gap.

We wrote a legislative proposal forbidding all wire-tapping, except that by law enforcement officials in connection with a small number of specified crimes. This exception was rigidly fenced in by a number of safeguards, administered by the courts and Congress. In my view, this was an excellent bill, balancing the need to protect individual privacy with the needs of law enforcement.

And yet, once introduced, discussion of the merits of the measure was instantly submerged in a flood of criticism so emotional and so bitter that rational debate is, at least so far, impossible. I found that many of the critics had not even bothered to read the bill. And I was interested by the fact that the American Civil Liberties Union strenuously opposed it, while the A.C.L.U.'s own President, former Attorney General Biddle, testified in favor of it.

Our new Office of Criminal Justice can serve as a meeting ground for more profitable appraisal of this and other issues, so that each side may better understand the outlook and the practical problems faced by the other. Even if no consensus resulted, better understanding alone is a goal worth seeking.

However, such a task deserves even greater attention. Lack of understanding rests, at least in part, on lack of information. Crime in an industrialized, urban society is a quite different problem than it was in the simpler, rural society from which many of our legal rules developed. What we have discovered about the injustices of the bail system is an example. Yet too little has been done to collect and evaluate data about the present operation of our criminal laws.

The time has come for another Wickersham Commission -- another comprehensive survey designed to study and strengthen enforcement of and obedience to criminal law all over the country. The Wickersham Commission report had a marked effect on criminal law for many years. There are similar rewards to be gained from a new effort.

We should also consider formulating a permanent method to achieve these objectives. In the past, research in the field of criminal law has been left to the law schools, universities, and foundations. Perhaps no more is needed. But it is very possible that our laws and our society would benefit from a coordinated approach such as a National Institute of Criminal Justice, patterned after the National Health Institutes.

It is my conviction that the large contribution which now must be made to the field of criminal law is to achieve the communication which such organizations may help provide. But they can only help. The form is not the solution. Better understanding and greater communication will not be achieved by an adversary procedure of emotional arguments. The problem will not be solved by annual meetings. The problem will not be solved by an Office of Criminal Justice. Nor will it be solved by a Commission or by an Institute. It can be solved only by the larger institution to which we all belong, the American legal community. The responsibility rests, as it should, on each of us as lawyers.

No generation of lawyers has yet failed its responsibility to the law or to our society. The role of the lawyer in De Tocqueville's time prompted him to say that "I cannot believe that a republic could hope to exist at the present time if the influence of lawyers in public business did not increase in proportion to the power of the people."

Let us today continue to accept that challenge, whether in private practice or public service. Let us see to it that for all our citizens, criminal law means criminal justice.