



Department of Justice

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STATEMENT

BY

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BEFORE

SUBCOMMITTEE ON IMPROVEMENTS IN JUDICIAL MACHINERY
OF THE
SENATE JUDICIARY COMMITTEE

ON

FEDERAL JURY REFORM LEGISLATION

TUESDAY, MARCH 21, 1967

Bills before your committee seek in various ways to reform federal jury selection. It has become all too clear that reform is essential to equal justice in the federal system and that it is overdue.

It is difficult to imagine the hopelessness felt by an accused approaching a trial which he believes will not be fair. Citizens must be assured that if they are ever charged with a crime the merits of the case will be determined by a fair and impartial jury. Only with this assurance can we live freely, openly, without fear. Without it, life will be intimidating.

There come before our courts cases involving every type of person, of every background. None is spared: the rich and the poor, the strong and the weak, the ignorant and the learned, people of all races, religions and national origins. The law does not discriminate in choosing its litigants. It must not discriminate in choosing their peers. Because if it does, unwitting and unwanted though it may be, there comes into the decisional process, as a reflection of human nature, those preferences and prejudices--perhaps subjective and unrecognized--of the select few.

Whatever the ease of truly random selection by individual choice in earlier years, this is an impossibility in urban America. We live in a time of immense and growing numbers; numbers of people; numbers of nearly everything. Assume a right in individuals to the opportunity to jury service--a right we should cherish and its usage cultivate. Assume, as well, a duty when chosen to serve. Who will sense that opportunity in Baltimore or Dallas or San Francisco, if a few people from their millions choose jurors other than by chance? If my name is in the hat even with thousands, I will be interested in the drawing. If my choice depends on a friend or acquaintance and his is made in the same manner,

or if the choice is based on a membership, then I see the narrow strain of selection and the inherent vast exclusion because we are so many. Even the duty is more burdensome when its choice is guided.

To the defendant the exclusion must be more ominous. If he is a stranger he sees a system of selecting its own to judge him. He can fear purpose in the method of selection if he is suspicious. He can fear the result of the selection if he understands the vastness of a city and its variety. How can a representative cross section of 5,000 from a million be chosen except by chance? What computer can itemize all the differences of those million and select a tiny blend representative of them all? But even if the high art of electronics could perform this miracle would it be preferable to chance? How would you prefer your jury?

The Administration proposal for federal jury reform was carefully considered in the 89th Congress. Its essentials are few. First it guarantees the right to jury service opportunity.

"No citizen shall be excluded from service as a grand or petit juror in the District Court of the United States on account of race, color, religion, sex, national origin or economic status."

Next it fixes the voter list as the basic source for juries, providing methods of assuring a fair cross section where the voter list may fail to do so. From this list jurors are to be selected at random. In a master wheel the names of prospective jurors so chosen shall number at least one half of one percent of the total numbers on the voter list. Juries are chosen from this wheel.

Every citizen is qualified who is over 21, a resident in the District for a year, who can read, write, speak and understand the English language, who is free of incapacitating mental or physical infirmity, who does not stand convicted of a crime punishable by imprisonment for more than a year.

Excuses and exclusions from jury service are narrowly limited.

An effective challenge system is prescribed to assure compliance. A definitive mechanism is provided to assure efficiency.

The bill would include within its potential under the limitations noted all of the people in the processes of justice. It would regularly supplement their numbers in quantities ample to provide fresh juries. It would provide certainty that verdicts rendered would withstand challenge on grounds of improper jury selection. It would bring to actual practice "...the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community." (Smith v. Texas 311 U.S. 128,130)