Department of Justice

STATEMENT BY ATTORNEY GENERAL ROBERT F. KENNEDY BEFORE SUBCOMMITTEE NO. 5
OF THE HOUSE COMMITTEE ON THE JUDICIARY REGARDING H.R. 4816
THE PROPOSED CRIMINAL JUSTICE ACT

MAY 22, 1963

I appear before this Subcommittee today in support of H.R. 4816. This bill, known as the Criminal Justice Act, is designed to make our ideal of "equal justice under law" a reality. It seeks to do this by assuring that competent legal representation will be available in federal courts for every accused person whose lack of funds prevents him from providing for his own defense.

In terms both of equality and justice this measure is long overdue.

Ever since 1937, the Judicial Conference of the United States, the Department of Justice and the American Bar Association have sponsored or endorsed legislation to guarantee the poor man the same chance the rich man has to receive justice in our courts. In the 85th, 86th and 87th Congresses, the Senate passed bills toward this end. But on each occasion the legislation died in the House.

In April 1961, shortly after taking office, I appointed the Attorney General's Committee on Poverty and the Administration of Federal Criminal Justice. Its task, among others, was to explore the whole question of representation for the needy.

The Committee, headed by Professor Francis A. Allen, a distinguished scholar at the University of Michigan Law School, brought to this problem

the combined experience of a federal district judge from Virginia, a State supreme court justice from Illinois, a former assistant United States Attorney, an ex-public defender, and several other professors and practicing lawyers.

After nearly two years of study, the Committee concluded that our federal courts are seriously handicapped in administering criminal justice when defendants without funds are involved.

But it also found that no legislation previously proposed or supported by the Department of Justice seemed to take full account of the defects in our system. The committee, therefore, drafted a new bill designed to cure these defects and accommodate differences of opinion regarding remedies.

After incorporating further suggestions from federal judges and leaders of the bar, we gave the proposed Criminal Justice Act the highest priority in the legislative program of the Department of Justice.

The bill was transmitted to Congress by the President - "A giant stride forward on removing the factor of financial resources from the balance of justice."

It has been introduced by your Chairman, whose long and devoted efforts for legislation of this character are unsurpassed, and Congressman Toll and Kastenmeier have introduced identical bills.

The legislation has been most favorably received by my predecessor, former Attorney General William P. Rogers, by the Chief Justice of the United States and by the American Bar Association.

I believe you will find the Criminal Justice Act significantly improves upon many features which met with legislative opposition or apathy in the past.

It abandons the emphasis on public defenders.

It avoids the influence of politics in appointments.

It recognizes the necessity of investigators and experts to an adequate defense.

It establishes a framework in which compensated assignments can be fairly distributed.

It carefully limits its benefits to those who demonstrate financial inability to secure justice. And it provides safeguards against abuse.

NEED

The need for this legislation is beyond controversy. Federal courts today continue to delegate the defense of the underprivileged to assigned counsel who are not paid for their services.

They are not reimbursed for their out-of-pocket costs.

They do not receive a shred of investigative or expert help.

They are not appointed until long after arrest when witnesses have disappeared and leads grown stale.

They often lack the trial experience essential for a competent defense.

These shortcomings are not mere technicalities. We all know the profound effect they can have on the outcome of a criminal case. No one in this room would be content with that kind of representation if charged with a serious crime.

The dimensions of this problem are remarkably great. Almost 10,000 defendants charged with federal crimes - more than 30% of the total - receive court-appointed counsel each year. Appraising the quality of

their defense, a nationwide survey by the Harvard Law Review recently concluded that whether the impoverished accused "under present conditions receives excellent or mediocre representation is largely fortuitous."

The Allen Committee, in a study of selected federal districts, found that the prevailing system sometimes induces guilty pleas; appointed attorneys realize the futility of going to trial in the absence of resources to litigate effectively.

The Committee reported that pleas of guilty are entered much more frequently by defendants with assigned counsel than by those represented by retained counsel. It found that defendants with appointed counsel have less chance to get charges against them dismissed, less chance of acquittal if they go to trial, and less chance, if convicted, to get probation instead of jail sentence.

These disadvantages are particularly disturbing considering the substantial number of persons who are charged with crimes but who are not guilty. Over 4,000 federal criminal cases are dismissed each year. Of the more than 4,500 additional defendants who elect to go to trial, 1,400, or nearly 30%, are acquitted.

As lawyers, you know that the success of these defenses result depends on the effort and skill of counsel. Any time an accused's poverty deprives him of timely and competent representation, there is danger that our system of justice may convict an innocent man.

LOCAL OPTION

For many years this Subcommittee has seen bills which would have required Congress to choose between setting up public defender systems in the federal courts or providing compensation for assigned counsel. Proponents of each method opposed the other.

The Criminal Justice Act eliminates this dispute. It delegates to the judiciary in each district and circuit the responsibility to set up a system of adequate representation in accordance with local needs and preferences. The available alternatives are flexible and wide.

1. Private Counsel

The first option is to appoint counsel from the private bar. This has been our traditional solution. It has the great advantage of spreading the defense of criminal cases broadly among the bar, fostering wide participation and interest in the administration of criminal justice.

Under the Criminal Justice measure, districts choosing this option would, for the first time, be able to pay lawyers up to $15 an hour for their services and reimburse them for necessary expenses. This amount will permit no excess profit. It is substantially less than the minimum recommended by bar associations for charges to private clients with similar cases. We believe, however, that the $15 figure is fair, and that, in addition, the fairness of reimbursing appointed counsel for out-of-pocket expenses is clear.

2. Federal Public Defender

The second option, establishment of federal public defenders, has long been advocated. A public defender office can provide the skill, experience and availability so essential to an adequate and timely defense. The Criminal Justice Act would authorize the creation of such an office, with the necessary assistants and staff. It would permit salaries equivalent to those which the United States Attorney and his assistants receive in the same district. It would allow part-time defenders in districts that do not require full-time public defender offices.

The method of appointing the federal public defender has long been a troublesome point. Presidential selection has been opposed because of patronage or on the grounds that the prosecutor and the defender should not be controlled by a single authority. Likewise, Senate confirmation of appointees has been opposed as introducing political considerations which would have no place in the system. Appointment by district judges has been opposed because it might inhibit the public defender to avoid conflict with the judge who controls his reappointment.

The Criminal Justice Act avoids these dangers. It places the appointing power in the judicial council of each circuit. After receiving recommendations from the district court and the local bar, these appellate judges will determine who the public defender will be. In this way the federal public defender can maintain his independence from the Executive branch, the influence of politics, and the trial court.

3. Local Defender Organizations

The third option provides for participation by bar associations or selection of local legal aid or defender organizations to furnish attorneys for court appointment. This provision recognizes the valuable role which such organizations have played in various parts of our country.

The Criminal Justice Act leaves open the possibility that state and local defender organizations, public and private, may be designated to participate in this vital area of federal justice. The decision would be up to the judges.

4. Combination

Finally, the Criminal Justice Act for the first time would authorize each district to adopt a system containing any combination of the first three options. The Allen Committee considered a hybrid system to be a highly desirable choice for a large metropolitan district.

The District of Columbia provides a good example. In 1960 Congress created the Legal Aid Agency for the District of Columbia. In its first two years, this agency has won a fine reputation for skilled and dedicated service to needy defendants. But it handles by no means all of the nearly 700 trial cases assigned annually. A great many private attorneys supplement the agency staff. In addition, appointments in appellate cases are handled exclusively by the private bar.

The Agency thus gives the District of Columbia the combination of a strong central defender office augmented by the individual efforts of numerous volunteer attorneys.

TRIAL PREPARATION

Providing for experienced, paid counsel is fundamental. But the phrase "adequate defense" means more than counsel. Equally important to a defense are expert fact-finding services. For example, an innocent man may be unable to hire an investigator to find the witnesses and evidence indispensable to his acquittal. Assigned counsel may be unable to retain a handwriting expert to show that a forgery was not committed by his client.

The importance of skilled investigation is underscored in police work every day. The prosecuting attorney cannot function without the facts. The same is true of the defense.

The Criminal Justice Act recognizes that investigative and expert services are indispensable to adequate representation. If the court finds an accused to be financially unable to afford a service essential to his defense, that service will be made available. Whether it will be rendered by staff personnel, such as the investigators for the Legal Aid Agency for the District of Columbia, or be retained on an ad hoc basis, is left for each district to decide.

Counsel and services may, but need not, go together. An accused who is destitute may obtain appointed counsel but have no need for the services of an investigator. Another defendant, who uses up his funds to hire a lawyer and thus is unable to hire a needed expert, could qualify to have such a defense service furnished.

In short, a man who may be able to pay part but not all of his expenses will not be denied justice when his money runs out.

THE PLAN

Basic to the Criminal Justice Act is its requirement that a system of adequate representation be set forth in a plan for each federal district. Within the framework set out in the bill, every district is free, in consultation with its judicial council, to devise the plan best suited to local needs.

The choice of how to do it is wide, but there is no option to do nothing. We cannot permit inadequate representation to continue in any federal court.

The plan will inform judges, lawyers and the community of the manner in which counsel and fact-finding services will be provided to qualified defendants. It can provide different procedures for preliminary hearings, trials and appeals.

It will specify whether the appointment of counsel in hearings before a United States Commissioner will be made by the commissioner or the district judge.

It will determine whether inquiry to screen unqualified defendants will be made by hearing, affidavit or interview by a panel of private lawyers.

It may establish fee limitations for different offenses or for representation at different stages.

It will specify whether day-to-day administration of the plan will be by the court or by an independent board of trustees - like that used with great success by the District of Columbia.

It may establish a certified list of qualified attorneys and a rotation system for their appointment.

The plans formulated under this bill will enable Congress to see how the statute is being interpreted. They will provide a basis for checking costs, determining appropriations and guarding against waste. Plans which prove successful may become prototypes for adoption elsewhere, not only in the Federal courts, but perhaps in those of the States. Experience gained in this way may provide a valuable guide to future amendments.

CONCLUSION

The poor man charged with crime has no lobby. Legislation to guarantee him an adequate defense is the product of no faction, no section, no political party. It has been sponsored or supported for 25 years by Democratic and Republican Administrations, by prosecutors, defense lawyers and judges, and by Members of Congress from all parts of the country.

The Criminal Justice Act is not part of any welfare program. When enacted, it would give a poor man nothing to relieve him of his poverty. It would simply recognize his right to equal justice.

Our system of law and our sense of fairness require that we implement this right. In the words of the epigram on a wall of my office: "The United States wins its point whenever justice is done its citizens in its courts."