



# Department of Justice

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BY

ATTORNEY GENERAL ROBERT F. KENNEDY

BEFORE THE  
GREAT LAKES REGIONAL MEETING  
OF THE  
AMERICAN BAR ASSOCIATION

HOTEL SHERATON-CLEVELAND

NOVEMBER 15, 1963

Minister Chevrier, Mr. Craig, Mr. Hanning, Monsignor Seward, and other distinguished guests:

I'm very glad to take part in this meeting, and pleased that your theme is that of continuing Canadian-American friendship.

It seems typical of that friendship that we can find mutual profit in conferences like this, where we come together not as members of different nations but as members of the same profession.

I want to talk with you tonight about criminal justice. It's a subject that ought to be of primary concern to all of us in the law -- yet I think we can agree that in modern times it has become the neglected step-child of legal practice.

I believe that a deep and general resurgence of interest in criminal justice is needed among lawyers today, for many reasons, and I'd like to discuss just two of those reasons here.

They are issues involving two very different kinds of crime -- or at least two very different kinds of defendant -- but they are alike in that both tend to be obscured under the drift of public apathy. And both concern a fundamental principle of democracy -- the principle that rich and poor are equal in the eyes of the law.

The first is the problem of providing an adequate defense for accused persons who are unable to hire their own counsel.

Here in Cleveland we have seen a fine example of what can happen when that obligation is taken seriously by dedicated attorneys. The Public Defender organization established three years ago by Merle McCurdy has earned a splendid reputation throughout the legal community.

But other cities throughout the country have not been so fortunate -- and I think we must admit, in all honesty, that in general the legal profession has not yet lived up to its ideals in this regard.

As you know, the issue was brought into national focus earlier this year by the Supreme Court's decision in Gideon v. Wainwright, and by Gideon's subsequent re-trial and acquittal after two years in prison.

The impact of the Gideon case has been to suggest that appointed counsel for indigent defendants will now be required in all courts, state as well as federal -- which means that all courts will now have to face the problems with which Federal courts have been dealing for many years. And the problems are considerable.

As the law now stands, court-appointed defense attorneys receive no pay, nor are they reimbursed for out-of-pocket expenses. They receive no investigative or expert help, and they are not appointed until long after the time of arrest -- when witnesses have often vanished and leads grown stale. Moreover, those appointed all too often lack courtroom experience.

The result, borne out of several recent studies, is that poor defendants stand less chance of obtaining full justice than wealthy ones.

Pleas of guilty are entered much more frequently by defendants with appointed counsel than by those with privately retained attorneys -- and they have less chance of getting charges against them dismissed.

If they go to trial, they have less chance of being acquitted; and if convicted, they have less chance of getting probation instead of jail.

This is highly disturbing when we realize that almost ten thousand persons charged with federal crimes each year -- more than thirty percent of the total -- have court-appointed counsel.

Two years ago I appointed a committee, headed by Professor Francis A. Allen of the University of Chicago Law School, to investigate the problem of poverty in the administration of federal justice.

As a result of the Allen Committee's report, legislation is now pending in Congress that may well help to redress this inequity.

The Criminal Justice Bill would provide, first of all, that court-appointed defense attorneys be paid for their services, and it would provide for local option in allowing each district and circuit to choose the most suitable plan for appointing a defense counsel.

Four choices are offered: the use of private attorneys; the use of a public defender; the use of local legal aid societies and defender organizations; or any combination of those three.

The bill defines "adequate defense" as including whatever auxiliary services are required in preparing a sound case -- the use of investigators, experts, and other special witnesses.

It would provide too that counsel be guaranteed at every stage of the proceedings, from the time of the defendant's first appearance before the commissioner.

Finally, it avoids the term "indigent" and specifies that it would apply to all persons unable to afford an adequate defense -- thus allowing for the man who may be able to pay part but not all of his legal fees.

If the bill is passed -- and I feel it must be passed -- it will go a long way toward fulfilling one of the basic promises of our Constitution.

But legislation alone -- this or any other legislation -- is not enough. The real task, the real challenge, is up to the legal profession itself.

Professional competence, professional dedication to duty, sustained professional interest in criminal law -- these are qualities that no amount

of legislation can cultivate. So is another important legal obligation -- the responsibility of lawyers to keep the public well informed on the nature of the legal and judicial system.

For example, the whole question of bail, another matter explored by the Allen Committee, reflects a needless amount of public unawareness -- and inflicts what is often a needless penalty on defendants who lack funds.

A number of recent studies show that accused persons who must await their trials and prepare their defense behind bars suffer a great disadvantage compared with those who are released on bail.

Last March, I instructed all United States Attorneys and their assistants to recommend the release of defendants on their own recognizance when no substantial risk is involved. Merle McCurdy, here in Cleveland, and other U. S. Attorneys throughout the country tell us this has been done with no problems and complaints -- except from some professional bondsmen.

Hopefully, the National Conference on Bail and Criminal Justice, scheduled for next spring, will lead the way to further help for the financially handicapped defendant.

Obviously, not all Americans accused of crimes are poor. Some, in fact, are extremely rich -- and this brings me to the second of my two contrasting reasons for urging a greater interest in criminal justice.

Before getting into this second topic -- or rather, by way of introducing it -- I'd like to read a statement once written by a highly successful business man.

"This American system of ours," he said, "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."

It wasn't Henry Ford who wrote those patriotic words, and it wasn't Andrew Carnegie.

It was Al Capone.

He was speaking from a wealth of personal experience. The American system did indeed give Al Capone and his kind a great opportunity -- they became tycoons of crime, millionaire rulers of an industry that flourished in violation of the law.

And the unsettling fact is that America has not yet been able to bring that kind of industry to justice. The names of the tycoons have changed since the twenties and thirties, but the rackets continue -- and they continue to prosper. Organized crime today is one of the biggest businesses in the country, grossing several billions of dollars a year.

Occasional televised investigations, like the recent Valachi hearings, bring fleeting public attention to the nature and the scope of organized crime -- but as lawyers, we shouldn't need to be reminded.

We know, and have always known, that this nation supports a vast parasitic underworld whose leaders, following Capone's dictum, have seized their opportunity with both hands and are making the most of it.

It isn't hard to explain this unhealthy state of affairs. One reason for it, undoubtedly, is public indifference -- the average citizen tends not to care very much about what he can't see.

Another reason, whether we like to admit it or not, is the corruption of some police and other public officials.

But we can't afford to overlook a third and highly significant explanation -- the fact that key men in the big crime syndicates have enough money and enough power to turn the very machinery of judicial process to their own advantage.

They can, and do, hire excellent legal brains to defend them -- and to help ward off their apprehension in the first place.

They can, and do, bring influence to bear on jurors, either by bullying or bribery.

They can, and do, cause cases against them to collapse by their power to intimidate prosecution witnesses -- frightening them into silence with threats on their lives or the lives of their families.

These are not isolated occurrences -- they are the standard operating procedure of the racketeer.

In the Eighteenth century, Oliver Goldsmith advanced the gloomy theory: "Laws grind the poor, and rich men rule the law."

And it was little more than a century later when Anitole France cynically wrote that "The law, in its majestic equality, forbids all men to sleep under bridges, to beg in the streets, and to steal bread -- the rich as well as the poor."

Have we, in our modern democracy, come no further than that? Is our whole legal system so unsound that a poor man can be wrongly imprisoned while a rich criminal goes free?

All of us here tonight would be reluctant to accept that premise. But there are the facts.

In the problems of organized crime, as well as in those of the poor defendant, federal legislation is now pending that may improve our ability to see that justice is done.

But here again, legislation alone is not enough. Here again, a clear and definite obligation exists for all members of the legal profession.

No one can legislate integrity in the Bar.

Every lawyer, in every community, should make it his business to know whether that community has an organized criminal underworld. He must be aware too that the province of the modern racketeer extends far beyond the traditional fields of gambling, drug peddling and prostitution. It extends today into legitimate business -- the crime syndicates have infiltrated everything from nightclubs and motels to insurance companies and banks.

Wherever organized crime exists -- whether or not it involves political or police corruption -- the lawyer should see it as his duty to call it to public attention, to work however he can to make his fellow citizens aware of the waste and menace they are inadvertently supporting.

As a responsible leader in civic as well as legal matters, the lawyer can and should work for effective local government and effective police forces. He should see to it that adequate laws are on the books -- and that they are properly enforced.

In all his dealings -- with rich and poor, with the innocent and the criminal -- a good lawyer is an embodiment of the sanctity of the law, a living reminder that ours is a government of laws and not of men -- or of money.

"All men are born equal," said Montesquieu, "but they cannot continue in this equality. Society makes them lose it -- and they recover it only by the protection of the laws."

I believe that a democracy is possible only to the extent that its citizens understand the meaning of that truth. And I believe that our work, as lawyers, is the measure of their understanding.

Thank you.