



Department of Justice

STATEMENT

OF

THE HONORABLE GRIFFIN B. BELL
ATTORNEY GENERAL OF THE UNITED STATES

Before
the

SENATE JUDICIARY COMMITTEE
SUBCOMMITTEE ON CRIMINAL LAWS AND PROCEDURES

Concerning
the

Criminal Code Reform Act of 1977
S. 1437

June 7, 1977

Kennedy, former Senator Hruska, and the late Senator Philip Hart. I am pleased to have participated with the members of the Senate in the extensive reviews and negotiations that took place earlier this year and that lead to the joint drafting of S. 1437.

Almost all of us in this hearing room know firsthand that existing federal criminal laws are in serious need of revision. Their deficiencies are particularly apparent to those of us who must work with them on a daily basis. Two and a half centuries ago, an English judge noted that "an act of Parliament can do no wrong, though it may do several things which look pretty odd." We have some things which look "pretty odd" in our existing federal statutes. Side by side, we have statutes that are well drafted and statutes that are ambiguous; statutes that meet current needs and statutes that are outmoded; statutes that work as intended and statutes that are unenforceable. In some areas where there should be statutory coverage there is nothing; other areas are papered with overlapping and often inconsistent provisions. The sentencing process is a prime example of an area that needs reform; under present law the punishment levels for similar offenses vary irrationally, thus raising questions about the rationality of the federal criminal justice system itself.

It is partly because of this confusing state of our law that so much attention is focused in individual cases upon attempting to unscramble and rationalize the law. This causes an expenditure of precious time on the part of judges and lawyers that would be unnecessary under a more modern criminal code. It also introduces unfairness into our federal criminal justice system -- unfairness because of the delay caused by the confusion in the present system, and unfairness because the current law is almost incomprehensible to ordinary citizens. By inadvertance rather than by design we have almost reached the situation that existed in Rome at the time of the Emperor Caligula when the laws were deliberately posted on columns so far above eye level that the citizens could not read them.

S. 1437 provides a remedy for these problems by establishing for the first time an integrated Code of virtually all statutes and rules concerning federal crimes and the federal criminal justice process. Probably its single most important contribution is in setting forth the law in a far more comprehensive, orderly, and simple manner than the statutes existing today. This itself is a major, progressive step. It will make the law far more understandable to professionals and laymen alike. It incorporates most major areas of judge-developed law into

associated statutory provisions, leaving uncodified only a few areas -- such as defenses to prosecution -- where compromise has made necessary, for the time being, the continuance of the practice of deferring to judges on the exceptions to criminal liability. Thus, the new Code provides, with the exception of the statement of defenses, a single, basic source of federal criminal law.

The new Code's value goes far beyond its simplicity and comprehensiveness. It contains literally hundreds of improvements over the existing state of the law. Certainly it will make the criminal justice system more efficient, permitting the Department of Justice and the courts to respond to crime -- from organized crime to white-collar crime -- in a more effective manner. Moreover, it will make the system more fair -- more fair in providing clearer notice of what is considered criminal conduct, and more fair in providing for greater rationality and equity in sentencing. The Code's sentencing system would apply guidelines to determine objectively what kind of sentence would be appropriate for a particular case and would grant appellate review of sentences outside the range specified in the applicable guidelines. This system provides an ingenious means of assuring sentences that are not only fair to individual defendants but fair to the public as well.

As this Committee proceeds with its work on the new Code, one thing must be kept in mind. This bill is a compromise -- a very good compromise. An editorial in the New York Times even referred to it as a "masterly" compromise. A tremendous amount of time on the part of the congressional sponsors and on the part of the Department of Justice has gone into the drafting of the bill. I firmly believe that the result is as fair and workable a Federal Criminal Code as has yet been devised. It is a careful, yet progressive, balance -- and care must be taken to assure that this is not upset by well-intended attempts to shift the Code's emphasis either toward the views of those who would emphasize the need of our communities for more effective law enforcement, or toward the views of those who would emphasize the equally important need for strong assurance of individual liberties. Severable issues should be just that -- severable. There will be time enough in the future to make further changes in individual provisions of the Code when the need is sufficiently apparent to achieve a consensus.

S. 1437 has my strong personal support, and the support of the Department of Justice. We will be pleased to be of further assistance during your continuing work on the bill. I look forward to its early passage.