to whispers about the immorality of the Negro ghetto. Fear and envy are compounded; the special brutality of Irish policemen may have its source here. Such rationalized fears cannot be voiced in reply to the direct questions of the pollster. They too patently run counter to the sermons preached on brotherhood. But in the secrecy of the voting booth they can be powerful.

Catholics in America, then, are in a state of confusion. Just at the moment when Vatican II is prodding them ecclesiastically from a long night of conservatism, they are tempted to fall back into conservatism in American politics. Democrats at this point would best influence the undecided not by trying to sound as conservative as Goldwater, but by meeting the issues head-on, and by showing the steps "up from conservatism" one at a time. Big national problems need big government to help solve them; complex international problems will at best get complex, imperfect solutions. In the creative confusion brought by Vatican II to many Catholics at the grass-roots level, old simple certainties have been shaken. Now is a good time to make solid progress by rational discourse.

MICHAEL NOVAK

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Crime, Wealth and Justice

by Ronald Goldfarb

The poor are beginning to get their day in court. The Criminal Justice Act, which Congress passed, reaches a high-water mark in the administration of justice, and joins the legislature in the movement of the judicial and executive branches toward more mature and civilized standards of social justice.

A classic Churchillian cliché observes that the measure of the maturity of any civilization is the way it treats its criminals. Traditionally, criminal law enforcement has been evaluated in terms of its physical implementation – its style and manner. Coercion, invasion of privacy, and police lawlessness have been in the focus of most critical considerations of the criminal trial process. But a new appraisal is being made concerning the evenness of the application of criminal law to classes of defendants. All branches of the federal government have now recognized the inherent inequality of a double standard of law enforcement.

For about a decade the Supreme Court has been gradually but inexorably striking at one inequality in the trial process after another. Between the Griffin case in 1956, which dealt with the right of an indigent to a free trial record for appeal purposes, to last year's Gideon case dealing with the right of indigents to counsel in state criminal trials, the Court has decided a number of cases in which various discriminations based upon the poverty of a defendant have been eliminated from the judicial process. The philosophy behind all these cases was articulated in one by Justice Black in a line: "There can be no equal justice where the kind of trial a man gets depends upon the amount of money he has." And recently Justice Goldberg, delivering the annual James Madison lecture at New York University Law School, enumerated inequalities which now deny the poor equal legal treatment. His eloquent lecture must be the fountainhead for the course of future attitudes about poverty and the administration of justice. However, the trend of the Justices notwithstanding, it is important to recognize as did Attorney General Kennedy recently that the principles of these decisions are so central to the law that these cases should not have been necessary. Their results "should have been present long ago, springing from our consciences rather than our courts."

This last comment uncovers another, relatively unpublicized aspect of Robert Kennedy, and another significant phase of his administration of the Justice Department. In his first press conference on April 6, 1961, the Attorney General said: "The poor face problems in the criminal court not shared by the rich and I have appointed nine men of distinguished public service to serve on a special committee to investigate the unique problems these people face in the federal criminal courts." This group, the Allen Committee, worked quietly for almost two years and on February 25, 1963, issued its report entitled "Poverty and the Administration of Federal Criminal Justice", and dealing with the general effects of one's wealth upon the quality of justice he receives. Its suggestions for reform were far-reaching and singled out as significantly egregious examples of imbalance the bail situation and the prob-

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lems of the indigent defendant. This report led both to the National Bail Conference held in Washington this past May and to the "Criminal Justice Act."

The Act deals with the right to counsel. By the right to counsel, at least nowadays, we speak of the right of a man to demand the aid of a lawyer to represent him at a criminal trial when he cannot afford to provide one himself. This is to be distinguished from the more esoteric question whether one who has counsel may use him at a particular proceeding. Common sense and common experience both indicate that the wealthy man who has lawyers and all the accompanying protective paraphernalia fares better in criminal trials than does his poor counterpart. The poor man has had to face the mysteries of the trial process, the profundities of the legal profession, and the facilities of government all by himself.

The Sixth Amendment to the Constitution directs, among other things, that, "In all prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel." Yet, the common law has traditionally denied the right to counsel even in more serious criminal cases. It was not until 1932 that our Supreme Court recognized a right to demand counsel in state cases, and then it applied the protection of this rule only to offenses for which there could be capital punishment. These comprised a small minority of the serious cases arising in the states, and the jails have been full of prisoners who were tried and convicted and sentenced without having had the assistance of a lawyer. As late as 1944, the Supreme Court upheld this rule. Only last year, in the Gideon case, did the Court change this rule for the states, and uphold the right of indigent defendants to be represented by counsel at all criminal trials. The significance of this rule is that the American Bar Association recently estimated that about 150,000 defendants who are charged with serious state crimes each year cannot afford a lawyer.

But at that point new questions arise: Who the lawyer is, what facilities and assistance he is allowed, during what proceedings he is available, and whether he is paid anything for his work are all integral to a defendant's effective counsel. These questions are the subject of the new Act; their treatment is a radically refreshing departure from the practices of the past.

The new Act, written with unusual simplicity, sets out the following future requirements for the federal judicial system. In every criminal proceeding, every defendant is to be advised at the earliest possible time of his absolute right to have counsel appointed to assist him if he is financially unable to get counsel himself. He is entitled to this representation from his initial appearance through all subsequent trial stages including appeal. He is entitled to this aid at any stage of the proceedings when his need for assistance develops, and he need not be absolutely impoverished. Attorneys appointed to represent indigents pursuant to this Act will be modestly compensated ($15 an hour in court; $10 an hour out of court) for work in court and preparing cases. Now they are not.

The bill goes further and allows counsel "to obtain investigative, expert, or other services necessary to an adequate defense in his case. . . ." This assistance is to be provided to all defendants who cannot afford it regardless of whether they can afford counsel. Thus the practicalities as well the legalities of criminal trials are recognized. Without this kind of often vital assistance the trial bout could be heavily, in fact awesomely, weighted in favor of the government and to the disadvantage of the poor accused. Finally, in a gesture toward local self-regulation, the bill calls upon the different federal district courts throughout the country to set up some system to implement this Act which best accommodates the local situations. Counsel may be selected from bar associations, legal aid societies, or from court-maintained lists of private practicing attorneys. Each federal district court is free to choose which specific plan it will use to implement the broad social policies required by the new law. Any combination of these alternatives *may* be used; but at least one of them *must* be used. And the plan must be in operation within one year from enactment of this bill.

The Administration's poverty program has focused attention on a condition which should not and need not exist in America today. It has created an environment and atmosphere which has made curative social legislation possible. There are over 10,000 federal criminal cases each year involving indigents. The United States Judicial Conference has urged legislation to cover this situation 17 times in the past. Every Attorney General since 1937 has supported the Conference's recommendation. Legislation like this law has passed the Senate three times in the past only to be held up each time by the House Judiciary Committee. Yet it was not until last week that the end came in sight. The most astonishing aspect of both the Gideon case and the Criminal Justice Act of 1964 is that it took America until this time to reach the point where an ideal which is so clear and meritorious finally will become a reality.