

Release for  
Afternoon Papers  
Friday, August 17, 1934  
After 1:00 P.M.

AN ADDRESS

by

HONORABLE HOMER CUMMINGS

O. C.

Attorney General of the United States

delivered

AUGUST 17, 1934

before

The Commonwealth Club

of

California

San Francisco, California.

Mr. President, and members and friends of the Commonwealth Club of California:

To me, San Francisco has always been a fascinating city. Some time ago a distinguished foreign visitor took occasion to remark that, after all, there were only three truly characteristic cities in the United States. He named the three, and one of them was San Francisco. Somewhat in the mood of Francis R. Stockton, I leave you to guess the names of the other two. Undoubtedly the colorful history of this extraordinary place, its miraculously-perfect setting, and the vigor and friendliness of its people, have exerted a profound influence upon all who have been privileged to come here. San Francisco has the peculiar attribute, not only of enthraling the hearts of its own people, but of causing its delighted visitors to experience, after they have departed, what I may term, for want of a better phrase, a permanent and incurable nostalgia. The people of this city have every right to be proud of its place in American history, and it is no idle compliment to say, especially in the light of very recent events, that America is proud of San Francisco. You have demonstrated here, once more, the unflinching resourcefulness of the American people when hard put to it, and you have rejustified our faith in the essential principles of local self-government. I compliment you and congratulate you from the bottom of my heart.

It is a privilege to speak before this great organization, representative, as it is, of the vital things in the life of California. There are many matters I would like to consider with you but the time is brief.

If I were to emphasize one dominant thought, it would have to do with the satisfaction which we, as Americans, feel in that unflinching unity of purpose characteristic of our common country in periods of stress. We have been passing through difficult times. The boundless resources of our country and the capacity for converting these resources to human account have been so completely relied upon in the days gone by, that we have been somewhat careless of the heritage that is ours. We have learned to our cost, in the years since the World War, what havoc the recklessness of unwisdom may create. Careless of moral values and even of business prudence, our country entered upon an era of ill-ordered production, unwise spending, sheer business libertinism, and almost universal gambling.

And it paid the price. We were confronted with the extraordinary paradox of starvation in the midst of plenty. Millions were in idleness. No man of imagination could have witnessed the steady drift of our great people toward lower standards of living and toward universal chaos, without grave apprehension and deep concern.

This is not the time or place to assess responsibility for these conditions. The undoubted fact stares us in the face that a little more than a year ago our country was upon the brink of a great disaster. Happily the nation is recovering. Under the guidance of a great leader, the people were aroused from their inaction and shook off their dark despair. The vitalizing blood of credit once more runs in the veins of our banking system and is energizing the nation. Factory wheels are beginning to turn, and our railroads once more distribute the abundant resources of our people. The checked forces of national existence are being released

and their energies directed hopefully and intelligently toward "a more abundant life for all."

Many things have been done, and many things remain to be done. The peril has passed, but the great rejuvenating and cleansing process must go forward to its legitimate conclusion. There will be time enough hereafter for the ordinary differences that grow out of political ambitions and partisan controversies. These things can well be held in abeyance until America is set upon the broad road once more. To this task we must devote all our energies and draw upon those abundant and hidden reservoirs of spiritual power which never yet have failed our country in time of need. I think it is fair to say that such a purpose and such a program accord with the overwhelming sentiment of America. Moreover, this is a task to which each individual can contribute his share. We are far too apt to think of our nation as an abstraction. We think of the flag at the masthead and forget that it is a human hand that pulls it up -- or down. The nation is but a group of individuals. True, they often think and act in concert and possess group characteristics, but such thinking and acting and characteristics are factored by the thoughts, the acts, and the characteristics of one hundred twenty-five million individual men and women. It was not a mere abstraction which, in the years after the World War, became careless of moral value and business prudence, or that flung itself into unwise production, wreckless spending, and unmoral devices to avoid work and win unearned profits. Certainly, it was not an abstraction that paid the price. It was individual men and women who paid the price. The summation of their folly and their suffering was the summation of the nation's

folly and the nation's suffering. This is not to say that all were at fault, or that all those at fault were equally so. This is not to say that the results were not in part affected by environment, or by the course of other nations and other peoples. But we can shelter ourselves little in that thought, for we cannot deny that within this country there are natural and human resources sufficient, if need be, for a wholesome life lived wholly through and wholly unto ourselves. This is not the ideal I would inculcate, but it illustrates the power we have to exercise mastery over our own fate.

As we live individually, so will our country live in the years to come. The morality and prudence of individuals, families, business and professional life will be the morality and prudence of our national life; and the individual morality and prudence of the public officer will be the individual morality and prudence of his public acts.

So long were common precepts of right and wrong unheeded in our national thinking, and ignored in many phases of our national life, that it was a natural shock, in many quarters, when an administration made bold to proclaim that certain old virtues were to be revived and their vitality reasserted.

These facts should be kept steadily in mind when we seek to appraise the attacks made by the politically minded upon the program of the administration. It is from these quarters, in large measure, that we hear the oft-recurring and plaintive protests that what is going forward constitutes, in effect, a destruction of the Constitution of the fathers.

Nearly a year ago, speaking before the American Bar Association at its meeting held in Grand Rapids, Michigan, I discussed this general subject at some considerable length. Nothing has happened since that time which has

caused me to regret or withdraw anything I then said. It was my view then, and it is my view now, that the constitutional difficulties inherent in the recent legislation are grossly magnified. During the World War unusual legislation was enacted dealing drastically with such matters as selective service, espionage, the creation of a war industries board, the establishment of a food administration, the control of railroads, industrial mobilization and the like. The Constitution easily met the test and marched with the needs of the times. No thoughtful or unprejudiced student of our judicial history can fail to be impressed by the recurring periods since the Constitution was adopted during which many eminent men viewed with alarm -- I may add, with totally needless alarm -- the enactments and proceedings of the Congress. In 1791, when the first act for the creation of a national bank became law, that measure constituted a greater departure from the customary practice than the National Industrial Recovery Act and the Agricultural Adjustment Act of 1933, or any of the other recent emergency enactments. It is interesting to note that when the bank bill of 1791 was debated in the House of Representatives, James Madison made the principal speech in opposition, emphatically contending that the measure was unconstitutional and not within the intendment of that document. Those who may wish to study this question further are referred to the Annals of Congress, Volume Two. The measure passed both houses and was eventually signed by the President, and its constitutionality was approved in the great case of *McCulloch v. Maryland*, in 1816.

There have been successive periods in our judicial history when abnormal and somewhat artificial fears for the safety of our Constitution have been

expressed. It is comforting, however, to note that each crisis, each era, produces its own peculiar legal problems, and our judicial tribunals have never failed to solve them with constructive intelligence. Time and events have a way of dealing with critics, and, as Emerson said many years ago, "Life is greater than anything that can be said about it." You will recall that President Wilson once declared that "The Constitution is no mere lawyer's document, but the whole of the nation's life."

Thus far, in cases in which the courts have passed upon the essential aspects of recent legislation, the results have been almost uniformly satisfactory. Those who fear, or affect to fear, that the Constitution is in serious peril should pause to reflect that Mr. Chief Justice Hughes and the Associate Justices of the Supreme Court of the United States have the last word upon this subject, and if the prophets of evil and disaster show a lack of confidence in the wisdom of that Court, I have no hesitancy in asserting mine. Let me say by way of comfort to the timid who may be disturbed or bewildered by the outcries which rise from interested sources: Be of good cheer; the Supreme Court of the United States is not likely to place the seal of its approval upon unconstitutional measures; and the integrity of the Constitution is entirely safe in the hands of the Federal judiciary.

The Attorney General does not conceive it to be his duty to make new law or to search for strained constructions to support existing law. It is his duty to uphold the law and the Constitution as applied and interpreted by the decisions of our courts. It is true, of course, that new laws have been enacted and additional power and responsibility have been confided to the President, but these new laws and new powers grow out of the needs of our

people and rest upon established and traditional sanctions.

It is my solemn conviction that what is going forward is not a violation but, rather, a vindication of our form of constitutional government.

The Department of Justice is but one arm of the Government. Its activities cover a vast range of important subjects. For convenience, and for the purposes of efficient administration, the work is divided amongst eleven divisions of outstanding importance. Only one of these divisions deals with the questions of crime. The others render services which touch matters of administration, legislation, taxes, condemnations, lands, customs, claims, codes, antitrust violations, opinions, executive orders, compromises, the care of prisoners, executive clemency, pardons, paroles, appeals, and general litigation. The simile may not be a fortunate one, but nevertheless, I sometimes compare the Department of Justice to the engines of an ocean liner. Hidden from sight in the very bowels of the ship, at times almost forgotten by passengers and crew, this great mechanism throbs on, doing its indispensable work with unrelenting persistency. The figure of speech may be a bit overdrawn, but, nevertheless, the Department of Justice is performing very steadily and very conscientiously a great and essential service.

Something akin to a national emergency confronted our people a year or more ago, growing out of the extraordinary development of predatory crime having interstate characteristics. Realizing this situation, and realizing further, that some agency with a nationwide approach must deal with this problem, if it was to be dealt with at all, the Department undertook what is now generally known as its "campaign against crime". This campaign was not entered into impulsively or with any illusions.



At the very beginning the Department of Justice created a special division to deal with racketeering and kidnaping. We sought, also, to bring about a more intimate, friendly, and cooperative spirit between federal and local law enforcement agencies. We strove, also, to develop our own facilities and to strengthen our organization by improving its personnel and stiffening its morale.

It was manifest that additional legislation was imperatively required. This led to what has been generally described as the "12-point program" of the Department of Justice. These bills, originally twelve in number, ultimately resulted in the passage of seventeen specific and important enactments. Let it be said most emphatically that these measures were not calculated to place the Federal Government in control of the crime situation of the country. It was not our purpose to invite local organizations to turn over their problems to the Federal Government. Law enforcement now and hereafter must, for the most part, be a matter of local concern. Moreover, there were constitutional limitations which had ever to be kept in view.

The bills, in general, deal with the menace of an armed underworld and with that aspect of the problem which has been brought so dramatically forward of late by roving groups of criminals passing and repassing state lines and bent constantly upon predatory crimes of violence. These laws were the result of very careful study, and while they have imposed greater responsibility upon the Federal Government it was a responsibility which could not properly be avoided. Manifestly, the problem of crime is not limited to detection, arrest, and punishment. It is a social question with manifold ramifications, touching environment, heredity, education, the home, the school, and, indeed, almost every activity of life.

When I return to Washington it is my purpose to call a crime conference to be held in the new Department of Justice Building at Washington during the early part of December. At that conference the whole problem will be studied in a manner not heretofore attempted. I am hopeful, also, that it will be possible to establish at Washington a national institute of criminology, which will concern itself, not only with the study of crime problems, but also with the practical side of police work. At the present time we are maintaining a technical laboratory which permits of the analysis of latent evidence and is an excellent school for the study of the use of the latest scientific equipment.

While we were engaged in the formulation of our "12-point program" of legislation, we received thousands of suggestions, some of which were helpful and many of which involved proposals too radical or fantastic to be considered. Some people wanted the federal troops called out to suppress gangster operations. Others wanted all police power turned over to the Federal Government. Still others advocated the establishment of a gigantic Scotland Yard.

Those who suggested the establishment of a system similar to that of Scotland Yard spoke without any adequate comprehension of the situation. The structure and functions of that famous organization are hardly adaptable to our complex problems. There are many curious misapprehensions about Scotland Yard. Commissioners, Constables, Inspectors, and Superintendents of that organization have thrilled us as they stalk through the pages of fiction and romance. Charles Dickens' "Inspector Bucket"; Sergeant Cuff in the novel "The Moonstone" by Wilkie Collins; Lestrade, who is so frequently saved from failure by the greatest of all amateurs, Sherlock Holmes; and countless

others have fostered a popular misconception of this excellent British police Department. Scotland Yard, contrary to popular belief, is not a detective force and does not have jurisdiction throughout England or the British Isles. It is simply the Metropolitan Police Department of Greater London, and is one of the 187 police forces in England and Wales. It has no jurisdiction outside the city of London, except upon rather infrequent occasions when it is invited by some other police department to aid in the solution of a particular crime. Its Criminal Record Office acts as a clearing house of identification data for the British Isles, in much the same way as the Identification Unit of the Department of Justice serves the law enforcement agencies of this country.

Even if it were assumed that Scotland Yard operated over the total area of Great Britain, its problem could not be compared to the conditions which exist in the United States. Let us take the Urschel kidnaping case by way of illustration. Mr. Urschel was kidnaped in the State of Oklahoma, was held captive in a remote rural section of Texas, the ransom money was paid in Missouri, a portion of the ransom money was exchanged in Minnesota, another portion was hidden in Texas, one of the guilty parties was located in Colorado, and the others in Tennessee, Minnesota, Texas, and Illinois. These seven States have an area of about 683,000 square miles, which exceeds in extent the combined area of Austria, Denmark, France, Germany, Italy, Holland, Switzerland, England, Scotland, and Wales. The terrain to be covered by the forces brought into play to identify and capture the perpetrators of this infamous crime is out of all comparison to the limited area of a country such as England.

It may also be interesting to note that the famous fingerprint division of Scotland Yard contains about 500,000 sets of fingerprints. On July 1, 1934, there were in the possession of the Identification Unit of the Division of Investigation of the Department of Justice at Washington 4,372,619 sets of fingerprint records. Nearly 7,000 law enforcement officials and agencies are contributing to these records, and during the last fiscal year we made identifications numbering 265,128. Additional fingerprints are flowing in to the Department of Justice at the rate of about 2700 per day. It is by far the greatest and most valuable fingerprint department in existence at the present time anywhere in the world.

We are engaged in an undertaking of serious import. It cannot succeed without popular understanding and cooperation. You, my friends, can, if you will, direct your efforts toward the building up of a stout-hearted public morale which will cause citizens, as a matter of course, promptly to furnish to the officers of the law the information that may come to them regarding known fugitives from justice, to give testimony freely in criminal cases, and to render jury service gladly when the opportunity is afforded to perform this high function of American citizenship. You can aid in speeding the activities of police and prosecutors, in enabling courts to establish proper rules and practices, and in securing desirable laws from state legislatures, local administrations, and, if the need should appear, from the Congress itself. You can lend your support to honest public officials dealing impartially with public problems.

No more worthy enterprise could possibly engage your attention. Organized bands of criminals prey upon legitimate business, exact tribute from the

timid or the fearful, and constitute an everpresent threat, not only to property, but to the safety of our homes and the sanctity of life. I have said before and, because the accuracy of the statement has been challenged, I reassert emphatically that there are more people today in the underworld bearing arms than there are in the combined forces of the Army and Navy of the United States. This open challenge to orderly government must be met with a courage worthy of our intrepid ancestors.

Our approach to the problem must be made thoughtfully, scientifically, and overwhelmingly; and it must be based upon the proposition that it is a relentless warfare, which will never cease until the black flag of gangsterism has been hauled down.

And now one final word. The time has come to call a halt upon the glorification of the criminal classes. Far too often, the gangster is depicted as a hero with fine qualities of mind and spirit, while the police officer is represented as a mean or heartless individual, gluttoned with authority, and stupid in the performance of his duty. Such distortion of the truth cannot fail to have an injurious effect, especially upon the plastic minds of the younger generation. The gangster is not a hero but a public enemy. His distorted mind is bent upon injuring, maltreating, preying upon, or destroying the innocent and the helpless. In an emergency he is almost invariably a coward. The real heroes are the courageous judges and public officials and officers of the law, throughout our land, who, in the line of duty, are performing their dangerous and necessary tasks with devotion and zeal. These men are the veritable peace time soldiers of the Republic, who are entitled to our unwavering confidence and our undivided support.