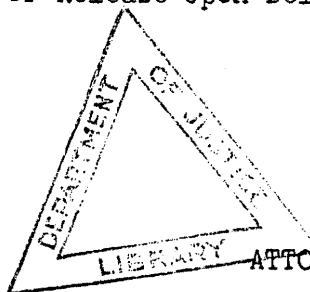


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ADDRESS

BY

HONORABLE J. HOWARD McGRATH

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

at

Centennial Banquet

THIRD ANNUAL INSTITUTE

SMITH COUNTY BAR ASSOCIATION

American Legion Hall

Tyler, Texas

Saturday, April 7, 1951

6:30 p.m.

I am honored to be here today to have an active part in this third annual institute of the Smith County Bar Association. Texas and Smith County, Texas, have proud histories, in which the bar and the bench have had important parts. That this month marks the 100th Anniversary of the first sessions of the Federal and State courts here in Tyler, Texas, in April, 1851, bears testimony to those histories. And the star of Texas is still rising.

In this largest State of the Union, from which many of our national blessings flow, in this State whose inhabitants are brimming with vigor and enthusiasm, a person realizes that he lives in the greatest country on the face of the earth.

As all of you are aware, two of my illustrious predecessors in the office of Attorney General of the United States have come from Texas, the Honorable Thomas Watt Gregory, and my good friend, the Honorable Tom C. Clark, now Associate Justice of the United States Supreme Court. Both of these distinguished lawyers and Americans served as Attorneys General in difficult and critical periods in our history. Attorney General Gregory was the trusted legal adviser to President Wilson from 1914 to 1919, throughout the period of the First World War; Attorney General Clark was President Truman's Attorney General during the important years from 1945 to 1949, when many of the tremendous problems which grew out of World War II first arose. Texas can well be proud of the contributions to the Nation's welfare made by each of these sons.

The Department of Justice has expanded with the increasing complexities of our civilization and the growth of our Nation. Edmund Randolph, appointed the first Attorney General in 1789, had no assistants of any sort and his salary was \$1500 a year, out of which he had to pay for all his own stationery and meet his other expenses. Not until 29 years thereafter was

the Attorney General allowed \$1,000 for the employment of one clerk, and an additional \$500 for office rooms, stationery, books, and other incidental expenses. One hundred years ago, in the year of the judicial sessions which we are celebrating today, just two clerks and one messenger were the only employees of the Attorney General's office. It was not until 1870 that the Department of Justice, as such, was created, at which time there was established the Office of Solicitor General and two Assistant Attorneys General were provided for.

By the time of Attorney General Gregory's administration, the appropriation for the Department had grown to somewhat more than 6 million dollars annually. The then still small size of the Department, compared to its present day size, is reflected by the fact that the annual report of the Attorney General for 1915 indicates that the personnel of the Bureau of Investigation consisted of two special agents, 14 examiners, and 21 accountants. Numbers of other persons, I should add, were employed on work now handled by the Bureau.

In the years between Attorney General Gregory's administration and that of Tom Clark, the personnel of the Department increased to nearly 28,000. Now there are approximately 30,000 persons employed in the Department. The appropriations for the Department have increased to somewhat more than 150 million dollars for the current year. I want to emphasize, however, that the bulk of the Department's budget goes to maintain the FBI and the Immigration and Naturalization Service. Together these agencies require annual appropriations of nearly 100 million dollars. Other functions of the Department related to the security of the United States require another large part of the budget. I regret to say that I see no possibility, in the immediate future, of curtailing these costly

services which current circumstances demand be rendered by the Department to protect the internal security of our Nation. I do not believe that Americans want them curtailed.

The Department of Justice has become an institution of tremendous scope and complexity. It is the function of the Attorney General to enforce Federal law, to represent the Federal Government in the courts, to act as legal adviser to the President and heads of the departments of the Government, and to administer and enforce important Federal statutes, such as the antitrust and immigration laws. In this work the Attorney General is assisted by the Solicitor General; the Deputy Attorney General; eight Assistant Attorneys General and their staffs, each comprising a division or office of the Department; three directors of Bureaus and their staffs, comprising the Federal Bureau of Investigation, the Immigration and Naturalization Service, and the Bureau of Prisons; and the United States Attorneys, and their staffs, in every judicial district.

The Solicitor General is chiefly concerned with the Government's litigation in the Supreme Court. The Government is involved in more than half of all the matters which come before that Court.

The Deputy Attorney General has general supervision over the various bureaus, divisions, and offices of the Department, and is also the liaison for the Department with the Congress.

The Antitrust Division, as its name implies, has the enforcement job under the Sherman Act and kindred laws, and the Tax Division of the Department prosecutes all criminal cases and prosecutes or defends all civil cases arising under the internal revenue laws, except liquor tax violations.

The Claims Division handles the vast bulk of the civil suits and claims for and against the Federal Government, its officers and agencies. These include cases involving contracts, torts, admiralty and shipping, injunctions, patents and copyrights, renegotiation, and veterans' civil matters such as reemployment cases.

The Lands Division is responsible for approving titles and handling purchases, foreclosures, condemnations, and other acquisitions of lands by the United States.

One of the lesser known but very important divisions of the Department of Justice is the Customs Division located in New York City, which defends the Government in all protests involving customs matters before the Customs Court and the Court of Customs and Patent Appeals.

Better known, of course, is the Criminal Division, which has charge of prosecuting criminal violations of Federal law, other than antitrust and tax offenses, and which handles about 50,000 cases each year.

The Office of Alien Property is charged with the duties of vesting, managing and liquidating enemy-owned property located in the United States.

There is, in addition, in the Department an Office, headed by an Assistant Attorney General, which serves in many ways as an immediate personal legal staff of the Attorney General, to assist him in the preparation of legal opinions and the drafting and review of Executive orders and proclamations to be submitted to the President.

The investigating arm of the Department is the Federal Bureau of Investigation. With bias, which I trust is pardonable, I state my belief that it is the outstanding criminal investigating agency in the world. No small measure of its success has been due to its ability to obtain the full cooperation of the thousands of State and local law enforcement units

throughout the country, and in turn to lend assistance in the special schooling of hundreds of their officers each year.

The Immigration and Naturalization Service administers the immigration, naturalization, alien registration, and exclusion laws. It is responsible for securing our boundaries against the illegal entry of aliens. This means patrolling the thousands of land and water miles of our borders, as well as the examination of all persons entering the United States through legitimate channels, whether by land, sea or air, to determine that they may lawfully enter the United States.

The Bureau of Prisons operates the 26 Federal penal and correctional institutions, with approximately 18,000 persons in custody at the present time. There is also in the Department of Justice a Parole Board, which determines when eligible prisoners should be paroled, and a Pardon Attorney who makes recommendations on applications for Executive clemency.

These, then, are the instrumentalities by which the modern Department of Justice discharges its principal functions. Intrinsically an organization for the rendering of services to other departments of Government, the Department of Justice must execute its functions in constant consultation with the many other Federal agencies, subject at all times to Presidential direction, the acts of Congress, and the decisions of the courts.

It is at once apparent that the operations of the Department of Justice provide many interesting subjects for discussion. I should like to talk briefly about one of those subjects -- the communist threat and what we are doing about it.

Never have Americans been more aware of the existence of a threat to their cherished liberties. Day by day, communism is being plainly demonstrated as not merely a philosophy of government, but as an instrument

designed to subjugate our Nation and its people to the full control of a despotic foreign power. It is now evident that the evil, grasping men whose iron hands dominate this foreign power have as their plan and motivation the same wild dream of world conquest as impelled Hitler and other similar tyrants before them. But, communism as a political doctrine, has never had an appeal to any substantial portion of the American people. As a political party, the communists have won virtually no office of national importance. In the market place of ideas, communism is bankrupt.

The trial in New York of eleven top members of the Communist Party of the United States weighed communist aims against communist claims. I cannot discuss the details of that case with you, since certain issues in it are still pending before the Supreme Court, but I may fairly say that the record in the case is heavy with evidence painstakingly gathered by the Federal Bureau of Investigation and introduced under strict rules of American justice that brands the communist party in the United States as the complete if sorry tool of the Soviet dictatorship, and damns the leaders of the party as puppets of their foreign masters. The "Made in America" label has been completely stripped from their wares.

Whatever may be the differences among us, Americans are united in the resolve that we shall not permit our territory, our persons, or our liberties to be delivered by these stooges to their masters.

The communists in the United States, because of the purpose and plan of their conspiracy, necessarily operate in dark secrecy and hypocrisy. Revelation of their identity and publication of their schemes destroy much of the pernicious evil to which they are dedicated, for Americans will not buy their wares in the open market.

Day by day the agents and the dupes of communist imperialism who have been hiding in our midst are being unmasked and caused to face the just wrath of the neighbors whom they have deceived and whom they have conspired to impress into slavery. In the days ahead, many more will be brought out into the light.

It is no secret that in the files of the Federal Bureau of Investigation there reposes information concerning more than 43 thousand sworn communists and a much larger number of former communists and communist sympathizers in the United States. You may be interested, incidentally, in the fact that a very recent survey of our information on this subject indicated only 227 communists in Texas. The files of the FBI also contain elaborate details of the communist apparatus, from tiny cells, to ward, city, county, State and district organizations, and to the national headquarters in New York. As the evidence becomes sufficiently complete against such of these persons as have violated the laws of the United States, day after day will we bring more of them to trial.

The FBI, of course, as the investigative branch of the Department of Justice, carries a heavy load in this matter. Its function with relation to communism is to gather information to safeguard the internal security of the United States, and to present for the use of the Criminal Division of the Department any evidence it may find of violations of Federal law. I believe that all of you will agree that the FBI, under the able directorship of J. Edgar Hoover, is doing a splendid job in this field.

As I have indicated above, communism as a political theory is bankrupt. It has never appealed to any substantial portion of the American people, and it cannot prevail here. As a conspiracy directed by a foreign power,



it is doomed to failure. So long as we are alert to its true meaning and means of achieving its subversive ends, I do not think we need have any real concern with the possibility of the success of communism in this country. I am concerned, however, with the effect upon our democratic way of life of our efforts in successfully halting the march of communism.

From time to time there come upon the American scene persons, in public and private life, who purport to possess some magic gift for catching communists. The principal ingredient of the formula of the people to whom I refer seems to be a readiness to label as a communist anyone with whose views they disagree. Such people use the emergency in which we find ourselves as an occasion for disregarding basic human rights which we in this country have cherished for so long. We need to be very much concerned about those who smear all opposition sentiment with the label of communism. Demagogues who pose as crusaders against un-Americanism by seeking to abridge beyond all reason our traditional democratic freedoms are as dangerous to American liberties as the communists themselves. We must not fight subversion by demanding orthodoxy of opinion or by a willingness to label any speech or action with which we disagree as disloyalty.

And only very recently a powerful voice has urged the congressional investigation of judges who have released communists and alleged communists on bail pending judicial review of their convictions of various offenses. This suggestion is to me completely contrary to basic concepts of American justice. Under our system, the questions of when bail should be granted and what constitutes reasonable bail are judicial questions. The decisions were made after full presentation of all relevant facts, and, having been made in accordance with American judicial standards, should not subject the judiciary to unseemly investigation.

There are other persons, loyal Americans and well intentioned, who in their righteous anger against communists apparently would have us bend the courts to conviction of all communists in all cases, under penalty of a Congressional investigation for failure to do so. I have been sorry, in the recent past, to note pressures for investigation of the judiciary as a consequence of decisions against the Government in criminal prosecutions of communists. The hung jury in the first Hiss trial resulted in a number of such demands which have not ceased although, as we all know, Hiss was convicted in a second trial and now has begun serving a five year prison term, the maximum which could be imposed, after unsuccessfully appealing his case through the Court of Appeals for the Second Circuit, and having had a petition for a writ of certiorari denied by the Supreme Court.

The undesirability of a Congressional investigation of the Federal judiciary such as has been the subject of these demands is, to me, self-evident. It is my considered view that such an investigation would do much more damage than good and would be most ill-advised in these critical days. The mere staging of such an investigation, with its attendant publicity and notoriety in the press and on the radio, would, in my judgment, be seriously prejudicial to the proper administration of justice.

Moreover, a Congressional investigation of our courts, which are the bulwark of our freedoms and liberties, would be interpreted in many places as an attempt to bring the judiciary under the domination of the legislative branch. The complete independence of our judiciary is one of the prime characteristics distinguishing our form of government from the governments of less fortunate lands. I refer specifically to the fact that in the past in Nazi Germany and in Fascist Italy, and in Communist Russia as well as

in all the other countries behind the Iron Curtain today, it is notorious that the courts were and are political rather than judicial agencies, completely subservient to the will of their political masters. In our American system, we have no place for such subservience. And I think it would be a grievous mistake if, at this juncture in world affairs, we were to say to the world that we are about to subject the operations of our judiciary to non-judicial scrutiny in a manner not provided for by our own Constitution. Certainly, in days such as these the complete independence of the entire Federal bench should not be endangered or curtailed, and it would be foolhardy to bring such independence into question in the eyes of the world. I am convinced that an investigation of the judiciary, or even the threat of such an investigation, would have this effect.

Any complaints against the judiciary should, of course, be investigated. But the Constitution, which amply protects the people of the United States against misfeasance or malfeasance by members of the judiciary, prescribes the means for achieving such protection. It places the responsibility for evaluating such charges in the House of Representatives which, under the Constitution, has the sole power of impeachment. It places in the Senate the authority to try impeachments referred to it by the House. The fact that the Constitution provides this impeachment procedure as a means of removal of judges whose behaviour has not been good excludes, in my opinion, other methods of inquiry into the operation of the judiciary.

President Truman, when he recently established the President's Commission on Internal Security and Individual Rights, headed by that heroic American and Texan, Admiral Chester W. Nimitz, recognized the importance of guarding our personal liberties while maintaining our internal security. In a statement issued at the time of the creation of the Commission, the President said:

"We in the United States have a special responsibility of leadership in these critical times, when free men the world over are strongly resisting the challenge of the Communist drive for world domination. We must guard our freedom well -- guard it from armed assault, guard it from subversive infiltration, guard it from internal suppression and the deadly imposition of conformity. For the kind of freedom we have enjoyed in this country has been the shining goal for millions in other lands -- and the results of freedom in this country have been the shattering reply to the false claims of Communist imperialism."

The Federal Bureau of Investigation is doing its best to prevent sabotage and subversion and to be informed of all the plots and plans of communists. The Department will prosecute whenever violations of our Nation's laws are found. But Mr. Hoover and I are determined that we will engage in no Gestapo witch hunts or OGPU-type interrogations. The basic rights of the individual, as guaranteed by the fundamental law of the land, will be respected and protected. We Americans must be resolved that in fighting communism we do not chip away and ourselves destroy individual rights and constitutional freedoms.

In this regard, one of the frustrating paradoxes confronting law enforcement officers today is the fact that those who scheme to destroy our Government, or to violate its laws, often hide behind the guaranties of the Constitution, which they would crush could they attain their ends. The Fifth Amendment to the Federal Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." The courts have construed this to mean that a person may remain silent if it

appears that a criminal charge, no matter how remote, may be made against him on account of any matters concerning which he is questioned. Criminals, engaged in rackets and prohibited transactions of all kinds, have been learning to take advantage of this provision, which was written into our Constitution to protect law-abiding citizens against governmental excesses. I have been giving considerable study to the problem and have concluded that the law-abiding people of this nation are as much entitled to protection against criminals and those who would destroy the institutions of freedom as they are to protection against abuse of authority. In the light of the history of the constitutional provision it is clear that the granting of immunity from prosecution would present a means of obtaining needed testimony from one who might otherwise hide behind the constitutional protection against self-incrimination. If any witness protected by immunity refused to testify, he could then be punished for contempt; or if he committed perjury in his testimony he could be convicted and punished.

I have asked the Congress to give thought to the enactment of a law which would give the Attorney General of the United States authority to grant immunity from prosecution to witnesses whose testimony may be essential to an inquiry conducted by a grand jury or in the course of a trial. I hold to the view that the authority to grant immunity, or authorize such grant, should be centered in the Attorney General, who is the official charged with the responsibility for all prosecutions under Federal laws.

I believe that the same principle for granting immunity in appropriate situations can be extended to the cases of Congressional investigations, again upon agreement to centralize the responsibility for the grant of immunity in the Attorney General. Upon the recommendation of a Congressional committee, the Attorney General should determine whether granting immunity

in a particular case would be compatible with the furtherance of other investigations and prosecutions. The responsibility would be a heavy one. Nevertheless, it might be worth undertaking if it would aid in restoring vitality to needed investigations of criminal activities without at the same time risking an indiscriminate grant of immunity from prosecution.

A kindred problem in balancing the public interest against private rights concerns wire tapping. It is important for you to know that the FBI never engages in wire tapping without the express approval of the Attorney General of the United States, and that such wire tapping is confined to cases involving the national defense and the internal security of our country. However, under the construction placed by the Federal courts on the Federal Communications Act, Federal officers are prohibited from using evidence obtained from wire tapping.

While I recognize the soundness of maintaining this position in regard to most situations, it seems to me there is every good reason for amendment of the Federal laws to permit wire tapping by our law enforcement agencies under adequate safeguards, where the security of our country is concerned, and to permit the use of evidence so obtained. A number of the States now authorize wire tapping and the use of evidence obtained from wire tapping under certain well-defined limitations and restrictions. It would seem to me that these offer an example of how Congress and the courts may work out a reasonable solution to preserve our national security on the one hand and the right of privacy on the other.

In proportion to our total population, the number of people engaged in criminal efforts is small. I am confident that, either with, but even without, the amendments I have suggested to our present laws, our law enforcement officers can remain on top of the problem and able to cope with

it. What troubles me is the large tendency to confuse the means of combating criminality with the means for dealing with communist ideology and propaganda. If, in truth, one of our objects is to counteract at home, as well as abroad, communist ideology and propaganda, we have at hand much more powerful and enduring weapons and defenses than repression. It is well recognized that communism has been most successful in taking over in places where human misery has prevailed, where economic security and recognition of human rights were nonexistent for the great majority of the people. To the downtrodden, communism has offered the lure of security and freedom, though always postponing the realization. It has been shrewd enough to align its propaganda with the just as well as the unjust complaints, and has not hesitated to invent a few of its own. It has played for all their worth alleged differences and inequalities of class, of race, and of religion.

We are not unaware of the imperfections of our society, and, aided with the handglass of our own self-appraisal, we have set out to correct our shortcomings and eliminate inequalities. In the fields of employment, housing, education, and social security, large-scale programs have been put into effect, and have made tremendous inroads upon the poverty, ignorance, and suffering from disease and old age which existed even in this land of plenty. We have not stopped. The programs in this direction have been renewed and expanded to enable Americans to realize a higher standard of living and a greater measure of economic security than ever before. Certainly this is assured, if peace in the world can be maintained.

The actual demonstration that democracy works, that in a framework of representative self-government people can achieve not only economic security but a broad measure of individual freedom, and opportunity for enjoyment of the sciences, arts, and even graceful living, is the most cogent assurance

to our own people, and the answer that makes hollow the words of the enemies of democracy.

Let us then get on with the needed repairs, that the best of machinery needs, and move forward with the confidence and assurance that is the mark of free men.