

THE ROLE OF THE FEDERAL GOVERNMENT
IN COMBATTING CRIME

AN ADDRESS

BY

HONORABLE J. HOWARD McGRATH
ATTORNEY GENERAL OF THE UNITED STATES

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The federal government does not exercise general police powers in ordinary criminal matters. Basic criminal law enforcement is and should be performed at the local level in the states. The federal government has only such jurisdiction over criminal law enforcement as is given to it by the United States Constitution. We cannot avoid being acutely aware of this division of governmental responsibilities in dealing with crime. The federal government has exclusive criminal jurisdiction over such matters as violations of the postal regulations, protection of the United States currency, enforcement of revenue and tax statutes, and in general those which protect the operation of the federal government itself. By their very nature these laws must necessarily be enforced by the federal government. In addition to the strictly federal matters, Congress is given by the Constitution the exclusive power to regulate commerce between the states; and it is in the exercise of this power that much of the federal criminal legislation is based.

While both the state and the federal governments have primary responsibilities in combatting crime, their fields of operation are separated by constitutional limitations and well-established concepts of states rights. May I state at the outset that so long as I am the Attorney General it will not be the purpose of the Department of Justice, the chief federal law enforcement agency, to usurp the functions of the state and local police or to conduct activities that extend beyond constitutional limitations, or the usages of our people. We must never lose sight of the fundamental principle that local responsibility, fully realized, makes for sound government and

healthy law enforcement. That is the true meaning of "states rights" and "home rule." Conditions which breed contempt for law can only become worse if we allow ourselves to be lured away from sound principle by the temptation to pass off state and municipal responsibilities to the federal government. Nevertheless, adherence to this view will not detract from the common purpose of the federal and local agencies in devising means for aiding each other, within the limits of law, nor of the federal government assisting and complementing local law enforcement agencies charged with primary responsibility.

It was with this idea in mind that in February of this year there was called the Attorney General's Conference on Organized Crime. Attending that conference were representatives of the major law enforcement associations throughout the United States, such as the National Association of Attorneys General, American Municipal Association, the United States Conference of Mayors, the National Institute of Municipal Law Officers, as well as representatives of the United States Attorneys Association and other federal agencies. This conference was called by me in an effort to find a way of greater cooperation among all law enforcement officials to the end that a more efficient and successful fight against organized crime might be conducted at municipal, state and federal levels. The President of the United States appeared and gave his wholehearted support to the undertaking. At that conference, as well as from many of the representatives of the states and municipalities with whom I have talked, there was almost unanimous agreement that one of the most serious threats to efficient law enforcement and

good government was the apparent increase in organized crime which had resulted from a flourishing of the most lucrative field of all criminal activities, that of organized gambling. While historically the fight against gambling had been a matter of state concern, yet it became apparent that state agencies were having considerable difficulty in combatting this insidious evil; and that the federal government might well find means to assist the states in this fight without encroaching upon any of the powers of the state in this field. Because of the general agreement that the major problem was one of organized gambling, legislative committees were appointed and immediate study was directed toward formulating constitutional means of aiding the states in this fight. Following extensive study by the legislative committee of the crime conference, drafts of two proposed bills were submitted to Senator Johnson of Colorado who introduced them in the Senate. One of the bills, S. 3357, was designed to prohibit the transportation of gambling devices in interstate and foreign commerce. The other bill, S. 3358, was intended to prohibit the transmission of gambling information by communication facilities through interstate channels. Both of these bills were the result of special resolutions enacted at the conference endorsing the idea of federal legislation which would prohibit the transmission of gambling devices or information through communication facilities in interstate commerce. The committee on Interstate and Foreign Commerce in the Senate reported the slot machine bill favorably eight days after its introduction and seven days thereafter the Senate passed it unanimously. It has now

been amended and passed by the House of Representatives on August 28th, and is awaiting Senate approval of the House amendments. Extensive hearings were held by the Senate Committee on Interstate and Foreign Commerce on the other bill, S. 3358, and a modified form of the bill was reported out on May 26, 1950.

These bills are examples of the means by which the federal government may aid the state in its primary responsibility in combating crime. In the history of federal-state relationships the use of the federal power to support state policies has had a number of important precedents. For example, in the field of liquor law enforcement, Congress enacted the Wilson Act (26 Stat. 313, now 27 U.S.C. 121), which provided that all fermented or intoxicating liquors transported in interstate commerce must be subject to the operation and effect of the laws of the state into which they were shipped upon arrival in that state. The Wilson Act was held valid in In re Rahrer (140 U.S. 545). The Wilson Act, therefore, permitted the state to take away from interstate commerce shipments of liquor the privilege attaching to such shipments, that is the right of the original purchaser after receipt to sell liquor while still in the original package, even though the state law prohibited such sale. Following the enactment of that legislation, Congress passed the Webb-Kenyon Act of 1913 (37 Stat. 699, now 27 U.S.C. 121), which statute prohibited shipment or transportation of liquor into any state where the receipt, possession or sale of such liquor was prohibited by state statute. The Webb-Kenyon law was approved by the Supreme Court in Clark Distilling

Co. v. Western Maryland Railway (242 U.S. 311). Still later the Reed Amendment of 1917 (39 Stat. 1069) enlarged the statute to include a criminal provision punishing any individual who "shall order, purchase, or cause intoxicating liquors to be transported in interstate commerce." This supplemental amendment to the Webb-Kenyon Act was upheld in United States v. Hill, 248 U.S. 420.

By these statutes Congress aided the states in controlling the distribution and sale of liquor. The interstate transportation of intoxicating liquor into a state where the law forbade the bringing in of intoxicating liquor was prohibited, while allowing for its continuous interstate transportation through the state (18 U.S.C. 1262); its transportation where it was to be used in violation of the law of the state was prohibited (27 U.S.C. 122); it was subjected to state laws regarding intoxicating liquor (27 U.S.C. 121). As the court stated in the Clark Distilling Co. case, supra:

"Congress * * * considered the nature and character of our dual system of government, State and Nation, and instead of absolutely prohibiting, yet so conformed its regulation as to produce cooperation between the local and national forces of government to the end of preserving the rights of all * * *."
(242 U.S. 311, 331)

Of course, ever since the decision of the Supreme Court in the lottery case in 1902 (Champion v. Ames, 188 U.S. 321) holding that Congress may prohibit the interstate carriage of lottery tickets, there has been no room for doubt of the authority of Congress to exclude from the channels of interstate commerce various forms of gambling paraphernalia, as well as other illegal activities and fruits of crime. What the court said almost fifty years ago is equally appropriate today.

"We should hesitate long before adjudging that an evil of such appalling character, carried on through interstate commerce cannot be met and crushed by the only power competent to that end. We say competent to that end, because Congress alone has the power to occupy, by legislation, the whole field of interstate commerce. What was said by this court upon a former occasion may well be here repeated: 'The framers of the Constitution never intended that the legislative power of the nation should find itself incapable of disposing of a subject matter specifically committed to its charge.'" In re Rahrer (140 U.S. 545, 562).

There are many additional statutes which employ the federal government's power over interstate commerce in an effort to eliminate from these channels other types of illegal activities as well as the fruits of crime where the criminal attempts to escape state enforcement officials by taking advantage of jurisdictional limitations. Examples of these other statutes are the Mann Act, National Motor Vehicle Theft Act, Fugitive Felon Act, Stolen Property Act, and others too numerous to mention.

Today the problem of combatting crime is more complex and difficult than ever before, but it is not insurmountable. It will require constant vigilance of the law enforcement officers and citizens alike, for that is the price of our liberation from the domination of all unlawful elements. The criminal today has become smart, at least in the sense of becoming organized, and utilizes every technical advantage available under our system of dual laws and divided jurisdictions and geographical limitations. By becoming organized the criminal elements have become wealthy and through the use of big money have become powerful. But that is all the more reason why there must be

close and constant cooperation between the federal law enforcement officials and the state. In this fight the federal government can play an important role in assisting the states by depriving the criminal element of those advantages he seeks through the utilization of interstate commerce channels, upon which the state officials may not encroach under the Constitution. It is in this role, which the federal government may constitutionally assume, that the President of the United States and I have pledged the cooperation of the federal law enforcement agencies toward the end that we may present a united front with the state officials in the fight against this serious menace to good government. I have offered the facilities of the Department of Justice to the special committee to investigate organized crime in the Interstate Commerce Committee of the United States Senate, and I have pledged to Senator Estes Kefauver every possible cooperation that we may give him. To accomplish this cooperation I have instructed all United States Attorneys (Circular 4133, July 31, 1950) to cooperate in every possible way with the members of this committee and those assisting it in its investigation of organized crime.