Department of Justice

ADDRESS

BY

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It is a real pleasure for me to take part in this 52nd Annual Meeting of the National Association of Attorneys General. Over the years the meetings of this Association have produced many forward-looking programs of national importance. Today, rather than discuss with you any single subject, I would like to touch informally on the highlights of several problems which are of current interest to us at the Department of Justice and which, I believe, are of significance to you and to the nation.

A matter of vital national concern is what happens when the President of the United States because of serious illness or other unexpected emergency is unable to discharge the powers and duties of his office.

Section 1 of Article II of the Constitution, provides in part as follows:

> "In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President."

The crucial question raised by this Constitutional provision is not what are the criteria for determining inability or who determines inability. The crucial question is what is the effect of a determination of inability? Is it permanent or only temporary?

The large majority of scholars believe that the Vice President would act only temporarily, and it seems clear to me that this is what the drafters of the Constitution intended. The fact remains, however, that enough doubt has been engendered on this question to discourage Vice Presidents from

acting as President when a President is temporarily disabled. Thus, in two instances, during the prolonged illnesses of Presidents Garfield and Wilson, this country was without authoritative leadership for unfortunately long periods during which matters of public importance went unattended.

In cases of inability of a President, it is interesting to notice that the problem has never been one of an over-ambitious Vice President. On the contrary, Vice Presidents have hesitated to exercise the powers of the presidency in view of the constitutional doubt as to whether a President could resume his powers.

Therefore, I believe that a constitutional amendment is needed to make it absolutely certain that the Vice President steps in only temporarily. Such a provision is contained in the Administration's proposal, submitted last year, re-urged this year, and incorporated in the bi-partisan Dirksen-Kefauver amendment.

Briefly, this constitutional amendment would provide, first, that the Vice President would act as President if the President himself declares his inability; second, that when the President is unable or unwilling to declare his own inability, the Vice President would temporarily act as President if a majority of the Cabinet approves, and that the President would resume the powers and duties of his office upon declaring that his inability is terminated.

This leaves only one extremely unlikely contingency, a difference in opinion between the President and the Vice President as to whether the inability has ended.

The Administration's proposed constitutional amendment would allow the President to resume the functions of his office in the event of such a dispute, but provides for the immediate action of Congress, whether then in session or not, to resolve the question of Presidential inability if raised in writing by the Vice President supported by a majority of the Cabinet. A two-thirds vote of the members present in both Houses would determine the existence of a President's inability; a majority vote of both Houses could restore the powers of the office to him at a later date if and when he recovered.

Pending action by Congress the President has entered into a public understanding with the Vice President. Under it if the President could declare his own inability the Vice President would take over temporarily. If he could not, the Vice President would decide the matter. In either case, the Vice President would serve only as Acting President until the inability had ended. In either case, the President could determine when the inability was over. This agreement is in accord with the Constitution as originally drafted in convention and interpreted by most responsible authorities today. Thus the Administration has provided for continuity of the office consistent with the Constitution.

However, there are still strong voices which say that a Vice President becomes President permanently in case of inability. These and other such voices will be raised in the future. This might well result in uncertainty and inaction at a critical time. Congress now has a golden opportunity to consider this vitally needed constitutional clarification and put to rest such uncertainties.

A Constitutional amendment would not be effective until after 1960. So the Constitution can be clarified by a bi-partisan effort now without any consideration of who will occupy the White House by the time the amendment is effective. For this reason, the proposed measure can be considered entirely on its merits without considerations of persons or party. So far, this Congress has not indicated that it intends to act on this measure.

What is more important to our country in the age of the hydrogen bomb and intercontinental missile than to make certain that the Office of the President of the United States will have continuity and the power to act quickly and effectively under all conditions? It could be--God forbid--that historians might some day have to record that by not acting on this amendment now when it has strong bi-partisan support and in a climate devoid of political considerations that Congress will have committeed a tragic mistake--a mistake that could be very costly to our country.

Another problem which calls for Congressional attention is embodied in S. 1538, as amended. This is a bill to permit the federal government to return to the states legislative authority over land owned by the federal government throughout the United States.

The power of the federal government over the District of Columbia is well known. All of the District's laws are federal laws, and no state has any authority within it. It is not so well known that a situation similar to that which exists in the District of Columbia exists in thousands of other areas. The federal government owns nearly 1/4 of the land area of the United States.

Many military reservations, national parks, veterans' hospitals and thousands of federally-owned buildings and establishments are no less under the authority of the federal government than the District of Columbia. Crimes committed there are more often than not beyond the reach of local police and local courts.

You will no doubt recall that the problems arising in these federal "islands" came to a head a few years ago when a group of children living on the grounds of a federal veterans' hospital in Pennsylvania were denied the privilege of attending local public schools. As a result of that particular incident, an extensive study was conducted by an interdepartmental commitee, headed by Assistant Attorney General Morton of the Lands Division. We now know that this was but one of a thousand situations in which people residing on federal property within the states are being deprived of fundamental rights.

What has this meant to the people who live in these areas to be under federal law? It has meant that lacking residence in any state they are often denied the right to vote, to hold public offices, and to be entitled to public assistance. It has meant that often they are unable to have their wills probated, to arrange for appointment of guardians or to seek redress in many of the courts. If residents of the District of Columbia can be called "second class" citizens, the plight of the residents of these other areas is often even worse.

In these federal areas, the states are deprived of the right to tax, and otherwise to impose usual state and local regulations. On the other hand, the existence of federal jurisdiction has meant that the National government has

had to assume the role of a local government and supply services which the states are better equipped to render--fire and police protection, garbage disposal, and the like.

In addition, many criminals have escaped justice because of doubts arising from this peculiar jurisdictional arrangement. In one case, a soldier was convicted of murder in a state court. On appeal the state Supreme Court reversed his conviction on the ground that the state had no jurisdiction over a crime committed on a federal military reservation. The man was then indicted in a federal court but went scot free when the federal court held that the state, and not the federal government, had jurisdiction over the particular area where the crime was committed. This example could be multiplied many times, running from minor traffic offenses to major crimes of violence.

Through the cooperation of the National Association of Attorneys General, the Council of State Governments, and other organizations concerned with bettering federal-state relations, we were furnished with a detailed factual report concerning the effects of federal possession of legislative authority over land. This federal-state team effort produced reports which concluded that in the usual case the federal government should not receive or retain any of the states' legislative jurisdiction over federally owned areas. In those instances where general law enforcement by federal authorities is indicated, the federal government should have jurisdiction only concurrently with the states. In any case, the reports further concluded, the federal government should not receive or retain any of the states' legislative jurisdiction over

taxation, marriage, descent and distribution of property, and various other matters which are ordinarily the subject of state control. We agree.

The legislation to which I have referred would reverse the trend towards centralizing more and more power in the federal government. It would permit the government to give up federal jurisdiction in proper cases and thus eliminate the hodge-podge of problems that have gone with it. The bill has the unanimous approval of representatives of the states and the executive branch of the federal government. I am aware of no reason why it should not be promptly enacted into law, and we intend to press for its early enactment--this session of Congress if possible. This is legislation with which you are vitally concerned and which, I know, will have your active and enthusiastic support.

Finally, this evening, I would like to touch on several matters relating to law enforcement which are of mutual concern.

We have a serious responsibility to protect the public from crime and lawlessness. As you know this year the nation will spend more than 40 billion dollars on national defense. But few people realize that the estimated cost of crime in the United States in one year is about 20 billion dollars -- that it is second only to national defense in terms of cost.

Of concern at the moment is the rising tide of crime, particularly juvenile crime. Since 1950 the rate of crime in our country has exploded at a rate four times as fast as the rate of growth of our population. The rate of major crimes throughout the country in 1957 increased more than nine percent

over 1956. Almost half of the persons arrested for major crimes last year were under 18 years of age. It seems clear to me that for one reason or another our country has not done a proper job of inculcating our people, particularly young people, with an awareness of how destructive crime is to them and to the country.

The most obvious fact about the growth of crime in our country is that professional gangsters are disproving the old adage that "Crime does not pay." Organized crime rings have been able to reap huge profits with little risk by exerting "remote control" over those types of criminal activities that yield the most profits -- gambling, narcotics, and extortion -- and they pay only a small portion of their taxes on these activities.

One of the shortcomings of law enforcement is that efforts directed against organized crime are apt to be uncoordinated and sporadic. A series of vicious crimes occur or a Congressional investigation is held and a drive on crime is started. When the excitement dies down the drive is apt to die down.

You are no doubt familiar with the fact that the Department of Justice has undertaken a new program designed to meet the challenge of these crime syndicates. Assistant Attorney General Malcolm Anderson, who is your guest here tonight, heads up that program.

The program we have in mind is not intended to produce quick or sensational results. Rather it will be a long-range program built on policies which will be lasting and intended to meet a continuing and constantly changing problem.

Briefly this program has the following objectives:

The problem of crime will be attacked on all fronts within the limit of our jurisdiction with special concentration being placed on the top racketeers.

We will urge the courts to impose maximum penalties and within the procedures laid down by the law will seek to expedite the trial of cases.

We will urge federal legislation to give the federal authorities more weapons to cope with organized criminal activities that have interstate ramifications.

We will cooperate with state and local authorities to the greatest extent possible.

I want to emphasize particularly the last point because crime is basically a local problem. Under our constitutional division of powers, less than ten percent of all crimes violate federal law.

Despite this fact, misunderstanding continues to exist. Almost every time a serious crime is committed which gets national publicity, demands are immediately heard that the FBI investigate. The pressure becomes especially great when the crime is particularly shocking.

The Department of Justice is constantly alert to any possible violation of federal law. We carefully consider the various statutes to see if federal jurisdiction can be established. If such jurisdiction is found, we institute an immediate investigation. If not, we are prepared to assist the responsible authorities in every way possible. But it is important to remember that we do not believe in or want a national police force. The FBI has about 6000

special agents engaged in investigative work. New York City has four times as many police officers and the FBI is only two-thirds as large as the police force in Chicago.

The point I wish to emphasize is that law enforcement in any community is only as effective as the local citizens demand and are willing to support. Misunderstanding of community responsibility can only lead to disrespect for law and order.

We, the Attorneys General of the nation, are charged with the responsibility of insuring that the administration of justice in our country is prompt, fair and above reproach. While it may seem trite, it is worthwhile emphasizing - in very large part the strength of the nation depends upon the efficient and honorable administration of justice. Particularly at this time, when we are faced with "total competition" from the Soviet Union -- when we are being challenged on every idea which is basic to a free society -- religion, the rule of law, individual rights, freedom, ethics -- concepts basic to law enforcement -- the importance of law enforcement has never had greater significance.

This association is a powerful force for good in the United States. There is no group with whom we in the Department of Justice have worked more closely or with whom we have been on more friendly terms. Our task -- yours as Chief Legal Officers of your States and ours in the Department of Justice -- is to be aware of the present significance of honorable and efficient administration of justice and constantly seek to improve and strengthen it. Never have we faced a more important task.