

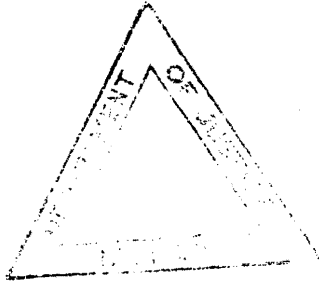
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ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES



Before the Joint

SEVENTY-THIRD ANNUAL MEETING

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and

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THE CANADIAN BAR ASSOCIATION

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If there is one department of the Government in which lawyers and the organized bar have a special interest, it is the Department of Justice, the law department of the Government. The bonds of interest and kinship are very simply stated in the American Bar Association constitution, which makes the Attorney General and the Solicitor General of the United States members of the House of Delegates, the controlling body of the Association.

In the course of American history there has always been an Attorney General, and there have always been local associations of lawyers. But there was not always a Department of Justice, nor an American Bar Association. The interesting thing is that they came into being at approximately the same time, when the need of the Nation was great for consolidating a rapidly expanding physical growth and economy. The administration of law in the Government was sadly uncoordinated, while the commercial world suffered under the confusion of many legal diversities and contradictory jurisdictions. So it was that in 1870 Congress established the Department of Justice, as was said by the contemporary, "so that it may be made the Law Department of the Government, and thereby secure uniformity of decision, of superintendence, and of official responsibility." And, in 1878, at a conference of lawyers from nineteen states including the District of Columbia, there came into being the American Bar Association with the object, among others, to "promote the administration of justice and uniformity of legislation throughout the Union." In consummation of that objective one of the outstanding early accomplishments of the American Bar Association, through the medium of the Committee on Uniform State Laws, succeeded by the National Conference of Commissioners on Uniform State Laws, has been what can be described as a "codification" of the commercial law of the country.

I need not dwell on other large accomplishments of the American Bar Association in such matters as developing standards of legal education and the canons of ethics. These are known to you. But I would like to describe the modern Department of Justice, in the eightieth year of its existence, and discuss some of the special problems with which all of us, in and out of the Government, are concerned.

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 conducts the Government litigation in the Supreme Court. The Government is involved in about 40 percent of all matters which come before that Court. Additionally, the Solicitor General decides whether appeals should be taken by the Government, or applications for review filed, in all cases in which the Government is a party in any court in the country. He also decides whether the Government should apply to intervene in cases where the United States is not a party, but in which an important principle of federal concern is involved. In connection with

some of the recently decided cases argued in the Supreme Court by the Solicitor General, I would like to mention two decided in the last two terms, of considerable significance in our present preoccupation with international armed conflict and in our continuing concern with international organization. The decisions establish, to my mind, wise principles of judicial self-denial in relation to our foreign and international affairs, and facilitate our participation in them.

The first, enunciated in Hirota v. MacArthur, 338 U.S. 197, is that an international tribunal sitting in war crimes cases is not a tribunal of the United States, whose judgments and sentences may be reviewed by United States courts simply because American officials were part of the international machinery. Had the decision been otherwise, it would have been most unfortunate; for, this country is increasingly engaging in international undertakings, in which American citizens and officials participate along with the nationals of other countries, and which could not function if American courts or the courts of other countries were to claim the right to review and supervise their actions.

The second principle, derived from Johnson v. Eisentrager, 339 U.S. 763, is that the Constitution of the United States, in particular the guaranties of habeas corpus and of the Fifth Amendment, does not extend around the world so as to permit overseas alien enemies to challenge in the domestic courts of the United States the actions taken abroad by our military authorities and tribunals. To have held otherwise would have meant "placing the litigation weapon in unrestrained enemy hands" with no reciprocal "equivalent for benefit of our citizen soldiers." It was gratifying and

reassuring to find the Supreme Court and the Executive Branch in agreement on these principles.

The Deputy Attorney General has general supervision over the various bureaus, divisions, and offices of the Department in regard to policy, litigation, compromises of litigation, appointments, legislation, and administration of the Department generally. The Deputy Attorney General is also the liaison for the Department with the Congress.

The Antitrust Division has the enforcement job under the Sherman Act and kindred laws. The object of the antitrust statutes is to prohibit monopoly and other unreasonable restraints upon competition, because it is believed that the elimination of competition will raise prices, limit production, stifle individual initiative and enterprise, and in other ways damage our free society. Since its inception in 1890, the antitrust program has always enjoyed the popular support of the great majority of our people. The antitrust enforcement story is a long and interesting one, much of which my predecessors and I have had occasion to discuss with the bar and the general public. Hence, I will say now only that during the past three years the Antitrust Division has filed 150 suits and has been responsible for the indictment of over 1,000 individuals. Out of eight recent antitrust cases before the Supreme Court, the Government was successful in six.

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 Tax Division handles annually about 5,000 cases, the majority of which are suits by taxpayers for judicial determination of tax liability. The Division is a revenue producer. In its

collection or defense of the federal revenue, it has collected or saved the Government an average of over 21 million dollars each year for the past five years, representing an average return of \$221 for each dollar spent for personnel. The Government's drive against tax evaders has resulted in obtaining convictions against 96 percent of the 1,357 defendants prosecuted.

One of the important, troublesome problems recently involved in civil litigation has been the issue of taxing, or exempting from taxation, a regular business enterprise which is conducted by or for an eleemosynary or other tax-exempt organization. The practice has grown whereby the ownership or normally taxable businesses is placed in the hands of tax-exempt organizations, and exemptions are claimed. If allowed, it is manifest that the effect on competitive businesses would be serious. The efforts of the Tax Division to defeat this form of tax evasion have been helped somewhat by a recent decision of the Court of Appeals for the Seventh Circuit (Universal Oil Products v. Campbell, 181 F. (2d) 451), in which an exemption was denied on the ground that the taxpayer was neither organized nor operating exclusively for scientific or other exempt purposes. There are other cases pending, and it is possible that Congress may step in and further clarify the law to close any avenue of unwarranted tax escape afforded by this device.

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. A unique function, recently assigned to the Claims Division pursuant to an Act of Congress, is the adjudication of claims against the United States by persons of Japanese ancestry for damage to or loss of real or personal property as a consequence of the evacuation or exclusion of such persons from certain parts of the United States during World War II. Incidentally, the recognition by Congress of these claims was one of the President's ten recommendations to Congress in his famous Civil Rights Message of February 2, 1948, and was the first to be enacted into law.

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. The Criminal Division handles about 50,000 cases each year, although it should be borne in mind in connection with the criminal cases as well as much of the Government's civil litigation, that a great deal of the pre-trial and trial responsibilities are shouldered by the United States Attorneys and their assistants in the various judicial districts of the United States.

One of the critical enforcement problems which came to a head at the beginning of this year was the matter of organized gambling and the crime it breeds. As you know, except for certain limited offenses concerning lotteries and gambling ships, there are no federal laws, and the Department of Justice has no enforcement functions, in matters of gambling and bookmaking, which have always been subjects dealt with by state law. Nevertheless, the problems created by commercialized gambling were brought to my attention by representatives of state and local governments, in particular the United States Conference of Mayors, the American Municipal Association, the National Institute of Municipal Law Officers, and the National Association of Attorneys General, seeking guidance and assistance in meeting a situation that had grown to alarming proportions.

As a result I called a conference of representatives of these organizations and of other local groups of enforcement officers, together with representatives of federal agencies who perform specialized enforcement functions in addition to the Department of Justice and its United States Attorneys. The meeting assumed the name of the Attorney General's Conference on Organized Crime, and left behind it continuing machinery to evolve and coordinate proposals for effective federal, state, and local cooperation in the field of criminal law enforcement. In addition to certain state and local programs, the Conference prepared two specific proposals for congressional legislation in the support of basic state policies.

The two proposals, introduced in Congress at the request of the Conference in April of this year, were a bill to outlaw the interstate transportation of slot machines and similar gambling devices, and a bill

designed to deny the use of interstate communications facilities for organized gambling and bookmaking activities. The bills (S. 3357--pertaining to gambling devices, and S. 3358--dealing with gambling communications) were the subject of extensive hearings and study. The slot machine, or gambling devices, bill appears close to final passage, it having first been passed as introduced in the Senate, and then passed with modifications by the House of Representatives August 28, 1950. The bill has now gone to conference. The gambling communications bill, however, will apparently not be finally acted upon at this session, although it was reported out in considerably altered form by the Senate Committee on Interstate and Foreign Commerce. It is quite likely that the subject will receive further attention by the Senate Special Committee to investigate Organized Crime in Interstate Commerce, headed by Senator Kefauver.

However, I am sure all will agree that the introduction of the bills and the hearings have tremendously spurred public interest in obtaining the basic local enforcement which is essential to a solution of the problem. It cannot be over-emphasized that the suggestions for federal legislation evolved by the Conference on Organized Crime were proposals for federal assistance in support of established state and local policies against organized, commercial gambling. It was my firm position, stated from the beginning, "that it will not be the purpose of the Federal Government to usurp the functions of the state and local police, nor to conduct activities that extend beyond constitutional limitations or the usages of our people."

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

and controlling the property of certain non-enemies which, for various reasons, remain blocked. The great bulk of the vesting program is of course complete, although it is estimated that there is between 33 and 50 million dollars of property yet to be vested which was owned and acquired by the governments or nationals of Germany and Japan prior to the close of 1946. The bulk of the work remaining is the liquidation of claims, and there are approximately 750 million dollars of these, the disposing of cases in litigation, and the settlement of so-called intercustodial conflicts. These conflicts arise out of the claims of the various allied countries and their nationals, and prevent the settlement of claims and the marshaling of dollar assets until agreements between the several countries can be given effect. At present there is legislation pending, which it is hoped will be speedily enacted, authorizing the President to conclude and give effect to agreements for settlement of intercustodial conflicts involving alien property (H.J. Res. 516, which passed the House August 14, 1950, and was reported favorably without amendment by the Senate Foreign Relations Committee September 6, 1950).

Until recently we had in the Department an Office of the Assistant Solicitor General. That office is now headed by an Assistant Attorney General. In many ways, it is 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; representing him in interdepartmental committees concerned with international policy or organization; and performing similar activities of assistance to him and the Deputy Attorney General, growing out of the Attorney General's status as a member of the Cabinet and as the President's legal adviser. One of the functions of the office has been to represent the Department in the development of a federal-state cooperative program of state legislation, through the instrumentality of the Council of State Governments, the Drafting Committee of State Officials, the various commissions on interstate cooperation, and the several other associations of state and municipal officials, with which many of you are affiliated.

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. Guarding the internal security of the United States is one of the prime concerns of the FBI. In that connection, it may be of interest that recently the FBI checked the records of about two and a half million government employees as part of the loyalty program. I shall have more to say regarding internal security in a moment.

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 magnitude of the task becomes apparent from the amazing fact that there were over 90 million entries of travelers and others into the United States last year. An equally important phase of its responsibilities is the detection and expulsion of aliens in the United States who are not entitled to remain. The numbers, again, are enormous, indicated alone by the fact that over half a million illegal entrants voluntarily departed from the country last year rather than be deported. Of course, you are well aware that once an alien has succeeded in entering the United States his expulsion is not ordered except after hearing. Such hearings have been an essential element of our deportation process since its inception. No more striking testimonial to the strength and vitality of our democratic institutions can be offered than the fact that whether the alien is a subversive, who obtained entrance to participate in the destruction of our society, or is not entitled to stay for any other reason, he is granted a fair hearing with appropriate procedural guaranties. One further interesting fact about the Immigration Service is that during the war years it supervised the naturalization of more than one million persons.

The Bureau of Prisons operates the 26 federal penal and correctional institutions, with approximately 18,000 persons in custody at the present time. An interesting, though not well known, fact was the contribution to industrial production during World War II of nearly 74 million dollars worth of goods produced by the Federal Prison Industries corporation. A further important contribution was the program for vocational training which taught specific skills to more than 2500 prison inmates. Practically all these men and women, following their release from custody, took their places on production lines and found new and worth-while means of becoming good citizens.

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.

The Department's budgetary, accounting, and other housekeeping problems are the responsibility of an Administrative Division, which, incidentally, services not only the Department in Washington and the offices of the United States Attorneys in the field but also the clerks of the federal courts and the marshals in every federal district.

These, then, are the instrumentalities by which the modern Department of Justice discharges its 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.

One of the vexing problems of our time, to which all three branches of the Government have given their attention, is what might be labeled the domestic containment of Communism. To understand the policies adopted so far, and to gauge what should be done in the immediate future, regarding domestic Communism, there should be clarity of understanding as to what the problem is and what the dangers are which require the application of criminal laws.

In my view, the problem is one of guarding our internal security, and the principal dangers requiring sanctions are espionage, sabotage, and subversion. If that can be made clear, much misty, obscure thinking can be dispelled. Communism as a political doctrine has never had success with, or appeal to, the overwhelming majority of the American people. As a political party, the Communists have captured only a minute portion of the total vote and have won virtually no office of national importance. In the American market place of competitive ideas, freely exchanged, present-day Communism is bankrupt. The "dictatorship of the proletariat" looks no different, and offers no more, than the dictatorships of the fascists and the nazis.

Is it, then, to suppress the expression of bankrupt ideas that we must enact criminal laws, tread upon the constitutional guaranties of free speech, and in general conduct ourselves with complete lack of confidence in our institutions? Obviously, such a course would amount to nothing less than pinning the wings of martyred angels upon the devil's advocates.

But when, to serve the ends of a foreign power and to destroy or weaken our Government, Communists or any others engage in espionage or sabotage or other unlawful acts of subversion, then we are confronted with a clear and present danger warranting the taking of swift penal and remedial action. Our national security statutes and administrative security programs cover these activities. The statutes and programs deal with treason, seditious conspiracy, advocating the overthrow of the Government by force or violence, sabotage, espionage, registration of foreign agents, perjury and the making of false statements, exclusion and deportation of subversive aliens, exclusion or removal of disloyal persons from Government employment, denial or cancellation of passports, and denial of income tax exemptions to subversive organizations or of tax deductions for contributions made to them. Under the criminal statutes, to name but a few of the cases, there were convicted of treason Chandler, Best, Gillars (Axis Sally), Toguri (Tokyo Rose), Monti, Burgman, and Kawakita. Dennis and 10 other leaders of the Communist Party of the United States were convicted of conspiracy to advocate and teach the overthrow of the Government of the United States by force and violence, and to organize the Communist Party of the United States to so teach and advocate. Viereck was convicted of violating the Foreign Agents Registration Act. Coplon and Gubitchev were convicted of espionage, and Gold and others are currently being prosecuted for espionage. Hiss and Bridges were convicted of perjury, and Marzani of false statements to his superiors in Government service. In the case of aliens

advocating or teaching overthrow of the Government by force and violence, in the period 1947-1950, approximately 200 Communists were excluded from entry into the United States at the borders and ports-of-entry; and deportation cases are now in process against over 200 Communists on similar charges. As I stated earlier, the government employee loyalty program required a check by the FBI of about $2\frac{1}{2}$ million employees. Full field investigations were made in about 12,000 cases, resulting in dismissal of 128 Government employees and exclusion from employment of 102 applicants and conditional employees.

In some few particulars, the basic statutes I have mentioned need improvement. The President so urged in his recent message to Congress on August 8, 1950, and there are a number of pending bills which contain provisions to accomplish this. For example, certain language of the espionage laws should be clarified, the statute of limitations for peacetime espionage should be lengthened, the coverage of the Foreign Agents Registration Act should be expanded, and stricter supervision should be provided in the case of aliens against whom there are orders for deportation but who cannot be deported because no country will accept them. Most important, the President should be authorized, in time of war or national emergency, to extend anti-sabotage regulations for protecting military installations and facilities to include other property and places as he shall designate in the interest of the national security, in order that there may be excluded from industries and facilities relating to the national security persons suspected of a purpose to engage in sabotage or espionage. If we are able to exclude potential saboteurs from

defense plants, and keep the individual troublemakers out of vital places, as was done during World War II, we can afford to ignore the soap-box oratory. Proposed registration of Communist party and front organization memberships, and labeling of their printed political publications, count for little in fighting wily persons trained in and bent upon intrigue and deception.

We appear to be going through a period of public hysteria, in which many varieties of self-appointed policemen; and alleged guardians of Americanism, would have us fight subversion by prescribing an orthodoxy of opinion, and stigmatizing as disloyal all who disagree or oppose them. This hysteria appears in vigilante groups who decree and execute beatings of purported Communist sympathizers; or, who, in more polite circles, intimidate radio advertisers into silencing performers whom they say have Communist leanings. Another manifestation is the recent proposal to investigate the fitness of the federal judiciary because of displeasure with a decision directing the release on bail of Harry Bridges pending his appeal of a conviction for perjury.

Some proposals for legislation contain the same shrill overtones of hysteria. One proposal to alter our naturalization and nationality laws (H.J. Res. 238), which the President vetoed on September 9, was drafted so broadly as to permit depriving naturalized citizens of their citizenship if they were affiliated with organizations which advocate changes in our form of government even by constitutional means. Not very long ago Mr. Justice Jackson stated for the Supreme Court in the famous flag salute case (Board of Education v. Barnette, 319 U.S. 624)

the resounding answer to proposals that would coerce uniformity of sentiment and opinion, when he said:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

Techniques of suppression and compelling adherence to the "party line" are the very mark of Communism itself in lands where it holds sway. We cannot afford to be misled into believing that we will be providing machinery to combat espionage and sabotage by adopting such techniques.

If, in truth, our object 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 hand-glass 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.

In addition, we have instituted, and are realizing, more slowly perhaps, programs to eliminate inequalities in opportunities and in the enjoyment of civil rights.

The most heartening progress has been made in the field of education, where slowly but surely the paralyzing grip of segregation is being loosened. The recent decisions of the Supreme Court, in the field of higher education (Sweatt v. Painter, 339 U.S. 629; McLaurin v. Oklahoma State Regents, 339 U.S. 637), are landmarks in this field. There is a spreading feeling of the people expressed in local determinations, many of them voluntary, to eliminate grade school and other forms of segregation. I need not go into the details of the programs, as yet unrealized; or the progress in such matters as the elimination of segregation in interstate transportation, the striking down of racially restrictive covenants in the sale and use of land, and the protection of racial minorities against discrimination in collective bargaining arrangements.

The point is that, in total, these programs represent a goal, the gradual attainment of which is being worked for by all thinking Americans, and which is now in sight. As accomplishments are achieved in reaching the goal, they will eradicate division and class consciousness, they will unify us in meeting hostile threats from abroad, they will solidify our international relationships with the many nationalities and races of the world.

If Communist propaganda is a threat, our best answer is this kind of actual demonstration that democracy works, that democracy provides for its people security, equality, and freedom.

The American Bar Association has not been unmindful of the special significance and importance of safeguarding civil liberties. In 1938, upon recommendation of one of the great presidents of the Association, the late Frank J. Hogan, there was created a special Committee on the Bill of Rights, which is now a standing committee, charged with the duty of investigating "substantial violations, actual or threatened, of the Bill of Rights," and of taking "such steps as it may deem proper in defense of such rights in instances which might otherwise go undefended."

This was and is a large order. But such is the need. It requires constant attention, and vigilance, and the willingness to risk discomfort when controversy arises. The burden cannot be met by Government alone. This the Association has recognized. It has recognized that the defense of civil liberties is the task of lawyers everywhere, with special responsibilities in the organized bar.

May I therefore importune this great Association, adding the new note of urgency created by America's position in the international community, to renew the vigorous spirit that gave impetus to establishing a Bill of Rights Committee, and to provide the forward-looking leadership which will maintain the unity of our people in the difficult days ahead. Teamwork built this country. The voluntary teamwork of a sturdy citizenry, nurtured by equality of opportunity and rights, will make it even greater.