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"LAW IN THE WAR EFFORT"

Address by

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Before the

Tennessee Bar Association

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When I am in Tennessee I feel that I am among friends. In your own progressive organization I have many such, including my very good friend, Congressman Estes Kefauver, who is a member of the House Judiciary Committee. I am, therefore, not unfamiliar with the progressive program of the Tennessee Bar Association. Nor am I unacquainted with the great work your State is now accomplishing as one of forty-eight great States at war. Among Tennessee's contributions for victory, the first that occur to my mind are TNT and Cordell Hull. I think the enemy is feeling the effects of both. From our eminent Secretary of State, I bring warmest regards.

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Since April 27, 1942, a new frontier has appeared within the world scene of peoples at war. It is another frontier of ideas, of the clashing of men's minds, and I think it is of significance to all Americans and of singular interest to lawyers. I especially welcome the opportunity to discuss it with you this morning.

On that date, some six weeks ago, Adolf Hitler, before the German Reichstag, talked exactly one hour and one minute. It took the Fuehrer that long to say what he might have said in the extra minute, but when the punch landed it turned out to be a big minute's worth. To the German

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people he made a certain proposal. Here, as quoted in translation from the Berlin version, is what he wanted:

The Fuehrer must, without recourse to the Legislature, in his capacity as Fuehrer of the Nation, Commander in Chief of the Army, Chief of the Government, Supreme Holder of the Executive Power, Supreme Judge and Leader of the Party, at all times be in possession of the power, if necessary, to compel every German--whether officer or soldier, official, judge, party officer, workman or employe--with all the means he deems suitable, to fulfill his duty; and in the event of his neglecting his duty, duly to punish him after a thorough examination without regard to so-called "duly acquired rights."

In our language that means, "No matter who you are, or what you are doing, do as I say -- or else."

When Hitler was finished speaking, Marshal Goering put the question to that anticlimactic procedure which in Nazi Germany is called a vote. It is not very astonishing that every deputy present at the meeting rose in favor of the motion. Had anyone neglected to fulfill this "duty," what might have happened to him afterwards is a question now legally within the knowledge of Adolf Hitler alone.

Of course this new law is, in reality, no law. In the action taken on that day, the Nazis killed what remained of law in their country, plunging themselves into the last ugly phase of their cycle of self-enslavement--the phase of complete, undisguised despotism. From now on Adolf Hitler's will--and what is more tragic for the German people, his intuitions--will supersede all law.

It would be superficial thinking to assume, merely because Hitler has been and is a dictator, that this new grant of power changes nothing in Germany. Such as it was, the Nazis up to now have had their own improvisation of justice. Of course Nazi indoctrination has pretty thoroughly

planted the persecution complex which convinces the people that the rest of the world is criminal, hence in their eyes not deserving of any exercise of the sense of fair play. Among themselves, however, there were still, up to six weeks ago, the fragments of a code. Judged by our standards, many of the things they have done within their own country have been indecent, brutal, inhuman. By their standards, these acts were for the fatherland, a conception which has been elevated in the German mind from the realm of patriotism to that of religion itself.

But it is precisely there--in that old conception of "fatherland"--that Adolf Hitler violates the German conscience in his latest demand for power. That is where, in the name of national socialism, he crosses the line which the Kaiser would not have dared to cross in the name of outright monarchy.

This term "fatherland" has always been something more to the German people than a mere designation of country. To the individual it embraces a complete, reciprocal system of ethics. It includes both the duties that are expected of him and the benefits, the protection, promotion, economic security and status in society, which he will derive. To him it is an intimate, private concern, distinctly a part of his inner living.

Those rights which were "duly acquired" by the citizen of Germany were of the essence of this devotion to the fatherland. They were not rights comparable to our own, as citizens of a democracy. They did not include the privilege of electing the government, for example, or the assurance of equality, or of trial by a jury of one's peers. Yet for the accused they did provide trial; as a reward for special merit they held

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out special privilege; they assured superior rank to those entitled to it by German standards; and they protected officers against removal without cause.

These were rights which the fatherland had accorded its people through many generations before Adolf Hitler arrived on the scene. They had become deeply imbedded in the consciousness of the people. And like all demagogues, Hitler had gained his power over them by holding out to the people the promise that he would protect that which was already secure among them.

Since then, step by step, Hitler has moved to destroy those rights, each time holding out a more tempting bait, a rosier assurance of things to come, a sterner warning of danger from above. In 1933 he demanded, and was granted by the newly elected Reichstag, a concession that "Federal laws may be enacted by the Government outside of the procedure provided in the constitution, and laws decreed by the Government may deviate from the constitution." That same year the German Bar Association was dissolved and its place was taken by the National Socialist Lawyers Society.

Through all this, however, and up to the Spring of the present year, an outward appearance of functioning on the part of the German courts, as they served non-Jewish Germans, had been maintained. From now on this, too, will be done away with. The Germans will not even have ersatz justice. Only a few days ago a judge was removed from office for declaring that the independence of the courts should continue to be inviolable. Another was ousted because the penalties which he had imposed were deemed insufficient. The nation has entered upon the last stage of absolute, personal dictatorship, the home stretch of a suicide trail.

In the exercise of authority there is a line beyond which the dictator, the despot, finds himself in an area of diminishing returns. I do not mean to predict at this time upon revolt in Germany. Writers, keen observers for the press who have recently returned from that country, have told us that in spite of the tight situation they saw no sign of an immediate crackup. I think that observation is probably sound. In the past few years the people of Germany have had plenty of practice in swallowing bitter medicine. By now they must have disciplined stomachs.

There is a difference, however, between that which men are willing to swallow in violation of their tastes and that to which they must commit themselves irrevocably in violation of their souls. There is a kind of invisible revolution of which men are capable, deep within themselves, showing neither in open uprising nor in the organized workings of underground revolt. There is a corrosion, a moral surrender, which can creep into the back of men's minds even while they are outwardly stimulated by reports of military victories. There is such a thing as the sabotaging of a nation's soul. The comment of the Russians, immediately after that session of the Reichstag last April, sums it up rather neatly. "Hitler's Spring offensive has begun," Moscow announced: "It is against the German people."

How long the German people will be able to bear up under this offensive from their own government is as much one of the unpredictables of this war as the military engagements. The staying powers of a nation at war are usually overestimated by itself and underestimated by its enemy. But this we do know: That to the extent that law among citizens is a force in war, our enemy is now weakened. He has cast aside that shield of endurance. Against disorder within, and the spiritual debility that I have mentioned, he has now over his regime only the flimsy dependence upon honor among thieves.

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How great a force for victory is the law? How effective as a fortifying influence is the order which law insures to our own people, as against an adversary who has no law and only that order which depends for its blood-stained continuity upon the gestapo?

First, we regard the principle that our citizens must remain free men as a fighting urge that no battle cry of the Axis powers can ever match. Therein lies our basic strength; and in each of the four freedoms we defend, the law of our land is implicit. But beyond that, how, from the field of the law, can there be produced sinews of war? What are the specific contributions?

To answer these questions, I should have to sketch in much greater detail than time permits the more important war activities of the government's law agency, the Department of Justice. I should have to say something, indeed, of all our law enforcement agencies, both State and Federal. As our laws are part and parcel of our freedoms, so our machinery for law enforcement must always be an integral unit of the machine defending them. We have learned, in this war as never before, that a nation cannot hope to survive simply by setting off a part of its population, equipping that part with weapons and calling it the army, and then going back to its own pre-war knitting. We are in a war of peoples, and if a part of our people are distinguished by the wearing of uniforms, it is only because they are assigned to a certain vital part of the bigger job that concerns us all. The old conception of a military life here, and a civilian life there, worlds apart, has no place in the war we are now fighting.

To mesh the gears of these two sources of fighting strength was therefore necessary at the outset. Coordination, reaching down through the

government, the armed forces, the law, industry and the maze of civilian activities, and bringing all these to bear on the one objective of defeating the Axis, was prerequisite to any attack. This meant, first, a general clearing for action. Military thinking had to readjust itself to the new type of total war. Certain old notions that stood in the way had to be discarded. On the civilian side, certain privileges which in time of peace had been properly regarded as matter of right, but which were now impeding the fighting machine, had to be put aside for the duration. Then we were ready, in the military, in industry, and in the legal system governing our civil life, to join forces for the offensive against our enemy both inside the country and out.

Within my department this process has been carried out to a high degree. The way in which the various units now coordinate their operations, without duplicating, without waste, is, I think, deserving of a word of tribute for those divisional heads who have done so well in executing the plan. Last month the coordination achieved in practice was brought up to date in organization through the formation of what is now known as the War Division. This division includes the Alien Enemy Control Unit, the Alien Property Unit, and the Special War Policy Unit. The first two, by their titles, are self-explanatory. The third—Special War Policy—directs and coordinates activities relating to sedition, espionage and sabotage, and administration of the laws applying to foreign agents. It acts in the same capacity in relation to the wartime work of the Criminal Division, the United States Attorneys and the War Frauds Unit of the Department. I should like to tell you what all these offices are doing, and

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others as well--the Lands Division, for example, in speeding up the vital business of getting space for the Army, the Prisons Bureau, in making things our soldiers need--but time allows for only a few highlights.

In making the nation secure internally, one of the first major problems arising from the declaration of war is, of course, the control of those persons who become "alien enemies"--in this instance the non-citizens of German, Italian and Japanese origin. We have in this country about one million such persons. As you know, the large majority of them are loyal to our cause. A small minority are not. The task of the government--never a simple one under the stress of wartime psychology--is to make it impossible for the dangerous minority to function, while at the same time enlisting to our full advantage the unity of spirit and the actual services which the loyal majority are anxious to render.

Toward that objective a carefully worked out program was ready when the war came. I have reviewed many times the several steps which we have taken and I shall not detail them now. The results to date are interesting. Alien enemies with definitely bad records are arrested and interned--to date, 1700 of them. Those suspected are given an opportunity to tell their own story before a civilian hearing board before the decision is made. For the others, the large number who have kept out of trouble, regulations are in force which safeguard the country in a situation in which we can afford to take no chances. They are registered and identified as alien enemies. They are forbidden to own certain dangerous equipment. Their travel is regulated. The control is pretty complete; but they are neither persecuted here, nor embittered. They remain staunch supporters of the United Nations' cause. They are helping to make the things we need for war and they are

buying war bonds. While their status as alien enemies is a continuing problem and must remain so while the war lasts, I think I may safely say that in the matter of control we are now "over the hump."

Contrast this with what is going on in the Axis countries. There the road of enslavement leads in another direction. We hear that within the bounds of the pre-war Reich there are now more than 4,000,000 imported slaves--over 2,000,000 in forced labor obtained through an outright draft, the others brought in through various methods of Nazi "persuasion"--and the end is not yet in sight. The factories, the fields, need more and more. So, without law, with none of the concerns of a civilized world, they are herded in. And as their numbers grow, the gestapo and the storm troops find it necessary to be ever more vigilant, ever more brutal. Only when the shadow of defeat falls over the torturers of those millions may the vicious circle be finally closed.

A word about espionage and fifth-column activity in general. The enemy abroad is the target for today of our armed forces. The enemy within was the target of the Department of Justice, not only for 1942, but for 1940-- and from that time on. War as the spy, the saboteur and the propagandist wage it, war on the uncharted, invisible front, was under way inside the United States long before the Axis formally declared it. I can assure you now that the planning, the strategy and tactics, were not all being carried on by one side alone.

While the enemy's spy rings and specialists in organized sabotage were trying to establish themselves in our midst, while they were working on the blueprints of grandiose projects against our government, the rapidly

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expanding Federal Bureau of Investigation was even then going them one better in the development of a new technique of counter-espionage. That technique turns the tables. It traps the conspirators, frustrates that which they are attempting, and boomerangs it back on the governments that have sent them here. It is distinctly a form of the offensive.

For example, when FBI agents found a German short-wave radio station operating here, they did not close it down immediately. Instead they became the "insiders." They worked their way in, then operated it themselves for months. When a self-styled "tourist" who seemed especially interested in the scenery around our army camps and war factories came to their attention, the agents did not arrest him at once. They became fellow travelers. And before they were through, they had cleaned up a ring of half a dozen spies, they had intercepted and suitably doctored up a large batch of messages destined for Heinrich Himmler himself, they had located mail drops in Madrid and in South America, and they had picked up quite a little fund of useful knowledge about caches, code methods, and other Axis techniques. When they had learned all that the "tourist" had to give them, then they took him in hand.

But the methods on which the Axis has banked most heavily bear but little resemblance to those of the spy and saboteur of past wars. Agents of the enemy, working directly, have made their appearance, as in the case I have just described; but the most important fifth column job which the Axis has attempted has been to delude Americans, if possible, in order to make them do the dirty work themselves. Much more diffuse, this technique, much subtler, than the old way; not so melodramatic, perhaps, but far more dangerous. If Mata Hari were back today, I think she would put away her low-necked gowns and go back to grammar school.

To get at these hidden trails and block them up, several offices within the Department of Justice are in daily liaison, both among themselves and with other departments of the Federal Government. Our offensive against the disloyal takes us into the fields of immigration and naturalization, border patrol, alien enemy control, foreign propaganda, and crime against the Government. Our offices concerned with these matters are in close touch with the intelligence divisions of the Army and Navy, and with the State Department. Each of these reaches out with a myriad of contacts into the civilian life of our country. When enemy-inspired work begins to trickle through, anywhere within the vast arc covered by these contacts, the "alarm" is touched off. At once the whole Federal machine goes into action.

There has been a great scurrying and squealing recently around one of the rat-holes that is being plugged up--the publication of seditious material which follows the master-pattern laid down in Berlin. Probably we shall hear more of it as the fumigating process goes on. But for these vicious stooges of Hitlerism--and that is the capacity in which they serve whether they are doing so consciously or as the unwitting dupes of the Goebbels machine--for these, the last line of defense is gone. The laws securing to our people the right of free speech and a free press are upheld now as staunchly as ever before. We are fighting, our young men are shedding their blood, for those rights. But there are laws, too--and there have been for many years--which authorize us to deal with those who try to sabotage the morale of our nation at war. This we shall not permit.

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I need not draw for you the contrasting picture that exists today in Germany. You know what has happened to the freedom of the press there. You have observed, here in America, how the pressure of public opinion has worked upon the whole nation, in the early stages of this war, like a forced draught upon the motive power of a vast machine. You saw our giant industries getting under way on a war basis. You observed a lag here, a defect there, and you saw how these deficiencies were made up, quickly, because they were being aired before the public and because the public demanded it.

That wholesome pressure will continue. To the will of the nation, which finds its expression in free speech and the free press, there will be responses in industry, in government, and directly on the battlefield. There, until the Axis is broken, will be felt the ever-increasing might of a nation committed to the preservation and enforcement of its laws even in the midst of war.