MESSAGE TO THE SECTION OF CRIMINAL LAW AMERICAN BAR ASSOCIATION

By

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This has been a noteworthy year in the field of federal criminal law. There have been important developments in administration, in judicial decisions and in legislation and I think it might be of some value briefly to summarize the major developments in each.

In the field of administration we have been principally occupied during the last year with war problems, the detection and punishment of war crimes. We have put to work, for the first time in many years, the laws defining treason, misprision of treason and sedition. We have had a host of new cases involving war frauds, espionage, sabotage and foreign agents. We have undertaken a broad program of cancelling naturalizations as a result of the pre-war activity of certain anti-American groups and we have devoted much time to a fuller examination of the cases of incarcerated enemy aliens, releasing those against whom no clear case has been made.

In the forefront of the significant judicial decisions of the past year in the criminal law field are the McNabb[1] and Anderson[2] decisions. All of us can agree with the Court's strong expression of disapproval of the practice of holding arrested persons an unreasonable length of time before bringing them before a committing magistrate. However, it is at

1. McNabb v. United States, 63 Sup. Ct. 608 (1943).

2. Anderson v. United States, 63 Sup. Ct. 599 (1943).

least questionable whether the sanction applied by the Court, i.e. rendering inadmissible confessions obtained during the period of detention, is the most desirable method of coping with this particular abuse. Indeed, there is grave doubt whether the application of the Court's rule will in fact improve police methods generally. Additional consideration of this whole problem will undoubtedly have to be given by the courts as subsequent cases arise.

The Japanese exclusion cases[3] deserve mention in a summary of the year's judicial developments as demonstrating that judicial review of executive action in the field of domestic security will be greatly limited during wartime. And the German saboteurs case[4] is noteworthy as upholding the jurisdiction of military tribunals to try members of the military service of enemy powers apprehended here in the course of activities in furtherance of the military operations of those powers.

The year's legislative developments in the criminal law field have not been of the same scope or significance as developments in the administrative and judicial fields, at least in terms of legislation passed. The Smith-Connally anti-strike law represents about the only important new wartime criminal statute enacted during the past year.

An important measure now pending before Congress is the Hobbs Sabotage Bill (H.R. 2503) which extends the sabotage laws to the intentional defective manufacture of any material intended for or useful for war purposes

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3. Hirabayashi v. United States, 63 Sup. Ct. 1375 (1943); Yasui v. United States, 63 Sup. Ct. 1392 (1943).

4. Ex parte Quirin, 63 Sup. Ct. 1 (1943).

as against the quite narrow group of war materials included in the existing sabotage law. The nation has been outraged by the recent disclosures of the Department of Justice and the Truman Committee of intentional evasion of government specifications by producers of war materials and the palming off on the government of seriously defective war goods. As a result of the narrow scope of the existing sabotage laws we have been forced to treat many of these offenses as frauds against the government, recognizing that the penalty as such is inadequate and that such treatment ignores the gravamen of the offenses as war crimes. The Hobbs Bill properly punishes all such acts as sabotage. It would penalize even more heavily persons who willfully cause war materials to be made below specifications and so defectively that use would endanger the lives and safety of our armed forces. Such criminals would face maximum imprisonment for life and a fine of up to $1,000,000.

The need for this legislation is dramatically illustrated by the Anaconda case, in the Northern District of Indiana, in which the company and five officers were charged with conspiracy to defraud the United States and to present false claims in the production and sale of wire and cable used by the armed forces for combat purposes. The government was prepared to prove, and so stated to the court, that the defendant company supplied the government with large quantities of defective wire and cable, and that deceptive practices were used to conceal the defective nature of the product. The wire and cable were for use of our armed forces and for lend-lease purposes. The government believed that only the imposition of maximum sentences would serve the ends of justice, and such sentences were

recommended. Nevertheless, after acceptance of pleas of nolo contendere the Court imposed fines and prison sentences of two years or less and suspended the sentences.

The promulgation of the preliminary draft of the federal rules of criminal procedure represents to my mind the most important event of the year in the criminal law field. It speaks well for the nation that, with its energies so fully occupied with the war, it has been able to spare the work of its judges and scholars for this basic reform of judicial procedure.

I have always felt that uniform rules of criminal procedure in the federal courts are desirable. The present principle of following state common law procedure, except in such respects as Congress has legislated upon or district and circuit courts of appeal have seen fit to cover by rule, has given rise to too much uncertainty and variation. It will be in the interest both of the defendant and the government to have a full, clear and uniform code outlining the procedural rights and duties of each. Moreover, it will aid in the uniform enforcement of the law. Procedure is closely related to substantive law and differences of procedure have in some cases resulted in differences in application of the substantive law. If the federal law is to be truly uniform in all the federal courts the procedure governing its enforcement must also be uniform.

Even more important than uniformity, however, is the simplification of procedure which will result from these new rules. Simplification of procedure in all courts is necessary not only to save the time and energies of the judges and attorneys but also to enable the more expeditious trial of cases. I think the new rules are going to be very helpful in achieving this simplicity.

Without undertaking to comment on particular rules, I may say that I think the preliminary draft is an excellent job. The Department of Justice is now giving it detailed study. We will have our comments and some suggested changes ready shortly. I know that you lawyers participating in the Section of Criminal Law will give your best thought to the consideration of the rules. When they are finally approved, we are all going to live with them for a long time. These rules can serve their purpose only if they are supported by the fullest approval and understanding of the bar, the judiciary and the government.

I am happy to greet you and to give my hearty support to all of your very useful activities in the field of criminal law.