

FOR RELEASE

"FREEDOM UNDER LAW"

ADDRESS

BY

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Twenty years ago the United States Attorney General was appalled by the fact that over 1,500,000 major crimes were committed in the United States during 1933. He found that a crime of desperate proportion--- robbery, assault, burglary, rape, kidnapping, manslaughter or murder--- occurred every 20 seconds, hour after hour, day after day, affecting during that year one out of every 8½ Americans and bringing tragedy to one out of every 16 homes. \*

I wish that I could report more favorable statistics today. But in 1952 a major crime was committed every 15 seconds---over 2,000,000 crimes---affecting one out of every 80 Americans, and showing an overall increase of 8.2% over the crimes committed in the preceding year. On an average day there were 20 murders or non-negligent deaths, 47 rapes, 160 robberies, 240 aggravated assaults, 1,200 burglaries, 3,300 larcenies and thefts, and over 600 cars stolen. \*\* And these figures are considered by the FBI to be conservative.

This record is a national disgrace. It imperils our governmental system which has given us Freedom under Law.

It proves that despite the conferences which have been held, the cooperative measures which have been adopted, the many laws that have been enacted, and the efforts of many fine law enforcement agencies, we have not begun to solve or even abate the inflationary trend in crime.

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\* Homer Cummings, We can Prevent Crime, page 10.

\*\* Uniform Crime Reports, Vol. XXIII, No. 2 (1952), page 73.

Why has crime continued to increase? Largely, I think, because of two basic failures:

(1) the failure to properly evaluate the criminals of today and their methods of operation, and to revise our laws and enforcement techniques accordingly, and

(2) the failure to place law enforcement agencies above politics and to obtain personnel of competence with integrity and loyalty.

Today I would like to outline to you the major new steps which the Department of Justice is prepared to take to help remedy these failures.

As to the first basic failure, many of us have too long pictured criminals as bleary-eyed, unshaven, seedy-looking characters, with caps pulled over their eyes, sneaking along the streets at night, furtively glancing behind them as though constantly in fear of being caught. We have thought of them as operating alone, as uneducated social outcasts, not fully responsible for their crimes because they are the unfortunate product of the environment in which they were raised. There are many such misfits, and there always will be, but by and large, our enforcement agencies are able to cope with them. While they contribute to the total crime picture, they do not represent the real menace of today.

What we have failed to appreciate is that the really dangerous criminals, those directly and indirectly responsible for the major share of our crimes, are of quite a different description. They are educated, well dressed, prosperous, and more often than not, distinguished looking individuals who circulate freely with the best company, and regularly turn up at our most fashionable resorts. They look and act like ordinary

men, ordinary in every sense except that their business is that of buying and selling the tools of crime.

These professional criminals do not work alone, nor do they come directly in contact with the sordid products they sell. They escape detection and prosecution by becoming members of powerful syndicates, the lower echelons of which trade in illegal business on a wholesale basis. Dealing in narcotics, prostitution, gambling, numbers, book-making, and extortion, leading racketeers and professional criminals working together on a national and international scale have established monopolies, which flourish in all of these activities and from which they reap huge profits. By means of rapid transportation and communication, they direct and control criminal activities throughout the United States without ever committing any of the crimes themselves. They maintain discipline within their ranks and of subordinates by threats of violence, which more often than not are sufficient without actual violence. However, they do not hesitate before ordering the liquidation of a non-cooperating competitor or informant. Just as they hire subordinates to do their dirty work, they hire experts to search for loopholes in the criminal laws and the tax statutes. To them tax evasion is the key to success. Through bribery they buy protection and by unscrupulous use of force and money they infiltrate government at all levels and businesses of all types. In short, the criminals of today are organized into a conspiracy which is better coordinated, more powerful, more wealthy, and more efficient than many of the law enforcement agencies established to control them.

The leading racketeers are all well-known. The names of Erickson, Costello, Adonis and Luciano are better known to the public than the

names of the President's cabinet members. We need only read a recent issue of a nationally-circulated magazine to find out who is now in control of the old Capone gang, complete with picture and personal history. Every law enforcement agent in the country can repeat from memory the names of the local bosses.

Fortunately, steps are being taken to do something about this situation.

In establishing your American Bar Association Special Committee on the Administration of Criminal Justice you have enlisted the services of the very finest minds in the field of criminology today, and no one will doubt but that this able team, under the capable leadership of Mr. Justice Jackson, will do the job and do it thoroughly.

I am particularly happy that Mr. Warren Olney, long an active member of this Association, and now head of our Criminal Division in the Department of Justice, has been asked to participate. Speaking for myself, Mr. Olney, and the whole Department, I can assure you of the very fullest cooperation in this splendid project you are undertaking.

In addition to the need for such a study there has long been a need for cooperative Federal-State action, for today's criminals have no respect for state lines. J. Edgar Hoover stated in 1934 that "when the United States can have absolute cooperation and closely knit programs of crime detection and apprehension worked out among all of its law enforcement agencies, then indeed will we begin to enjoy the minimum of law infractions to which this country is entitled,"\*

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\* Proceedings of the Attorney General's Conference on Crime (1934), page 25.

Here again, I am happy to report that cooperative measures have been and are being adopted. Too familiar to enumerate are the many services and facilities which the FBI makes available to state and local enforcement agencies. The recent compact between New York and New Jersey establishing a joint Commission to clean up the waterfront, which, Congress and the President have just approved is another example.

I believe that the Department of Justice has an obligation to supply active leadership in a drive against these syndicated racketeers. The answer does not lie in creating a federal police force or in expanding federal jurisdiction to include local crime. I do not share the opinion of many well-wishing people who believe that the solution is to "let the Federal Government do it". They fail to realize that only about ten per cent of all crime comes within the jurisdiction of the Federal Government as restricted by the Constitution and that our entire staff is not as large as the enforcement agencies of some of our larger cities. They also fail to realize that Federal criminal statutes are primarily designed to complement state statutes and to strengthen local law enforcement by controlling those activities which are the proximate cause of crime.

In my opinion, our responsibility is for more effective action in the three established areas where the Federal Government has primary jurisdiction.

First we have the duty to keep the channels of interstate commerce free of the criminal commodities and activities upon which local hoodlums depend. In this connection and in response to a demand that "one-arm bandits" and like devices be outlawed in interstate commerce, we are now

enforcing with marked effect the recent "Slot-Machine Act" (15 U.S.C. (Supp. V) 1171 et seq.). Manufacturers of gambling devices are going out of business daily because they can no longer freely transport their merchandise in interstate commerce to the point of operation. But this Act, like many other federal statutes which prohibit only the transportation of the tools of crime in commerce, while effective, is in one sense a futile operation of locking the barn door after the horse is out. The real evil is not the transportation but the use of these machines, and the states must face up to their responsibility and make the manufacture, possession and use of them also illegal as is recommended in the Model Anti-Gambling Act which this Association endorsed.

Interstate transmission of gambling information upon which the "Bookies" depend is not at present prohibited by federal law. The Department of Justice is endorsing a proposal which if enacted would prohibit the transmission of such information by requiring the communications companies to refuse service to those who lease "tickertapes" and "phones" for such purposes. We fully anticipate and expect that the next session of Congress will pass this or similar much needed legislation.

The second area is one in which the Department of Justice has not only primary but exclusive jurisdiction--the field of denaturalizing and deporting gangsters and racketeers, who are foreign born and who, because of their criminal activities, can make no claim to remain in the United States while violating its laws. There is no place here for those foreign born (a very minute percentage, I may add, of our overwhelmingly loyal and law abiding foreign born residents) who make use of their citizenship to engage in crime. We have investigated and are continuing to investigate

criminals who are aliens or who have derivative citizenship. This program has proven to be very successful and we are daily issuing warrants for denaturalization and deportation because investigations have disclosed that those engaged in illegal activities as a profession have not hesitated to obtain citizenship or entry into this country by fraud or to commit crimes of moral turpitude. To mention but a few, Joe Adonis of New York, Nicolo Impostato and his Lieutenant, Joe De Luca of Kansas City, Nick Circella of Chicago, Jack Dragna of Los Angeles, and Tony Marino of Brooklyn, reputed to be even more powerful than Costello, are all under orders for deportation. And the Circuit Court of Appeals for the Second Circuit on August 13, dismissed an appeal by Joe Accardi to review the order deporting him. These and others like them are being weeded out and sent to their native countries and we will continue to deport them as long as they continue to violate our laws.

Finally, the third area in which the Department may directly affect the operations of the underworld is in the field of taxation.

The income tax laws can, and should, be strengthened for a drive on organized crime and the utilization of such laws to the fullest extent will be a powerful and effective weapon. There is much merit in the observation made by your Commission on Organized Crime in 1952 when it reported that the "failure of the federal government to collect just and lawful taxes from racketeers and professional criminals has had a tremendous stimulating effect upon organized crime and the huge sums which should have been collected have been an important contributing factor in weakening law enforcement at the state and local level . . ."\*

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\* Organized Crime and Law Enforcement (1952), page 300.



Part of the fault lies in the laws themselves and can be corrected only by amendments. A number of recommendations, some made by this Association, are presently under study and will be presented to Congress when it reconvenes. For example, we are considering an amendment to make it a felony to willfully fail to file a tax return or keep records required by law, presently only a misdemeanor, and to extend the statute of limitations for such violations from the present three-year period to six years. Also under consideration is a recommendation that the law be amended to disallow all gambling losses as offsets against gambling gains.

Part of the fault lies in some of the procedures. Take, for example, the policy of accepting as a matter of course in criminal indictments, particularly tax cases, a plea of nolo contendere. This plea, derived from the common law, may have its use in rare and unusual cases but it has no place in everyday practice. England, from whom we took the plea, has not permitted it since 1702, and it has been abolished in nearly all of the states.

Its abuses are manifest. A person permitted to plead nolo contendere admits guilt for the purpose of imposing punishment for his acts and yet, for all other purposes, and as far as the public is concerned, persists in his denial of wrong-doing. It is no wonder that the public regards consent by the Government to such a plea as an admission that the Government has only a technical case at most. A person indicted for fraudulently evading payment of income taxes is either guilty or not guilty. His neighbors or competitors more often than not may suspect that he is guilty because with an income comparable to theirs he has bought a new home, a new car, and is contemplating a trip to Europe.

Yet often he is permitted to enter a plea of nolo, pays a small fine, returns home, and shrugs off the whole thing as "just another Government fiasco."

Most federal district courts will not accept the plea unless agreed to by the prosecuting attorney, although the final decision is in the judge. As a matter of practice, however, entry of the plea is usually preceded by negotiation between the prosecuting attorney and defense counsel. If the parties reach an agreement, the judge will normally accept the plea. In my opinion it is appropriate to settle civil suits but there should be no compromise of criminal indictments except in the most extraordinary circumstances. Indictments should be brought, not to serve as a basis for negotiating settlements, but because the person charged with crime is guilty and should be punished. A defendant who does not wish to defend may always plead guilty.

As a practical matter, permitting a plea of nolo contendere accomplishes little in the ordinary case. The defendant after pleading nolo may deny all the facts involved in the criminal indictment and the Government still must prove its case in the civil litigation which usually follows.

I think the plea of nolo contendere has been abused and its use must be discouraged. Accordingly I have instructed the United States Attorneys not to consent to the entry of it except in the most unusual circumstances and then only after approval by the Assistant Attorney General in charge, or my Office.

As another example, take the practice of disallowing deductions of expenses of illegitimate businesses. It seems anomalous that a person engaged in a business which is admittedly illegal may take a deduction for

"ordinary and necessary expenses" incurred in the business. As either a legal or practical matter, I can see nothing ordinary or necessary in expenses incurred in long distance phone calls made to place bets or make lay-offs; automobile expenses for collecting numbers or delivering "dope", rent for houses used for gambling or other vice. But even if they are "ordinary" expenses, there is certainly nothing "necessary" about them.

Our policy will henceforth be to disallow all deductions for expenses incurred in illegal enterprise, and the Treasury Department has promised us its fullest cooperation. While there is some judicial confusion among the lower courts as to the right under existing law to disallow such expenses, the Supreme Court has never squarely passed on the question. In Lilly v. Commissioner, 343 U.S. 90, the Court indicated that "it could be argued", and I believe the argument can and should be made.

The second basic failure contributing to the ever-increasing crime statistics has been the failure to keep politics out of law enforcement and failure to obtain first-rate personnel whose loyalty and integrity are beyond question. I view law enforcement as wholly non-political; it is a self-defeating process to appoint a person to enforce the laws, not because he is able, but because he knows the right people and made the right contributions at the right time.

A person who buys a job can be bought.

An illustration of this is the practice, too frequently observed in recent times, of Government employees leaving public service to engage in defending or prosecuting the very claims or cases they worked on while in Government. The reason for their switching sides is no secret. Knowledge of the Government's evidence and files can be of tremendous

advantage to parties litigating with the Government and it is information for which they are willing to pay well. The temptation to "cash in" is all too obvious, particularly if the employee knows that others have done it and nobody seemed to mind.

The Keating Committee of Congress, which on August 1, issued its report on its investigation of the former administration of the Department of Justice, found that during the 10-year period from 1942 to 1952, only 11 prosecutions were brought under the conflict-of-interest statutes and none of them involved employees of the Department of Justice. The Committee discovered that the attitude of the top officials was partly responsible, and I agree. Employees in the Department were accepting favors from those against whom they were supposed to be defending the Government's interest because no effort had been made to prescribe or enforce standards of propriety in the relationships of its employees and the public. Condoning this practice is exactly the sort of thing which led to bribery, influence peddling and corruption on a wide scale.

Lawyers who switch sides not only violate the Canons of Professional Ethics of this Association and may be disbarred, but clearly commit a crime. Section 284 of the Federal Criminal Code makes it a felony for any employee within two years after leaving government service, to act as counsel, attorney, or agent in prosecuting any claim against the United States involving any subject matter with which he was directly connected when employed. This statute has never been enforced; no prosecutions have ever been brought under it and, consequently, it has never been judicially construed. But in my opinion it means just what it says. It disqualifies former employees for a period of two years from representing parties in

any capacity with respect to all matters in which the United States is interested and with which the individual had official connection when employed by the Government. As so construed it encompasses monetary and non-monetary claims, and claims which seek affirmative relief against the Government and claims which are asserted to defeat claims made by the Government.

I have today circularized the United States Attorneys, advising them of this construction of the statute which is as broad as the evil it was intended to proscribe, and instructed them to prosecute all violations of Section 284 as thus construed. By pursuing these prosecutions vigorously we will bring this practice to an end.

In addition to demanding that Department employees maintain high ethical standards and that they be capable of doing a workman like job, I ask also that they be fully loyal to the United States. Communists cannot overthrow our Government by force and violence as long as the country has faith and confidence in its public servants. The Communists know this too, and their present stratagem is to infiltrate positions of responsibility and to undermine our system of government from within. Every place the Communist movement has been successful it has been preceded by a period devoted to breaking down the faith of the people in their government so that it was weak and helpless in the face of a coup.

The task of weeding disloyal persons out of Government, and at the same time fully safeguarding those who are loyal is not easy, but it must be done. We are the losers if in our effort to combat communism we adopt their illegal methods of operation by tossing out the window our basic civil liberties which we seek to defend. I believe the recently adopted

Federal employee security procedures assure fair treatment to all accused of disloyalty. Recognizing the stigma which attaches to being falsely branded a subversive, we have broadened the hearing procedures, both for the accused individual and for the organization which are designated as Communist or subversive.

The purpose of designating an organization as subversive is solely to alert the security agencies that the group involved is permeated with Communists and fellow travellers so that where it appears that a government employee is a member this factor may be taken into account in determining whether he is a security risk.

The designation of an organization is now preceded by the most thorough investigation and study of all the evidence. Where the evidence indicates that an organization is not what it outwardly claims to be, but is in fact and sympathy aligned with the Communist movement, then it is my responsibility as Attorney General to make that fact public. Uninformed loyal citizens must have the opportunity of disassociating from such groups at the earliest possible time, for continued activity in such groups may render them ineligible for Government employment. And this applies to every type of organization. Lawyer groups have not been exempt from infiltration by the Communists, and where this has occurred, I will make no exception for them.

We have been studying evidence that the National Lawyers Guild be included in the list of subversive organizations. Because this organization originally attracted some very well-known and completely loyal American citizens including many Colored members who found it would admit

them (at a time when our American Bar Association failed to do so), I have conducted the study with great care. I am now prepared to make this determination public.

It has been clear that at least since 1946 the leadership of the Guild has been in the hands of card-carrying Communists and prominent fellow travellers. On every major issue since then it has steadfastly followed the Party line and its programs and actions have been consistent with it, excepting only those issues so notorious that their espousal would too clearly demonstrate the Communist control. It has become more and more the legal mouthpiece for the Communist Party and its members, and it has consistently opposed all laws or investigations which have sought to curb or expose Communist activity in the United States. It is because the evidence shows that the National Lawyers Guild is at present a Communist dominated and controlled organization fully committed to the Communist Party line that I have today served notice to it to show cause why it should not be designated on the Attorney General's list of subversive organizations.

I have outlined to you some of the new steps which the Department of Justice has determined to take as its part in the battle against organized crime. These steps can and will be taken without weakening our constitutional freedoms under law. They will be difficult to enforce without cooperation from the organized bar and law enforcement agencies. Therefore, we ask your earnest study of them and, if you approve, your energetic support--for the safety of our citizenry.