MESSAGE TO THE SECTION OF CRIMINAL LAW
AMERICAN BAR ASSOCIATION

By

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To Be Read at the
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It gives me a great deal of pleasure to extend my greetings to the Section of Criminal Law of the American Bar Association.

The protection of society from crime is one of the basic functions of government. Perhaps no single group is better qualified to contribute, and certainly no group has contributed more, to the orderly and impartial administration of this function than the members of the American Bar. For this reason I am gratified that the Section of Criminal Law is an active, vital and energetic group.

Last year I referred to the promulgation of the preliminary draft of the Federal Rules of Criminal Procedure as being the most important event of the year in the field of criminal law and dwelt on the necessity for, and the benefits to be obtained from, the adoption of the new rules. The Department of Justice, particularly the Criminal Division, has taken an active interest in the proposed rules. A detailed study of the second preliminary draft was made, and attorneys of the Department attended various conferences of Federal Judges and United States attorneys for the purpose of obtaining the views expressed at those meetings. Thereafter the Department submitted certain suggestions and recommendations to the Supreme Court Advisory Committee. The final draft of these rules, prepared in the light of the helpful comment and criticism of members of the Bar, has been submitted to the Supreme Court. This subject is within the function of this Section and for that reason I suggest that you may find it desirable to give your attention to the draft of the rules now pending before the Supreme Court.

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During the past year another undertaking of great interest to the Bar has been inaugurated by the Committee on Revision of the Laws of the House of Representatives. I refer to the revision of the Federal Criminal Laws which will eventually replace the Criminal Code of 1909. A preliminary draft of Part I of the revision, relating to Crimes, has been printed and will be followed shortly by drafts of Parts II, III and IV, relating respectively to Criminal Procedure, Prisons and Prisoners, and Juvenile Delinquency. Despite the enactment of many new laws and the amendment and repeal of those previously in existence, there has been no codification of the Federal Criminal Laws for 35 years. In adopting a new Federal criminal code, the Federal Government will be following the excellent example of the States, most of which are now equipped with modern criminal codes and penal laws governing their citizens. A detailed study of the preliminary draft is presently being made by the Criminal Division, and its comments will be forwarded to the Reviser and House Committee. Again I suggest that the Section of Criminal Law may find it desirable to scrutinize the preliminary draft of the proposed revision and to submit to the House Committee and to the Reviser its suggestions and comments relative to this matter.

In still another field of Federal criminal procedure there has been a marked advance during the past year. On January 20, 1944 Congress approved the Court Reporter Bill which had been prepared and submitted by a committee appointed by the Judicial Conference. The law as enacted provides for the employment of court reporters in the Federal District Courts on a salary basis and requires, among other things, that the reporters

record all proceedings in criminal cases had in open court and transcribe and certify all pleas and proceedings in connection with the imposition of sentence. In accordance with directions in the Act, the Judicial Conference has determined the standards and qualifications for court reporters and the salary to be paid in individual districts. However, Congress has not provided an appropriation for the administration of this Act during the present fiscal year. Accordingly, the existing practice and procedure with respect to court reporting will continue until the fiscal year of 1946, for which it is expected that Congress will appropriate sufficient sums to make the bill effective. When the new law is finally in operation, it will bring Federal judicial trial system into line with the State systems, in nearly all of which there is an official reporter.

During a time of war, as at present, those in charge of the enforcement of criminal laws must be particularly vigilant to protect the nation from the depredations of its enemies through sabotage, espionage and treason. There is every indication that the past year has seen a gradual decline of Axis-inspired activity in all of these fields. There has been no sabotage by enemy agents in the last twelve months; and cases of sabotage which have been prosecuted have usually involved the making of defective war material for private gain or the damaging of war machinery by dissatisfied employees. Prosecution for espionage has been authorized in seven cases, five of which related to acts of espionage committed prior to our entrance in the war. In the remaining two cases the defendants had ceased their activity prior to arrest because of a fear of apprehension, inability to maintain adequate communication with the enemy, or the discontinuance of

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compensation from abroad. Prison sentences totaling 117 years have been given to ten persons convicted of this offense. An interpretation of the law of treason and the effect of the constitutional requirement that an overt act be proved by the testimony of two witnesses awaits final decision of the Supreme Court in the case of Cramer v. United States, which was argued last term but which has been set down for re-argument this fall. The main question before the court is whether an overt act must in and of itself openly manifest treasonous intent or may instead be an apparently innocent act deriving its treasonous significance from other proof of intent not circumscribed by the two-witness rule.

Related to the suppression of treason, sabotage and espionage is the detection and prosecution of persons who defraud the government in the performance of war contracts or who seek to make "black market" operations and violations of necessary wartime regulations a profitable business. The work of the War Frauds Section of the Criminal Division is being co-ordinated in these fields with the activities of other governmental war agencies. Field offices have been set up in some of the larger cities to supplement and cooperate with the various United States Attorneys in war fraud cases.

Since the enactment of the War Labor Disputes act,[1/] commonly known as the Smith-Connolly Act, Sec. 6 of which makes it unlawful to interfere with the operation of any plant, mine, or facility, which is in the possession of the United States, there have been 14 successful prosecutions involving 94 defendants. In one other case, 2 persons indicted for violation of this Act were acquitted. At present, there are 4 cases totaling 19

1/ 50 U.S.C. App. § 1501.

defendants, which are awaiting trial. All but one of these cases involved work stoppages instigated by employees of coal mines in the possession of the United States. In the remaining case, the work stoppage was caused by "boot-leg" coal miners whose activities were threatened with curtailment by the mining operations of the lawful owners.

Although further decisions will undoubtedly be necessary in order to define the exact limitations on the questioning of persons held in custody of law enforcement officers, the Supreme Court, at the last term, has somewhat clarified the rule previously announced in the McNabb case. United States v. Mitchell [2/] makes it clear that some connection between the illegal detention and the confession must exist, and that a confession is not invalid merely because it was obtained while the accused was in custody.

Enforcement of those statutes securing civil rights and liberties has been continued during this third year of the war. White and colored persons alike have been rescued from slavery, and in at least three instances their oppressors were convicted or pleaded guilty to charges of peonage. State officers have been prosecuted in ten instances for having deprived prisoners of their constitutional rights. The decision in the Mosley case has been extended in United States v. Saylor [3/] to include conspiracies to stuff a ballot box in an election at which a member of Congress is to be elected. As a result of this decision there are presently 99 defendants, named in 28 indictments, awaiting trial during the fall term for ballot box stuffing.

2/ 322 U. S. 65.
3/ U.S. Sup. Ct. No. 716-717, May 22, 1944.

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The task of protecting the rights secured to discharged veterans and members of the armed forces under the provisions of the Selective Service and Training Act of 1940, as amended,[4/] and the Soldiers and Sailors Relief Act, as amended,[5/] has been assigned to the Criminal Division, and a study is being made of the legal problems which will arise upon the termination of military activity. The formulation of a sound policy which will give effect to the Congressional intent and secure justice for returning soldiers, employers and non-veteran employees is regarded as one of the most important functions to be performed by the Department in connection with post-war readjustment.

4/ 50 U.S.C. App. § 308.

5/ 50 U.S.C. App. § 510 et seq.