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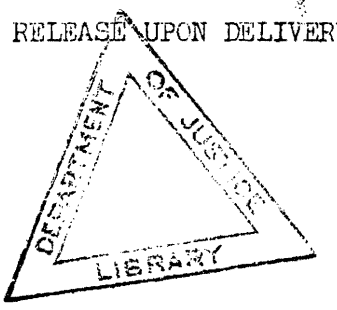

ADDRESS

BY

HONORABLE J. HOWARD McGRATH

ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before the

SAVANNAH BAR ASSOCIATION

DeSoto Hotel

Savannah, Georgia

Wednesday, February 14, 1951

6:30 P.M.

I welcome the opportunity which this occasion affords me to talk with you about a number of matters which concern all Americans but which are of particular interest to us as lawyers.

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These are critical times, and developments, both here and abroad, are of great significance and importance to all of us. We have learned, after painstaking efforts to avoid rearming, that in the world of today the most effective force for peace is a strong armed force. We no longer have any doubt that our immense production potential must be dedicated to meet our military requirements. We know that our strength will grow through trained men, through greater arms stockpiles, through increased plane output and in many other ways and that behind our armed forces we have unequaled civilian enterprise and manpower. And more than that, we have the faith and determination of all Americans that peace and justice will prevail in the world. We know also that in achieving our goal we will demonstrate to the entire world that our democratic way of life, upon which our Nation was conceived and founded, will not be forsaken.

In a period of emergency, it is to be expected, of course, that some of the normal rights and privileges of peacetime must be temporarily abridged or restricted in the interest of national survival. But the accomplishment of the task which confronts us now, as a nation, may take many years. We must be resolved in the process of becoming strong and in helping our friends to become strong, that we will not discard the democratic processes and institutions which our Nation has developed. You and I as

lawyers have unique responsibilities in this field. Lawyers are trained craftsmen, with the skills of men trained to think and with a sense of the continuity of the law and social institutions. We, as a class, realize, perhaps more than any other group of citizens, the importance of precedent. We know that what we do in one instance creates a pattern for future decisions or action, often far afield and beyond the scope of our original deed. It is perhaps because of this quality and ability of the lawyer to place particular actions in their proper perspective and to appreciate their impact on other related activities that through the course of our history lawyers have largely dominated our legislatures and manned the executive offices of our Government. It is inevitable, therefore, that much of the responsibility for preserving our rights and freedoms should rest upon lawyers. The great body of law which protects personal and property rights must be utilized in large part through our efforts.

As the chief legal officer of the Government I am deeply aware of the duty of leadership which rests upon me and which I accept. It is the function of the Attorney General, as you know, 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 important federal statutes, such as the antitrust and immigration laws.

In this work I have the assistance of the Solicitor General; the Deputy Attorney General; eight Assistant Attorneys General,

and their staffs, each comprising a division or office of the Department of Justice; 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. Of course, it is the responsibility of the Department of Justice to execute its functions in constant consultation with the other federal agencies, subject to Presidential direction, to the acts of Congress and to the decisions of the courts. I fully understand, nevertheless, that ultimately, as Attorney General, it is my duty and obligation to achieve, as completely as lies within my power, consistent action in the field of law enforcement.

Several major problems which concern the Federal Government and the people of the Nation, have served to focus attention upon the need for renewed consideration of provisions in the Constitution and statutes adopted for the protection of persons from harassment and persecution, and to safeguard their rights to privacy. Such provisions are vital elements of our democratic way of life, of our freedom to pursue happiness, and it is the obligation of all good citizens, and especially the members of the Bar, to guard against any attempt to impair or destroy them.

Our problem takes the form of a paradox in that those who aim to destroy our form of government take advantage of the freedoms, immunities and privileges guaranteed by the Constitution and the Bill of Rights to escape detection and punishment, and to

continue their efforts to overthrow the Government whose generosity they abuse. The problem is by no means limited to those who prefer some other form of government, and who are willing to become the agents or tools of a foreign power determined on world domination. Criminals and outlaws, operating in large urban centers, who are engaged in illegal gambling on a nation-wide scale, in rackets, and prohibited transactions of all kinds, have been learning to take advantage of the provisions which were written into our Constitution and laws for the protection of honest and law-abiding citizens. But the law-abiding people of this Nation are entitled to just as much protection against criminals and outlaws and those who would destroy the institutions of freedom, as they are entitled to protection against abuse of authority, wherever it may occur.

I cite, for example, recent instances of witnesses, summoned before grand juries sitting in different sections of this country, and before committees of the Congress, refusing to testify, some as to the activities of communists, and others as to their knowledge of the operations of gambling rings across State lines. These refusals have resulted in citations for contempt. The Courts of Appeal of the Second, Fifth and Ninth Circuits have found that many of these refusals to testify cannot be successfully prosecuted because of the existence of the privilege granted by the Bill of Rights. The Supreme Court has reversed convictions for refusal to testify affirmed by the Court of Appeals of the Tenth Circuit, and only a few days ago there was an acquittal in the United States District Court for the District of Columbia on charges based on a Congressional contempt citation.

Article V of the Bill of Rights provides that no person "shall be compelled in any criminal case to be a witness against himself," and the courts have construed that language to mean that a person may remain silent if it appears that a criminal charge, no matter how remote or unlikely, may be made against the witness on account of any of the matters concerning which he is questioned.

I have been studying this problem a great deal, and I am considering the advisability of asking Congress to enact a law which would give the Attorney General of the United States the authority to grant immunity from prosecution to witnesses whose testimony may be essential to an inquiry conducted by a grand jury or by a Congressional committee. I think the authority to grant immunity, or to authorize such action, should be centered in the Attorney General because he is the official charged with the responsibility for all prosecutions under federal laws, and he ought to accept the responsibility for making the decisions as to where immunity should be withheld and where it should be granted, so that needed investigations may proceed and evidence against important culprits obtained and used. There are many cases in which immunity granted to conspirators of lesser importance might result in obtaining needed testimony against the top criminals.

In the case of Congressional investigations, I am sure that we could cooperate with the committees of the Congress so that we could agree as to which of the witnesses, if any, should be given immunity. Upon the recommendation of a Congressional committee, the Attorney General could determine whether granting

immunity in a particular case would be compatible with the furtherance of other investigations and prosecutions. Of course, if any witness, benefited by immunity, still refused to testify he could then be punished for contempt; or, if he committed perjury in his testimony, he could be convicted and punished.

You, as lawyers, will appreciate the fact that the Attorney General will be accepting a heavy responsibility in undertaking to exercise authority to grant immunity, in order to remove barriers to successful investigations and prosecutions.

It seems to me that my suggestion will do much to restore vitality to investigations into criminal activities, and I am submitting it to you here tonight because I want your views, and the views of other lawyers and bar associations throughout the country. I shall welcome suggestions from you and from your fellow practitioners. I am having a bill prepared, so that the ideas I am expressing tonight may be translated into legislation, and submitted to Congress at an early date. The one thing I do want to emphasize is that I am convinced that if we are to grant immunity from prosecution in return for necessary evidence, the final authority to grant the immunity should be in the Attorney General for the sake of uniformity and fixed responsibility. This is absolutely essential in order to prevent the granting of immunity indiscriminately, with the unfortunate result that many criminals may escape their just punishment, while evidence of wrong-doing remains unused or hidden from law-enforcement agencies.

Another serious problem before the Department of Justice relates to the use of evidence obtained from wire-tapping. Some of the courts have been construing the acts of Congress prohibiting the use of evidence obtained from wire-tapping so as to deprive the Government of the benefit of legally admissible evidence. We are asking the Supreme Court, in a petition filed on February 3rd, to review the action of the Court of Appeals for the Second Circuit in reversing the conviction of Judith Coplon, an employee of the Department of Justice, for conspiracy and espionage. The Court of Appeals found that her guilt was plain, and yet her conviction was reversed because the Court found fault first with the manner of her arrest, and second because we declined, for reasons of national security, to reveal to her the source of the information on which the investigation of her criminal offenses was based.

The Coplon case is pending in Court, and I do not intend to comment on it further, other than to say that we hope the Supreme Court will grant the petition for review. Aside from that we shall, in the courts and in Congress too, press for rules and laws needed for the safety, security and welfare of the people of this country.

The subject of wire-tapping is a highly controversial one. I am, of course, firmly opposed to its promiscuous use, as an invasion of privacy which should be sternly punished. But I see no good reason why wire-tapping should not be employed by law-enforcement agencies for the security of our country. You may be interested in knowing that the FBI never engages in wire-tapping without the express approval of the Attorney General of the United States, and that it is confined to cases involving the national defense and the internal security of our country.

A number of the States authorize wire-tapping under certain limitations and restrictions, and the use of evidence obtained from wire-tapping in accordance with the provisions of law. It is incomprehensible that a situation should exist in which a State may use evidence from wire-taps in criminal cases, and that such evidence must remain useless to federal officials. The only persons who benefit from this situation are enemies of our form of government - the people who seek to use our freedoms in order to destroy them - and the criminals who live outside the law - the gangsters engaged in preying upon innocent, God-fearing, and law-abiding people.

I should also like to refer briefly to the Internal Security Act of 1950, which has created some very difficult problems of law enforcement for us. That Act was passed over the President's veto, and in his veto message the President predicted some of the very difficulties we are encountering. I shall mention only certain immigration features of the Act. These have caused some hardships and have received a great deal of publicity. I would like to tell you something of how we are attempting to deal with them.

Before the enactment of the Internal Security Act of 1950, alien communists and anarchists were categorically excluded from admission for permanent residence in the United States under the provisions of the Act of October 16, 1918, as amended. Under section 22 of the Internal Security Act of 1950, members of "any other totalitarian party" were added to that group. It is the addition of that general category which has been the source of trouble and the cause of practically all the hardship and dissension in the administration of the law.

Current reports would have you believe that the Department of Justice, through the Immigration and Naturalization Service, is trying to arouse opposition to the Internal Security Act of 1950 and undermine its purposes by denying admission to the United States to aliens who are only nominal members of totalitarian parties. Let me say here and now that any such report is without foundation. The Department of Justice will continue, as it has since its passage, to administer the Internal Security Act in good conscience. We have always favored the objectives of the Act.

There is, in my opinion, no sound basis for any express or implied exception to the flat declaration in the 1950 law that aliens who have been members of totalitarian organizations must be barred from admission for permanent residence in the United States. Moreover, there is no recorded legislative history as to what was the intent of the Congress concerning the meaning of the language "any other totalitarian party." Consequently, we have had no choice but to be guided by the plain language of the statute. Elsewhere in the same section 22 of the Internal Security Act of 1950 the Congress explicitly has provided relief for unwitting members of other proscribed groups. The fact that similar relief with reference to membership in "any other totalitarian party" was not provided may be explained by a desire to avoid countless pleas of involuntariness from former members of totalitarian organizations. The Congress may not have wished to undertake the risk of determining which of such pleas was bona fide. In addition, the Congress may have

been prompted by the realization that the acceptance of such pleas in the cases of former Nazis and Fascists would necessarily require similar tolerance when claims were made by present or former Communists. These are only conjectures. We cannot be conclusive, because the wording was not the subject of congressional debate or hearings in either House.

Now we have recognized that this provision of the Act has engendered hardships in the cases of many deserving aliens who have sought to enter the United States for permanent residence, and I have tried with the means at my disposal to alleviate some of these hardships within the limitations of the statute.

Under the Immigration Act of 1917, I am permitted to exercise discretion, sanctioned by the ninth proviso to section 3 of that Act, in permitting the temporary entry of aliens who would be inadmissible because of membership in a totalitarian party or organization. The determinations as to whether the alien was a willing participant in totalitarian activities and whether his membership in a totalitarian party or organization was voluntary are among the considerations which I have taken into account in determining whether to exercise discretion under the ninth proviso and permit temporary entry.

By exercising this discretion and permitting these temporary admissions, I am able to say that not one alien has been denied admission to the United States by the Department because he was only a nominal member of a non-communist totalitarian party. On the other hand, not one Communist has been admitted to the United States except in those cases in which such admission was recommended by the Department of State in the national interest.

The makeshift of temporary admission is not a satisfactory solution in most cases. There are many cases in which the Internal Security Act of 1950 will bring excessive hardship unless permanent entry in deserving cases can be effected.

In order to correct the situation there appears to be no alternative to amending the Internal Security Act of 1950, which I advised and recommended to the Congress in my letter of January 11, 1951, so as to permit discretion in determining the permanent admissibility of past and present members of totalitarian organizations, other than communist organizations, rather than exclude them categorically as under present law. We will, of course, continue to exclude communist aliens categorically, as we did before the enactment of the Internal Security Act of 1950, but we would permit the admission of other nominal totalitarians in appropriate cases where such admission would appear to be justified and not detrimental to the national security.

I am happy to report that Senator McCarran, Chairman of the Senate Judiciary Committee, and I are in complete agreement with a measure proposed by the Senator which, if enacted, would provide that membership and affiliation, except as such terms relate to Communism, shall be considered with reference to exclusion under the Act of October 16, 1918, only when such membership or affiliation is voluntary. In addition, the proposed measure would permit us to disregard membership or affiliation while the alien was under 14 years of age, or which resulted from operation of law, or which was for the purpose of obtaining employment, food rations, or other essentials of living. We feel that this proposal, if enacted, will

go far to relieve the present situation without diminishing the Nation's security.

The problems I have discussed with you this evening are merely a few of the problems with which I am concerned which involve the relationship between the individual and government. There are many others, created by governmental controls in the field of pricing, allocations, priorities, employment, etc. In all of these, we are faced with the problem of the rights of the individual in relation to the needs of government in critical times. As Attorney General of the United States, I shall continue to enforce the laws as written by the Congress, never forgetting for one moment the freedoms and rights of the individual citizen.