Address of
HONORABLE JOHN W. H. CRIM,
ASSISTANT ATTORNEY GENERAL OF THE
UNITED STATES,
before
THE ALUMNI ASSOCIATION
of
WILLIAM AND MARY COLLEGE
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When this Government was established by the adoption of the Constitution, the people had before them the experience of the ages, which demonstrated that no government predicated on the theory of popular suffrage could long exist unless the more important processes of government were under the constant observation of the average citizen, the voter. Our form of government implies the right of a citizen to occupy a position where he may observe the conduct of its officials and the duty on his part by constant vigilence to hold such officials to a high degree of accountability. Hence, matters of public health, the public schools, education generally, public roads, local contentions, and, broadly speaking, all matters of government which could be handled within the confines of a State without injury to those beyond its borders, were reserved by specific terms in the Constitution to the several States. The State, in turn, distributed these reserved powers to appropriate units of government, such as the Magisterial District, the New England Village, the County, and the City; or where the matter was of State-wide concern, the State acted as a unit of government. On the other hand, the powers delegated to the Federal Government were limited to those matters deemed of nation-wide concern, such as the maintenance of an army, a navy, a system of mails, a currency, the relations between the citizens of different States, and the intercourse with foreign nations.
Most emphatically, it may be said, the entire structure of the Federal Government has its foundation on local self-government. A healthy national government is utterly impossible with irresponsible local government. We then have the ever-existing problem of producing an informed and patriotic voter. Moreover, the constantly increasing population making government more complex, intensifies the need of these qualities in the voter. If the American civilization cannot produce as an average voter, an intelligent and aggressively public-spirited citizen, then we must concede his limitations and ask less of him by at least restricting his vote to a limited number of elective officers. The intelligence and patriotism of the average voter is mirrored in the character and competency of the elective official.

Deduct from the possible voters in any State, those who actually vote, and again from the actual voters, the number who are intelligent and patriotic and the defects in the link in the chain which binds the innumerable agencies of government together in a coordinated whole become apparent. It is pertinent to add in this connection, the admonition to those responsible for the agencies of education that our nation now ranks eleventh in education. The estimate that twenty-five percent of the American children of school age are receiving absolutely no instruction seems reliable, and under a form of government exacting the highest degree of intelligence, accounts
in the last analysis in part at least for the fact that on the Canadian border, on the Mexican border, on the Atlantic Ocean, on the Gulf of Mexico, on the Pacific Ocean, a belt around the entire United States, we have a veritable "No Man's Land": bootlegging, graft, piracy, smuggling, murder, are committed in a degree of deliberately and skillfully organized infamy which is without parallel in American history. In Logan and Mingo Counties, West Virginia, in Williamson County, Illinois, in Osage County, Oklahoma, in Morehouse Parish, Louisiana, and in other places, we have had during the past two years, demonstrations of lawlessness, which, to say the least, arouses the solicitude of every thoughtful citizen. The causes which contribute to this situation can not be isolated. They have their roots deep in our political, economic, and social fabric. Here we are dealing with more than ignorance and avarice, and any consideration of them requires a view of the entire perspective.

For many years, there has been a powerful current of political opinion flowing through our society, devitalizing local government under authority of the State, and saddling police responsibility on the Federal Government that is essentially the function of local government. Illogical and inconsistent with our customs, our traditions, and our form of government, this clamour for Congress to invade State sovereignty
is impairing the fundamentals on which the American civilization rests. It permits the citizen to avoid community responsibility and it places a burden on the Federal Government which it cannot carry. In a quiet, creeping and persistent way, year by year, it is creating a bureaucracy at Washington which in time will know no master.

The scope of the Federal Criminal Law has followed the popular political conception of the function of the Federal Government. Limited in scope and easily defined in the early days of the nation, its scope is now so broad that no man knows where Federal jurisdiction of crime begins or ends. The responsibility for the enforcement of laws pertaining to intoxicating liquor, larceny in interstate commerce, the dissemination of obscene literature, fraud by stock-selling schemes, the distribution of narcotics, larceny and embezzlement from State banks belonging to the Federal Reserve System, and many other similar laws now rests on the Federal Government. The Department of Justice is staggering under the load imposed by such police laws, -- laws that in all common sense in the broad scope they now cover, invade to an unjustified extent, the natural scope of State sovereignty. It cannot be emphasized too strongly that Congress ought to limit its jurisdiction in dealing with these vices to offenses nation-wide in effect and which cannot be disposed of by a State tribunal. The Federal
Courts are so congested with litigation of this character that years will be required to clear their dockets. It is one thing for the Federal Government to police imports and interstate commerce for intoxicating liquor. It is a far different thing for it to police the drug stores for it in a community hundreds of miles from Washington. It is a logical thing for the Federal Government to police its imports or its interstate commerce for narcotics, but it is far different thing for it to assume the responsibility of policing the relations between a physician, a druggist, and an addict in a remote section of the United States. The result is obvious. All sense of responsibility on the part of the citizen, the voter, for local self-government vanishes, with a distinctly inimical result on the part of the Federal Government in that its officials are so occupied with local matters that affairs essentially national are being neglected. In a recent survey we found that to try all of the suits now pending in our Federal Courts under the mail fraud statute alone will require approximately all of the time of all of the trial judges of the United States Courts for one year. Add to this the vast number of cases arising under other Acts of Congress and the load is obviously too great. In the fall of 1921, we found in our national banking situation that the average bank defaulter was in no way being molested by the prosecuting arm of the Government until more than two years had transpired subsequent to
notice to it of the defalcation. This crime had increased more than 200 percent above the normal line. The prosecution of such offenses so long after commission is unduly expensive; witnesses forget and die, the community loses interest, and if the offender is rich, builds up a political defense beginning with the local District Leader and ending with a more prominent statesman of national reputation, pleading that the default has been made good by a return of the money, that the offender has always occupied a good social position, that he has a wife and three children, that in view of these considerations and the time which has expired, public justice will be served if there is no prosecution. Obviously, the only way to handle a criminal case is to arrest the offender the moment the offense is discovered, for time is always the best witness for the defendant. Once the matter is notorious, the politician is less aggressive, and in the atmosphere of injured citizens and an indignant community, pleas of guilty become the rule.

It is not to be overlooked in this connection that in the shifting of the responsibility of government from State to Nation, there is no corresponding diminution in the number of State, County and City officials. On the contrary, there has been a steady increase in the number of officials with a commensurate tax burden, and just as cogent is the increase in the number of Federal employees during the past decade. I doubt if anyone knows within any fair degree of approximation
how many Federal detectives there are. Their classification
on the payrolls of the several Departments and Bureaus pre-
cludes their identification without detailed study of their
duties. It will suffice to say that there are thousands of
them; that the task of managing them is one that would have
made the founders of this Republic shudder. In any event the
more complex society becomes, with its dense population in
constant intercourse by means of such instrumentalities as the
telephone, the wireless, powerful locomotives, flying machines
and automobiles, the more difficult becomes crime detection,
and the greater the necessity for special knowledge on the part
of those engaged in that work. The County as a unit of govern-
ment in crime detection and prosecution is unequal to the
demands of the present; the cost is prohibitive, and before
that exalted personage, the County Sheriff, comes out of the
cornfield, as it were, the thief is fifty miles beyond the
jurisdiction of his process. The State Constabulary, protected
from the intrigue of the politician, is a distinct step in
advance and should be more widely adopted. The County Court
must give way to a forum much further removed from neighborhood
influence. So much for the jurisdiction of the State.

And now with respect to the Nation, at the very outset it
is necessary to emphasize that any examination of the laws
having to do with the detection and prosecution of crime against
the United States involves the function of the Department of Justice, a department which in its origin and organization, to me, suggests the origin of Topsy.

Briefly, on September 24, 1789, Congress provided:

"And there shall also be appointed a meet Person, learned in the law, to act as Attorney General of the United States, who shall be sworn or affirmed to a faithful execution of his office, whose duty it shall be to prosecute and conduct all suits in the Supreme Court in which the United States shall be concerned, and to give his advice and opinion upon questions of law when required by the President of the United States, or when requested by the heads of any of the Departments, touching any matters that may concern their Departments, and shall receive such compensation for his service as shall by law be provided."

Thus was ushered into office Edmund Randolph of Virginia, as the first Attorney General of the United States. I may say parenthetically that on the day previous Congress fixed his salary at $1500. per annum. The Judiciary Act creating the office of Attorney General, substantially in accordance with the geography of the then United States, established thirteen Federal Districts as units of government for enforcing the Federal law. Congress further provided:

"And there shall be appointed in each District a meet person, learned in the law, to act as attorney for the United States in such District, who shall be sworn or affirmed to the faithful execution of his office, whose duty it shall be to prosecute in such District all delinquents for crimes and offenses cognizable under the authority of the United States, and all civil
actions in which the United States shall be concerned, except before the Supreme Court in the District in which that Court shall be helden."

The United States Attorney was then as now appointed by the President and confirmed by the Senate. He received his compensation through the fee system and was absolutely independent of the Attorney General. In the early history of our country he was an outstanding lawyer. With the increase in population and extension of Federal jurisdiction, his duties became onerous without appropriate consideration at the hands of Congress in the way of quarters, clerks and law books. The time came when outstanding men were loath to accept this position, and Congress, seeking a remedy, provided for the organization of the Department of Justice in 1870 and placed the United States Attorney under a certain degree of supervision by the Attorney General. While in theory of law he is under this supervision of the Attorney General, the fact is that in his innumerable duties he is more frequently under the control of some inexperienced employee of the Department at Washington than the Attorney General. The intensified centralization of government at Washington has placed such a burden on the Attorney General that it is utterly impossible for him to give intimate personal attention to the work of the average United States Attorney. To prevent any misapprehension, permit me to emphasize that in all of these
matters pertaining to the Department of Justice, I am drawing on an experience of seventeen years, either identified with it or defending some client against it, and what I say must not be applied to any particular administration. I deem of very great importance at this time a greater consideration of the enforcement of the Federal criminal law and I ask you to accord me that degree of freedom from the imputation of unjustified criticism of any particular individual or administration that I undertake in a frank discussion of these matters. Personalities are without significance where a great system of government is involved. No one man, no one administration, should be held responsible for the gradual development of a system of government covering a period of one hundred thirty-three years. There is nothing novel nothing sinister in the architect's remodeling a building (essentially sound in every timber) to meet the requirements of changed conditions.

The United States Attorney cannot spend a penny, - cannot employ a messenger, a clerk, a stenographer or an assistant attorney without authority from Washington. Including Porto Rico, Hawaii, Alaska, and continental United States, there are now eighty-eight United States Attorneys. The average district contains more than a million people. His average salary on May 1st, this year, was $5,409.00. Recent legislation will increase this somewhat, but nowhere in proportion to the re-
sponsibility which must be placed on him and which will attract outstanding lawyers now so much needed to this position. In this vast territory, there are but two hundred and eight Assistant United States Attorneys with an average salary of $2,600.00. It will therefore be seen that the primary responsibility for the enforcement of the Federal law, the great burden of the work, falls on less than three hundred palpably underpaid attorneys. To relieve this situation, there are now one hundred and eighteen Special Assistant United States Attorneys of temporary tenure in office, usually employed to handle a single case, who are somewhat better paid than the regular Assistant United States Attorneys, and which fact is frequently the occasion of friction in the United States Attorney's Office. Never in the history of the country was so much required of a United States Attorney. He must be untiring in his efforts and immune from physical exhaustion. Mentally, he must be alert, aggressive and courageous, for the average criminal of today is more cunning and resourceful and has a broader field than the criminal of twenty years ago. The investigators or detectives of the several executive departments and bureaus come in constant contact with him and unless he has a comprehensive grasp of the many ramifications of the Government in its complexity of organization, he will soon lose the confidence of such employees. He must be a good lawyer in its highest and broadest sense. If he is an outstand-
ing man, the position which he occupies, coming on contact with the Government employees and observing how the several departments function in his district, he can guide them in their work. He can co-ordinate these departments. In a word, his office is a tremendous agency in the cause of good government throughout our land. On the other hand, if his office breaks down through incompetency, or dereliction of duty, the damage is widespread and the criminal class is not slow to avail itself of the opportunity thus presented. The salary of the United States Attorney should be made commensurate with his responsibility. The Assistants in his office and other employees should be better paid. He should have adequate and healthy quarters in which to work. His office should be equipped with the working tools of a lawyer in the way of Digests and Reports. I have come in personal contact with two United States Attorneys within the past ten days,—the district of one is a densely populated eastern state, the district of the other is a large western state,—in neither of their offices are the United States or the Federal Reports. Frequently it is necessary for the United States Attorney to rely on counsel for the defense to lend him a law book containing an authority in point. Under the present circumstances it is necessary for them to rely to too great an extent on the Attorney General's Office for advice and assistance. Time is lost, confusion ensues, and the malefactor obtains an undue
advantage. It should be the function of the Attorney General's Office to be solely responsible for the selection of competent United States Attorneys, render them assistance in cases of extraordinary importance, encourage them in the aggressive enforcement of the law, and remove them for incompetency.

A study of those agencies of law enforcement which now constitute the Department of Justice carries one through the careers of many eminent and distinguished members of the American Bar. Taking up this study at any point in our history, we always come to the career of William Wirt, that rollicking, brilliant character from the Bar of Culpeper Courthouse, of whom the biographer has said: "Fortune smiled on him from the start," and whom Justice Storey ranked "among the ablest and most eloquent of the Bar of the Supreme Court". At the instance of President Jefferson he represented the Government in the historic trial of Aaron Burr in 1807. He was United States Attorney for the district of Virginia in 1816 under President Madison, and appointed Attorney General of the United States by President Monroe in 1817. He continued in that office until 1829, the longest tenure of that office in its history, under Presidents whose policies were as opposed as the poles of the earth. As Attorney General, he stands alone. He accomplished more, measured by
the standards of the epoch in which he served than any other Attorney General. The reason is plain. The relatively great period of time he served gave him an opportunity to make an intensive study of the national situation and to put in execution the plans formulated from such study. In a tenure of four years it is utterly impossible for an Attorney General to accomplish very much in the way of systematizing and organizing his department. The most talented lawyer at the American bar cannot master the details of the functions of this department without months of time to study its needs, and to select the subordinates necessary in such a tremendous machine. The first year of his tenure is passed before he has selected all of his subordinates and obtained a working perspective of his department. Another year is required for his immediate subordinates to perfect the organization in its entirety. By the third year the machine is perfected and devoted to real accomplishment. With the Presidential campaign and election in the fourth year, little can be accomplished, so that out of a four-year tenure in office the Attorney General has little more than a year for effective accomplishment.
All of this is grist for the mill of the intriguing politician. I can count on my fingers the professional politicians in my experience who at any time rendered substantial aid in law enforcement. The crooked politician with his machine is always arrayed with the other side. The various processes in the Department of Justice have always had a peculiar attraction for them and their number increases in a direct ratio with the increase of its work. It is impossible to bring an important criminal case without a fight with them at every point where a process of government is exposed. The government's safety is in the compensating fact that the more dangerous type is cannibalistic, ultimately they destroy each other. I believe in political parties, parties prompting the affiliation of their members through the adherence to principles of government but the moment a party becomes dependent on a following prompted by spoils or special privilege, then it should be destroyed. However, amusing, I take no exception to the political partisan patronizing the blacksmith, the barber, the tailor, the merchant, the publisher affiliated with his party, but when he carries this view to the point of selecting a physician, I think he is a fool. Similarly, political considerations are a dangerous guide in selecting an attorney as an executor of an estate. The political expediency of the moment is a dangerous guide in selecting the judiciary. In those positions where peculiar knowledge, special training are required in addition to unflinching courage and integrity, political considerations taint with suspicion rather
than commend. Are not therefore my hopes of many years well-founded that the day may come when Congress will attempt to raise the Department of Justice to a level where those with peculiar qualifications, from the Assistant United States Attorney to the Attorney General of the United States, may be kept indefinitely in the service and not have the Department of Justice disrupted every four years by the whirligig of politics. Let it become a great law office, recruiting its officials solely because of their special training, their peculiar fitness, because of their demonstrated talents as lawyers, without regard to a single political consideration; simplify and make more direct its processes, now too widely distributed, by eliminating unnecessary positions, that responsibility may be fixed and a high degree of accountability exacted; give the office boy in the office of the United States Attorney the opportunity to climb by honest effort an official ladder to the position of Attorney General of the United States and recruit from this body of lawyers those specially fitted for the Federal Bench.

The widespread use of the expression "crime wave" does not square with my observation. Sleeping sickness on the part of officials is a more accurate term, and while those directly responsible for law enforcement seem to be peculiarly susceptible, the careful diagnostician has found it among members of the legislative branch of our Government. Permit me to illustrate. John Doe is indicted in the Federal Court at Chicago. He is
found a fugitive from justice at New York. He is arrested and brought before a United States Commissioner at New York. The Government establishes on the hearing before such Commissioner probable cause against him. He is ordered removed to Chicago for trial. He sues out a writ of habeas corpus before a United States District Judge at New York, and on this hearing the Judge is satisfied that John Doe should be removed to Chicago for trial, and so orders. John Doe then appeals to the Circuit Court of Appeals, or to the Supreme Court of the United States, and is given his liberty under bail. The appellate court finally determines that his contentions are without merit, and orders him removed to Chicago for trial. The mandate of the Circuit Court of Appeals, under our federal practice, does not reach the District Court for fifteen days. John Doe, therefore, has fifteen days notice before his arrest for removal to Chicago. He is guilty, and Chicago is one place in this world that he does not wish to be sent. When the Marshal receives the warrant to take him in custody, John Doe has fled from New York, and six months later is found at San Francisco. By precisely the same procedure had at New York, he avoids being sent to Chicago. Under the present procedure, with the requisite amount of audacity and money, he can continue this abuse of process until he has exhausted every State in the Union. All of this unnecessary delay can be eliminated by taking away the right of appeal from the District Court to the appellate court at New York, in removal cases.
Federal officials must have statutory authority for their official conduct. I have indicated the procedure with respect to removal of defendants for trial. We have absolutely no established procedure for the removal of a convicted fugitive for sentence or imprisonment. We are limping along in this regard on the dangerous and anomalous conduct of official kidnapping, as it were, of convicted fugitives.

It is an offense against the United States to assault or wound an officer of the United States in serving or executing a process, but it is no crime against the United States to murder an officer in performing those duties. In the Federal Courts of New York, it is lawful for the Grand Jury to have the services of a stenographer, while in Pennsylvania, in the Federal Courts, it is unlawful for the Grand Jury to have a stenographer report its proceedings. It is unlawful for two or more persons to defraud the United States in any manner or for any purpose. There are many ways, however, whereby one individual may defraud the United States without violating any law.

And, finally, in this discussion of law enforcement, the congested conditions at our Federal prisons makes entirely appropriate the query; viz., whether or not they are universities of crime rather than agencies for correction and protection.

Long, long ago, when the American clipper, whaler and other sailing vessels out of the seaports of New England were accustomed to take long and perilous voyage, and the lives of those who
manned such vessels were filled with heroic adventure, it was the custom on the return of such a ship to her home port for all those interested in seafaring to informally assemble at the village tavern and listen to the stories of adventure narrated by those "hardy old salts". Incidentally, there are those who will contend unto the end of time that it was the convivial atmosphere of the tavern that not only made the seafaring man's story interesting, but contributed that quality in his character which in those days made the American Flag familiar in every harbor of the world. Disclaiming any interest in the New England tavern, and for that matter any tavern, other than as an historical institution, it will suffice to say that it is from the marine stories of New England whence came that inspiration for a vast amount of literature, giving her a transcendent position in the gripping stories of early America on the high seas, and the traditions which made every inch of her sea coast a magnet for the curious and roaming American. In the score of years since I stood on this very rostrum as an orator under the banner of the oldest literary society of the kind in America, at times I have felt that I was being tossed on the waves of an angry sea. I cannot give you a story of interesting adventure. Without any particular command of the cardinal virtues, I can only commend what I say on the basis of a somewhat varied experience. But I assure you it is a very great pleasure, indeed, a very great honor, to come here under the circumstances of this occasion to discuss
some of the problems of government which confront the American people for solution.

I may be pardoned in a digression to say what when I received the cordial invitation to address you on this occasion, I paused for a moment to revel, as it were, in the memory of scenes here twenty years ago. I recalled the faces and the pleasant associations of those student days. I ask you to permit just a word in regard to them. What a splendid class of fellows! Nearly every one of them making his way through college. A student who spent more than $150 here, all told, per year, was regarded as a high profligate. An extraordinary percentage of them now occupy positions of distinction, and in so far as it has come to my knowledge, not a single one of them has been guilty of an act which reflected on his honor or the honor of his Alma Mater. But with some -- their work is done. They have crossed the Great Divide, and beyond, -- somewhere -- in the realm of the setting sun, their spirits mingle with those of other sons of William and Mary in that "undiscovered country from whose bourne no traveler returns".

"Gone! Gone! No more this hallowed spot ye tread, Unseen, but not forgotten, ----------" words which I used to write monthly as editor of the Alumni Notes, and which now have a deeper and greater meaning to those of us who knew and loved them.
And so I return, not with heroic stories of adventure as the New England seafaring man, but I trust with appropriate humility, to kneel, as it were, at this ancient shrine and receive, if possible, new inspiration from those associations which make William and Mary revered and distinguished wherever statecraft is studied and law is given. For it was here that John Marshall drank deep of the knowledge dispensed by George Wythe, then occupying the first chair of law on the American continent. It was here under the same teacher that Thomas Jefferson developed the faculties which in later life qualified him to destroy the fetish of primogeniture, of entailing estates, of the Established Church, and to inculcate instead the doctrine of absolute liberty in the worship of God and the duty of the public to educate itself through a system of public schools. It was here that James Monroe was equipped to proclaim to the world a doctrine which today must be recognized as the one fundamental principle of this Government in its international relations. It was here that developed that great school of Virginia statesmen whose names a greatful posterity has written large in the history of the formative period of this nation. The incomparable contribution of the sons of William and Mary to the Committee of Correspondence to the Committee of Safety, to the Virginia Declaration of Rights, to the Declaration of Independence, to the Continental Congress, to the American Army, to the Annapolis Convention, to the Constitution of the United States, to the Presidency, to the Cabinet,
to the Halls of Congress, and to the Supreme Court of the United States, makes her immortal. And thus I say, let her immortality shine as a beacon forever guiding her sons and daughters in generously lending themselves to the cause of good government.