

Address by Robert H. Jackson, the Attorney-General of the United States, entitled "The Department of Justice and the Cities," delivered on September 19th at the 1940 Annual Conference of the U. S. Conference of Mayors, held at the Waldorf-Astoria Hotel.

Mr. Chairman, Mayors:

I suppose I ought to begin my remarks by apologizing to the gentlemen of the press for having failed to provide them with a manuscript of the speech today. I have been trying to convey the impression that that is due to the fact that I have been too busy, but it doesn't seem to make much of an impression, so I will break down and tell you the truth.

The fact is that I am in the same position with my friends that Mr. Willkie is with your editors and columnists. When I work hard and prepare a written manuscript and deliver it they say it would not have been so bad if you had been "extemp". Then when I work hard and prepare an "extemp" address they say, "you had better go back to writing". My last speech was from manuscript and I suppose the next one will have to be.

I was very grateful to hear the suggestion that there is a place for ex Attorneys general to go. I do not gather the impression that I would be so welcome in St. Louis from some of the editorials that I have read in the St. Louis papers. I am glad to be reassured.

In the recital of the list of offices which I have held, the Mayor omitted that I also, at one time - briefly - acted as corporation counsel of my city. I say briefly because that is the tenure that is allowed a Democrat in up-State New York. So I have some sympathy with the men who are called upon to solve municipal problems.

Many people have viewed with anxiety, and some with a good deal of satisfaction, the change that has taken place in the relations over the past few years between the Federal Government on the one hand and the government of our great municipalities on the other hand.

When I was serving as a Corporation Counsel, about the most remote thing in the world was the Federal Government. I would no more have thought of getting help in any problem affecting my city from Washington than I would have thought of getting help from The Hague. Those relationships have changed, and today the Federal Government, more than ever before, is acting in cooperation with the municipalities and the governments of those municipalities, and I want to take a bit of your time today to discuss some of these problems which it seems to me we face, not as rivals, but as partners.

The powers of the Federal Government, of course, do not extend to regulation or interference with municipal affairs and should not extend to that, and I know of no disposition on the part of anybody any place to try to expand them to anything of that type.

The real power the Federal Government is exercising that brings us together again and again is the first power that is conveyed to the Congress by the Constitution of the United States -- the power to raise revenues and spend money for the common defence and the general welfare.

Those two great objectives -- common defence and general welfare -- were linked together as the proper objects of Federal expenditure by our forefathers in the very set-up of our government. But for a long period of time they were rent asunder by a philosophy of government which held that the Federal Government had really no

concern with those things which happened to the peoples of the localities! that all of the problems that affected their individual and collective welfare had to be solved locally. Now, I think there has been a noticeable change - I know it has worried some people, I know it has pleased others -- in the attitude of the central government, toward these problems and I want to tell you that the change has not been because of any drift away from the fundamental principles of our constitutional government. It has been because there has been a return to and a revival of those principles expressed in the clause delegating Federal power to look after common defence and general welfare as two things that belong together.

You know that we have a new concept, a reinvigorating concept of National Defence. I don't have to tell you that, you are all engaged in the work. Only a short time ago this city, for example, was the threshold of America. It was the spot on which a potential enemy would first set his foot, if he had intended to invade. It was the threshold on which we would fight against invasion.

Only last month the threshold of American defense was boldly picked up and moved out to sea, 500 miles, so that the first line of defense today is not New York's immediate vicinity, but well out where no enemy can cross.

I think that, as you sit here today, the establishment of that line of naval and air bases out at sea must be more significant to you than it would be in your own towns. It impresses me much more as I am here in what seems to be a very perfect target in a most exposed city.

But there are other phases of the national defense with which my department is particularly concerned, and with which the cities

are particularly concerned, and that is the problem of internal defense in the United States.

I want to tell you that more than a year ago -- long before the fall of Norway had made dramatic to American minds the possibilities of Fifth Columns -- The President of the United States ordered that the Federal Bureau of Investigations of the Department of Justice be expanded in size and take charge of the problem of internal defense. It was on the 6th of September, 1939, that we were directed to coordinate the activities of the departments of the government and that the President appealed to local authorities to cooperate with the Department of Justice and the Federal Bureau of Investigation in this problem of internal defense.

But I want today to say that the Department of Justice has found on the part of city officers throughout the country the most cordial and whole hearted cooperation. We have had from every source a complete willingness to fall in line with plans which seem to make our traditions and institutions safer.

It has been of tremendous importance to us because, as your Chairman has indicated, you men are infinitely closer to the lives of the people than any administration in Washington can ever be. You sense and detect currents of unrest and currents of intrigue among the peoples of your cities that our organization cannot reach. And you have forces -- your police forces, your forces of city officials -- to penetrate the lives of your communities in a way that the Federal Government never can penetrate those lives and never ought to. And the contact, the vital contact, through which this internal defense can best be

accomplished is through the organizations of our municipalities.

That's why it is so significant that the cities of this country, regardless of local conditions, have, without fail, cooperated with the Department of Justice.

Without any invidious comparisons, I do not know how we would approach the problems that exist, for example, in this great city if it were not for the whole hearted cooperation of the Mayor. And that same thing is true of the municipalities throughout the United States.

Just let us sketch through roughly the problems that we have to face and let me tell you, the spirit, the general direction of our effort.

First of all in a time like this we face the problem of sabotage. Now, it is astonishing when you look back through the statistics of the Department of Justice in the last war to learn how few sabotage cases were ever successfully prosecuted in the courts. It's a very difficult thing in a time of industrial expansion, in a time when you're taking on men who have been idle for a long time and their skills have relaxed, in a time when you're speeding up, to differentiate between some industrial accidents and sabotage. Sometimes the only answer is in the heart of the man who did it and that's the difficult thing for law to explore.

And in view of the difficulties in the way of successful prosecution as exemplified by the experience in the last war, our department has tried to center on the problem of prevention, because we all agree that sabotage prevented is infinitely better than sabotage punished. And in that effort, the cooperation of

local authorities is vital -- vital because it's the local authorities who are close to conditions.

We have a plant protection program, a program in which experts who have studied this problem of sabotage, studied the methods by which it's accomplished, studied the means by which it is prevented, go about to keep plants engaged in vital defense work and aid them in arranging their physical set-ups in such manner that sabotage will be unlikely. Of course, we can't prevent it wholly. What we can do is to reduce it to a minimum. And there is ample room for additional guarding, ample room even in many states for additional state legislation to reach situations that the Federal Government cannot reach.

Let me tell you this, that the Department of Justice is not, and none of its agents are, engaged in activities in these plants that have to do with labor relations. Those are not considered to be the sphere of our investigators, but I call attention to that because it has come to my attention that in some parts of the country employers have called in men and said, "You're discharged on request from Washington". That is false wherever it occurs.

A word of warning is not out of order at this time that whenever there are men working in your communities and contacting you from the Federal Bureau of Investigation, you just ask them to show their credentials. There has been some confusion -- to put it charitably -- on the part of some people as to the identity of men from whom they thought they received orders.

The subject of espionage is probably one that can be handled only by the National Government, and there, again, counter-

espionage is much more effective from our point of view than a lot of arrests. There is no occasion to go into detail on that subject. Sometime ago one of the New York papers wrote an excellent newspaper story on the subject of activities in this municipality. It was a splendid piece of newspaper work, but it destroyed one of our great **sources** of information. The story really wasn't ripe from our point of view.

The other day we dismissed the case of a foreign agent who had been arrested because his passport had already expired, and we didn't have to have him in the country any longer. We were not going to subject to cross examination the confidential sources of information which we had.

I say these things because there are some people who believe that the Federal Government ought to comb the country, to put every suspicious character in an internment camp or do some other violent thing. I want to say to you that those people who are engaged in activities of that kind today are a source of information for us instead of being a source of information for countries abroad.

There is another activity to which some people in the country object, and that is the surveillance which our department maintains over Nazi groups, Fascist groups, Communist groups, in order to know what their plans are and what they are doing. It is frequently said that that sort of activity is an infringement of civil liberties. I believe in civil liberties; I believe that the civil liberties embodied in our Constitution are essential to the functioning of any democratic form of government but I don't believe that because we are a tolerant people, and because

we are determined to be free, we also have to be ignorant. This is a country in which any man who wants to engage in political activities has the right. He may make speeches; he may distribute pamphlets; he may hold meetings, and I say he has the privilege of being licked at Election time. And where a country gives to men the privilege to exercise their public rights in the open, there is no need for movements under ground.

We respect civil liberties. There is no suppression in this country. All you have to do to find out that the government isn't suppressing criticism of the government is to get a newspaper. Public criticism goes on as it must go on in a democracy, but the groups who entertain such relationships to foreign powers as might make them sympathetic to movements against American institutions are under observation.

Now, the cooperation of the locality in all of this is, as I have said, of utmost importance. Your closer information, your instincts, your general information as to your own localities, is sometimes better than our evidence. You know whether there are situations that need attention. Now we get from citizens -- some of them malicious, some of them just excited -- thousands of complaints. Some of them on their face do not deserve investigation. Most of them cannot be turned down without some inquiry. But it is from municipal officers and men of public responsibility in their localities that we expect to get responsible, well sifted, well thought-out, information and suggestions, and I want to tell you that we welcome that kind of information and suggestion and criticism. We don't always do a good job and it helps to tell us of it.

The next thing that I want to ask cooperation in is in keeping the law enforcement in all of your communities in the hands of the duly constituted authorities. I appreciate the fine spirit of many patriotic citizens and organizations which leads them to volunteer for work of this kind. But, gentlemen, the real work of this kind is not work for amateurs; it is not the work for private agencies. It is work for disciplined and trained men and men who are responsible to the governmental bodies. It cannot safely, it cannot properly, be entrusted to men outside of governmental groups. That is particularly important because we must in America vindicate the processes of democracy. There are so few countries doing it. It is our job to vindicate the processes and we can't do it if these vital things in the law are turned over to vigilantes or assumed by mobs.

The Federal Bureau of Investigation has a course, a long course, a hard course, it's no play-course as the Mayor knows, that men go through before we will entrust them to go around and represent the Federal Government. And I hope that in your cities, so far as possible, you will see that law enforcement is placed in the hands of men who have a high sense of responsibility, men who know how to accomplish things without crude methods, men who have the respect of the citizens. That is the way to procure good law enforcement and if you have men who have the character but have not the experience, the Federal Bureau of Investigation has the Police Academy which was set up in order that men from localities could come and spend a period of time in contact with the most modern, we think, methods of law enforcement, so that they may glean in a short period the experience, the

information and the scientific knowledge necessary to do good jobs in your communities.

Then I want to say that I hope we can keep this thing, this enforcement of our law, this dealing with propaganda and with foreign goods, on a common sense basis rather than on a technical, law basis.

You know, up in our community in the last war we had a police justice who wasn't a lawyer -- the Bar Association regularly said he ought not to be a police justice -- he was a patrolman, and when he became too blind to patrol a beat, we elected him Police Justice.

But he had more common sense generally than half of the lawyers that preside over courts, and when some German citizen leaned over the bar and tossed off a toast to the Kaiser and then some enthusiastic lawyer came in and wanted to make a case of high treason of it, the old judge said, "No; disorderly conduct, --Ten Days." We never had any trouble. Let me tell you, gentlemen, that I want the spirit of my department to be one of practical sensible law enforcement, and not the effort to make sensational cases. This problem of law enforcement is not a matter of building up a few sensational shocks. What we want to do is to have a continuously common sense dealing with the problems of your communities.

I am going to say just a few words about this other side of constitutional authority which has driven the Federal Government and the City governments close together. I want to call your attention to the fact that in the very setting up of our government our forefathers connected two ideas in Federal power -- common defense and general welfare.

We drifted away from general welfare. The Federal Government took the position that about the only function it had was to keep the tariff up and send some ambassadors abroad and do a few little jobs in Washington, but that the real problems of the American citizen were for the locality.

Do you know that in 1936 the Supreme Court of the United States said: "We have never had to pass on the meaning of the General Welfare clause. It had been so little used." Do you know that after 150 years of our government it fell to me to work on the first case in which an administration appealed to the Supreme Court to uphold the use of the General Welfare clause of our Constitution. This was in the Old Age Benefit Case. The Supreme Court responded with a great opinion by Justice Cardozo in which he held that Federal Government has not only the power but the responsibility in this field of general welfare. And that opened up new possibilities of cooperation between the Federal Government and the localities.

Now, what I want to talk to you a moment about today is not the extent to which this power should be exercised -- your own conditions will have to determine that -- but something of the method by which we have tried to exercise it, because I want to tell you that one of the problems that we lawyers have struggled over was how to handle this General Welfare power, so as not to interfere with the prestige or the right or the dignity of local governments.

Let us turn back just a moment. When this power was first granted, the power of taxation was given to the Federal Government with a marked limitation. The Federal Government could not lay a

direct tax except if it was apportioned among the states, and that meant practically that it could not lay a direct tax at all. The effect of that was to leave to the State Governments and the local governments the full power of direct taxation, and in that day that was the great power of taxation because real estate was the great repository and source of wealth. If men wanted to speculate, they speculated in land. If men wanted to make sure that they had their funds in permanent and protective form, they had land. And land and the appurtenances of land were made the exclusive province of the states and localities, and they had the great source of revenue. Only excises to the Federal Government. Now there came about a great change in this economic situation. Land ceased to be relatively as important. The great increase in the welfare of this country was in the form of intangibles, not in land alone. More and more the reservoirs of wealth came on paper, things, men could put it in their pockets and take it to some other country. Some of them did. Some of them would like to get back.

But this development by which our economy became based on movable values destroyed the possibility of the localities on levying and collecting taxes on the greatest reservoirs of wealth in the country and at the same time the burdens were growing.

Now, that is the situation that was faced here when it first became the functions of the Federal Government to help out with the General Welfare.

Now, what was done? Of course it was necessary, and I don't know of a more sound law, when the burden became too great than that the burden ought to follow the revenues. The Federal

Government is the only government that can collect adequate revenues under this existing system. It has to take some of the burden of unemployment. It came to a time where it had to be assumed by the Federal Government or crush the localities, and it was assumed.

Now, let's just look at the method that was pursued. This is one of the most conscientious efforts ever made to preserve local government -- not to infringe upon it.

F.W.A., that great project financed with federal funds, which has placed school houses, sewer systems, water systems and public buildings and auditoriums in Buffalo, Mr. Mayor, and across this country, were all done with Federal funds. In fact, I think perhaps some criticism may some day be made that the Federal government might have spent some of its money on great national projects and had more for its money. But be that as it may, there certainly can come no criticism that there was no effort to respect the wishes of the localities. We have loaned money to build some Municipal Power Plants -- and did we get in trouble! That was when the litigation started. W.P.A. -- every W.P.A., project in this country, was sponsored by local authorities.

Unemployment Insurance. When that project became a necessity and it was recognized that some system must be set up, the Federal Government used its taxing power to enable the states to set up unemployment systems of their own. No state could undertake an unemployment system and charge it upon industry if that meant that other states not bearing that burden could undersell them in the market. The effect of the Federal Legislation was to lay a nation wide burden for unemployment insurance and rebate 90%

of the tax if the states would set up their own systems with wide discretion in the States in what the system would embody.

So I come here today, with great satisfaction, because I don't feel that we are dealing as rivals or at arms length. We are engaged in a great enterprise together -- the Federal and the State governments, the Federal and the City governments -- the project of carrying this Constitutional power of common defense and General Welfare into efficient and sensible application. We are partners in that purpose. We are partners in the purpose of invigorating those powers so that cooperatively we may realize for this country a defense, which will keep any enemy at a distance, a defense that will not leave our country subject to any pressure from the other side, and a concept of General Welfare which will direct our social order against the injustices and privations which result in social unrest or in social upheaval.