

The Economic Club of New York

76th Meeting

Subject - Lawlessness

Marcus Kavanagh
Judge of the Superior Court of Illinois

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MR. ELY: In the absence of our President, Mr. Elliott, the Presiding Officer will be Congressman Ogden L. Mills, Vice President of the Club. (Applause)

HON. OGDEN L. MILLS: Gentlemen of the Economic Club: Your Executive Committee has selected as the topic of the evening “Lawlessness,” and has invited a distinguished group of experts to address you on this all important question. The first of our speakers is Judge Marcus Kavanagh, of Chicago, for thirty years a Judge of the Superior Court of Illinois; one of the veterans of the American Bench and a student not only in this country but abroad of law enforcement. It affords me great pleasure to introduce Judge Marcus Kavanagh of Chicago. (Applause)

The Honorable Marcus Kavanagh
Judge of the Superior Court of Illinois

Mr. President, and Gentlemen of the Economic Club, and Ladies and Gentlemen: I esteem it a great privilege to be permitted to address this influential and powerful organization, and to present to it my views in the discussion of the tremendous question which is now before the American people.

Mr. Villard, in an article published in one of the magazines, "The World's Work," estimates that last year there were 11,000 homicides in this country; 11,000 human being unlawfully killed, or killed while they themselves were performing unlawful acts.

A statement of mere figures is apt to leave us cold. But can you visualize that? Eleven thousand human beings, yesterday throbbled with our hopes, feared with our fears, and the ghastly line if laid pulse less breast to pulse less breast, would stretch for five miles. And the year before, there were 10,000 and the year before 10,000, and every year during ten years, not less than 9,500. In other words, in this land of crowded school houses, teeming prisons, and forested with church spires, in ten short years 98,000 of our fellow citizens have perished by poison, by the pistol, or the knife.

No one seems to have been thinking much about it. No one seems to have been saying anything serious about it; no one seems to be doing anything about it. Well, possibly you and I are not to blame. You in New York and we in Chicago, well, don't you think it is a matter of climate? It is like those rays of the sun that has shown on us today, like the cold weather of a fortnight ago, like the spring sun that will shine next month. We had nothing to do with it; we had nothing to do with their coming, nothing to do with their going. May we lay that flattering uncton to our souls? Well, listen. There is a country just to the north of us, separate by only an imaginary line. Its people speak our language; they have common religions, common traditions. The situation on that side of the line should be the same as here. But in Canada they have 13 homicides every year

for every million of their inhabitants, thirteen. We have 100. In England they have 9 each year for every million of their inhabitants. We have 100. In Germany before the war they had 5 for every million of their inhabitants. We have 100. And those of you who have looked into the question abroad will testify how they speak with scorn in Europe of poor, old Italy, call her the birthplace of the assassin, the home of the stiletto, because in Italy they have 15 homicides for every million of their inhabitants, and we have 100. the scorn of the world for Italy, and I ask you thinking men of this club, is it any wonder we are gathering upon our heads the universal scorn and contempt of the civilized world?

Do you realize how our prison population has been increasing? Well, listen to these crimson figures. In 1850 we were the most law abiding people in the world. We had a population of 23,000,000 and there were only 7,000 in all our prisons. Today, 132,000 tortured human beings crouch and cower behind the steel walls of our prisons. We have increased in general population five times. We have increased in homicides fifteen times. We have increased in our prison population twenty-one times. What is the matter with us? What ails us? Are we a dishonest people? No. the standard of commercial honor is higher in this republic than in any other place in the world. Those of you who have traveled abroad will testify that one will be cheated five times in the shops of Rome, Berlin, London or Paris to once in those of New York or Chicago, or any other great city. We are not a dishonest people.

Are we lovers of injustice? Above all things not that. From a thousand battlefields, the spirits of our heroic dead leap forward through billows of earth rolled up by the winds of death to protest most of all against that. Notwithstanding the magnitude of their wards abroad, let it be written and proudly remembered that no nation in ancient or modern history has paid the same price in blood and treasure for mere ideals of justice than we have paid. We are not lovers of injustice. Well, what does ail us then? It seems to me that to answer that question one must go an inch or so under the surface of human nature. You know, I believe that few men reach middle age who have not strongly been tempted to break the law. These days no man stands before me for sentence in the criminal court but what there go ringing through my mind those wonderful words of John Bunyan: "But for the grace of God there stand I."

Now, when the Canadian or the European is tempted to break the law, he realizes that if he does so the chances are at least 78 in 100 that he is going to be caught and punished, and so from this certainty of suffering he turns aside from the temptation and the crime remains uncommitted. Is there any mystery about the reason why there were 42 murders in London last year, 238 I think it was, 238, Mr. Buckner, in this City last year, 368 in Chicago? That there were 151 murders in all England and Wales last year and 11,000 in the United States? Is there any mystery in the reason? Why, none at all. The reason is clear as daylight. In England and Wales, when a man is deliberating whether he shall kill another, he knows while he is deliberating that if he does so within six or seven weeks he himself will climb the gallows stair and die for his crime. And so he lets the other live. But in this country if a man is deliberating whether he shall kill another, he

knows while he is deliberating that the chances are five to one that he will never be arrested, fifteen to one he will never be convicted, and more than 100 to 1 that he will never die for his crime, so he does not let his victim live.

I have the figures of Germany the year before the war upon the subject of homicide, and in that year, of those who unlawfully took the lives of their brethren, what proportion do you think were caught and punished, in Germany, with its five homicides to the one million inhabitants? What proportion do you think were caught and punished? 95%. And in this country that same year, for that same crime, what proportion do you think were caught and punished? 95% in Germany and 1.3% in the United States of America. Is there any mystery about this difference?

What is the reason for our lack of respect for the law? Why, this awful record which I have recited for you is only a symptom. Outside of the court house in the fine, old City of Dusseldorf they raised a wonderful statue of Justice. In one hand it held a sword, in the other a scales, and one night a terrific thunderstorm came up and the lightning struck the sword from the hands of justice. That is what ails American justice. She holds in one hand an intricately arranged scales, but she has lost her sword. (Applause)

What shall we do? Well, the answer comes like a flash of light. Mend the broken sword of justice and put it back in her weighty hand. What shall we do, you powerful men of New York? What shall you do? The answer comes, as I said, like a flash of light. Why, enforce the law. Enforce

the big law, enforce the little law; let no man because of his insignificance creep under it. Let no man because of his power and his pull step over it, and if we think those in authority are either unwilling or unable to enforce the law, well, the blame is on them, but the shame is on us. They are our agents and we are responsible for our agents.

I adjourned my court in Chicago to accept the honor of this invitation and you cannot, you would not, expect me to be eloquent or to amuse you. You want the truth, and I tell you that if the law is unenforced in New York City and New York State, if the law is not enforced in Chicago, or in any other City or State of Community, the people of that State and that community cannot shift the blame to the shoulders of their officials for the enforcement of the law in every State and in every community rises just to a dead level with, and no higher than, the public conscience of that State and that community. (Applause)

Enforcing the law means hurting somebody and we are the most tender hearted people alive. On the day of the great crime then, of course, we say, "To Halifax with the law, why don't they lynch him?" And three or four months afterwards somebody is sending in flowers to his cell and by the time his case gets back from the Court of Appeals the first time, and it may come back several times, we are already to forgive and to forget.

Now, you know this is not pleasant talk, nor it is not popular talk. An easy way to be popular with you would be to talk about pity and mercy and uplift for the fallen. But there has been just a

little bit too much of that talk in the last eight or ten years, and I have accepted your invitation tonight because it seems to me that someone who knows, and all those who know, shall rise and remind their fellow citizens that lately, and especially during the past ten years, there has arisen a deadly tendency in this country to coddle criminals, and you cannot coddle a criminal without at the same time in his mind belittling the enormity of crime, and you cannot coddle criminals generally without in the public mind belittling the enormity of crime.

I had the honor to be appointed on a committee of law enforcement of the American Bar Association in company with one of your distinguished citizens, former governor Whitman, and with John Wade Ellis, of Washington. We were sent abroad to study these questions, and came here to study them. I cannot stop to give you details. I tell you this, that it is my deliberate judgment that 85% of the serious predatory crimes being committed in this country today are being committed by men who have been convicted before, and who, through false clemency, have been discharged before they were cured. There is a great society in Chicago being formed now that says, "We ought to reform criminals by taking down the prison walls and appealing to their better natures," and I say, too, let us appeal to their better natures, but I say that as long as in New York City tonight there are 10,000 men, every one of whom is willing, if he found it expedient, to go to your house and yours and yours, pry open the windows, and go among you and your families, take that which you have that he wants, and merciless as a tiger kill you if you resisted him, I say, too, when we catch one of those fellows and he is guilty, let us appeal to his better nature, but I say that while we are appealing to his better nature, and until we have reason

to believe that his better nature has awakened, and is listening, until we see in him, irrespective of the time marked in probation and parole laws, until we see in him that if we set him free he will no longer be a threat and danger to your little family and to my little family, no matter how long it takes in weeks or years or lifetimes, until that change comes in him, let us be just to our families, our neighbors, and our country, and keep that sort of fellow until then safely locked up.
(Applause)

Well, that is not pleasant talk. It is bitter talk. It is bitter medicine and we need bitter medicine from now on. It is a hard thing to say, but for human nature punishment is still the great deterrent force. Our great Mother Nature sets the example. Stop to think of it. She has kept life on this planet since creation warming by means of punishment. If we eat too much she punishes us. If we eat too little she punishes. If we work too hard she punishes. If we break any of her laws she punishes. Only the fact that we know this great Mother of ours stand waiting with her switch, keeps us from breaking her laws.

Oh, please, please do not think me cruel. I would hate to have this body of men think that. I believe in mercy. I believe the law should teach mercy, because the law is great, the great teacher that teaches when the schools are empty. When the press runs down, when the pulpits are empty, because every waking moment of our lives we are shaping our lives according to the law, and I believe that when one commits any ordinary crime, an ordinary crime, and it is his first offense, and he says, "I did it and I am sorry, and I won't do it again," I do not think that he ought to be

punished that time. But I am making a plea as a lawyer tonight to a jury for a client of mine, for a client, it seems to me, that no one is thinking of, no one is working for, no one is acting for my client, the long abused, the neglected, the forsaken individual, the law abiding citizens. I stand here tonight for the law, for our country's law, for the abused, the forsaken, and the neglected law of their country, and I am asking you men of New York to rise and stand on guard to your country's law. I am making an appeal for that poor fellow who is walking the streets around here somewhere at this moment, full of life and hope for tomorrow who, before midnight, is going to be carried bleeding and dead to his little family. I am making a plea for that poor woman whose house is going to be broken into, and her little family terrorized tonight, and I am asking for a little while, for tonight at least, to quit thinking of the pleasure, the welfare and the comfort of the scoundrels who are going to commit crime against them. (Applause)

Well, how can this condition be remedied and who is responsible? First, who is responsible? I don't know what you think of the present Chief Justice of the Supreme Court of the United States, William Howard Taft, when you think of him as a politician. But I do know what you think of him as a Judge. He is a great Judge, a deep student of social conditions, and a brave man, and he said not long ago at Yale a thing I would not dare to say on my responsibility, because you don't know me, but I repeat it on his responsibility. He said, and mark my words; he said, "The administration of the criminal law in this country is," these are his words, "is a disgrace to civilization." And he said, "Again, the trial of the criminal seems like a game of chance. If he wins he seems to have the sympathy of the sporting public."

Why, out in the State of Washington a man is accused of stealing \$100 Canadian money, and so he was set free under that indictment (Laughter)

Down in Arkansas a man is accused of killing a Wyandotte Indian, and he did kill the Indian, but the State's Attorney, Mr. Buckner, forgot to show that it was a Wyandotte Indian as charged in the indictment and, of course, he went free under that indictment.

In the State of New York a few years ago a gentleman was accused of stealing a certain amount of money, and the indictment was found defective because it was not charged in the indictment that the money was stolen in the following denominations, and, of course, he went free under that indictment although he did steal the money.

Another gentleman in the State of New York was convicted of murder, after a trial, and after the case was over they found that one of the jurors had not been naturalized, was an alien. That juror may have been superior to every other juror in the box in the point of intelligence, social influence, and character, but your court, one of your Appellate Courts, decided that the murderer had not been tried by a jury of his peers, and he was given a new trial.

In the State of Indiana a man is accused of stealing a Smith & Weston revolver, and he did steal a revolver, but the Supreme Court of that State decided, and decided truly, that there is no such

thing as a Smith & Weston revolver; it is a Smith & Wesson revolver, and the poor, innocent fellow who stole a revolver was set free.

In the State of Missouri a man is accused of gambling. The indictment says that he did play a game of chance, to wit, a game called poker, for money, and he was caught playing poker, but the Supreme Court of Missouri set the conviction aside because they said the indictment should have added that poker was a game played with cards. (Laughter) I don't know how innocent you gentlemen are in New York, but out in Chicago we think that a Supreme Court that does not know that poker is a game played with cards is a mighty innocent sort of Supreme Court.

(Laughter)

It was that same Supreme Court that set a man free who had been convicted of the most terrible crime that can be committed under the stars, because one line of the indictment set forth that he did these things against the peace and dignity of State of Missouri, whereas, it should have said against the peach and dignity of the State of Missouri.

I can stand here and any judge and any lawyer can stand here all night and repeat instance after instance where the burglar, the thug, the murderer, has gone un-whipped of justice through some such foolish technicality.

But please do not go away and say that you heard Judge Kavanagh say that justice is not obtained in the courts. It is obtained in the courts in most instances, and the wonder is that justice is obtained so often. But the thin I am saying, is that these foolish technicalities have everywhere at some time set some criminal free and all the time somewhere are setting criminals free and killing fear and respect of the law in the hearts of wicked men.

Who is responsible? I can see I am going to lose all my friends. I have scolded so much tonight, and if I have any left, I might as well say goodbye to them right now. Who is responsible for this? First of all, let the truth be spoken. We, the judges on the bench and the lawyers at the bar. (Applause) No one stands ahead of me in admiration for my profession. I was born into it. I believe with Chief Justice Brewer when he wrote, “Wipe from American history the achievements of the American lawyer and you rob that history of half its glory.”

It was a lawyer’s hands and none other than wrote the Declaration of Independence. It was the hands of the lawyers, and none other that lifted into place, stone by stone, that immortal, that incomparable fabric, the American Constitution. And another thing to which I am proud to call attention tonight, in the War of the Revolution it was the lawyers of this country who officered the volunteer forces of the country. Their genius conceived this nation, their swords defended it, Why, three quarters of our Presidents have been taken from that small profession, and how did they attain this rank among their fellow men? You go into your lawyer’s office and you leave in his keeping your life, reputation and property, even the titles to your land, and how easily he

could cheat you there. But you never think of asking him for security. No other profession is so trusted, and not once in ten thousand times does he betray your trust, and so I wish that I might to on and say the same think over and over again of my profession. But instead it is my duty to come to you with a complaint against my profession. The lawyers will not reform the criminal laws, nor, and this is the worst part of it, nor will they permit you to adequately reform the criminal procedural laws. They will put a rusty patch over a rusty hole.

Your National Crime Commission appointed a committee of twelve to draft plans for general amendments of the criminal laws and submit them to the different legislatures and to Congress. They did me the honor to include me on that committee and I say to you that in my mind and in the minds of most of us, that the obstacle in the way that must be overcome, the chief obstacle will be the opposition of the lawyers in the legislatures. They are the ones who will be the chief enemies of any adequate reform of the criminal law.

Now, a judgment ought not to say a thing of that kind, a man ought not to say a thing of that kind, unless he can make good. But if he can make good his first duty is to his country and not to his profession. It is his duty to say it and, unfortunately, it is too easy to make good.

More than one third of the members of your legislature and of the legislatures generally are composed of lawyers. One third in numbers, nineteen-twentieths in influence. They lead all the important committees by reason of their skill in debate and their knowledge of drafting laws, and

in every legislative house there is a sieve like a gold miner's sieve; it is called the Judiciary Committee, and through that sieve every measure must go before it becomes a law. In the last Congress I think something like 98 members were in the Senate and 76 were lawyers. Of the 435 members of the lower house I think 367 were lawyers.

For 100 years my profession has had in their hands the amendment to these laws. For 100 years the people of this country have asked us to reform those laws. During those 100 years we refused to reform them, and who is to blame for it? Some 14 years ago, a great society in Chicago did me the honor to send me abroad to study these questions, and I was taken up by Lord Leveston and sat with him many times, had my conferences with Lord Reyburn, who was then Lord Chancellor of the British Empire, and I came back with four simple propositions, not my own, but principles that had brought peace and honor to the British people in their courts. Do you know that 35 years before that time the British people were harassed by criminals worse than we are today, and suddenly had begun a movement, a movement to simplify the law, so that a man accused of a crime got a quick trial and speedy justice, and had emptied the prisons, and I came back with four simple propositions and I began to go to legislatures and Bar Associations. They always listened pleasantly, because I like my profession and I think the members of my profession like me, but I was always beaten by the lawyers, and then at a great meeting of lawyers at Chicago, they did me the honor to invite me to address them. They beat me, as I knew they would, and I said to them, "Gentlemen of the Bar Association, I have come before a Bar Association for the last time. I have gone before committees of the legislature for the last time.

Henceforth, whenever I can get an audience, I am going to meet my fellow citizens. I shall explain to them the situation as it appears to me. I shall advise them in my poor way, yes; make lawyers Presidents if you wish to, make them Governors of your States, but for awhile at least send businessmen, send farmers to the legislatures. (Applause)

Times have changed, Bar Associations have been kind to me and I am serving them and the legislatures are listening. I warn you, I give you this solemn warning, that you will never get adequate relief in the amending of the procedural laws unless you, the businessmen, and the people generally, wake up to your responsibility and use your influence to obtain proper legislation. If you have a lawyer here who stands for these things, take him, by all means, but whomsoever you choose, see that he stands at least for this one principle, and when I recite it for you, you will think it so simple, that all I have got to do is to write it on the back of an old envelope and throw it through the windows of the Capitol down in Albany and it will become a law of itself. But I warn you that it will take all your influence to have this simple matter put into a law, and take years of your time, and this is all it is:

“All laws and rules of court concerning forms, practice, and procedure, shall be directive only, and not mandatory.”

That means you do not have to change your system to follow the forms you have until such time as the form does an injustice, and when the form does an injustice, then do as they do in England,

and in France, cast aside the old form and do the justice. It means that facts shall not be contorted into an iron inflexible mold of the law to fit the forms, but the law shall be flexible to fit the facts.

If a man is accused of stealing a Smith & Weston revolver and it transpires that it was a Smith & Wesson revolver, then the judge here would do as the judge would do in England, take his pen and scratch out the extra “t” and go on with the case to see if the revolver was stolen. That means that no judgment and no jury has a right to sit in any case except to do justice in that case, without so much reference to some other old case decided 150 years ago and now cited as a precedent. It means that you shall open the windows of the court houses so that the great State of New York, and that the common horse sense of the people of New York, shall decide on the manner of the administration of the law, and that is all it means.

You know, in passing sentence out in Chicago, they say I am rather free with other people’s time. (Laughter) There is one thing that I am very grateful for and that is the way you applauded me when I was abusing my profession. I am glad you did, because I like applause and I do not get very much of it. And just to show you how grateful I am, and what a good fellow I am, I am going to return the compliment to you. I am going to ask you gentlemen who are not lawyers, if you think that the lawyers are the only ones who are faithless to justice in this community? I am going to ask you just between ourselves, when justice needs a friend and needs it badly, how often have you stood up for justice and one your duty to her? Take jury service, for instance.

(Laughter) I have heard a good many businessmen frequently say, “What is the use of my serving on a jury? The lawyers won’t take me.” One gentleman had said that to me who had just come down from the court room where he had disqualified himself by swearing that he had an opinion in the case. In one case tried before Judge Scanlon, 500 men went through the jury box and disqualified themselves to serve as jurors, and 260 of those were businessmen. In the case that is being tried now, 246 citizens have sworn that they have formed an opinion, that they could not serve, and it has take some months to get a jury.

Maybe you did serve. If you did, I can hear what you said to your wife when you started to serve. You said, “Mary, do you know what I have got to do? I have got to drop everything and go down to that blamed old court house and serve on a jury. They won’t let me off any more. I have got to go, but I will go down, and don’t let them bring any criminals before me. I will show them. I just wish they would bring a burglar before me. I will show these lawyers and judges what to do with burglars.”

Well, the first case you are called on was a burglary case. You imagined that a burglar was a man about six feet four inches tall, with bushy, black whiskers, like Bill Sikes, in Oliver Twist, and a slip of a young fellow, 19 or 20 years of age, come in and sits down at the prisoner’s table, and he is dressed in the best suit of clothes his poor people can get for his trial, and you feel sorry for him. You see an old lady with a shawl about her in the back part of the court room. You know that is his mother, and you feel sorrier still, and the first witness on the stand was the policeman.

I don't know why it is in this country we hate policemen. Sir Basil Thompson, I think it was, pointed out in England how they loved the bobby. He symbolizes their law, and respect for law, and do you know that during the past five years 62 policemen in the City of New York have been killed by criminals while defending your homes? In my city there is not a week but what the story is repeated on the stand of some policeman with a wife and four or five children of his own, who has gone a dark alley at midnight and done battle against some desperadoes. Thirty-two were killed there, and they had killed at the same time 163 criminals. They were not able to tell me here how many criminals the policemen had done for. But 62 of them had been killed, and if we should take a census in this country, you would find that a mighty war, with killed, wounded and dying, had been fought with criminals by the policemen from the Atlantic to the Pacific Oceans.

You have this prejudice against the policeman, and he went on the witness stand, and then the poor fellow whose house was broken into went up on the witness stand, and he was a bit rattled, he fell into little inconsistencies and little contradictions. You should have heard the attorney for the defendant when he began to shout his cross-examination against those little contradictions. If the court house windows were opened you could have heard them way down the street, and presently the poor fellow on the witness stand who was being cross-examined began to wonder whether he was on trial for breaking into his own house, or whether the man down there was on trial. (Laughter) And then came this last plea for mercy. You have all heard it. This is it:

“Mercy, Gentlemen of the Jury, pity; give him one more chance. Do not break a man and ruin this young life. You are going home to your families; you are going to see happy faces tonight at your supper tables. Don’t have to think of this poor man weeping in his prison cell. For God’s sake, give him one more chance. Let him go home tonight with his mother,” and so on. You knew he was guilty, but you hung your fluttering conscience on the little contradictions in the testimony and you found him not guilty. You pardoned him, gave him one more chance. What did that mean, gentlemen? Just between ourselves, it meant you had broken your oaths to follow the law and the evidence. You betrayed the law. You had encouraged the criminals, or, if it were a murder case, maybe you let him off with a slap on the wrist and gave him a lighter penalty. If you did that, remember this, the next murder that happened in that part of the city, although your part can never be traced, and only God will know it, yet just so surely as you signed that unjust verdict, just so surely are you a partner in that next murder. (Applause)

These technicalities have done much to bring disrespect upon the law, but the tragedies of the law that have killed the fear of the law in the hearts of wicked men and of murderous minded women, have been these weepy, mawkish, sentimental verdicts from the jury box. And if you wish the law enforced, gentlemen, you must feel its responsibility, and that you, as citizens, have upon you a solemn obligation from this time on, to rise up and take your part in the administration of the law, and uphold your officers of the law.

One other word and I am done. You know one of the reasons why this country has lost its touch with justice? Because it has, I am old fashioned, because it has lost its touch with God. We haven't the same respect for Him and for religion that our fathers had fifty years ago. Then we were the most law abiding people upon the face of the earth. Who is responsible? Largely you. I ask you, Gentlemen, what have you done to instill in your family respect for law and respect for God? Do you realize that your little boy and your little girl think you are the wisest man that ever lived? And this is the thought that I put to your souls, "How often have you told your boy that you believed in God, and that he was their Father and it was their first duty to obey and revere Him?" I tell you it is necessary to teach them respect for authority, respect for authority in the street, respect for authority in the school and in the home, teach them respect for the rights of others. It is necessary not only for their own good, but for their country's good, and the primer lesson, I tell you, the primer lesson in teaching respect for their country's law is for you to teach your own children respect for your law, for the law of the home, the law of the family.

I have lived a long time, and I never yet have seen a disobedient boy who grew into a successful man. I have lived a time and I never have yet seen a disobedient girl who grew to be a successful queen of a happy home. And what, after all, is the foundation of all law? When I sentence a man, I ask him questions, if it be a serious crime, and try to get into the red center of his heart, and I go to prisons and I talk to prisoners and wardens and Chaplains.

About a year ago this time I was in one of the prisons in one of your eastern states at 9 o'clock at night talking to a young man who was to die the next morning, 28 years of age, a handsome young fellow. It was a pity. As I was talking to him the guard came in with that terrible suit of clothes that they all must wear at that awful ceremony, and he shrunk from it, and I said to him, "If you had one wish tonight and it was not life or freedom what would it be?" and he spoke without hate and he said "You know, sir, I was born and reared on a farm near Cleveland, Ohio, and I ran away from home, and the night I ran away, I had a little baby brother that was sick and they kept a kerosene lamp lit up in the kitchen. I looked into my brothers' room and my brothers were asleep. I looked into my sisters' room, and they were quietly sleeping. I looked then into my parents' room and I saw my mother's white hair, and my father's gray hair on the pillow beside her, and then I went out into the night," and so strange is human nature, that this man who was to die in a few hours said, "You know, sir, the mist lay very heavily on the pastures and I stumbled over a cow and then I went up on the hill and looked down over the valley and I could see that light shining through the window of my home. I know, sir, that light is shining at this minute there, and if I had one wish that could be granted, and it was not life and it was not freedom, it would be to go and stand outside that window for half an hour. I know they would not see me, but if I could do that and see them once more, I think I could get into that terrible chair tomorrow morning and smile myself into forgetfulness."

Oh, gentlemen, don't you see it is the home, the home that the human heart, stripped of its unrealities, and face to face with the realities of life and death, flies like a swallow to its nest

back through the intervening years to its childhood home, to its father's side, to its mother's knee.

There is your first duty, gentlemen. Well, I have taken too much time. I only want to say to you that, as Lincoln said, "Our first love should be the law," because, as Theodore Hook said of the law, "It must be acknowledged that her seat is the bosom of God and her voice is the harmony of the world. All things in heaven and on earth pay her homage. The highest is not exempt from her power. The noblest of men and the creatures of all conditions whatsoever unite and admire in her as the mother of peace and joy." (Applause)

MR. MILLS: Gentlemen of the Economic Club, I think you will agree with me that we have listened to a great speech. (Applause) We are under a great obligation to Judge Kavanagh. He has told us some things that we ought to know, and while he may forget us, I am sure that we won't forget him what he has told us tonight.

Now, I am sorry to say that I have got some bad news for you. Judge McAdoo is detained at home under doctor's orders and our Police Commissioner has just telegraphed that he is kept from us this evening by official and pressing business.

Some twenty years ago when I was at the Harvard Law School, I first met Emory Buckner. He had just come from the West to work his way through law school. He did that for three years and

all the time he was there he was one of the ranking A-man, and he has been an A-1 man ever since. (Applause) he combines great intellectual ability with great courage, and above all, the capacity for telling the truth as he sees it without fear at all times. Mr. Buckner says he will be very glad after he gets through his talk to answer any questions you may care to fire at him.

United States District Attorney Emory R. Buckner. (Applause)

The Honorable Emory R. Buckner

United States District Attorney

Mr. Chairman, Members of the Economic Club, and Guests: I agree with everything that Judge Kavanagh has said, as members of the Bar usually agree with what Judges say, (Laughter) except in one particular. I think to make the suggestion that members of the Bar be disqualified to hold public office is going a bit too far, even in the midst of a crime wave. Being essentially a man of peace and one who hunts for compromise, I think I have a suggestion which would reconcile the duty of members of the Bar to serve their country in Congress and Legislature and other public offices, and at the same time meet the disqualifications that Judge Kavanagh posits. I suggest that we adopt a law, perhaps an amendment to the Constitution; it seems to be perfectly simple to get an amendment to the Constitution; that no one shall occupy the position of a legislator in a State, or a Congressman or Senator in Congress, or a member of the bench, either a court of first instance, or appellate Court, until he has served a term as Assistant District Attorney. (Laughter) In that way, members of the bar would still hold office and at the same time they would take to

the legislative chamber that knowledge of technique required for combating crime and they would take to the bench nisi prius that intolerance of technicalities which has proved so sure a city of refuge for so many criminals in times past. I think probably that suggestion will meet with favor among the members of Congress and members of legislatures only if there is any danger of Judge Kavanagh's radical remedy being adopted. (Laughter) I am sure it would suit the Assistant District Attorneys very well and make the low salaries they are paid even more welcome.

We hear a great deal nowadays about crime and rime waves. Almost every week you read in the newspaper of some new crime committee or some new crime commission which has been organized. We have had for the past two or three months a gradual organization of a rather elaborate crime commission and also within a very few days ex-Secretary Newton Baker, we were informed, had accepted the Chairmanship of that crime commission, composed of private citizens. I read in yesterday's paper that Governor Smith was recommending to the legislature the appointment of a Legislative Commission to study the crime wave in New York, which was to include with itself a number of private citizens, so as to make a commission composed of both of members of the legislature and of men not in public life. And, of course, when Governor Smith recommends something of that kind, we may know that it is getting serious.

We have only within two days read in the newspapers that the City of Chicago has sent to Congress, that ever present help in time of trouble; that some civic committees were asking Congress to go out, come over into Macedonia and Lake Michigan, and succor them, in despair

of meeting the crime wave. It must be that they haven't very many Judges in Chicago like Judge Kavanagh, or there would have been no need for Congressional interference. (Applause)

And so it goes. Now, you take breakfast, Breakfast used to be for me, at least, a very nice, comfortable meal, one of the best meals of the day. You went down to breakfast, and you generally had your breakfast in that room of the apartment where you could get a little sip of eastern sunshine, and you had your newspaper, and you settled down with your coffee, your two or three cups of coffee, and got all cranked up for the day and the dash into the subway, and the children came in and were bundled off to school and you reflected on what you had to do, had had a good night's sleep and everything, and you were just all pepped up and everything was fine.

Now, what is the condition that has come over us? Breakfast has become the worst meal of the day. We go to it with terror; we pick up our morning papers with more or less terror, and between gulps of coffee we read almost every single day of some new violence or new outrage against organized society by organized or unorganized criminals. It has really become a terrible kind of a meal, for me at least.

Now, what is the cause of it all? We have had a lot of luncheons about it and a lot of dinners about it, and a lot of committees about it, and more being organized all the time. I suppose there are a good many causes. It seems to me at least that one of the most important causes, if not the most important cause, has been the war. I know it is popular to blame everything on the war, but

there was that terrible visitation that rocked the world, and we had war, with its vandalistic hand pulling down all those restraints that had been created more or less for years and years on the part of us all, individual restraints and social restraints were simple ripped off by this demon of war.

If Police Commissioner McLaughlin were here tonight I have no doubt that he would tell us that one of the most serious contributors to criminal conditions in this country today is the invention and prevalence of the automobile, a very serious invention. Not only did the war re-discover firearms and teach several million men that there was such a thing as guns that could shoot, but with the end of the war and coming after the war our number of automobiles very, very greatly increased and where you have the automobile you have a factor which Police Commissioners did not have to struggle with fifteen or twenty years ago in anything like such large numbers, the practicability of escape, facilities for escape, which have simple been revolutionized overnight. The invention of the automobile has created the most effective hurdle against pursuit that, so far as I am aware, has ever been devised.

And then we have a third factor which Judge Kavanagh has been talking about, and it is far more serious than people are inclined to suppose. We have our archaic, creaky, worn-out legal machinery, unadapted for the problems of 1926. We have this fetish of the Constitution, this Ark of the Covenant, that nobody dares touch unless he falls dead, as the man did in the Bible. You must not ask your coddled criminal any questions, because there is the Constitution and the right

against self-incrimination. What would you think in your office if your stenographer and your bookkeeper had a row and you sent for your stenographer and said “Come on, Miss Johnson, tell me all about this,” and she said, “Oh, no Constitution. You must not ask me any questions about it at all. You must not ask me any questions about it, but not only that, but you must not even remember that I refused to answer. You must not hold it against me in any possible way because I have a right to stand on my Constitutional rights and you will have to get the facts just the best you can, and if you use this against me I am going to tell the Bar Association on you.” You would say, “You’re fired.” Was there anything; is there anything more preposterous in a civilized community in 1926 than a Constitutional right that a Judge or a responsible District Attorney is forbidden to call a defendant to the witness chair and ask him a few interesting and pertinent questions? Nothing. Why, this Constitutional provision is purely historical. It comes down from a time when poor unfortunate wretches were put under the thumb-screw, put under the torture and asked questions until in the agony of pain and fear of death they would say anything. Nothing like that happens now. Nothing of that kind has happened for one hundred years, and yet with our reverence and our worship for the Constitution we keep on carrying this perfectly ludicrous, ridiculous law against self incrimination.

Who knows better what to tell about a burglary with which he is charged, or any other crime with which he is charged, than the man who is charged with it? He should be the first witness. He is the man you want to ask the questions of, and you want to ask him the questions before he has had three years in which to think it over and consult his attorney. (Applause)

Do not talk to me about crime waves as long as you tolerate complacently and placidly, and even enthusiastically, the archaic machinery which has no bearing on our present problem and does not fit our present needs. Apply it to your own business, as I say. What is good enough for you in your own business where you expect to use justice ought to be good enough for society, where its very existence sometimes is at stake.

Well, now of course, that really is Judge Kavanagh's territory which he has studied for so many years and which tonight he has voiced in this wonderful message we have heard. My particular contribution, I suppose, is whether or not by any remote chance -- I do not suppose it is true, -- but is there any remote chance at all that Prohibition has anything whatever to do with lawlessness and the crime wave? Well, some people say that lawlessness has increased since Prohibition. I don't know whether it has or not because I have never taken the time nor have I the facilities to investigate that subject. Other people say that lawlessness has decreased since Prohibition, and I don't know that either. Some say it has, some say it has not. It all depends on which side you are. I do not pretend to know anything about it. I do not know anything about Prohibition anywhere, except New York, and there is plenty here to learn about it for longer than I shall be able to stay in office. (Laughter)

So anything I say is just for home folks and only refers to the District which I have the honor to serve as United States Attorney. I say that so I won't be misunderstood. But I have heard,

(Laughter) and there is some gossip which I cannot confirm, that other large cities in the United States which are not situated in the Southern District of New York have, in lesser degree, the same problems to face that we have here. So I am going to talk for a few minutes about what I call Prohibition lawlessness. I am going to surprise you. I am not at all going to talk about the lawlessness of the individual who buys liquor for his own consumption, or the lawlessness of the individual who manufactures liquor for his own consumption. That controversy has been raging for the last four or five years without any signs of abatement. It has plenty of debaters on both sides of the fence, and it does not need any contribution, either pro or con, from me. On the one side you have the epithet that such a man is a liquor criminal, that he is failing to uphold the Constitution of the United States, that he is setting a bad example to his children and to his neighbors. On the other side you have the assertion that a man has a moral and ethical right, so long as he is willing to take the punishment, to protest against a law in which he disbelieves, even to the extent of violating it; and then, to add a little more fuel to this flame of debate, this particular side of the controversy drags in the Fugitive Slave law of the United States, and the justly celebrated Boston Tea Party, and so the debate goes on. (Laughter)

I have nothing to say on that issue. The Prohibition lawlessness that I am talking about is the lawlessness, the professional lawlessness, the crimes committed by professional law-breakers in connection with the non-enforcement of Prohibition, and you will understand that when I speak of Prohibition, that is simple shorthand for non-enforcement of Prohibition. That is a sort of code to save time. That is the first kind of a crime I am going to talk about, the law breaking by

professional law breakers that is involved in the present situation in which we find ourselves in New York City, because of the existence of Prohibition on the books, and the non existence of Prohibition in substantial form as a reality.

The second kind of lawlessness which I am going to talk about, which I call Prohibition lawlessness, and these two categories fill up the content of what I mean by Prohibition lawlessness, is the breaking of the law, the perjury, the dereliction of duty of those who may be employed by the National Government or by the City or by the State and charged with the enforcement of the law. So, to repeat, what I am talking about by Prohibition lawlessness is the organized and unorganized crime which goes with the professional law breaking of the Prohibition law and, second, is the crime, which is the necessary consequence, committed by people who hold some kind of public office, and it would seem to me that that is worth talking about.

Why, I had no idea until several months ago what Prohibition lawlessness meant. The majority of you have no idea what Prohibition lawlessness means. You don't know it. You cannot know it unless you get in a position where you get a little peep at it. Unless you get in a position where you see this open sewer from which the noxious vapors are at present emerging and which threaten our very society, or threaten our safety, and threaten our existence. Many people think that Prohibition lawlessness is buying a case or two of liquor from some nicely laundered, nicely dressed steward of his club whom he has known for many years and who, in all probability, is

himself a teetotaler. They think that this is Prohibition lawlessness, and he is the law breaker. That is not the kind of lawlessness I am talking about. A short time ago I talked to a man who had been arrested who, for many years, had been violating the law in a very substantial way. I knew, of course, that he could not have operated for so long a time in such an obvious and substantial way unless for some reason or other, his operations were not seen by those charged with the supervision of his operations, and their prevention. He told me that he had paid gangsters thousands of dollars for their protection. He did not know of his own knowledge where the money went. He knew that he was unmolested. I said, "If you will testify before the Grand Jury and give the names of those gangsters that you are talking about, I will do nothing whatever to you. We will turn you free, and I will do nothing to your place of business." He said, "I would rather take any jail sentence that I am likely to receive than be killed within 24 hours." I am quoting him. Maybe he is mistaken. I am telling you what he thought, and he took a jail sentence to make good his word.

Four days ago a man came to me and told me of an intolerable place next door to his home, with a few blocks of this hotel, which had ruined his property, his residence, which threatened the very safety of his family if he stayed there, into which all night long men and women congregated, out of which they scattered drunk, disorderly, crazed with the denatured poison and rotten liquor which most people get now, except the very wealthy, or those who can afford to pay, if not wealthy. Well, I said, "We will see what we can do." He had made complaints in the usual channels. "We will make a special case of this. We want you to testify as a responsible

citizen.” He would have made as good looking a witness as anybody I see here. He was a very good looking businessman, a man of substance. He said, “No, never.” Four days ago this was. “Never. I will leave my house, I will move my family, I will allow its value to be reduced by this disorderly place next door, rather than be a witness in this case, because the place is run by ex-convicts and I can see the kind of people that congregate there all night long, I will not testify. Get them if you can with somebody else, but do not ask me. My life is worth too much to me and my children.”

Is that Prohibition lawlessness or is that bunk? And that happened within four days. Would he have any motives to come down to me and lie? Would he have any motive to refuse to testify in a case that had so offended him, that was ruining his property that was disturbing his family? Would he have any motive to refuse to testify, except fear? That is Prohibition lawlessness, that is defiance, the defiance which organized bootlegging and organized violators of the law are hurling; that is the challenge that organized violators of the Prohibition law have made to society, and which have been made possible and invited and welcomed and patted on the back, and received into the family by passing a law and putting it on the books and being satisfied, without doing anything one way or the other. (Applause)

Is that lawlessness, or is that just a man buying a case of liquor from the steward of his club?

What is it? Four or five months ago we made our first direct challenge to an organized bootlegging ring of whom at least two had long persona; prison histories, including, in the case

of one, a trial for murder, which resulted in a disagreement or an acquittal. One of the most important witnesses in that case was a subordinate who, in the parlance of the underworld, had squealed, and who was our most important witness because of the disclosures he had made. Some three weeks ago he committed suicide in a hotel in which he had locked himself. Why? Somebody run away with his wife? Not that I ever heard of. Was he caught short in the market? We have not heard that he was in Wall Street. We did not know of any of the usual conventional reasons for suicide. I don't know why. I cannot tell you. I just state the facts, that there was the most important witness in our first direct challenge to a big, wealthy, powerful and hitherto unmolested gang of bootleggers, and their most important witness committed suicide with three weeks. Is that Prohibition lawlessness, the kind I am talking about? Nothing controversial about that; nothing debatable about that; no question there of personal liberty. I am telling you what is happening.

Within one week a witness in another case came to my assistant, and his disclosure had become known to the bootleggers against whom he had testified. Within one week he came and said his like had been threatened by four men. Anonymous letters? Oh, no. the never disturb anybody. Every public official gets those. A direct threat by four men that if he testified he would lose his life and with a week that report has been made. What do you call that? No matter what kind of a case it is, Prohibition case, larceny case, burglary case, narcotic case, speeding case, any kind of a case; make it as trifling as you like; make it a law you do not believe in; what do you think of a

condition of affairs when the administration is challenged by four thugs who say, “If you will testify we will kill you”? Is that lawlessness, or is that just shaking up a cocktail?

That is what I am talking about, and that is all I am talking about, Of course, I would not have known anything about those things until I got inside and took a look at it. We have found that to a very substantial extent, not wholly, but a very substantial extent; the employees, if not the principals themselves in the bootlegging business, are recruited from the underworld. The money made by bootlegging, because of the enormous profits, is more than any other crime, so far as I am aware, that has ever been conceived or made possible by statute law. The profits are enormous in New York where the demand keeps up with the supply. (Laughter) Do you think for one moment that professional criminals and ex-convicts and gunmen can be employed in this business which, I assure you, is sometimes hazardous -- not all the public officials are by any means corrupt -- do you think that type of man can be employed as a rum-runner or a truck driver, armed, ready to shoot, and by some kind of process is going to limit his future activities just to this particular controversial law? Is he going to be built that way, or if something comes along that offers and opportunity, isn't the same man who is being subsidized by the non-enforcement of prohibition, going to get over into some other department and field of endeavor? What is there in the nature of the professional criminal which should make his say, “Aha, I must just stay within the realm of a law as to which there is a controversy?” He would say, if you put that to him, “What are you giving us?”

And so I could go on and multiply illustrations. When the United States put the Prohibition law on the book and does not take the adequate steps to enforce it in those States, which do not enforce it themselves, and thus give the Government a free Prohibition rider, which is what the National Government wants and expects, and admits it thought it would get, when that was put on the statute books, then the result of that inactivity is simply to grant charters to lodges and clubs of crooks all over the place, like New York City.

We say to Congress, “If you won’t give us the right kind of machinery for coping with this law, by giving us policy courts, and a great many of them, and by giving us money, and a great deal of it, then, from very necessity, you are giving appropriations to the crooks, without knowing it.”

(Applause)

Now, I will take up the other half, the second half of what I call Prohibition lawlessness. Millions and millions and millions of dollars made by bootlegging in this vicinity in the importing business and, of course, the real business is the bootlegging of industrial alcohol from which liquor is made, for the most part the millions and millions of dollars made cannot be made without a perfect carnival of corruption and bribery and perjury and violation of somebody’s oath. (Applause) That is the thing that gives you a sort of a jolt when you get into these things and you see it. It cannot be done without corruption, and, again, if you think for a moment that you can have wholesale gigantic corruption of the National, State or City employees, going along very nicely and doing no harm whatever because the law happens to be one as to which there is a

difference of opinion, I think you are greatly mistaken. You have gangrene on the arm. You say, “That is all right, I will just keep it there on the arm.” There is danger in it. Or, you have blood poison on your great toe from a dye in the sock. You say, “That is all right, I don’t mind losing a toe, I think I will just keep it down there. I believe in it. That is the way I feel about it.” You cannot control the spread of poisonous pus in that way, and think of the effect on our entire civil service, National, City and State, to whom we look for the operation of our government, to whom we look for the operation of our city, to whom we look for the protection to our property, to whom we look for our very lives. If you throw among them and throw among them, as we have done, this enormous temptation, it is too much to expect that everybody will resist. When a member of the Coast Guard, an officer of the Coast Guard, at \$99 a month, with a wife and children on shore, can make \$300 to \$500, \$1,000 in two or three hours, by looking in another direction, you cannot expect everybody to resist a temptation of such colossal magnitude, I say that Prohibition lawlessness, the consequence of the passage of a law without any machinery for enforcing it, or without any effort to modify or repeal it, has been a very serious contribution to the present condition of crime. (Applause)

My friends who have talked to me have been very much surprised that along in September or October I made a statement at the Bar Association that in my judgment the “Wets” of New York ought to get a State law for their own protection. I haven’t convinced anybody of that yet, but I would not have supposed that myself, twelve years ago. It is only this angle which you get, only when you see it, that you realize that if the wets of this State think they could ever get the

Prohibition law modified or repealed, well and good, let them go at it. The other gentlemen say, “We are satisfied, it never will be repealed,” so that we don’t do anything. But they do not realize that while they are waiting for that and working for that in an orderly, safe, democratic way, through the ballot box, for their own protection from these horrible conditions which have been forced upon us by a law which is not enforced, they ought to turn to the only relief which I personally see in sight, and that is a State law to deliver us from the approach of this death, in the words of St. Paul.

That is not good doctrine, because people do not like it, but it is based only on the premise that the Prohibition lawlessness is a serious menace to this community. We are blowing down the barrel of a loaded gun without knowing it. We are little children making mud pies in the back yard out of dynamite. This is not fantastical. I have not lost any sense of proportion. If you doubt it, you come down, stick around our office for sixty days, and see whether or not you will go out and tell your friends that you must get out of the present Prohibition muddle, either by going one way and modifying it and repealing it, or by going the other way, taking your medicine, getting a State law and seeing that it is enforced for your sheer personal protection. (Applause)

Why, the bootleggers have got society right by the windpipe, and it is going to get worse, and it is going to get worse, because their appropriations are so much greater than ours. The money they get from profits is very much more than the money that Congress appropriates for this work, and there is a great campaign of education that I think ought to be carried on. I do not say I am

right. I may be wrong. We all make mistakes, But it is my candid judgment that the present deplorable situation which we are in is due to the fact that too many people are just enamored of a law if they can read it in print and feel that they achieved a great moral victory if they have accomplished the passage of legislation, and then the committee holds a dinner and celebrates and disbands and goes home.

Did you ever hear of a man who, on signing a promissory note, called in the neighbors and had a big party? Did you ever hear of a man who, on the anniversary of that day, every year for five years, on the anniversary of that day, called in the neighbors and had an even bigger party to celebrate the promissory note which he gave five years before, and which he has not yet paid? Why, the putting of any law in the books is only a promise by the majority to the minority that that law will be enforced, and a law which is put on the books and then, in effect, repudiated because they may be afraid to come through with the necessary revolution of the court system, for fear there will be a reaction or recoil, is far worse, it seems to me, than if the law had never been enacted.

Concluding, you see how clear I make it, as I have made it many times in the last six or eight months, that I do not express my personal opinion upon the wisdom or the folly of the Prohibition law. As a man sworn to enforce that law to the best of my ability with the aid of the machinery provided, I have no business to have or express publicly an opinion on that subject. But I do feel that it is within my oath of office and it is within my obligation to my neighbors

who live here in New York, to give them the benefit of the information I have received, and to warn them that if they are well advised they will, as rapidly as possible, choose one of the two exits which are provided out of the present serious situation, either to see that the law is enforced either by the State or the Nation, or else modified or repealed so that the present subsidy, support, nourishment, and care given to the bootleggers shall be removed.

QUESTION AND ANSWER PERIOD

Now, I am ready to have some questions asked, some of which I may answer. (Laughter and Applause)

QUERY: I want to ask you, isn't the publishing of these murders in the daily newspapers on the front page that is causing the children of the families where it goes to know these things, and when they know they are not punished it makes criminals out of so many?

MR. BUCKNER: The gentleman wants to know if the publication of the commission of crime, particularly the publication of the fact that crime is not punished, does not have a bad effect upon the children, and if it were not better if those things were suppressed? That leads to a firm judgment of mine which I frequently have had occasion in the last six months to call to my defense, and that is this, I believe in the people knowing the facts. (Applause)

QUERY: What reason have you for believing State enforcement would be more effective than Federal enforcement?

MR. BUCKNER: My reason for believing that State enforcement would be more effective than Federal enforcement is this, because the State already has sensible, adequate, efficient machinery for the prosecution of petty offenses by the thousand and thousands and thousands a year, without jury trial, by Police Courts and Special Sessions. The Federal Government can do nothing with Prohibition, no matter how much money they may give, until they revolutionize their court system to be like that of New York City, which the conservatives in the rural districts would probably never consent to. It would, of course, require some extension of State machinery, but the skeleton is here. It would cost some money, but it is costing a lot of money now.

QUERY: Do you think it would stop raining if we ceased to publish weather reports?

MR. BUCKNER: Very good. I get support from the floor by the gentleman who wants to know and wants me to ask the other questioner if it would stop raining if the weather reports were withdrawn from the newspapers.

QUERY: After hearing from you on this subject tonight, I think that every man that takes a drink is encouraging the crimes that are going on. In other words, if we did not drink, that they could not sell it, and we would not have any bootleggers, and every man who takes a drink is helping

to foster crime. Don't you think that we ought to stop drinking, go to temperance, and encourage it? If we don't drink we won't have any bootleggers. We are all responsible for it, and if we would stop drinking it would help. (Applause)

MR. BUCKNER: Well, it was decided a good many years ago by the economists that there where is no demand there is no supply. (Laughter and Applause)

QUERY: would not the State official be subject to the same kind of graft and subsidy as the Federal official, if we had in force in New York the system that you advocate?

MR. BUCKNER: Oh, yes. But you see, in any group of officials there is always large number, probably the majority, who are incorruptible, and whenever you have a much large enforcement agency, and increase your agents, you increase your chances of getting some enforcement, and they are very much greater than when you have a smaller group. I will not say, I know too much to say, that all the officials commit treason to their government, not matter how humble their particular job may be. But the temptation would be there. You bet it would be there in bundles. (Laughter)

QUERY: Is it simply a question of degree?

MR. BUCKNER: No, because New York State has the machinery, as I say. It has courts here. In the Southern District of New York I think about one-third of the time of one Judgment under normal circumstances is give to the enforcement of Prohibition, and every case requires a jury, whereas, if you had a State law, sensibly enacted, you would have the power certainly for Special Sessions, and perhaps for every Policy Magistrate, to sentence for disorderly conduct. And they could dispose of thousands of cases where we are simply calling the roll some morning for all the people who have come in for their Constitutional right of trial by jury.

QUERY: You just quoted an economic law that where there isn't any demand there won't be any supply. I think it is equally true that where there is a demand there will be a supply. Hitting merely at lawlessness that you speak of, aren't you merely boosting the price of liquor up? In plain talk, isn't that what you are doing, because you are leaving the demand there and seeking to hit at the supply, which will only bring about a situation that your crime will become better paid. The harder you will hit at it the harder it will recoil, because the demand will not be satisfied, and those demanding it will pay more, and you will not cure your situation until you can hit adequately and effectively at the demand.

MR. BUCKNER: Of course. A single denaturing plant or a single rum ship, I figured out one time, with 300 cases of Scotch brought to shore by a Coast Guard boat and a Coast Guard crew, would require, at 15 or 16 drinks to the bottle, as I recall (Laughter) some fifty or sixty or

seventy-five years to prosecute each consumer of each glass of liquor, of that single cargo landed in two hours by one Coast guard boat on a stormy afternoon.

However, you know the whole prohibition discussion in one way is very silly, for this reason: don't you know that if we had the Policy Courts, and if we had the enforcement agencies, if we had anything that we have in every other law, I am not asking for any more, that the demand for liquor among people of the class at this dinner would be reduced 85% over the week end? Don't you know that people of the upper classes, so called, would not run a fifty-fifty chance of being arrested and put in jail or sentenced to thirty days in the Workhouse by a Police Magistrate, and the whole thing would be changed, in my opinion, as soon as we had the machinery, since we are all more or less engaged in fortune telling, which has never yet been provided? You cannot talk people into obeying the law any more than you can talk these millions of people in my district into obeying the traffic law, if you had one-third of one traffic court and every traffic violation tried by jury under the Constitution. (Applause)

QUERY: I would like to ask whether you think that crime can be reduced if there were more stringent laws regarding the sale of such things as cocaine and other drugs. In other words, the criminal today, when he is under the influence of cocaine or a similar drug does not hesitate to shoot a gun, for he scarcely knows what he is doing. Do you think that the criminals could be suppressed, that is, criminality could be more suppressed, if there was some money spent in other

ways, if we were to spend some of the money that we are spending on this Prohibition for the purposes of trying to stop the sale of these drugs?

MR. BUCKNER: I don't know enough to answer you. I suppose that some Inspector of Policy could tell whether or not more criminals are apprehended under the influence of bad hooch or under the influence of dope. I suspect that the number that are under the influence of bad liquor, which is about the only thing they can now get, is many times as many as those who operate under the influence of narcotics. I do not really know.

QUERY: Regarding the complaints directed against Prohibition, isn't it largely due to the fact not so much as adequate Police protection or legal machinery, but isn't it true that every law, regardless of police protection, must first have public support and public commendation before you can enforce it?

MR. BUCKNER: I will answer you this way: There are at this moment, right now, only 35 men, Prohibition Agents, charged with the detection of the criminal violation of the Prohibition law in all of Greater New York, in the State of Connecticut, and eight counties leading up to Albany, because appropriations have been exceeded, and that force has been reduced. Suppose, take our traffic law, in the State of Connecticut and all of Greater New York and eight counties leading up to Albany, that is 10,000,000 people, supposing we had 35 traffic cops of all kinds, and not over two traffic courts for violators of the traffic laws, every violation being tried with a jury, and you

have your newspapers, and you say, "I see there were 5,000 automobile accidents in the last six months. I tell you the law cannot be enforced unless it has got public sentiment behind it." That would be perfectly foolish, and it is perfectly foolish to speculate whether Prohibition can be enforced in New York until it is tried, and it has not been tried since I have been around here.

QUERY: Can you recall in American history a law which was an unpopular law which was enforced?

MR. BUCKNER: I am not very much of an historian.

QUERY: I am asking you, within your memory or time, do you know of any law which evidently is an unpopular law that you can enforce?

MR. BUCKNER: Of course, every law is unpopular with those who break it. (Laughter and Applause)

QUERY: I believe that Prohibition crimes would be materially reduced by legalizing wine and beer.

MR. BUCKNER: That is a question I have never answered. I will tell you what I think about it, just pure speculation. I said to a very prominent man who has written on the subject and whose

name I won't disclose, because it was not meant for publication, I said, "Why in the world don't you try to experiment of wine and beer? It cannot be any worse. It may be very much better, and certainly it is worth the experiment." He said, "I think the Prohibition law should have had that in the beginning, but since it did not have it in the beginning, it would be a step backward and retrogression. I am opposed to it and it can never happen." My answer to your question is in our present plight I think it is an experiment which might well be worth trying, although that is getting out of my province.

QUERY: In view of the fact that it is worth a man's life to testify, what good would it do to have more courts and more machinery?

MR. BUCKNER: The gentleman wants to know in view of the fact that people have said to us that it is worth their lives to testify, what good would it do to have more courts and more machinery? The answer to that is this, that when you have a battle and you have three or four people on one side and our or five thousand soldiers on the other side, the chances of getting killed are very much greater than if the two contending parties are about equal, and I want Judges, and I want enforcement agents, if we are to have the law, and we want the machinery, and we want Assistant District attorneys so that we will have some kind of even show in the fight with the bootleggers. (Applause)

QUERY: What is the result of your procedure by injunction and padlock?

MR. BUCKNER: The procedure by padlock seems to be, so far as it goes, extremely effective. It does not go anything like far enough, because of the lack of the right number of enforcement agencies. The 500 place that we have padlocked in 12 months, including some having very heavy financial investments, are, of course, only scratching the surface of the number of places that might be padlocked. But when a man tells me that it costs him \$75,000 to have his place padlocked for six months, and he takes the padlock, I think that so far as it goes, that is doing something. Now, so far as the injunction goes, it is not quite time yet. The period of gestation has not quite passed, because only the last few months are we beginning to get personal injunctions against the owners of places we are padlocking, and if we had the necessary agents and enforcement authorities, to discover the same people violating the law a second time, they then could be put in jail without a jury trial which would, I think, be extremely helpful.

But, again, we are talking about the question of adequate provision by Congress to give us sufficient Prohibition agents and machinery to do this job. I think in New York City, with the conditions that we have been faced with, that the padlock has been the most effective weapon that has yet been devised. But, of course, a hole in the wall they don't care so much about. They move out and open up somewhere else.

QUERY: Have you any idea of the cost of enforcing the present law if proper and adequate machinery were set up?

MR. BUCKNER: I made a real bona fide guess, a calculation, very conservative, but even before I tell you the amount of money, you must understand that the court machinery of the Federal Courts must be changed in order to be like the court machinery of New York City, so far as Special Sessions and Police Magistrates are concerned, and a jury trial must be abolished. In other words, you have got to put that over the country first, and that would probably take a Constitutional amendment. But that is all right. If it is done, and I figured it very conservatively, and cannot repeat the items to you, but I made the statement recently that a conservative, minimum estimate for New York City along, after the revolution of the courts, would be \$15,000,000, and the appropriation now for the entire United States is \$10,000,000.

QUERY: As I understand it, your contention is that the thing now lacking in this State is the fact that there is no enforcement law?

MR. BUCKNER: That is right.

QUERY: Isn't it true that there was a State law on the statute books several years ago, the Mullan-Gage Act, and that law was repealed?

MR. BUCKNER: Yes.

QUERY: Are you asking for the same kind of a law as the Mullan-Gage Act?

MR. BUCKNER: No.

QUERY: What was the matter with the Mullan-Gage Act?

MR. BUCKNER: It was drawn by its friends. They did not know how to draw it. I will explain it.

QUERY: In what respects? What kind of a law do you desire that we do put on?

MR. BUCKNER: I want a law that the Special Sessions and the Policy Courts can enforce, without time consuming and cumbersome trials, such as we have in New York City for petty larceny and disorderly conduct and in the old days of the excise laws. The big objection to the Mullan-Gage law, in order to make it severe, somebody made it a felony, and every single prohibition violation under the Mullan-Gage law actually had to start with an indictment of 23 men, and then be tried by a petty jury in court, just like a murder case or a burglary case and, of course, the Mullan-Gage law was electrocuted without trial. No wonder that the calendars got behind two or three years, which gave Governor Smith a strong argument against the re-enactment of a State law, overlooking the very important fact that, of course, that State law was not the law which the friends of Prohibition should have adopted. You cannot enforce Prohibition in New York City with a jury trial, no more than you can enforce traffic violations or

disorderly conduct or drunkenness or excise violations in the old days of the saloon. The Mullan-Gage law making it a felony was most preposterous and an inefficient kind of a law that you can imagine. It must have been written by somebody who did not understand the actual working out of law enforcement of that character.

QUERY: In your opinion, are there more drinking places today than there were before Prohibition? (Laughter)

MR. BUCKNER: The gentleman wants to know if there are now more drinking places than there were before Prohibition. Of course, I don't know. No one has taken a census of drinking places both before and since Prohibition. I have an idea, of course, that there are very many less drinking places now, even with our non-enforcement of the Prohibition law, than before. But I should warn the gentleman that because of the quality of liquor which is now dispensed, that going to only a few places under present conditions makes the impression of going to many place under form conditions. (Laughter and Applause)