

ADDRESS

OF

HON. JOSEPH P. KENNEDY

CHAIRMAN OF
SECURITIES AND EXCHANGE
COMMISSION

BEFORE

AMERICAN ARBITRATION ASSOCIATION
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**Address of Hon. Joseph P. Kennedy, Chairman of
Securities and Exchange Commission, before American
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It would be difficult to pretend indifference to the warmth of your greeting. I thank you for it and rejoice in the opportunity given me to talk to your association at just this time.

For after all, this is New York, the barometer of the Nation's business. I have lived in New York, shared its prosperity in former years and hope and expect to, again. I therefore claim the privilege of speaking frankly to you about matters of common concern. And in all frankness I must say that this ace of American cities is not giving a good account of its stewardship as the pace-setter of business enterprise. Those whom I have been meeting recently in other sections of the country are unanimous in declaring that New York is the "bluest" spot in the country with respect to business morale. Indeed, one of your financial editors told you so in his column only a few days ago. And when New York is blue, every other section of the country is confused and confounded.

Gentlemen, I am deeply concerned about the low state to which courage and confidence among business men have fallen. Moreover because the rest of the country has a high estimate of the prophetic value of New York's opinion, you should be satisfied that your pessimistic frame of mind has a reasonable basis before you allow its influence to infect other communities. This industrial machine of ours is so delicate an instrument that opinion everywhere else is sensitive to its fluctuations here. And we must admit that today at least, New York registers gloom and not sunshine; discouraging prophecies, not hopeful suggestions. As another clear-headed editorial observer stated the other day, Cassandra has dethroned Pollyanna.

Let us see if this brooding is worthy of us; whether the "jitters" we talk about today isn't merely a manifestation of temporary ailments common to every generation in our history. Is there really any justification for the universal lament that things are worse today than ever before because today, in contrast to other periods, there is "too much Government in business"?

You may well question my right to drift so far beyond the pale of the technical subject matter of the Securities and Exchange Commission. But in the discharge of our specific functions we of the



Commission have necessarily had to study attendant economic and social factors. Some first-hand knowledge of conditions leads me to suspect that those who despair of the future because of governmental activities are too often substituting guesswork for fact, and emotion for reason.

I happen to head one branch of the Government which has been pointed out as the arch example of Government interference. Because of this fact I ask you to bear with me while I attempt to develop three points which I believe will be of interest to you.

First: I would like to show you from the testimony of an unimpeachable source the logic of the expansion of Government activities in the affairs of our daily lives; secondly: I wish to show you how one branch of the Government—the Securities and Exchange Commission—actually operates in those activities of our daily lives which are its concern; and third: I hope by this demonstration of our objectives and activities to persuade you that it is cowardly and unmanly and un-American for one to blame the Government for his own lack of courage and enterprise.

Both the Securities Act of 1933 and the Securities Exchange Act of 1934 are the products of a civilization which had attained the ultimate of complexity in the daily routine of its life. Indeed, almost 20 years ago the sagacious Elihu Root said:

“We are entering upon the creation of a body of administrative law quite different from the old methods of regulation by specific statutes enforced by courts. As any community passes from simple to complex conditions the only way in which Government can deal with the increased burdens thrown upon it is by the delegation of power to be exercised in detail by subordinate agents, subject to the control of general directions prescribed by superior authority.”

That in essence is your own method of procedure. If I understand correctly the purpose of the American Arbitration Association, you seek to take disputed matters out of the delays of courts and into the expediency of arbitration and conference.

This, gentlemen, I submit is government by commission. I cite Mr. Root's prophecy of law administered by Government agencies as my text because I seek to enlist your support of our efforts to stimulate financial enterprise. To quicken the flow of money into business and to relieve the apprehension and fears of business men and bankers, which seem to have paralyzed corporate financing, should be a common ambition. I am persuaded that if I can remind the business men of America that the regulation of the business of dealing in securities is not the petulant imposition of discipline born of hatred and rancor, cooperation and response would be certain. If I can convince you that securities regulation was the inevitable and logical result of the complexities of life so accurately forecast by Elihu Root, there will be

less “quitting” and more “carrying on” and fewer baseless nightmares about governmental control.

If I can show you further a practical reason for accepting and adopting the interpretative rules and regulations promulgated by the Commission, I am sure that you, as practical business men, will follow Mr. Root's admonition.

“There can be no withdrawal”, he said, “from these experiments. We shall go on; we shall expand them, whether we approve theoretically or not, because such agencies furnish protection to rights and obstacles to wrongdoing, which under our social and industrial conditions cannot be practically accomplished by the old and simple procedure of legislatures and courts.”

How well these words describe what Congress attempted when it said that the sale of securities was affected with a public interest. Surely the phrase “public interest” means “protection to rights and obstacles to wrongdoing.”

That, gentlemen, is the objective of the Securities Commission. Make no mistake about the purpose of the legislation. Business must be financed. Those who do that financing—the investors—must be protected. Those who borrow that money—the business men—without whose initiative and courage there can be no country worthy of our history, must likewise be protected. If the tenor of the original 1933 act seemed to be largely or exclusively in the interest of the investor, let me say that the efforts of Congress and of the Commission since seem to have been in the interest of the borrower without impairing the rights of the investor.

In the complex setting in which we live and work and build, the necessity for a healthy regulation of the investment market must be apparent to all right-thinking people. We cannot turn back. It is idle to dream and wish for the return of a former day, with its unrestrained opportunity for unfair and dishonest practices. Our task is to face the future and with the aid of these regulatory laws to restrain the power of the strong over the weak. These laws are to be administered in the spirit of their enactment, protecting the investor and stimulating the free flow of capital into new enterprise. We have tried to encourage expansion by removing the obstacles of unnecessary procedural requirements and by minimizing the hardship of undue effort, the risk of liability, and the burden of expense. Our efforts, while they have received the approbation of even the most caustic critic, have brought little success in financing until some notable recent registrations. These, I am hopeful enough to believe, mark a turn in the road.

In my very first talk after taking office I said that the charge that pioneering and daring in business had been discouraged by the new securities legislation was insincere. Happily, some able business men

have agreed. You cannot minimize the fact that the two major pieces of financing registered within the past fortnight have represented a true cross section of the country.

Forty million dollars in Chicago in the case of Swift & Co.

Forty-five million dollars on the Pacific coast in the case of the Pacific Gas Electric Co.

Only a trickling little stream of private corporation finance as yet, where before there was a flood tide. But the stream is large enough and representative enough to justify the statement that there is no longer any excuse left to the corporation which has hitherto hesitated to go forward with confidence.

Can any reasonable man say that the control of those great corporations is in the hands of men recklessly imprudent about the management of their affairs? And if these men, after careful consideration of all the problems involved, have concluded that there is no unreasonable liability, burden, or responsibility imposed by the new securities law, who dares to assert any longer that the Government has made corporate financing legally impossible?

Let me reiterate to emphasize. Can these men, representing some of the best minds and hearts in American business, be entirely wrong, and the hesitant majority who carpingly criticize the existing law, without taking the trouble to become informed concerning it, be correct? We know better.

Let us accept today's promise on its face. I am rash enough to believe that these recent registrations are harbingers of a real upward trend. Do not be disappointed if new financing is not a daily occurrence and business does not boom immediately. There will be lapses of course. A snow storm in March cannot delay the advent of spring. It is enough if the turn has been reached.

You will find upon reflection that although the Pennsylvania Railroad financing in the early days of the 1908 depression unquestionably foreshadowed recovery, the stride of business activity was not manifest for some months. Also, that when the Northern Pacific financed during the 1920-21 reaction, that event was hailed as foreshadowing recovery, but it was some months before the recovery was recorded. The fact is that able business men, wisely advised, have flashed a green light signaling that the road ahead is clear of disaster; that the hurdles of legal complexities, expensive fees, and laborious detail have been practically eliminated; that now there can no longer be any excuse for further delay.

For months we of the Commission have been advising business lawyers everywhere that the risks imposed upon honest business by the new legislation had been so greatly reduced by amendment and administration that the requirements today do not exceed those of the common law. Lawyers were not receptive at first and created

a barrier which business men could not easily ignore. The legal profession, naturally slow to embrace new legislation, and the business man, proverbially timid to enthuse over innovations, have finally seen the light.

We expect some sizable financing will follow. We expect a declaration of faith in the future of our country such as has characterized American business at the turning point in every previous crisis. I urge you (business men) to seize the torch of leadership in this necessary crusade. For months it has been trite to say that business lacked confidence. That statement is still true. Business is better than confidence but business today has an underlying courage which sadly lacks aggressive leadership. New York, which has been holding back largely because of misapprehension and unwarranted fears, we hope will provide that timely leadership.

Government regulation under the Securities Act will safeguard your financial structure, not penalize your initiative. Government regulation affords you accessibility to legal counsel and corporation accountancy advice never before available to business men anywhere in the world. America's ablest business lawyers and accountants have cooperated with the Securities and Exchange staff in setting up the registration forms which leading corporations have accepted as their guideposts on the road to financial stability. The most powerful business man and the richest investor could never have had access to such authentic advice as was cheerfully and freely placed at the disposal of the Government in the studies which led to the adoption of present registration forms.

So, I say to you—and I now speak having in mind the example of seasoned practical leaders—that the road to new financing so necessary to recovery has been cleared for you. Money and credit, the lifeblood of profitable business enterprise, have glutted the market recently. The cheapest thing in the world today is money. Cheap money and lack of business confidence are synonymous. But courage is returning and money may not always be cheap. Stockholders and investors will be served if business is now fortified against the financial vicissitudes of the future. Accept the fine example of these business leaders and resist the small-minded critic who sees evil in every Government agency. Wherever you lead, the rest of the country will follow, and 60 days before anyone knows it the victory over doubt and despair will have been won.

It is true, unfortunately, that at present the Street has apparently very little basis for optimism if the present volume of trading be considered the sole index of the future. But all intelligent men know that the present figures are far below normal; they belong with gloomy predictions about the future of the business which I believe are premature and unsound.

But this much I do know and make bold to state: The confidence of the investor has been so completely shaken that, regardless of blame or justification, it required an agency such as our Commission to help regain this lost confidence; to restore the shattered prestige of the business. In the work of protecting the investor, particularly the small investor, against unfairness and dishonesty, we are the recipients of numerous complaints daily. As one might expect, fraudulent charges are made most frequently. Misleading and incomplete prospectuses, manipulations, and the circulation of deceptive information—in other words, charges arising out of the new legislation of 1934—are far less frequent. The old standard complaints of “bucket shop” and “sell and switch” swindles have not disappeared.

Even a cursory review of the recent history of security swindling amazes one. The shrewdness, cleverness, and daring of these trade pirates cannot be minimized. With a remarkable, almost psychic sense of what the public is likely to “fall for”, these racketeers constantly shift their wares and their technique. In fashionableness and up-to-dateness they rival the Parisian modiste. Colonel Lindbergh flew the Atlantic and before he returned, the country was flooded with aviation stocks, capitalizing the Nation’s latest thrill. A substitute for silk was advertised, and rayon stock swindlers pound the doors of unfortunate victims. The Sunday magazines feature the electric eye, the photoelectric cell, and the glib man from the “boiler shop”, aided by the tipster sheet, speaks caressingly of the golden dawn of tomorrow’s wealth. The Government abolishes the domestic market for gold, and mines long since abandoned are glorified in the language of fantastic promises to catch the unwary sucker, the only requisite being a hole in the ground, a ladder, and a feverish imagination. How reminiscent of Mark Twain’s definition of a mine: “A hole in the ground owned by a liar.” Remonetization of silver is discussed, and a flurry of silver mines with romantic names occupy the interest of the security underworld. Beer comes back, and its return is heralded by fraudulent brewery and beer-barrel stocks. Comes repeal and with it the intoxicating supersalesmanship of the distillery promoter. All of these are compelling evidence of the astonishing energy of the crook and the appalling credulity of the public.

Let me assure you that I have no intention of creating in your mind an inference that all promotions of stock in the various enterprises I have enumerated are fraudulent—far from it. Many of them are sponsored by honest and energetic individuals, but whenever a reputable company capitalizes something new, there are the racketeers at all times ready to pass off their worthless wares for the sound securities of the honest promoter.

Let me relate to you a recent one. You can’t guess it: It’s potash. As you know, potash is used chiefly as an ingredient of fertilizer and

is a very earthy substance. In this case the promoter reminds one of “the man on the flying trapeze.” For his balance sheet he modestly claims a value of \$3,000,000 for leases held by the company. Unfortunately, the company owned but one lease and the royalty charge was so high that even if it contained the richest deposit in the United States it could operate only at a loss. The contract rights were in fields where no commercial potash had ever been found, and even if the potash had been found, Federal regulations prohibited mining operations on this property. The prospectus is guaranteed to excite the envy of the Ananias Club. It lies about value, earnings, geography, geology, metallurgy, economics, and history. A close examination convinced us that the only truth in the whole prospectus was the address to which you are invited to send your money. So much for potash.

So you see, gentlemen, the magnitude of interstate frauds, the comparative helplessness of State officials limited by State boundaries is a complete vindication of our intervention in this field.

In addition to its other work, the Commission, at the request of the Congress, is conducting a special study of reorganization and protective committees. This report is desired by Congress as a basis for intelligent legislation. It is hoped and believed that this study will constitute a significant contribution to the annals of American finance and will accomplish long-needed reforms in our reorganization system, a field where unfairness and overreaching has been the normal experience.

Students of the subject have long been aware of the need for thorough-going reform and revision of the reorganization system. That system has grown up unregulated and uncontrolled for the most part. During the current depression it has assumed gigantic proportions, with the result that there is hardly an investor in the land who is not somewhat affected by it, and hardly a court in the land which is not confronted by the problems which it raises.

The reorganization system in the past has proceeded largely on the basis of private initiative. The drive and incentive for consummating reorganizations has been in large part the desire for profit on the part of the reorganizers. This desire for profit has not always been compatible with the interests of the investors. Consequently, there have resulted in many parts of this country vicious forms of racketeering by promoters of reorganizations. In many reorganizations we have found there exists a growing evil in the blackmailing tendency of certain individuals who by threats and suits and otherwise seek to embarrass the orderly administration of the enterprise in order to capitalize their nuisance value. For these reasons investors have had to pay a heavy toll. The designation “protective” committee has a misleading significance when the parties in control use their power to protect themselves at the expense of investors. Here we

find the constant application of the materialistic philosophy that might is right.

It will never be possible for this Commission, any more than any other department of the Government, to transform into sound securities bonds, notes, and stock which never should have been issued. Nor will it be possible to design a reorganization system which will repair and restore losses which have been suffered. Substantial progress, however, can be made toward designing a reorganization system which will safeguard the interests of the investors and prevent their exploitation for or on behalf of promoters, and foster the creation of sound successor companies. No new statutes or regulations can dispel the aura of disappointed hopes that surrounds every reorganization. Constructive measures, can be taken to curb and control the fraudulent and unethical practices which have been so prevalent in that field of finance.

Time prevents my dealing in detail with the Commission's activities in promulgating forms and rules and regulations. It is sufficient to state that they have been well received by the bar and business alike.

Closely related to nearly every other aspect of the Commission's activities is the problem of the over-the-counter markets. It is probably the most difficult and most complex single problem before the Commission. Constantly we are asked what our plans are for controlling this so-called "over-the-counter" market. Shortly we shall publish the first step in our program and in conformity with our established system, the regulations will have been promulgated only after a thorough discussion with representatives of the business affected. As in the case of our first steps in exchange regulation last fall, our assumption of control shall be gradual so that needless friction and annoyance may be avoided. In this field, as well as on the organized exchanges, the investigation by the Senate Committee on Banking and Currency disclosed numerous fraudulent, unfair, and other undesirable practices which have been eradicated in the interest of the investing public.

Congress would have seemed very naive if it intended this form of trading to go unrestrained. It is our plan, gentlemen, to carry out the definite will of the Congress in this respect so that, by the rules and regulations we shall prescribe, there will be insured to investors protection comparable to that provided in the case of national securities exchanges. The problems are being studied with the counsel and assistance of the country's security dealers.

This, gentlemen, is the story of Government supervision of the security business. Is there anything here that suggests persecution? Aren't we all too government-conscious?

Things never are quite as hopeless as they are made to appear by fear, and never in the past 2 years has there been such fearing of

fear itself, as there is today. It is the cold hand of death on business initiative. Men see business sustained at a rate which would have been considered impossible 2 years ago, yet they continually cry out against the uncertainty of things.

Business is still not only better than confidence; it is better than we deserve to have it. We have not matched results with our courage. We have not been grateful enough for a 34-percent increase in general business, for the practical rehabilitation of the great motor industry, and for the sound revamping of other industries.

We have not used these experiences of genuine improvement as spring boards to greater efforts. We talk about future uncertainties, ignoring present definite indications of progress. We seek assurance against the unforeseen, forgetting that risk and uncertainty have always been the ordinary incidents of business.

We continually ask, "Where are we headed?" I answer emphatically that we are still heading for the recovery and reform originally proclaimed by the administration in May 1933 as its goal. Why conjure up legislative monstrosities that will never see the statute books? Why not address our minds to business? In the midst of gloom last fall a voice sounded out of the wilderness—the voice of a single automobile manufacturer—to prepare for a record business in 1935, undertaking himself to produce and distribute 1,000,000 cars. The effect was immediate and dramatic. Competitors stopped their wishful thinking, went to work with confidence, and as a result automobile production so far this year is 47 percent larger than the output of the same period a year ago.

Frankly, I believe that many of the worries that impede business at the moment are unnecessary. I cannot forget an old adage oft-quoted under similar conditions in the past, "Today is the tomorrow that you worried about yesterday, and it never happened." Most of the things we worry about today will never happen. As I said before recently in Chicago, speaking of the relation of the Commission to business, "There is not the slightest thought of elimination or restricting proper profits, and I, for one, have no patience with the view that every man who has a dollar or wants to make one is a public enemy * * *." I have less patience, however, with that man who, blessed in a worldly way by the opportunities of living in America, smugly wraps the mantle of selfishness about him in a cowardly refusal to wager on our common future.

Do not let such a man tell you he is afraid of confiscation; afraid of socialization; afraid of government. Politics is the science of government. Politics is the living breath of representative democracy. Politics of a sort, has been the lot of this nation since Cornwallis' surrender. Politics troubled the last days of George Washington, harrowed the earned leisure of Lincoln, ruined the evening of Woodrow

Wilson's life. Had the business men of those earlier days abandoned their jobs and committed industrial suicide because of politics, this Nation would never have advanced an inch. Let us stop talking politics to the exclusion of business. Every legislative step of importance since the Constitution was written was claimed by critics as foreshadowing doom. And after every attack of nerves, immeasurable progress resulted.

Let me illustrate with some examples of dire prophecies.

On account of governmental and legislative attacks on corporate activities and on wealth and capital, enterprise has come to a halt and a blinding paralysis is spreading all over their industrial organization. There can be no enduring recovery until the causes responsible for this state of things shall have been removed.

When do you think this was written? It is a financial editorial of February 1908.

Here is another:

The closed mill and empty dinner pail will be as conspicuous as in 1896. The future outlook is disastrous and I hope it will not be enduring. The situation is appalling. It cannot be exaggerated.

When do you think that was written? It was the utterance of the chairman of the Senate Finance Committee in December 1920. In the 10 years following the 1908 forecast the industrial output in this country increased 52 percent. In the 10 years following the 1920 outburst the industrial output increased 55 percent.

So you see the futility of taking counsel of present-day fears.

You cannot chart politics. You cannot sit down and draw some crooked lines showing where the fluctuations of political sentiment are likely to lead. Then why watch politics exclusively?

Instead, let us stick to the one formula we all know, "business as usual." Never did this country need that slogan more than it does today. Box the compass of your own industry. Plan your future requirements. Cut your cloth according to your pattern as the motor industry has done. Invest in America. Its people have purchasing power, cash reserves, bank balances, and savings accounts. Hoarding, mental hoarding, and spiritual hoarding, keep these resources in hiding. The great American people whose common sense solved every crisis in their history have never failed to respond to sane, courageous, business leadership.

So I appeal to you "Be yourselves." Don't dodge the duties of citizenship by blaming Government interference for the lack of business initiative and enterprise. Government interference—politics, if you will—we have always had with us, yet our predecessors went ahead and developed this marvelous land which we enjoy today.

Let us imitate them. Talk and think and dream business progress today and tomorrow.

In closing I should like to leave with you the thoughts of one of your New York poets, Wallace Irwin. They dispose so effectively of those of us who magnify our troubles that I shall read them and then take leave of you.

I entitle them "A nautical diagnosis of a business man, 1935 model":

"Suppose that this here vessel", says the skipper with a groan,
 "Should lose 'er bearings, run away, and bump upon a stone,
 "Suppose she'd shiver and go down, when save ourselves we couldn't."
 The mate replies, "Oh, blow me eyes, suppose agin, she shouldn't."

* * * * *

"I read in the statistics books", the nervous skipper cries,
 "That every minute by the clock some fella ups and dies.
 "I wonder what disease they get that kills in such a hurry."
 The mate, he winks, and sighs, "I think, they mostly dies of worry."

* * * * *

"Of certain things", the skipper sighs, "me conscience won't be rid,
 "And all the wicked things I've done, I sure should not have did.
 "The wrinkles on me inmost soul compel me oft' to shiver."
 "Yer soul's first rate", observes the mate, "the trouble's with your liver."

