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CIVIL LIBERTIES DURING NATIONAL EMERGENCY

AN ADDRESS

by

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## CIVIL LIBERTIES DURING NATIONAL EMERGENCY

Ever since Virginia's revolutionary constitution of 1776, Bills of Rights have been an integral part of the American fundamental law. State constitutions the country over and the federal constitution, in its first ten amendments, proclaim that government shall not oppress the citizen and shall observe those civil rights won from the Crown by the English people through centuries of struggle.

Those civil rights may be simply stated. One's liberty and property shall not be taken without due process of law. One accused of crime shall have a trial by jury. He shall have the right to be confronted with the witnesses against him; to be brought to trial upon the indictment of a grand jury; to be set free when once acquitted and not to be subject to double jeopardy. There shall be no unreasonable search and seizure, and warrants shall issue only upon probable cause, particularly describing the place to be searched and the things to be seized. No person shall be compelled to be a witness against himself. Not only is a citizen to be protected thus from the accusations of his government, but he is to be entitled to criticize the government. There shall be freedom of speech and press and religion. People have the right to assemble peaceably to petition the government for redress of their grievances.

Such in essence are our civil liberties although they could be described, of course, with greater particularity and elaboration. If anyone is looking for an epitome of the characteristics which distinguish our country and Britain from the Axis powers, he will find it in the Bill of Rights. It provides a sufficient credo for a fighting faith in democratic institutions. Without the liberties it guarantees, life for people raised in our traditions would not be worth living.

The application of these principles of freedom to factual situations has raised many problems in the past, and forever will. The Bill of Rights furnishes the guide. What it means in concrete terms applied to the stuff of life depends on the judgment, intelligence and integrity of each generation of men and women.

Today our hard-won freedoms face an unprecedented threat. Nazi methods have raised questions in some minds whether democratic nations can stand up under the new kind of total war. Is it possible, they ask, to repel effectively the new techniques of the Nazis without ourselves becoming like them? Since high-pressure Nazi propaganda utilizes freedom of speech and press to spread its doctrine, can we defeat this propaganda without ourselves destroying the freedom it seeks to destroy?

Our answer must be that our liberty provides our vitality; that there is vast innate power in governments conceived in a passion

for human freedom which is not possessed and cannot be acquired by governments spawned in terror. We can prove, as we have proved time and again before when faced with other kinds of crisis, that in our freedom lies our strength.

Other speakers on today's program have described plans to strengthen our military and economic lines of defense. I want to assure you, as the person charged by the President and the Attorney General with supervision of the enforcement of our federal criminal laws, that we are determined to preserve civil liberty, indeed to strengthen it, during this crisis.

It is undoubtedly true that in times of national emergency individual liberties are exposed to greater dangers than in normal times. People tend to get excited. Impatience with the normal processes of law enforcement develops. There is an inclination in attacking subversive forces to take short cuts through time-honored principles of freedom.

It is my belief that one of the first essentials to curbing the nervous people who press for short cuts in law enforcement, is an intelligent, level-headed, law enforcement organization that is adequate to cope with the really subversive influences at work in this country. That is, I believe that if our investigators and prosecutors and courts can hold the country's confidence, there will be less tendency toward ill-advised vigilante action.

We are striving in the Department of Justice to act promptly



and effectively in all cases of subversive activity that are discovered. No job is ever done with perfection, and we do not claim it. I believe, however, that on the whole we have the confidence of the country that we are making an honest and vigorous effort to stamp out subversive activity without trampling on anybody's constitutional liberties. We are thoroughly investigating complaints. We are presenting cases to grand juries where evidence warrants. We are getting indictments. We are trying cases and securing convictions.

But we are not engaging in any "witch hunts." We are not making loose and irresponsible charges that injure innocent people's reputations. We are not making wholesale "raids." Our investigatory activity only follows responsible complaint or possession of facts showing probable cause. If legal action appears to be required, we try our utmost to observe meticulously all constitutional and legal requirements in regard to search and seizure, arrest, hearing, and other procedural and substantive requirements of fairness.

The prosecutions we have instituted have been stoutly resisted on the merits of the cases, but it is yet to be adjudicated in a single case during the present crisis that we have violated a single constitutional right in our enforcement procedures. This is a record which we are striving to maintain.

The preservation of civil liberties in connection with federal law enforcement has two aspects:

(1) The enforcement of the so-called Civil Rights statute (Sections 51 and 52, Title 18, U.S. Code).

(2) The restraint which the federal prosecutor should exercise upon his own activity in enforcing federal laws.

I shall briefly discuss each aspect insofar as it bears upon the present emergency. As for the Civil Rights statute, many intelligent people are unaware of its existence. Section 51 makes it a crime for persons to conspire to oppress and intimidate any citizen because of his exercise of a right guaranteed to him by some provision of the federal constitution, such as the right to vote, or a right guaranteed by some federal statute, such as the right of employers to bargain collectively. Section 52 makes it a crime for a public officer to abuse his official power by wilfully depriving any person of a right secured by the constitution or by some federal law. For example, this section applies to city officials who wilfully deny the right of free speech to any person or group; it applies to police officers who employ excessive third degree tactics to extort confessions.

The Department of Justice is also playing an important, if undramatic, part by enlisting the support and cooperation of local officials and lawyers in the observance of this statute always within a sphere that does not invade the proper jurisdiction of the states. Persons wrongfully arrested for having exercised a federal right have been released at the intervention of the Department.

Groups of people threatened with local prosecution if meetings were held or literature was distributed, have, through the intervention of the local United States Attorney, acting under instructions from the Department,

been allowed to carry out their programs unmolested. Local ordinances which were clearly unconstitutional as invasions of constitutionally guaranteed individual rights have been suspended when their invalidity was brought to the attention of city officials by our United States Attorneys.

But I personally think that the more effective guarantee for civil liberties in time of national crisis is to be found in the wisdom, intelligence and restraint of prosecutors and courts. The Department of Justice, for example, has the duty of enforcing all of the federal laws related to national defense. This includes prosecution of cases of espionage and sabotage. It includes prosecuting violations of the Foreign Agent Registration Act and the Voorhis Act requiring registration of subversive organizations. It includes selective service violations and violations of the Alien Registration Act. These, and hundreds of other criminal provisions of federal law, provide vital sanctions for our national defense. It is of the utmost importance that these laws be enforced and violators prosecuted. The responsibility of enforcement is on us.

And yet it would be very easy, through negligent or irresponsible enforcement, to do great injury to well-meaning and innocent people under the guise of enforcing defense laws. An unjust accusation of subversive activity may put a blight upon the life of a man or woman which it is impossible to remove. It is an important part of the protection of civil liberties that criminal cases in the field of subversive activity shall be carefully and efficiently investigated before presentation to a grand jury; that indictments shall be returned only upon substantial evidence; and that after indictment the accused shall be fully accorded all of the constitutional and legal safeguards of a fair trial.

Thousands of young men with obligations under the Selective Training and Service Act have, within the past year, exposed themselves to criminal prosecution and the stigma of a draft evasion conviction. These young men violated the law by failing to return questionnaires and other documents, to notify their local boards of changes of address or status. Yet in almost every instance, because of the patient and painstaking supervision and analysis of these cases, these technically delinquent selectees were located and returned to the administrative machinery of the Selective Service System without invoking the criminal sanctions of the Act.

In the field of sabotage, hundreds of workmen employed in national defense industries are reported and labeled as saboteurs by reason of faulty production and defective workmanship. However, they are not recognized as saboteurs by the Department until careful inquiry eliminates inexperience, lack of skill, speed up programs, and other innocent causative factors and establishes a true intent to interfere with this nation's defense program.

Likewise, many citizens today are suspected of espionage and reported as possible spies because they appear curious in the general vicinity of national defense projects or while there, are found in the possession of cameras. The Department cannot, of course, afford to disregard such reports but they are investigated without embarrassment or inconvenience to the alleged suspect and in no case may criminal action be taken without the express authority of the Department.

Probably one of the most important functions of the Attorney General's office in times like these is to resist irresponsible local pressures for ill-advised prosecutions. Excited individuals and groups in local communities often jump to unwarranted conclusions about the activities of their neighbors. Local pressures are at times great upon the District Attorney to proceed without sufficient evidence. We are striving in every possible way to control criminal prosecution in the field of national defense so that we may at once enforce the law effectively without permitting injustice to be done. Prosecutions in this field are closely supervised from Washington. Conferences with United States Attorneys and state and local officials have been had in an effort to lay down definite principles of prosecution policy to be applied throughout the country. By the exercise of appropriate restraint on the part of federal enforcement officials, as well as through conferences with state and local officials, we hope to set the standard for state and local enforcement to the end and purpose that, no matter how acute this war crisis may become, fundamental civil liberties in this country will not suffer. We can learn some things from certain unfortunate experiences of the last war, and we hope this time that we are both forewarned and forearmed against their repetition.

Apart from technical differences between the status of citizens and aliens I am sure we would all agree that the same spirit that animates our Bill of Rights should apply to our governmental relations to our aliens. We must set ourselves against all alien-baiting measures. This does not mean that we should fail to deal firmly with the dangerous or subversive

alien, but we must not let ourselves be goaded into extremes of action against aliens as a class, the overwhelming majority of whom are able and anxious to make their contribution to American life.

And now, let me say a few words about the general problem of subversive foreign propaganda. It must be obvious that we cannot by law forbid the dissemination of political propaganda without cutting directly at the roots of free speech. There are no standards conceivable by which propaganda can be sorted and some forbidden and other allowed. But we can by legislation require that those who utilize our constitutional freedoms to spread propaganda as agents of foreign principals shall fully disclose the facts of their agency. We have a right to know who is propagandizing for foreign governments, corporations or individuals, and the full facts concerning the employment and activities of such foreign agents. Knowing such facts, we shall be able better to evaluate foreign propaganda and to discount it where it should be discounted.

Congress in 1938 enacted the McCormack Act, requiring full disclosure through registration of the activities of foreign agents. A number of prosecutions have been instituted and several convictions obtained for failure of foreign agents to comply with this Act. The vigorous enforcement of this law will be very helpful in exposing the activities of subversive foreign agents, without in any way interfering with the right to disseminate propaganda for any cause.

But above all, the real solution of the problems presented by foreign propaganda is to be found in the resounding answers to its false claims which an aroused citizenry will make. Let us meet these propagandists on their own ground and expose their fallacies. This is a time that calls for a



renewal of our faith in the power of a free people.

We believe with Mr. Justice Holmes that freedom in this country must always include "freedom for the thought that we hate." We also believe with Mr. Justice Holmes that freedom of speech must ever be protected up to the point where it creates "a clear and present danger that \*\*\* will bring about the substantive evils [the government] has a right to prevent."

Firmly believing these things, it is distressing to see men by whom this country has done well making irresponsible and reckless public charges that freedom of speech and assembly are being destroyed in this country. When men who know, or ought to know, better tell us that we have lost our heritage of freedom, that we are about to enter a dictatorship, and that there may be no election next year, we are moved to observe that the same obligations of responsible self-restraint in utterance that apply to men temporarily entrusted with governmental power ought also to apply to opposition leaders. And, paradoxically, these rash charges that civil liberties have been suppressed by the government are made almost in the same breath with evil attacks upon the patriotism and good citizenship of a racial group in our midst. Nothing is more incompatible with the spirit of the Bill of Rights and civil liberties than anti-semitism and other forms of racial intolerance and bigotry.

But we will not think in terms of suppression no matter how unwarranted may be the criticisms of our government or our people. Instead we must expose the fallacies of those preaching a doctrine which would destroy America. Our faith, having its roots deep back in English history, has often been echoed in the literature which is our common heritage. Thus Milton wrote in Areopagitica:

"Though all the winds of doctrine were let loose to play upon the earth, so Truth be in the field, we do ingloriously, by licensing and prohibiting, to mis-doubt her strength. Let her and Falsehood grapple: who ever knew Truth put to the worse in a free and open encounter?"

And Thomas Jefferson declared in his first Inaugural Address:

"Error of opinion may be tolerated where reason is left free to combat it."

What was true in Milton's and Jefferson's times is no less true today. This country will emerge from this crisis greater and stronger than ever and with the civil liberties of the people unimpaired.