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"LIBERTY AND LAW ARE INSEPARABLE"

ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.

ATTORNEY GENERAL OF THE UNITED STATES

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Of all the benefits conferred upon our civilized society, none has been of greater value to our growth and development as a nation than the Bill of Rights. The Constitution has been the framework and backbone of American life; the Bill of Rights its bloodstream, giving life to the ideals of democracy.

It was not strange, therefore, that when our Federal Constitution proposed a strong central government there was fear that usurpation and oppression would soon replace the newly won freedom. In almost every state convention the Constitution was violently attacked for failing specifically to guarantee individual rights and liberties. In response to these demands, the first Ten Amendments to the Constitution were adopted. Thus, out of hard and bitter experience emerged the principles which became the Bill of Rights. They represented the hopes of a sturdy people who had just paid a high price to win their independence and were determined to defend and preserve it.

What has distinguished our Bill of Rights is that we have put them into practice in our daily lives. They survive today as strong, enduring precepts because we have been able to strike the right balance in reconciling the human rights of man with the public rights of law and order.

The Bill of Rights placed restrictions upon the Federal Government alone--not upon the States. Under them freedom of religion, speech, assembly and the press have been safeguarded, protecting from governmental interference the conscience, the spirit, the minds of men. For the protection of their person, privacy, and property, freedom from arbitrary arrest and unreasonable searches and seizures were guaranteed, and life, liberty and property could not be taken away without due process. They secure the basic elements of justice--the right not to be tried for a capital or infamous crime except upon indictment of a grand jury--the right not to be tried twice for the same crime--the right not to give self-incriminating testimony against oneself--the right to a fair trial.

To what extent have these essentials of liberty been realized?

It was no accident that religion was the first of the liberties mentioned by our founding fathers. In Europe, failure to conform to religious beliefs and modes of worship resulted in cruel and inhuman punishment. Again, in the colonies, religious persecution continued. The people were taxed against their will to support state recognized churches, frequently sects whose tenets they opposed. Failure to attend public worship and opinions designated as heretical were punished severely.

It was not until Roger Williams fled to Rhode Island that full religious freedom was first granted to Christians and Jews alike--even to those without any religious affiliation or belief. Under the laws of Rhode Island it was declared "that men of all religions, and men of no religion, should live unmolested so long as they behave themselves". These laws marked the path of tolerance and brotherhood which America was thereafter to follow.

The First Amendment reflected the views of men like Thomas Jefferson who believed that religion was a matter "which lies solely between man and his God; that he owes account to none other for his faith or his worship."

While the First Amendment guarantees freedom of religion, it may not be invoked as a shield against legislation enacted to preserve an orderly and moral society. Thus, it does not constitute a defense for polygamy, made criminal by Act of Congress. So, too, a statute which prohibits any religious group from parading on the streets without a special license is not an invalid interference with freedom of religion. These cases illustrate the principle limiting the enjoyment of all our liberties. If law and order do not prevail to restrict abuse of liberty by some people, the right would soon be lost to all.

Today, unlike the communists who are contemptuous of religion and the rights of man, we enjoy the blessings of freedom of religion.

We recognize the corresponding duty of practicing our religion in a way that does not interfere with the right of worship by others. We have learned from the experience of other countries how contagious are the corroding effects of religious intolerance.

As in the case of freedom of religion, whether a country provides freedom of speech or of the press to its citizens is not determined so much by what is contained in written documents or laws. Rather, it lies in the hearts, the minds and the conduct of our men and women; in an aspiring mankind for greater freedom and dignity for the individual.

The real test in our daily life is what happens to a member of an unpopular minority when he dares to speak his mind in opposition to the views which are generally accepted by the people? May a man get up on a soap box in a park and criticize the party in power, the Governor or even the President of the United States? May the editor of a newspaper condemn the highest officials of the Government and their policies? Do our teachers have to revise the principles of science or history or economics to conform with the views of some bureaucrat from Washington or his State Capitol? May we meet together with other citizens and petition to redress our grievances? May we threaten to vote out of office those officials who disregard the public will? The answer is obvious from daily life around us.

Here we enjoy the right to hold unorthodox opinions and to express them. In this country we may be thankful that the rights of free speech and assembly are not merely slogans to be used at patriotic ceremonies. When we acknowledge freedom of speech and thought we acknowledge as well the freedom to be wrong as well as right. As Judge Learned Hand recently concluded out of his long experience and great wisdom: The principles of civil liberties and human rights lie "in habits, customs--conventions, . . . that tolerate dissent and . . . that are ready to overhaul existing assumptions . . . ."

But here again, it is necessary to strike a proper balance between the rights of the individual and the security of the nation. Thus, the guarantees of free speech do not permit communist teachers to spread their poisonous propaganda among school children where it can easily escape detection. While the schools must attract and protect the critical minds, they need not be sanctuaries or proving grounds for subversives shaping the minds of innocent children.

Recently, the Supreme Court, in construing the Feinberg Law of New York, held that membership by a person in an organization listed as subversive by the Board of Regents may properly be used as prima facie evidence of disqualification for employment in the public schools. One of the main constitutional objections to the Feinberg Law was that it violated the First Amendment by creating an atmosphere of fear which would inevitably stifle freedom of

speech. The Supreme Court rejected this contention saying that "persons have no right to work for the state in the school system on their own terms." If they do not choose to work under the reasonable terms fixed by the authorities "they are at liberty to retain their beliefs and associations and go elsewhere."

The whole field of the conflict between the rights of the individual with the necessary protection of the security of the country, has been difficult for the courts, but one which will be best resolved on a case to case basis in recognition of the great principles at stake.

The competing interests to be assessed between the nation's security and freedom of speech also arose in the Dennis case. The Smith Act made it unlawful for any person wilfully to advocate the overthrow of the government by force or violence. Convicted defendants claimed that this Act violated guarantees of free speech and free press. The Supreme Court, speaking through Chief Justice Vinson, said that the Act was "directed at advocacy, not discussion"; that the right of free speech is "not an unlimited, unqualified right", but must on occasion be subordinated when it poses a substantial threat to the safety of the community.

Cases involving the prosecution of communists and fellow subversives are seized upon by some as demonstrating that freedom of speech is being sacrificed in an effort to safeguard our security.

On the contrary, by placing behind bars those few who have abused their liberty, we save that precious freedom for all others in our society. It is obviously absurd and at odds with all reality, to treat the communists, who are actively engaged in undermining our government, as innocent students of a seminar in political theory.

Another of our great liberties lies in freedom of the press.

History has shown again and again that a vigilant and courageous press is essential for alerting the people to corruption in government, for combatting crime, poverty, injustice and other social abuses, and for preserving free institutions.

All of us doubtless have our pet dislikes against certain newspaper, radio and television commentators. But we would rather have these commentators unhampered to tell the truth as they see it, however we may disagree with them, than hear them as members of an enslaved propaganda machine who must conform their opinions to the party line. Freedom of the press like freedom of speech and religion means and requires freedom for the views we dislike as much as for the views which comport with our own. Unless the press is free to present conflicting views it cannot be free for the whole truth.

If the press is to do its part in keeping the people informed of events in this and other countries, it must have access to pertinent and accurate sources of governmental information. The lid on a good

deal of this information has recently been lifted. We are now achieving a sensible balance between the needs of security and the needs of a free press.

For the most recent and direct proof that official channels of information are now open we need only watch President Eisenhower's televised news conference. Almost without restriction the questions and answers are now released to the public.

It reflects his faith in what Mr. Justice Holmes once said: "The best test of truth is the power of the thought to get itself accepted in the competition of the market . . . ."

Can you imagine the head of a communist government or the head of any satellite--iron curtain--nation subjecting himself to a televised audience under the blistering barrage of inquiring reporters who "pull no punches"? Here you have the real difference on a day-to-day basis between the press in a free and slave state.

One of the main purposes of the guarantee of freedom of the press in the Bill of Rights was to prevent previous restraints upon publications such as had been practiced by other governments. But the needs of a free press, as with other rights of freedom, have to be compatible with the rights of the public, its welfare, its safety, its security. Thus, obscene publications or those which present a "clear and present" danger to the public peace or which may tend to subvert the government have been held subject to appropriate penalties.

Statements that might properly be made in times of peace might be so perilous to the country's safety if made in time of war as not to be protected by the Constitution. Under the broadest construction of free speech a man would not be protected "in falsely shouting fire in a theater, and causing a panic". In short, freedom of speech and the press, like others of these rights, do not deny to the government the primary and essential right of self-preservation.

Freedom of the press must also be reconciled with the need for maintaining the impartial administration of justice. Freedom of the press depends on free and constitutional institutions, such as an uncoerced court and judicial integrity. One of the means of assuring independence to judges is a free press. Neither is more important than the other. Both are indispensable for a free society and for its government. Here, again, we see an accommodation of one set of principles, with another equally important, so that liberty of the press and justice may stand side by side.

The Fourth Amendment, safeguarding against unreasonable searches and seizures, is one of our most important rights. It confers, as against the government, the right of an individual to privacy--"the right to be let alone". In the view of Mr. Justice Brandeis, this was "the most comprehensive of rights and the right most valued by civilized men".

In including the Fourth Amendment in the Constitution, our founding fathers recognized that power is a "heady thing" and that brakes to curb abuse of it must be applied upon overzealous or arbitrary officials. Significantly, the Constitution of every state now contains a clause similar to the Fourth Amendment and often uses the identical language. Congress has always carefully respected the rights of privacy protected by the Fourth Amendment.

The Fourth Amendment deters unlawful acts of search and seizure by Federal enforcement officers by rendering the fruits of their unlawful actions valueless as a means of conviction. Even in the interest of truth, federal courts will not sanction the use of evidence obtained in violation of basic right. This is an extraordinary remedy since it frequently furnishes immunity from punishment to the criminal. The application of the Fourth Amendment, therefore, requires careful balancing. On the one hand there is the individual's right of privacy to be considered. On the other hand, there is the conflicting social need for repressing crime.

At an early point in our judicial history the question was raised whether it required an actual entry upon premises and search for, and seizure of, property to offend the Fourth Amendment? Or was the Amendment violated when a person was compelled by court order to produce books and papers to be used against him in a

criminal proceeding? These questions were answered in the landmark case of Boyd v. United States, decided in 1886. The court held that a man's papers were "his dearest property"--and that compulsory production of them was as much an invasion of his constitutional rights as an unlawful search and seizure.

It was in this case that the court also warned against stealthy encroachments on our liberties. It said: "Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure."

The courts have drawn a distinction between searches which can be carried out without a warrant and those which require one. A search warrant is generally required where there is time to obtain one, before officers may search persons, houses, papers and effects. Mere suspicion is not enough upon which to enter and search premises in the hope of detecting evidence of crime.

The search warrant serves an important function. It permits the objective mind of a judge or magistrate to determine whether the police are right in their claim that law enforcement requires invasion of a man's privacy.

However, there may be emergency situations which will excuse the requirement of a search warrant. For example, search of an auto, ship or other moving vehicle may be made without a warrant where the vehicle might have moved out of the jurisdiction by the time warrant

was obtained. So, too, imminent destruction, removal or concealment of property intended to be seized and other exceptional circumstances have been held to justify a search without a warrant. This does not mean the police have the right to search those lawfully on the public highway. The people have the right to pass through without interruption or search unless a competent official, authorized to search, has probable cause that the vehicles are carrying contraband or illegal merchandise.

In order to protect the individual from the dangers of police abuse, the Supreme Court has held that "a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success."

The Supreme Court has also held that wiretapping does not constitute an unlawful search and seizure under the Fourth Amendment. Presently, however, by Act of Congress, evidence obtained through wiretapping is rendered inadmissible even when obtained by federal officers. As the law now stands, it lacks teeth and force against unauthorized eavesdroppers and snoopers. At the same time the existing law puts the federal government in a strait-jacket during trial of its internal spies and other enemies since it cannot confront these subversives with intercepted communications. This is an invitation to them to hatch their plots for sabotage over the

telephone. The time has come to overhaul this obsolete law. Unauthorized wiretapping should be made a federal crime. Communications intercepted by designated federal officers should be admissible in federal criminal proceedings, under proper safeguards and in specific cases involving the nation's security and defense as well as in other heinous crimes such as kidnapping. This would constitute an accommodation of common sense principles which conserves the public interest as well as the interests and rights of individual citizens.

We come now to the Fifth Amendment. In recent years, the most controversial portion of the Fifth Amendment has involved the privilege against self-incrimination. Under this clause no person may be compelled in any criminal case to be a witness against himself. You have all observed the long parade of witnesses in the courts, before grand juries, and before various congressional bodies, refusing to furnish evidence vital to the security of the nation and the welfare of its people, on the ground that to do so would tend to incriminate them.

This privilege against self-incrimination has been construed so that one is not deemed a witness against himself if he is immunized against prosecution for crimes about which he is compelled to testify.

It is my opinion that it is more important to the nation's welfare to obtain information of communist ring-leaders,

their chief subordinates, their key plans, their locations as well as other information essential to the security of the country, than it is to send some minor henchmen to jail. Last year I strongly urged to the Congress that it enact a law which would confer immunity from prosecution to certain persons in exchange for the desired testimony. Such a law was passed. I should like to tell you briefly how it works.

Under it, either House or any of their committees or joint committees may grant immunity to a witness after first notifying the Attorney General and securing the approval of a United States District Court in which the inquiry is being conducted. The Attorney General is given an opportunity to be heard on the application prior to decision by the court. In proceedings before grand juries and courts involving the national security or crimes of a subversive nature, similar immunity authority is conferred. In these instances, if the United States Attorney determines that the testimony of a witness who has claimed his privilege is necessary to the public interest, the prosecutor must seek the approval of the Attorney General for a grant of immunity. Then he may apply to the court for an order directing the witness to testify and produce evidence. Upon the entry of such an order the witness receives complete immunity from future prosecution for any matter about which he was compelled to testify. In exchange for this immunity he must testify, otherwise be held in contempt of court.

As you can see, this statute is attended by adequate safeguards and constitutes a reasonable compromise to this important problem. It furnishes the Government information essential to its security. At the same time it satisfies the purposes of the Fifth Amendment of preventing a person from being convicted by his own involuntary testimony.

The rights of an accused in a criminal case to procedural due process stems from centuries of experience. This experience teaches that these rights would be unsafe in the hands of inquisitorial proceedings. Such proceedings are the trademark of the communist slave state where they have apparently patented the process, and have extended it through a compulsory licensing system for each of their satellites. These are precisely the practices which our founding fathers sought to protect against when they adopted the Sixth Amendment in the Bill of Rights.

The Sixth Amendment contains important specific procedural safeguards for securing justice which supplement those of the Fifth Amendment. The accused in a criminal prosecution has the right to a speedy and public trial. He has the right to be tried by an impartial jury where the crime was committed. He is to be informed of the nature and cause of the accusation--to be confronted with witnesses against him--to have process for obtaining witnesses in his favor--to have assistance of counsel for his defense. The Eighth Amendment bars excessive bail and fines as well as cruel and unusual punishment.

By these provisions it was intended that justice shall prevail

and that all people would stand on an equal footing before the law--the weak, the helpless, the poor, as well as the strong and powerful.

A controversy presently exists as to how far these procedural safeguards of criminal justice shall be carried over in administrative proceedings, such as the government's employee Security program, where no criminal sanctions are involved.

In the area of criminal law, the existing system of assigning counsel to represent defendants without means falls far short of compliance with the spirit of the Sixth Amendment. Voluntary acceptance of assignments as defense counsel, without compensation, is as outmoded as a volunteer fire department in a modern society. It is neither adequate nor fair to impose this burden on a small number of the bar. We shirk our community responsibility, where we fail to furnish full-time paid counsel, trained in criminal law techniques, to represent the poor charged with crime. To give real meaning to the Sixth Amendment, I recently renewed my recommendation that Congress authorize Public Defenders to represent indigent defendants in criminal cases in the Federal Courts.

When the glorious history of the Bill of Rights and the decisions construing them in this country are compared to the darkened history of human rights in communist-controlled countries, it lights the way to how liberties are won and how they are lost--how we may avoid the dangers of a police state and how we may continue to enjoy the blessings of a free state.

You may rightfully ask what is the proper role which the Attorney General may play in protecting the Bill of Rights for the People?

First, no higher duty rests upon him than of translating each provision of the Bill of Rights into a concept of living law so that justice will be done to all our citizens. His is a dual function: That the innocent shall not suffer, and the guilty shall fairly and fearlessly be prosecuted.

Second, he must endeavor by his own example to maintain in our free people a respect for law and order as essential to their continued liberty. As legal adviser to the President he must take every precaution that executive action is within the bounds and restraint of law--he must take no less care that the rightful prerogatives of the Executive remain unimpaired.

Third, he must always be seeking to establish and preserve highest standards in the administration of justice throughout the land. This objective he may achieve through careful selection of lawyers and other officials of integrity to represent the government; in recommending the most honest and superior persons as federal judges; and in adoption of procedures which will end delay and obstruction of the course of justice.

Fourth, he must continue to seek ways of deterring crime; of rehabilitating criminals so they can be returned to society as useful citizens; and of making special provisions for youthful offenders so that they do not become hardened criminals.

Fifth, he must cooperate with other officials and all other persons in making democracy workable and in helping to secure life, liberty and the pursuit of happiness for the American people.

To these tasks I shall devote all my efforts in the firm belief that liberty and law are inseparable and that a balanced judgment reconciling the needs of each is essential to preserve them for the free people of this country.