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ADDRESS

BY

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Mr. President, distinguished guests and fellow lawyers and friends of the National Bar Association:

It is indeed a pleasure to be permitted to address this gathering of the legal profession. I am all the more pleased that I have this opportunity to discuss a subject which is of special interest to you as individuals as well as members of the legal profession.

As lawyers, all of us are sworn to defend our Constitution and the guarantees of liberty which it contains. It is, therefore, fitting that we should consider anew what our freedom means to us, how it has been preserved and some of the things we must do to preserve it for the future.

I am sure that all of you on many occasions have been impressed with the great obligations which rest upon all members of the legal profession to uphold the dignity of that profession and to discharge its grave responsibilities to the courts, and to the community as well.

The lawyer's role is one of many facets. He may act in the role of advisor, counselor, or advocate. Over and above these important functions, he has a direct responsibilitity to protect the great Constitutional precepts from dilution and degrading influences. As a citizen and as a lawyer he must be responsive to assaults against the freedoms of all our people by those unthinking or evil persons who would deny to others the very rights they would so zealously guard for their own protection.

Sometimes, it seems to me, that, with the present day complexities which attend the practice of the law, there has been an ever-increasing trend by lawyers to limit one's activity to one or more of the specialized legal branches likely to prove more financially rewarding. While this is, of course, understandable, the result is that we too often neglect the vitally important field pertaining to the Constitutional rights and liberties of our citizens.

I should like to discuss with you our federally-protected civil rights and what we in the Department of Justice can and are doing in that field. In addition, I should like to point out the responsibility of the private practitioner in this vitally important area.

Perhaps just a brief reference to our Constitutional background might be helpful. As attorneys I am sure you all recall that it was as a sort of "condition subsequent" to the adoption of the Constitution that the Colonies insisted upon the adoption of the first 10 Amendments - known as the Bill of Rights.

In adding to the Constitution such guarantees as freedom of speech, press, and religion; the right peaceably to assemble and to petition the Government; freedom from unreasonable search and seizure; the right to due process of law and the prohibition against taking property without just compensation, our ancestors were not laying down novel principles of government. They were insisting on traditional guarantees and immunities. Because they were deprived of these guarantees, they had risen in arms against a tyrannical government. Except for those who are students of constitutional law, it is widely believed that the Bill of Rights was designed to protect individuals against deprivation of their rights by other individuals. This, as you know, is not correct. The Bill of Rights was not intended to -- nor does it -- protect the individual's liberties against the conduct of other individuals. It was, and is, an expression of fear and distrust of central government and an assurance that no despotism would arise to take the place of the one recently overthrown. In other words the Bill of Rights sets forth only what the federal government must not do in relation to the people.

Until the Civil War, the individual looked to his state and community governments as the source and guardian of his personal rights. After that War, however, it became apparent that many states could not, or would not, fulfill their obligations to protect the individual liberties of all classes of persons. Consequently, this Nation added to its Constitution the 13th, 14th and 15th Amendments with the purpose of abolishing slavery and securing personal and political equality to all persons as against the state and national governments. Thereafter, Congress launched a program of legislation to enforce these Amendments. In addition to anti-slavery legislation, five civil rights statutes, known as the Enforcement Acts, were placed on the statute books in the 10 years following the war. These statutes spelled out the guarantees contained in these Amendments and provided serious penalties against state officers and private persons as well as for deprivations of the rights protected thereby. Congress, through these statutes, undertook to secure to all persons the right to vote; the protection of individuals against mob violence; the right to acquire and own property; to make contracts; to have access to the courts and the right of accommodation without discrimination in places open to the public.

By 1909, most of these laws had been swept away either by repeal or decisions declaring them contrary to the Constitution. In fact, so far as penal statutes are concerned, only two of the original civil rights measures remain in the federal criminal code. They are, however, the principal weapons which the Department may use in vindicating and preserving the great purposes of the Amendments.

As criminal laws are judged, both of these statutes are unique. Neither of them identifies any specific right to be protected, and yet

each appears to be all-inclusive in prohibiting interference with any and all rights which the Constitution and laws of the United States secure.

One of the statutes, known as Section 241, Title 18, United States Code, is a civil rights conspiracy statute. It makes unlawful and punishable to conspire "to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution and laws of the United States..." However, experience has demonstrated that, because of the nature of our institutions, the rights and privileges protected by this Section are comparatively few in number. This is due to the fact that the Constitution deals primarily with relationships between the federal and state governments and between these governments and private persons. Thus, Section 241 has only a very limited application to the conduct of private individuals. For instance, in the absence of special facts the ordinary outbreak of mob violence, vigilante or Ku Klux activity directed against Negroes, soap-box orators, religious groups, or other similar private activities do not fall within the ambit of this conspiracy law.

Such aggressions may constitute deprivation of liberty, of life, freedom of speech, freedom of assembly, or freedom of religion, and from unlawful searches and seizures, or other invasions of personal rights mentioned in the Constitution. But these rights are rights against official action only. They do not extend to the private behavior of one individual against another. No individual can violate the federal Bill of Rights which, as you will recall, begins with the words: "Congress shall make no law," and has been held to restrict only the federal government. Nor can an individual violate the 14th Amendment which clearly says "no state" shall do the things forbidden.

Therefore, the individual must ordinarily look elsewhere for the security of those basic liberties sought to be preserved in the Bill of Rights and in the 14th and 15th Amendments. So far as the Department of Justice is concerned, resort is usually had to Section 242 of Title 18. This Section prohibits the willful infringement of federally-secured rights by state and federal officials, or in the Section's phraseology, by persons acting "under color of any law, statute, ordinance, regulation, or custom."

To put it simply, Section 242 is a federal guarantee that the individual shall not be deprived by official action of certain basic rights such as the right to liberty and property, the right to due process of law, to the equal protection of the laws, and the like. It is used to restrain and, if necessary, punish the "little tyrant" or the "I am the law" type of official. In other words, Section 242, as well as 241, is really aimed at fulfilling the promise of "a government of laws and not of men."

The majority of prosecutions under this Section have been concerned with the deprivation of liberty. Liberty includes personal security,[1] as well as freedom from physical restraint. It also includes freedom of speech and the press;[2] freedom to assemble peaceably[3] to petition the government;[4] to pursue a lawful calling;[5] to express and exercise religious beliefs;[6]

1/ Lynch v. United States, 189 F. 2d 476.
2/ DeJong v. Oregon, 299 U. S. 353; Grosjean v. American Press Company, 297 U. S. 233.
3/ Hague v. CIO, 307 U. S. 496.
4/ 1st Amendment to the Constitution.
5/ Truax v. Raich, 239 U. S. 33.
6/ Cantwell v. Connecticut, 310 U. S. 296; Pierce v. Society of Sisters, 268 U. S. 510.

to establish a home and to be secure therein from unlawful searches and seizures.[7] The right to due process in this connection includes a right to a fair trial, which, in turn encompasses a real, not a sham or pretended hearing;[8] the right not to be tried by ordeal or summarily punished other than in the manner prescribed by law;[9] the right not to be compelled to confess to an offense; the right of a defendant in certain types of criminal cases to be represented by counsel; and the right to a jury from which members of the defendant's race have not been purposely excluded.

Therefore, it is clear that the scope of the protection of these civil rights statutes is wider than the most of us realize. Technical interpretations of the statutes raise problems for the prosecutor as well as the private attorney. It is because of this as well as the need for careful enforcement that we have in the Department of Justice a special Section in the Criminal Division charged with the responsibility of careful supervision of the administration of these statutes. But the efficient FBI and the skilled attorneys in the Civil Rights Section can go to work on a case only when it comes to their attention.

One of the problems of a civil rights prosecution is that it is almost a complete reversal of the usual situation one finds in a criminal case. The typical civil rights victim is oppressed by poverty, ignorance, or both, and may even have a criminal record, or be a convict. On the other hand, the person who has the power and the influence to oppress and infringe upon the rights of such a victim is almost always a person of prominence in the

7/ Wolf v. Colorado, 338 U. S. 25.
8/ Moore v. Dempsey, 261 U. S. 86.
9/ Screws v. United States, 325 U. S. 91.

community. "It is a fair summary of history," as Justice Frankfurter has remarked, "to say that the safeguards of liberty have most frequently been forged in controversies involving not very nice people."[10/]

We in the Department of Justice realize that the person most likely to be a victim in a civil rights case may be without benefit of counsel, friendless, poverty stricken, and perhaps without any knowledge of what he may do under the circumstances. That is why I have authorized the FBI agents to proceed without waiting for the complainant to come to the Department of Justice with his lawyer. Investigations are made in this field promptly and sometimes on the basis of the most fragmentary information - perhaps no more than an article appearing in the local press. And while you may have heard of the work of the Civil Rights Section, that Section is not the only part of the Department which is concerned with this vitally important field of federally-protected rights. There is a similar unit within the Federal Bureau of Investigation, composed of trained investigators specializing in this field. It works directly with the Civil Rights Section of the Criminal Division in directing the investigative activities of the FBI. I might add that all FBI agents are thoroughly trained not only in the general investigative techniques but are given training instructions in civil rights matters particularly. That is why they have been authorized to conduct investigations of civil rights violations immediately, where circumstances warrant prompt action, without the necessity of referring the matter back to the Criminal Division.[11/] In addition, since the beginning of this Administration, all United States Attorneys have received special instruction in the handling

10/ Justice Frankfurter's dissenting opinion in United States v. Rabinowitz, 339 U. S. 56 at 69.

11/ Special orders No. 40-54 - signed by Attorney General dated February 9, 1954.

of civil rights matters and are given every assistance by attorneys in the Civil Rights Section to the end that these laws will be carefully and adequately enforced.

Let me make it clear that in prosecuting officials who disregard Constitutional guarantees -- who for instance attempt to substitute trial by ordeal or some form of kangaroo court for the authorized legal procedures of his State -- we are not interfering with "states rights". We are simply insisting that he who exercises government authority shall permit the laws of his government to function as intended. The enforcement of the civil rights statutes is therefore no interference with the legitimate affairs of the states. On the contrary, it is assurance that the rights of the states and the rights of individuals under state laws shall be preserved.

The realization of the full meaning of equal justice requires more than efficient law enforcement machinery and more than laws on the statute books. It requires a knowledge of constitutional principles and a genuine desire by all to follow them. It requires, also, a constant application of the basic principles upon which our government was founded. Eternal vigilance is still the price of liberty.

Without the active interest and the support of all the citizens, and particularly the lawyers, laws are often unenforced, forgotten, and rights thereunder lost. This seems to be especially true in the field of civil rights. An excellent example is the case involving a restaurant here in the Nation's capitol. Laws known as the "Equal Service Acts," enacted here shortly after the Civil War, made it a misdemeanor for any restaurant or hotel in the District of Columbia to refuse to serve "any well behaved and respectable person." But these laws were ignored and then forgotten. As

a result, racial discrimination was the accepted practice of the District of Columbia for more than 75 years. Only recently were they discovered and enforced. It seems hardly necessary to remind you that if the "status quo" of 75 years had not been terminated by the recent "discovery" and enforcement of these statutes, we -- you and I -- would not be meeting here tonight in this hotel!

The case, while it dealt only with the local statutes prohibiting segregation in the restaurants in the District of Columbia, nevertheless had nation-wide significance, because of the District's symbolic role as Capital of the free world. While its immediate effect is limited to the District, its consequences and implications are much broader. The decision contains the first specific holding by the Supreme Court of the United States that laws prohibiting discrimination in public accommodations are within the police powers of the states and are constitutional. Thus, the responsibility for prohibiting segregation in public eating places was placed squarely by the Supreme Court on local authorities and that is right where it should be under our form of government. But for 75 years the Supreme Court had no opportunity to speak out on this question, because no lawyer, either private or official, had brought it to the Court's attention.

The lesson of this case is that a great share of our liberties depends upon the vigilance, the wisdom, the tolerance and the courage of our citizenry.

Each of you, therefore, as a private citizen, has an unavoidable responsibility for the preservation of the American freedoms. But as lawyers your responsibility is even greater since your knowledge of the

law is greater and your duty as an officer of the court places higher responsibility upon your shoulders. As guardians of these freedoms, you are also guardians of the fair name of the United States and of its moral leadership in the world.

Our desire, indeed, our determination in the Department of Justice, is that we shall obtain "equal justice under law" for all persons regardless of race, color or creed. This is but a reflection of the policy, the determination and the attitude of President Eisenhower, who, while still a candidate, on June 5, 1952 at Abilene, Kansas, said:

> "I believe that insofar as the federal government has any influence or any constitutional authority in this field, all of its means, all of its expenditures, all of its policies should adhere firmly and without any equivocation to the principle /that there shall be equality among all types of American citizens/ --'so far as my own personal influence can extend in this country, I shall never cease to fight for it'."

And later he said:

> "I pledge that if elected President of the United States I will serve all the people, irrespective of their race, their creed, their national origin, . . . I pledge to devote myself toward making equality of opportunity a living reality for every American. There is no room left in America for second-class citizenship for anybody. Wherever it collects taxes

from you, to spend money, whether it be any contract for recreational facilities or anything else that it does for a citizen of the United States, there will be no discrimination as long as I can help it. . . ."

I am sure you will agree with me that more progress has been made toward this goal during the last few years than during any similar period since 1865.

As a result of the actions of the President's committees on federal employment and on government contracts, thousands of job opportunities have been opened up for members of minority groups all over the country which were not previously available. In the District of Columbia, restaurants, theaters, hotels, and schools are abandoning discriminatory policies. The last vestige of discrimination and prejudice is being removed from the armed services. And, of course, the greatest single step forward is the decision of the Supreme Court holding that segregation in public schools is contrary to the principles laid down in the 14th Amendment to the Constitution. While there have been some rumblings of dissatisfaction from some quarters, the mere announcement of this principle by the Supreme Court has cleared the air and schools all over the Nation are being either integrated or plans are being made to accomplish that goal in the near future. In a number of places in the South, some communities have already voluntarily gone ahead and removed the barriers of discrimination in their schools.

I think you may be interested, if you have not already noticed it in the press, in what happened in the town of Hoxie, Arkansas. Here was an area where it was expected that considerable opposition might be

experienced. The new school year opened on July 11th with integration complete, extending to classrooms, lunchrooms, playgrounds and school buses. Prior to the opening of these schools, Superintendent Kay E. Vance said that he was willing to try the new program without fanfare or any special preparations. After the school board reached the decision to proceed he was asked by a reporter why he took this action before other neighboring communities. His answer was that the Board reached the decision to proceed with integration immediately because (1) integration is right in the sight of God; (2) it is in accord with the Supreme Court ruling that segregation in public schools is unconstitutional; (3) it is cheaper than segregation.

This simple, yet logical and sensible reasoning of this Board of Education reflects, I believe, the attitude of the vast majority of our citizens throughout the land. No attempt was made here to confuse the issue, to make newspaper headlines or to appeal to the prejudices or emotions of any segment of the population. Rather, it was a realistic and honest appraisal of the facts combined with the desire to get on with the public's business and treat all citizens alike.

And so it has been with this Administration. We have refused to engage in demagoguery and have avoided making a partisan political football out of this issue. We have recognized that in the long run education and persuasion rather than compulsion are the most effective weapons in dealing with this problem at the national level. At the same time, we must acknowledge that the statesmanlike and temperate attitude of the great majority of responsible Negro leaders has contributed immeasurably to the success of our program.

These factors, I believe, constitute the real secret of the success that has been accomplished in this field in the last three years. It is a formula that I believe will work in the future although it will take the combined cooperation of all of our peoples both in the government and in private life.

As lawyers, all of us know that the mere passage of a law does not bring about automatically the desired change in conditions. A law is not self-executing. There must be a means of obtaining compliance with its provisions and there must be wholehearted support and cooperation on the part of all our citizens and particularly on the part of the members of the legal profession.

High up above the Tenth Street entrance of the Department of Justice building there are carved in stone, these words: "Justice, in the life and conduct of the state, is possible only as first it resides in the hearts and souls of its citizens."

The average citizen is not learned in the law but the ideal of justice under law is to him very real. He knows that American citizenship is immeasurably more attractive and valuable because of the great guarantees of personal rights, privileges and immunities embedded in the Constitution. As lawyers and as officers of the courts throughout the land, we -- you and I -- have the high privilege and duty of advising and counseling our people and of seeing to it that these rights are protected. I hardly need add that this responsibility can not be met unless we keep constantly abreast of judicial and political developments in the complicated civil rights field and manifest a personal and continuing interest in orderly processes, properly directed, toward the objective of healthy, effective government.

In maintaining the highest professional and citizenship standards, we provide assurance that our form of government shall function as intended by those who fought to create it.

We stand on the threshold of a great era of enlightened dealing between all men. I am confident we will not be lacking in the humanity, wisdom and courage to preserve for our posterity the priceless gifts of our heritage.