



Department of Justice

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ADDRESS

BY

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EIGHTY-FIRST ANNUAL MEETING

AMERICAN BAR ASSOCIATION

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DINNER IN HONOR OF THE JUDICIARY

Section of Judicial Administration

Los Angeles, California

Monday, August 25, 1958

Mr. Justice Clark, fellow members of the American Bar Association, distinguished guests:

It is a very great privilege to be invited to address this most distinguished gathering. We, in the Department of Justice, look forward to the annual meetings of the American Bar Association because they provide an opportunity to exchange views and consider problems of mutual concern with leaders of the American bar. And it is a particular honor to have the opportunity to discuss such matters in the presence of so many outstanding state and federal judges, and so many leading lawyers of our country.

Recent world tensions give every reason for renewed dedication to the rule of law for which this Association has long stood. The hydrogen bomb is a sobering reminder to all that nations can no longer afford to settle international disputes by resort to force. The rule of law now provides the only hope for future peace and security in the world. This places a heavy obligation on our profession. But, it also gives us a tremendous advantage. For of all the weapons in the arsenal of the free world, the most potent is the dedication of free nations to basic concepts of justice, morality, and the rule of law.

Above all others, the one thing that distinguishes free nations from totalitarian regimes is the importance attached to the rights of every individual. By contrast we need only to look behind the Iron Curtain to see how little value and protection there is for the individual in mere cold words written on a parchment.

The people under Soviet rule have many substantial rights expressly granted to them by written constitutions, many of them strikingly similar to ours. For example, freedom of speech and of the press are listed as rights guaranteed in the Constitution of the U. S. S. R. The same is true of the right of assembly for peaceful purposes. The Soviet Constitution proclaims the independence of the judiciary, and recognizes the right to freedom of religious worship. Yet it is clear that these written principles are mere deceptive devices. Whenever the interests of the state are involved, justice behind the Iron Curtain becomes synonymous with what the leaders decide. The key to this philosophy is Lenin's statement that "All is moral that serves to strengthen the Soviet system." Under such a system the rights of individuals of necessity are of subordinate importance.

Consider what took place during the regime of Stalin. Khrushchev disclosed in his speech commonly referred to as the "Downgrading of Stalin" that whole nations of people were deported to Siberia and that thousands of innocent persons were liquidated. He candidly admitted that confessions of enemy activity obtained by the government "were gained with the help of cruel and inhuman tortures."

His speech contains a series of shocking revelations. Yet Khrushchev contends that he and the present Soviet leaders are completely blameless for the mass atrocities he talked about even though they occupied prominent positions of leadership in the decision-making bodies involved. He placed all the blame on Stalin because he

was all powerful. Yet, this is strangely inconsistent with the position of their own chief prosecutor, General Rudenko, at the Nuremberg trials when he said:

"*** Very often the head of a criminal band usurps the unlimited power over the other members of the band, even the very right of life and death. However, it seems that it never occurred to any lawyer in the world to deny the existence of a criminal society only because its accomplices were not alike and one of them had power over the others."

It is interesting, I think, that Rudenko is now the Attorney General of the U. S. S. R.

One of the greatest weaknesses of the Soviet system is that it places so very little value on individual rights and liberties. This is their Achilles heel. I believe the Soviet leaders know it.

Last June, I remarked that what happened in Hungary in 1956 to the freedom fighters was an illustration of how ruthless and unscrupulous the Soviet leaders can be. I also noted that Kadar's Communist regime had broken its solemn assurance to the Yugoslavs that it would take no punitive action against Premier Nagy.

In July, Andrei Gromyko protested to the Department of State regarding my remarks. The official protest sought to defend what

happened in Hungary. Thus, at one point it reads:

"It is a matter of common knowledge that neither the Attorney General nor any other official representative of the United States made protests against the shedding of blood of honest Hungarian patriots, who were defending their people's Republic, because of the criminal activities of the now convicted plotters.*** It appears that certain Western statesmen, *** cannot sleep quietly because of the progress they see People's Democratic Hungary making."

The Soviet leaders would have the world believe that what happened in Hungary represents progress. The fact is that never has the total brutality of the Soviet system been made more clearly apparent to the whole world than in the massacre of unarmed Hungarian freedom fighters by Soviet tanks and the subsequent murder of Premier Nagy.

Our State Department rejected the Soviet protest. However, the significance of the protest goes far beyond anything said about the tragedy in Hungary. The real significance of this ridiculous protest by the U.S.S.R. is this -- it demonstrates that the Soviet leaders are extremely sensitive to world opinion which casts them and the system they administer in its true light.

The Soviet leaders have cause for concern. There is no greater force working for peace in the world today than a world-wide yearning for justice. Soviet leaders are compelled more and more to demonstrate this fundamental weakness of their system--the lack of belief in basic concepts of justice. As this happens, the standing of that system, particularly with the uncommitted nations of the world, is sure to suffer. This was dramatically demonstrated by one of the most significant statements of our time. I refer to the recent statement by Prime Minister Nehru of India in which he said, "Communism ignores certain essential needs of human nature." He further said, "Its unfortunate association with violence encourages a certain evil tendency of human nature and eventually will be overthrown."

But we must remember this fact in the days ahead. In an effort to detract attention from their own shortcomings, the Soviet leaders will continually seek to exploit out of all proportion the slightest shortcoming they can find in our system of justice.

Throughout our history we have constantly sought to strengthen and improve our system of justice and we must continue to do so. But now we have the important added factor of "world opinion" to consider. For as Daniel Webster observed many years ago: "Justice is the great interest of man on earth. It

is the ligament which holds civilized beings and civilized nations together." The challenge of our time is how to demonstrate to the whole world that our system of Government, not just in theory but in fact, actually provides meaningful justice to all individuals under all circumstances. Our obligation to improve and strengthen our system now is greater than ever before in our lifetime.

What are some of the basic concepts of justice which we must seek to strengthen and improve? A partial listing would necessarily include:

First. Equality of treatment under the law without prejudice because of race, religion, or national origin.

In my opinion, we cannot hope to persuade the people of the world that our system holds forth the greatest hope for individual freedom and opportunity if by our actions at home we fall short of the mark in matters relating to race relations. Equality before the law is the hallmark of democracy. This principle finds deep roots in our constitutional system. It is the very essence of the rule of law. We can ill afford not to give substance to this basic concept of justice to all our people.

Second. Independence and integrity of our judicial system.

The essential features of our legal system impose special and heavy responsibilities upon the courts, especially the Federal courts headed by the Supreme Court. In view of the nature of the cases

and controversies that come before the courts, it is inevitable that from time to time there should be outspoken and even intemperate assaults upon the actions of the courts.

The judicial branch is not, and should not be, any more immune from criticism than other branches of government. Imperfections in the administration of justice can be brought to light and remedied only by intelligent and constructive scrutiny of the work of courts.

We have a right to expect of judges the best that is within them-- to render a fair and just decision based on the fullest and most detached consideration of the applicable facts and law. As Mr. Justice Hughes observed:

"***the individual finds security in his rights because he is entitled to the protection of tribunals that represent the capacity of the community for impartial judgment as free as possible from the passion of the moment and the demands of interest or prejudice."

The judicial branch of our government, over the short span of our country's existence, has established an outstanding record for integrity and impartiality. Equally as important, the total record of the courts for wisdom and courage commands great respect. Many of the decisions which are landmarks in the progress of our country were unpopular when rendered and evoked bitter attacks on the courts at the time.

What is the relevance of these obvious facts tonight? It is important to remind ourselves that the independence of our courts is sustained by the confidence of the public. Constructive criticism and thoughtful scrutiny of the

work of the courts should be encouraged. Sweeping generalizations and across-the-board public condemnation of the decisions of the courts -- whether state or federal -- are not in the best interests of the nation. They give rise to as many harmful antagonisms as improvements and in the long run cause impairment of public respect for judicial processes. The deep-set respect which the public has for our courts is well merited and is a great national asset. All persons, legislators, judges, lawyers, and the public, should act so that well-meaning efforts to strengthen the administration do not impair public confidence in the courts and in justice itself.

Third. Equality of treatment under the law regardless of wealth.

Legal aid societies, public defender systems in some communities, voluntary service by many members of our profession, have assured, in the overwhelming majority of instances, that persons without adequate financial means to employ counsel will receive adequate protection of their rights. This voluntary system has been aptly likened to relying on a voluntary fire department for fire protection in a great metropolitan center. In view of the increasing burden of cases I do not believe the system is good enough.

The need in the Federal courts in large metropolitan areas is for a full-time adequately staffed public defender system. In less populous areas the need is for court-appointed counsel, but on a compensated basis. The action of the Senate in passing the bill incorporating those features long sought by the Judicial Conference of the United States, the Department of Justice, and the American Bar Association, holds new promise for making more meaningful the guarantee of the Sixth Amendment. We must make every effort to secure passage

of this important legislation at the next session of the Congress.

Fourth. Prompt vindication of personal rights.

Prolonged delay in the vindication of personal rights in the courts is the greatest single weakness of our judicial system. When a person must resort to the courts, it is almost always one of the most important events in his life. Yet a delay of many months--in some cases two to four years--before the case comes to trial, often proves to be too great a burden upon the individual. Delay often means a denial of justice.

Much has been said about chronic delay in the courts. In some communities, members of our profession are moving ahead with vigor and determination to overcome this deficiency in our judicial system. But as the recent Attorney General's Conference on Court Congestion and Delay in Litigation concluded, "delay still presents the most serious and challenging problem to our profession."

We do not live up to our responsibility so long as the rights of our people are prejudiced simply because months pass before the doors of a courthouse are open to them. The solution of this problem does not lie merely in improved administrative procedures and more efficient methods of handling cases. Such practices alone cannot eliminate the ever increasing backlog which exists in some districts. An essential part of the solution lies in providing more judgeships.

A bill to provide the necessary judgeships for the Federal courts has been pending in Congress since 1955. It has the complete

support of all groups and organizations which are interested in improving the administration of justice in the United States. Congressional inaction again this year on this essential legislation was most unfortunate. There is reason to hope that Congress will act favorably on this important measure early next session.

Fifth. Security against lawlessness.

Despite the tremendous strides we have made in social, economic, and scientific fields we are losing ground to that small segment of our population which lives outside the law. Since 1950 the rate of crime has exploded four times as fast as the growth of our population. Persons under 18 years of age represent almost half of the persons arrested for major crimes. It seems clear to me that our country has not done a proper job of inculcating our people, particularly young people, with an awareness of how destructive crime is to them and to the country.

Another shortcoming of law enforcement is that efforts directed against organized crime are apt to be uncoordinated and sporadic. A series of vicious crimes occur or a Congressional investigation is held and a drive on organized crime is started. When the excitement dies down the drive is apt to die down.

The Department of Justice has undertaken a new program designed to meet the challenge of these crime syndicates. It is a long-range program built on policies which will be lasting and intended to meet a continuing and constantly changing problem. Next year we will

press for legislation to provide us with more weapons to cope with organized criminal activities having interstate ramifications. Of top priority will be legislation aimed at labor racketeers.

These, then, are some of the areas which I believe our profession needs to give serious attention to in the days ahead.

We have achieved a great success in America because the lawyer has effectively discharged the great moral responsibilities reposed in him. But we must never forget that the rule of law is meaningful only as it insures justice for individual persons. Today--possibly more than ever before in our history--we must seek to improve and strengthen our institutions. For in a large measure the strength of our Nation lies in providing impartial and timely justice to all people.