



Department of Justice

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ADDRESS

BY

ACTING ATTORNEY GENERAL NICHOLAS deB. KATZENBACH

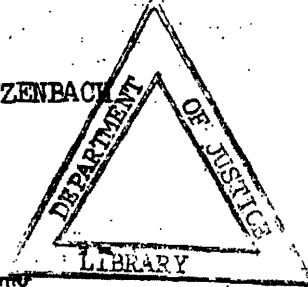
TO THE

BRONX COUNTY BAR ASSOCIATION

WALDROF-ASTORIA HOTEL, NEW YORK CITY

MONDAY, DECEMBER 7, 1964

9:00 P.M.



Mr. Frankfurt, Mr. Morgenthau, distinguished guests, ladies and gentlemen:

We join tonight on the occasion of two unrelated anniversaries. One is the fiftieth anniversary of Bronx County, a vital community of a million and a half, famous not only for Jonas Bronck and Peter Zenger, for its colleges and its zoo, but also as the home for some years of one of the most celebrated and successful teams in the country. I have seen the Kennedys play and I can testify to their skill.

Mr. Frankfurt has told me of the contribution of your organization made to the establishment of Bronx County a half-century ago, and I know of how much you have done in the intervening years to promote the growth and health of the borough. I congratulate you and I am glad to be with you.

Let us tonight also take note of another, more somber anniversary. It was on another December 7 that we sat at our radios, straining to hear the first news of an eclipse that was to change all of our lives. It will take more than 23 scant years to heal the wounds and dim the memories of that great war.

But no matter how much we may remember, we now live in a different country and a different world. The population of the United States is half again as large as it was then. The population of the world has increased from two billion to three. Indeed, half the people now alive on the globe were born since Pearl Harbor.

There have been great strides in those 23 years. That was an era when the country was panicked by a radio program about men from Mars. Now, we are calm in our curiosity about an American rocket, on its way to Mars. Then, the unemployment rate was nearly 10 percent and the average factory worker earned \$29 a week. Now, five percent are unemployed and the average earning is \$103 a week.

The past two decades have not only seen material growth; we have drawn far closer to our political ideals. And in that sense, 1964 also will come to be remembered as a historic year.

For it was in this year that the American Congress and the American public joined in a full commitment to equal rights and equal opportunities for all of our citizens. I refer not only to the Civil Rights Act of 1964, even though it is the first broad-gauge civil rights statute in 90 years. I refer as well to the level of compliance we have so far experienced under this act--and to the attitudes in our society which that compliance reflects.

Twenty-three years ago--and even three years ago--it was possible for a lunch counter to agree to serve Negroes, but then to require them to take Pepsi Cola instead of Coca-Cola, to stand rather than to sit, to drink from a paper cup rather than a glass--and then to pay seven cents rather than five for the privilege.

Today, such discrimination has been outlawed. So has the exclusion of Negroes, in almost all areas, from what by their very name are public libraries, public schools, or public accommodations. We have outlawed official, state-sanctioned discrimination in all its forms. Such segregation is now dead--or at least dying--and throughout the South, a new spirit of tolerance is budding--not enthusiastic, certainly, but still evident.

Even before the Act was passed, we had achieved in fourteen months of informal effort, at least some voluntary desegregation in 70 percent of the cities of the South. And such progress has continued in the five months since the Act became law.

Because of the Civil Rights Act of 1964, the federal government now is equipped with the legal machinery to act against all forms of official discrimination. As a consequence, we now are more free, at last, to concentrate on problems which the struggle for fundamental civil rights has obscured. We can now devote our attention not only to the problems of Negroes because they are Negroes, but to problems which we have learned are common to all disadvantaged Americans.

We have learned, for example, that it is insufficient to free men from the bonds of bigotry unless we can also offer them the means of becoming working members of society.

We have learned that it is insufficient to provide job opportunities without also providing the education to qualify young people to take those jobs.

We have learned that it is insufficient to improve slum schools unless we also improve the outside-school environment of the children.

And we have learned that it is difficult to improve the environment unless its residents have the earnings which allow them to live in pride and in relative comfort.

This cycle applies not only to Negroes, but also to whites. And it is to break this cycle, for the disadvantaged of all races, that President Johnson's monumental Anti-Poverty Program is directed. The Anti-Poverty Statute is an economic measure, but in this larger sense, it is also an equal opportunity law. The recent tax cut stimulated the economy, improved employment, and was thus an equal opportunity law.

The Manpower Retraining Act, the Juvenile Delinquency Act, and other such measures, are equal opportunity laws. It is in these directions that the main future thrust of our commitment to equal rights must go.

Nevertheless, purely racial difficulties remain. Pockets of resistance continue to exist. The balance that has been achieved under the Civil Rights Act is still too precarious for us to say with finality that the tide has been turned. Citadels of bigotry do not crumble overnight. There will be future indignities; there may well be future violence.

It is on this aspect of civil rights that I would like to concentrate tonight, because I think it is this aspect which is most seriously misunderstood--even by lawyers.

We in the federal government will continue to take every possible action, whether by persuasion or litigation, to prevent, prosecute, and punish such terrorism and violence. But we can do so at the federal level only within strict--and essential--limitations, the limitations of the Constitution.

These limitations can perhaps be most clearly stated by example. Last summer, the parents of one of the young men killed in Mississippi came to the Department of Justice to ask us not only to try to find the murderers, but also to provide protection to other young civil rights workers in the state.

The relationships of the dual federal and state law enforcement responsibility established by the Constitution are subtle, even for attorneys. But how does one explain them to such bereaved parents? How does one make it clear to them that law enforcement is, at root, a state responsibility--and, indeed, that it should be a state responsibility?

How does one respond to others who call not only for protection, but for a vast expansion of FBI forces in Mississippi, and even for occupying the state with troops. Their reasoning seemed to be that the greater the state wrong the more authority thus automatically conferred on the federal government to rectify that wrong.

Since its founding, our country has operated on the premise that, except in extreme emergencies, it is the states and not the federal government which are responsible for maintaining peace and enforcing the law. And we have always understood that this local responsibility meant responsibility to act according to the Constitution of the United States, as interpreted by the Supreme Court.

If local authorities do not act according to this understanding, either of two consequences may follow -- and each is intolerable: the federal government may throw up its hands and let the Constitution become not the law of the land, but the law of only parts of the land; or the federal government may seek to supersede local law enforcement through force and in so doing become involved in the smallest intricacies of keeping the peace -- determining, for example, whether a particular demonstration might be a legitimate expression of First Amendment rights or so interferes with rush-hour traffic that it may be banned.

At least in the four years in which I have been associated with the federal government, we have sought strenuously to avoid both courses. Rather, we embarked upon a tortuous process of persuasion, and failing that, of intensified litigation, sometimes against all the forces of a state or community. Federal force has been used only in the most flagrant cases, and only after every other means had been exhausted.

This has rarely been an easy decision to adhere to. It is not easy to stand by, without seeking to take some federal police action, in the face of even flagrant violations of constitutional rights -- such as the arrest of the young Negro for parading without a permit because he walked, down a street, alone, wearing a sweatshirt labeled "Freedom Now."

It is not easy -- and often, it appears lacking in a sense of justice or compassion. But if our political system is to continue unaltered, if we are to maintain a system of dual sovereignty, our course has been the necessary course. And certainly the recent, rising evidence of massive compliance with the new Civil Rights Act suggests the wisdom of this course.

I would venture to say that if there had been greater federal civil rights involvement in the past few years -- had there been more Oxfords or Tuscaloosas -- the mood of acceptance of law and even of moderation that now seems apparent in the South might never have been generated.

At the same time, I do not mean to suggest that the federal government is powerless to act against infringements of civil rights. Even under the limitations of our federal system, there is substantial, effective action which the federal government can take, has taken, and will continue to take, when necessary.

There are three principal areas in which we can so act. The most obvious is the enforcement of federal court orders. The actions which the federal government took during the Freedom Rides in early 1961, at the University of Mississippi in 1962, and at the University of Alabama in 1963 are so well-known they require little elaboration. I would observe only that one of the major achievements of President Kennedy and Attorney General Kennedy in the field of civil rights was their determination to make it clear the federal government would stand firmly behind the orders of its courts.

A second area in which the federal government has sought to take vigorous action is when discriminatory conduct violates specific guarantees of constitutional rights, such as voting.

A notable case began in the summer of 1961 in Tylertown, Mississippi, where no Negroes at all were registered to vote. A young Negro registration worker took several applicants to the county clerk's office to apply for registration. Not only did the registrar flatly refuse, but he pulled a pistol out of his desk and hit the student worker on the head with it.

The student stumbled, bleeding, into the street and found the sheriff. What was the sheriff's response? He arrested the wounded youth for disorderly conduct.

The Department brought an immediate action in federal court to enjoin the state prosecution, on the grounds that it was designed to intimidate Negro voting registration applicants. Ultimately, the prosecution was dropped and the young man's bond money was returned to him.

While our efforts thus were successful, there is one point which should be stressed. However much sympathy one might have had for the student, we did not take action on behalf of his rights. Rather, our interest had to be in the broader question -- the adverse effect of a prosecution against a registration worker on efforts by other Negroes to seek to register.

Finally, the third area of federal action is against violations of specific federal civil rights and related criminal laws. President Johnson has made clear his resolute intention that such action against violence and terrorism be continued and intensified.

The arrests made last Friday in Mississippi provide a dramatic example of what the FBI -- of what the federal government -- can and cannot do. The Philadelphia arrests, concluding a massive investigation lasting nearly six months, are only the latest in a series. In the past ten weeks alone, FBI investigations have resulted in the arrest of 49 persons in Mississippi for federal violations involving civil rights bombings and beatings.

Still, no matter how effective the FBI's efforts might be, it cannot provide bodyguards, cops on the beat, or enforcement of every state and federal law. The FBI is not a national police force and I know of no one who believes that it should be.

The lesson we must all continue to learn is that final answers cannot come alone from the federal government. Those answers must come from the states, from their law enforcement officials, and from the respect for law held by their citizens.

If they acknowledge constitutional rights which are now underscored by statute, if they accept the responsibility that must be theirs in our federal system, then the strength of that system will have been demonstrated anew. And I believe, in time, they will.

The successful implementation of the Civil Rights Act does not permit us to be satisfied, but it does permit us to be optimistic. We have much to achieve before the left eye of fact and the right eye of ideal converge on the image of equal justice and equal opportunity. Our work is far from complete. But we have now achieved a milestone. We have now achieved the end of the beginning.