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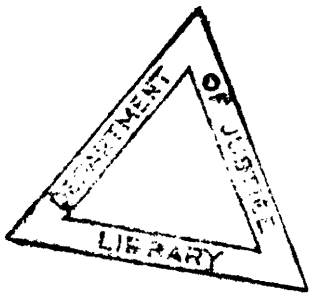

ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.

ATTORNEY GENERAL OF THE UNITED STATES

PREPARED FOR DELIVERY

at

SIXTH ANNUAL CONFERENCE ON CIVIL LIBERTIES

of

NATIONAL CIVIL LIBERTIES CLEARING HOUSE

HOTEL 2400

WASHINGTON, D. C.

THURSDAY, MARCH 18, 1954

It was a genuine pleasure to accept your invitation to speak at this Sixth Annual Conference on Civil Liberties sponsored by the National Civil Liberties Clearing House. To be afforded the opportunity to address this gathering of nationally recognized figures in the field of civil rights and civil liberties and associate myself with your record of achievements, is a signal honor. Drawing, as you do, members from more than fifty national groups representing all races, creeds, and colors, your agency is a truly representative organization and a splendid example of a free nation in action.

The need for frank discussion and widespread dissemination of the issues regarding basic freedoms is imperative. Only those completely blind to present day realities can fail to recognize the alarming tendency upon the part of too many Americans to assume that there must be something "un-American" about a person or group that evinces a genuine interest in civil rights. Yet informed people know, and through the efforts of this Organization the uninformed have had demonstrated to them, the exact converse. It is "un-American" not to be interested in the protection and extension of civil rights. The distinguishing feature of our Republic is that it was born of a struggle to secure these rights. Without the assurance that the Bill of Rights would be included, our Constitution would not have been ratified.

Because the Attorney General is charged with such grave responsibilities in the field of civil rights, I should like to discuss with you some of the activities of the Eisenhower Administration in this field and its program for protecting and extending civil rights.

1. The Administration has made real progress in its programs to abolish segregation and discrimination in the armed forces of the United States. Secretary of Defense Wilson has reported that the last vestige of segregation on army posts will be completely eliminated in 1955. And, already, 90 per cent of our Negro soldiers are serving in integrated units. In addition, wherever State law requires schools to be segregated, funds to operate integrated schools on army posts are secured from the Department of Health, Education and Welfare under a policy requiring all new post schools to be integrated and segregation abolished where it now exists by September 1955.

2. Segregation in the Nation's Capitol, long a national disgrace and a major subject of anti-American propaganda in the Kremlin, is rapidly being relegated to a dismal page in our history. In District of Columbia v. Thompson (346 U.S. 100), the Department of Justice argued that acts which imposed "an affirmative legal duty of non-discrimination in service upon owners of restaurants in the District" were both valid and had never been repealed. The Supreme Court agreed, and as a result, the doors of District restaurants are now open to persons of all races and all colors. The District Government has also abolished discrimination in the Capitol Parks and in the District Police Force. It now requires all contractors for District services to agree to practice no discrimination on account of race, creed or color. Most recently, the Chesapeake and Potomac Telephone Company has started to integrate its work force.

3. In the reargument of the "School Segregation" cases now pending before the Supreme Court for decision, the Justice Department, in an able argument by Assistant Attorney General J. Lee Rankin, took the position

"that segregation in the public schools cannot be maintained under the Fourteenth Amendment," that the Court had power to enter a decree abolishing school segregation, and that it should do so.

4. On August 13, 1953, by Executive Order 10479, President Eisenhower created the Government Contract Committee. In recognition of the importance he attached to it, the President designated Vice President Nixon to be its Chairman, and Deputy Attorney General William P. Rogers as its legal adviser. George Meany, Walter Reuther, John Roosevelt, and the newly appointed Assistant Secretary of Labor, J. Ernest Wilkins, are among its distinguished members.

For many years it has been mandatory to include in Government contracts involving the expenditure of Federal funds a clause whereby the contractor agrees not to engage in discriminatory employment practices. The Committee discovered, however, that while most contracts contained the clause, some agencies were unaware that it was required. It also found that few of the 30 major contracting agencies had ever established compliance procedures, although breach of the condition is and has been grounds for contract termination.

During its first seven months, the Committee has been revising and strengthening the non-discrimination clause and developing compliance procedures. Through persuasion, conciliation, mediation, and the prestige and influence of the Committee, it has already succeeded in obtaining compliance with the non-discrimination clause from 13 companies who formerly ignored its requirements.

5. When a defendant stands accused in a Federal court, the Constitution says he shall "have the assistance of counsel for his

defense." This, the Supreme Court has said, "is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty.***." It applies with equal force to both the rich and the poor.

We owe a great debt of gratitude to the many members of the bar who have given so generously of their time and talent to defend the indigent. But Judge Augustus N. Hand described the present haphazard system of appointing counsel in Federal courts accurately when he said:

> "It is clear that when the cases of poor persons needing defense become numerous and occur repeatedly, the voluntary and uncompensated services of counsel are not an adequate means of providing representation."

The Department of Justice is urging Congress to adopt a public defender system for our Federal courts so that indigent defendants can obtain full justice under law. The complexities of modern government, with its thousands of Federal criminal statutes, make plain that all persons, including the poor, are entitled to be represented by counsel to protect their civil rights.

6. The Department of Justice is making steady progress in its task of investigating and prosecuting those who violate the Civil Rights Act and related statutes and also in preventing abuses before they occur.

In the course of a year, the Civil Rights Section, under Warren Olney III, the capable Assistant Attorney General in charge of the Criminal Division, receives and reviews approximately 9,000 complaints involving alleged violations of civil rights. Some complaints come in letters that are often almost illegible and written by people almost

illiterate. Some cases are the direct result of newspaper accounts of serious mistreatment of persons accused of crime at the hands of local officers. Sometimes a court will call attention to facts which warrant investigation. Most complaints come as a result of FBI investigations on referral from United States Attorneys. But whatever the source, all complaints of substance are given most careful consideration.

As you know, Agents of the FBI are given a special course in the detection and investigation of civil rights cases. In addition, many agents are given special advanced training. The FBI is authorized to conduct a preliminary investigation into all complaints involving possible violation of Federal civil rights, such as violation of election laws or the Civil Rights Acts, and cases involving the possible exclusion of jurors on account of race or color, peonage or involuntary servitude. To eliminate delay which might result in the loss of civil rights, these preliminary investigations are conducted without the necessity of obtaining prior approval of the Criminal Division.

To further expedite the cases, the FBI report is now submitted to the United States Attorney in the area involved for his immediate review and recommendation. And, in unusual cases, where time is of the essence, or where evidence of violation clearly appears, the FBI is authorized to conduct a full investigation without prior approval from Washington.

We review each case in the Civil Rights Section before authorizing any criminal prosecution in order to have the benefit of the highly skilled technicians in this Section. The great bulk of cases, even though involving the most flagrant violations of personal rights, are not violations of Federal law, because no person acting in an individual capacity can violate

the Bill of Rights, which is a restriction on the Federal Government. Likewise, no person acting in an individual capacity can violate the Fourteenth Amendment, which is a restriction on the States. Therefore, in most cases, recourse is a matter of local concern.

There are, broadly speaking, three considerations which govern the institution of Federal prosecutions. First, almost every case of alleged violation of Federal civil rights is also properly the subject of State or local prosecution. For example, police brutality, which rises to the height of a Federal violation, is also criminal conduct under State law. Therefore, our policy is to defer prosecution to local authorities in instances where effective State action is contemplated. Usually, when we report to local officials the existence of a situation which violates civil liberties, both corrective action and local prosecution follow. Less than one-percent of all alleged violations ever reach the stage where it becomes necessary to institute Federal criminal proceedings.

Just as I do not believe in creating a Federal police force, I do not believe in Federal prosecutions for what are basically local crimes -- if local officials will act. I do not share the opinion of many well-meaning people who say that "only the Federal Government can protect civil liberties." It is therefore the policy of the Department to lend all possible aid to State prosecution, insofar as consistent with departmental regulations prohibiting the disclosure of confidential documents or files. But, where local officers refuse to cooperate, Federal prosecution ensues.

Second, sometimes civil rights cases arise upon complaints of citizens whom we might describe as lacking in the finer attributes of citizenship,

such as numbers-runners, narcotic-peddlers, pickpockets, or shakedown artists. The complaint sometimes charges serious misconduct against prominent and respected public officials or local citizens with unblemished records. Many of the complaints are totally unfounded in fact and are filed for personal or political reasons. Some allege facts, which if true, warrant action. Over-zealous local officials, desiring to obtain convictions, do on occasion overstep the bounds of decency; unscrupulous local officials have been known to deliberately disfranchise many qualified voters. When these facts appear, and local action is not forthcoming, our duty is clear. No prosecution is quashed because it may involve action against a prominent person. No case is buried merely because the person filing the complaint may be guilty of local crime and as a result go scot-free. These cases counsel caution, but never timidity.

Third, experience has demonstrated that once it has been established by court decision that Federal jurisdiction attaches to a particular offense, State and local officers, who otherwise would be reluctant to take action, will clean their own house. They prefer to avoid "outside interference" in what they view to be local problems. Accordingly, the establishment of precedents is one of our most important functions.

Perhaps the best illustration of this, and one of the most outstanding accomplishments of the FBI and the Civil Rights Section, has been its successful investigation and prosecution of the Ku Klux Klan under the False Statements Statute (18 U.S.C. 1001) and the Kidnapping Statute (18 U.S.C. 1201). Application of the Lindbergh Act, is particularly significant, because the Klan ordinarily does not operate under color of State law. However, the Klan, to protect itself, does not engage in its

terrorizing tactics in its own bailiwick. Rather, the hooded-nightriders invade a sister State and then bring their victims home for flogging or other mistreatment. The courts quickly responded to the argument that such action was kidnapping, and as a result the Klan has been almost completely destroyed in several states which were its most formidable strongholds.

Another example is illustrated by the case of United States v. Jones (207 F. 2d 785, CA 5th Cir.), where the Court of Appeals for the Fifth Circuit ruled recently that the Civil Rights statutes apply within State prisons. In that case, Jones, a prison guard, was indicted for whipping a prisoner who had escaped and been recaptured. The trial court dismissed the indictment, holding that as a matter of law prison dicipline was outside the scope of the Federal law and solely a matter of "state rights." In reversing, the Circuit Court recognized that convicts within State prisons enjoy federally protected rights. This holding will, no doubt, profoundly affect prisoner treatment in the future. It may well result in correction of conduct which recently has been a factor in serious prison riots.

The question whether the Civil Rights Acts apply to Federal officers has been the subject of conflicting decisions by several Federal District Courts. However, on October 15, 1953, the Court of Appeals for the Ninth Circuit upheld a conviction against Lawrence Gowdy, an officer of the United States Indian Service, who had been charged with beating one Juarez and then dumping him out of his car some three miles from town. (Gowdy v. United States, 207 F. 2d 730, CA 9th Cir.) I might add that while we were anxious to obtain the ruling, we hope that we will not have to use it

again. The case points up one of the reasons it is so essential that Government employees be of the highest caliber and fully worthy of the high confidence reposed in them.

I believe you will agree that the FBI, the Civil Rights Section, and the United States Attorneys, operating under the policies which I have outlined, have a record of real accomplishment and one in which we may all be justly proud.

7. Another major concern is the preservation of our democratic institutions against those who seek their destruction through violent overthrow of our Government. This is a challenging problem, not because I believe the Communist conspiracy will be successful in America, if we are vigilant, but because the Communist leaders in this country have assumed the role of liberals, claiming that they merely express political views. Without disclosing their true objective, which the President, the Congress, and the courts have said is the destruction of our Government and civil rights, they rely upon the rights of free speech and assembly to spread their fraudulent ideology.

The Communist Party in this country is not just a political movement. It does not seek through peaceful means, as it may rightfully do, to persuade a majority of our citizens to accept a different philosophy of government. Instead, it is a small, highly secret conspiracy, requiring of its members complete devotion to its revolutionary tenets. It seeks to infiltrate its members into all levels of government, hoping to make up by occupying key strategic positions the strength it lacks numerically. Eventually, through such tactics, it hopes to seize control.

That its ideology is false can also be demonstrated. In all places where the Communists have seized control, they have destroyed free press, freedom of speech, and the right of people to assemble and to petition for a redress of grievances. A government which must silence its critics in order to remain in power has no right to claim the popular support of a majority of its people.

We all agree that our Government has the power to protect itself from violent destruction. To that end it must exercise every proper means to expose and prosecute those who advocate its overthrow. We also agree that individual liberty, the guarantees of the First Ten Amendments, are our most cherished heritage. We will be the losers if, in our efforts to combat those who would destroy our civil liberties, we sacrifice them. One of our strongest weapons against communism is the comparison of what it offers against what we have. President Eisenhower stressed this when, as President of Columbia University, he said:

> "The truth about communism is, today, an indispensible requirement if the true values of our democratic system are to be properly assessed. Ignorance of communism, fascism, or any other police-state philosophy is far more dangerous than ignorance of the most virulent disease. * * * Enlightenment is not only a defender of our institutions, it is an aggressive force for the defeat of false ideologies."

We can expose and prosecute Communists and foreign agents who abuse and would destroy our liberties through subversion and espionage without destroying liberty itself. This cannot be done by making a political issue of Communists; the problem is wholly non-partisan. It cannot be

done if we permit citizens to dispense with due process by taking the law into their hands; two wrongs never make a right. It can only be done if we approach the Communist conspiracy with a determination to eliminate it by diligent and forceful prosecution in recognition of the great danger. We must place chief reliance in the effective and efficient operations of those trained for the job - the investigators of the Federal Bureau of Investigation to uncover and investigate the facts - the lawyers of the Criminal Division to assess those facts and bring any called-for criminal prosecutions. Their record is one of accomplishment. Under the Smith Act, 30 Communist Party leaders were convicted in 1953, six so far in 1954, and five are presently on trial. In addition, the trial of nine more Communist leaders will start next Monday in Philadelphia, and eleven indictments are outstanding.

Individual citizens or groups of citizens have an important responsibility, too. The obligation of citizenship is not to spread false and malicious rumor or to adopt vigilante techniques, but to report facts concerning suspected subversive activities to the proper authorities. It is not only dangerous but a self-defeating process not to recognize that Communist conspirators are criminals. But even as criminals, they are entitled to the same safeguards, the same fair play, the same presumption of innocence which we afford to all persons accused of crime.

Two measures to provide the Department of Justice with the weapons it must have if it is to do its job effectively are presently before Congress. They involve civil liberties and should be understood and discussed dispassionately. The first is legislation to grant immunity from prosecution to witnesses whose testimony is deemed important to ferreting out criminal and subversive conspiracies.

Certain witnesses, today, whether they are called to testify in courts, before grand juries, or before Congressional investigating committees are truly in a "box". The holdings of the courts in Aiuppa v. United States (201 F. 2d 287, 300 (CA 6th Cir.)), and Rogers v. United States (340 U.S. 366), point out that a witness is in a quadruple quandary. If he testifies truthfully and fully, he may be subject to criminal prosecution. If he testifies falsely, he may be prosecuted for perjury. If he refuses to testify at all or stands on the Fifth Amendment improperly, contempt proceedings may follow. If he testifies partially and then asserts the privilege, he may discover that he has waived it. None of these choices gives a witness much solace.

No one denies the right of any person not to give testimony which may incriminate him. No legal inference of guilt flows from the assertion of the privilege. And this is just as true in the case of a person suspected of Communist affiliation as in the case of a person suspected of selling narcotics to minors. No thoughtful person would recommend amending the Constitution to abolish the right. It was adopted to avoid "Star Chamber" tortures. But the Fifth Amendment privilege was never intended to cover a case where a person refuses to testify in order to shield some one else from a prosecution for a crime. The privilege is against self incrimination. What is needed is legislation to authorize a grant of immunity as broad as the privilege to be surrendered.

To provide immunity from prosecution to witnesses in exchange for their testimony will remove the hypothetical dangers which have caused many innocent or misguided people to refuse to testify. It will also operate as an incentive for the guilty to tell the truth. Moreover, with such legislation, a person who persists thereafter in remaining

silent would do so deliberately and with full knowledge that a contempt citation will more than likely stand up, free from constitutional challenge.

It has been suggested that such legislation would be the subject of abuse, that criminals would swarm in to testify in order to obtain an "immunity bath". To prevent such abuses, I have consistently urged that the law should vest in the Attorney General (or in the case where a Congressional investigating committee is involved, the Attorney General with the concurrence of Committee members) the authority to grant such immunity. The Attorney General is the officer most likely to know all the facts; he is the one person who knows the plans for pending prosecutions, he is the person best able to assess the value of the testimony to be obtained against the loss of power to prosecute. Moreover, immunity should be granted only after assertion of the privilege, and then, in a limited number of cases where full disclosure is in the public interest.

It has also been suggested that it is not enough to grant immunity from Federal prosecution, that an individual's rights are not fully protected unless the law provides immunity from State prosecution as well. While such protection may not be required by the Fifth Amendment, the decision of the Supreme Court last week in the Adams case (22 L.W. 4150) would indicate that Congress has the power to enact a Federal statute which would grant immunity in both State and Federal courts.

There is nothing novel about immunity legislation. It is already provided for in proceedings before the Interstate Commerce Commission, the Securities and Exchange Commission, in temporary war legislation,

and in virtually all of the major regulatory enactments of the Federal Government. I am aware of no recent instance of its abuse. Certainly, if it is important to provide immunity in order to compel testimony in in a proceeding involving commercial securities, how much more important it is to provide means to obtain information in a case involving the national security.

In my opinion, legislation to authorize the granting of immunity, subject to strict regulation by the Attorney General, would make available essential information in a manner which will fully protect the civil liberties of individuals.

The second proposal now before Congress is a law to authorize the introduction into Federal court proceedings, in cases involving national security or kidnapping, of evidence secured by wiretapping.

Wiretapping in any form invades the privacy of the individual. But, as President Franklin D. Roosevelt said in 1941: "There is, however, one field in which wiretapping is very much in the public interest. * * * Wiretapping should be used against those persons, not citizens of the United States, and those few citizens who are traitors to their country, who today are engaged in espionage or sabotage against the United States." The policy thus expressed established the basis for the present system of protecting the country from its enemies and has been adhered to by all my predecessors, including Attorneys General Jackson, Biddle, Murphy, McGrath, Clark and McGranery. The proposed wiretap evidence bill does not increase the present authority to tap wires. It merely authorizes introduction in Federal courts of evidence so obtained, in national security and kidnapping cases.

The proposed bills relating to wiretapping do not, as is commonly believed, in any way impair constitutional rights. These bills merely abolish the existing rule of evidence which has shielded from punishment those who have cleverly resorted to the wires to carry out their treachery against the Nation's security. And in no case could information obtained by wiretapping be made public until after a Federal judge has ruled that the evidence was relevant, material, and obtained with the approval of the Attorney General. Invasion of privacy is repugnant to all Americans. But how can we safeguard and preserve the civil rights of our people unless we pull Federal prosecuting attorneys out of their strait-jackets and permit them to introduce into evidence facts procured by wiretapping in cases involving the national security or kidnapping? Evaluation of the problems we face demonstrates the need for such legislation.

We must not delude ourselves. Communists are subversive conspirators. They are working fanatically in the interests of a hostile foreign power. Their objective is the internal disruption and destruction of this and all other free governments.

Look at what they did in the past: They successfully penetrated our diplomatic corps. They enjoyed great success in atomic espionage. They wove their interlocking web of intrigue in the State, Treasury, Labor, and Agriculture Departments, on Capitol Hill, in the national defense plants, and in the United Nations.

It is not a simple matter to "spot" Communists. They carry no membership cards or other identifying documents. The participants in the conspiracy are widely dispersed, and have been located in strategic positions in Government and industry throughout our country and throughout the world. As a matter of necessity, they turn to the telephone to carry on their

intrigue. When they will next strike, who will be their victim, what valuable Government secret will be the subject of a new theft, where a leading fugitive conspirator is being concealed - these are all matters that Communist agents talk about over telephones today, knowing that they cannot be confronted in a criminal proceeding with what they say.

A Communist or fellow-subversive on the witness stand cannot be expected to tell the truth about his own treachery or that of his confederates.

He is under instructions either to lie under oath in an effort to throw every obstacle in the way of a conviction or to refuse to give any testimony at all. Since these enemy agents will either falsely testify or stand mute and since FBI agents are forbidden from testifying to what they heard over the telephone, the Department of Justice is seriously impeded in proving its case and sending these spies to jail. Thus, many persons responsible for grave misdeeds are still at large.

Authorizing evidence to be introduced in Court, based on wiretapping by the FBI, under careful restrictions in cases involving our national security, is not, in my opinion, "dirty business." It does not involve the tapping of more wires. It is only a common sense approach to a very serious threat to our country. Prior to the invention of the telephone and telegraph, you could track a criminal down by shadowing him and checking his contacts. Today, spies and traitors are far too clever and devious in their operations to allow themselves to be caught, with their pockets bulging with "top secret" documents, ambling down the street with their accomplices. Discovering who they are is hard enough, even if you tap their phones. Convicting them is almost impossible unless you can use wiretap evidence in court.

The argument of possible abuse is best answered by our experience which demonstrates that the FBI has not abused the broad investigatory authority already reposed in it, including the authority to wiretap. Its record of "non-partisan, non-political, tireless and efficient service over the years gives ample assurance that the innocent will not suffer in the process of the Bureau's alert protection of the Nation's safety." (Colliers, August 21, 1953) Mr. Hoover has many times stated that he opposes wiretapping as an investigative technique except in connection with crimes of the most serious character, such as offenses endangering the safety of the Nation or the lives of human beings.

I agree with Representative Keating, who said: "We do not want to trifle with the great principle that every man's home is his castle. But we cannot apply it blindly. It is one thing to restrain interferences with what a man may do within his own four walls; it is quite another to let him use our modern network of communications media to plot the commission of crimes all over the country, or even all over the world from behind the same protection." (Hearings on H.R. 408, 83rd Cong., 1st Sess., p. 6)

In conclusion, what I view as the greatest danger to civil liberties today was well summarized in 1941 by Dr. Robert E. Cushman, a member of your Advisory Board. He said: "The chief danger is not that public officials will arrogantly override the liberties of a protesting people, but that an intolerant public will not only permit but demand the suppression of minority rights. The professional patriots and witchburners suddenly rise to posts of leadership. Whole communities lose their capacity for

thoughtful judgment and are whipped into an emotional frenzy not far removed from the mob psychology which results in a lynching." (Safeguarding our Civil Liberties, p. 3)

The protection of our civil rights against this danger is the responsibility of every American. Because it is, our future is secure - for Americans believe above all in the dignity of man. They will never permit the substitution of intolerance and persecution for our cherished heritage: civil liberties.