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"ACADEMIC FREEDOM AND RESPONSIBILITY"

ADDRESS

BY

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ATTORNEY GENERAL OF THE UNITED STATES

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Before the

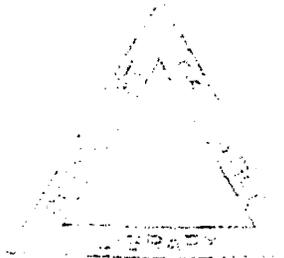
Legion Lex

of the

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Of the many freedoms which preserve the rights of the individual and the progress of our society, none is more essential than the freedom of scholars to search for the truth and to make it known. In this way we foster the open mind and critical inquiry - primary ingredients for responsible citizenship and enlightened and effective public opinion.

Today, I should like briefly to cite some outstanding examples of the development of academic freedom, before discussing how we may strike the proper balance between academic freedom and academic responsibility in an ordered society - especially in the area of Communist activity in the field of education.

One of the most famous cases in the annals of academic freedom involved the great Greek Philosopher and teacher, Socrates. An Athenian jury condemned him to death by poison because of the unpopular views which he espoused. The right to search for truth and the right to speak freely were so precious to Socrates that he would not exchange them for a reprieve from death itself. Plato reports that Socrates said "If you offered to let me off this time on condition that I am not any longer to speak my mind in this search for wisdom, and that if I am caught doing this again I shall die, I should say to you, 'Men of Athens, I shall obey the God rather than you. While I have life and strength I shall never cease to follow philosophy and to exhort and persuade anyone of you whom I happen to meet. *** Either acquit me or not; but understand that I shall never act differently, even if I have to die for it many times'".

Another victim of persecution was the learned Hugo Grotius of Holland, an outstanding scholar in the field of international law. It was largely through his teachings that civilized nations began to apply fundamental principles of justice, such as the independence and equality of sovereign states, treatment of war prisoners with justice and mercy, and exercise of restraint in imposing

sanctions against conquered peoples. Grotius was sentenced to life imprisonment in 1618, because of his political opinions in defending the constitutional rights of his country.

Galileo, the noted physician and astronomer, also was made to suffer, because his scientific opinions were considered to be heretical by theologians of his day. In 1632, after he published his exposition of the Copernican System, a storm of protest was raised by followers of Aristotle who firmly believed that the earth was the center of the universe. Galileo was tortured until he disavowed his findings.

These few illustrations of suppression and punishment of scholarly opinion, research and writings, may be multiplied many times. Each era has had more than its full share. In the early centuries of conflict abroad, the struggle for academic freedom was almost synonymous with the struggle for freedom of religion; but often there was also at stake political freedom, freedom of speech and freedom of the press - those cherished freedoms which are secured by the First Amendment to our Constitution.

In our country, during colonial days, higher education continued to remain the child of religion.

One of the first controversies over academic freedom in American higher education involved the first President of the first college, Harvard. In 1654, Henry Dunster turned in his resignation to the college Overseers. He had denied that there was scriptural authority for the baptizing of infants and had refused to present his fourth child for baptism. To the Overseers, this was serious heresy. They were gravely concerned that the youth of America be educated, not only in good literature, but also in sound doctrine. These Overseers refused to keep in the college a man who was so unsound in his faith and who would not be silent about his convictions.

Dunster's successor was Charles Chauncey, who went to the other extreme. He believed in total immersion, rather than sprinkling. Governor Bradford was dubious about this practice in this "cold country" and declared it would have greater bearing "on infant mortality than infant immortality." But Chauncey was finally deemed acceptable provided he kept mum his opinion for the need for immersion.

Thus in colonial days, academic freedom for professors was more often associated with particular religious principles. However, from 1830 to the end of the Civil War, there was a marked shift of the academic freedom issue into the moral and political scene. This was the bitter period when the intellectual life on the campus was profoundly shaken by the slavery question. There was virtual unanimity in the South, but the burning issue engendered great dissension among schools and colleges in the North and border States.

Professors urging abolition were dropped, or compelled to resign from border state colleges. Those supporting slavery in the North were subject to similar sanctions. Textbooks prepared in the North were censored, or banned in the South. A chancellor of a Mississippi University became suspect as unsound on the slavery question, because he accepted the testimony of a negro slave girl and voted to suspend a student who was charged with her assault. Professor Hedrick, a chemistry professor at the University of North Carolina was burned in effigy by the students and castigated by the press when word came out that he supported Fremont, the Republican candidate in 1856. Despite his denial that his students would ever be subjected to free-soil indoctrination, Hedrick was dismissed from the University. At Harvard, Judge Loring was dismissed as a lecturer, because, while sitting as a federal judge, he had enforced the fugitive slave law; and President Ford of Dartmouth was driven to resign, because he was an ardent defender of slavery and his opinions touching public affairs had aroused widespread prejudice against the college.

Soon, the climate for academic freedom was unfavorable everywhere. Suspicion and fear stalked both campus and classroom, while dogma was substituted for open inquiry and knowledge. The suppression of academic freedom was not conducive to continued discussion of this heated controversy, nor did it make for a peaceful solution of the problem. For, when free discussion of differences is stifled, resort to force and war is too often the price that people pay.

The next large issue in the struggle for academic freedom involved Darwin's theory of evolution.

So intense was the opposition to this theory that some colleges considered teachers of evolution far too dangerous and radical to be hired or retained. But the threatened and ousted professors were not timid about their convictions, nor did they shun publicity. They would not be silenced. They took their arguments to the people, to the newspapers, and to the students. The controversy tended to unify our thinkers - the scientists, philosophers and historians and other scholars - so that the right to open and uncoerced expression would prevail. It also developed a new conception about academic propriety. Dissent was no longer considered disloyalty.

Yet, the opposition to the theory of evolution did not completely die out. As recently as 1925, the State of Tennessee enacted a law which made it a crime for a teacher to deny the Divine creation of man as the Bible taught, and to teach that man had descended from the lower order of animals. In Dayton, Tennessee, a young high school teacher named Tom Scopes was indicted for approving Darwin's theory of evolution. The trial involving the right to teach modern science attracted nationwide attention. Scopes was defended by that outstanding lawyer Clarence Darrow. However, in view of the emotional temper of the times, William Jennings Bryan, acting for the prosecution, had little trouble securing a conviction and Scopes was fined \$100. This decision was later reversed on a technicality and Scopes was relieved from paying the fine.

Still another important period in which academic freedom was seriously endangered arose shortly after World War I. Several states passed laws directed against the teaching of German in the primary schools. A teacher by the name of Meyer was convicted for teaching reading in German to children in a parochial school contrary to the laws of Nebraska.

This conviction was reversed by the Supreme Court upon the ground that the State law invaded the liberty guaranteed by the Fourteenth Amendment to the Constitution. As the Court pointed out, the liberty thus guaranteed not only includes freedom from bodily restraint but also "the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."

During the last ten years, our schools and colleges have been faced with another most difficult problem - how to weed out communist teachers without impairing academic freedom. As I use the term "communist teacher," it applies to individuals who are indoctrinated with the communist philosophy as distinguished from persons who may teach a course in political theory that includes the study of communism.

Unfortunately, there is a good deal of confusion in this field. There are many people who believe that, if a university furnishes courses about communism, it engages in indoctrination. This is not the case. How can we possibly overcome any malignant disease, whether it be cancer or communism, unless we master the facts about it? How can we even hope to identify communists from those who are often unjustly accused of being communists unless we know the "Party Line"? How can we hope to cope with, discredit and demolish their arguments unless we

are prepared to meet them? Patriotism and loyalty are admirable and essential qualities for good citizenship, but they are no substitute for knowledge and study. We need fear communism only if we lack accurate knowledge of it. Almost 300 years ago John Milton in his "Areopagitica" said, "let truth and falsehood grapple, who ever knew Truth put to the worse, in a free and open encounter." And as President Eisenhower declared, while President of Columbia University, "Ignorance of communism, fascism or any other police state philosophy is far more dangerous than ignorance of the most virulent disease."

Another source of confusion stems from the belief that academic freedom is absolute and is not subject to any limitations, conditions and restrictions, however reasonable and essential these may be to our national security and welfare. This is not correct. No freedom in an ordered society is absolute.

For example, freedom of religion does not mean freedom of a religious sect to practice polygamy. Freedom of the press does not mean that a newspaper may publish ship movements in time of war. Freedom of speech does not mean that a person may cry fire in a crowded auditorium and cause a panic. Reasonable restrictions upon abuse of freedom-not its use - are essential, if the people are to enjoy any freedom. Unrestricted freedom would soon lead to anarchy. What is true for freedom of conscience, freedom for the spoken and written word, for the right of privacy and all other freedoms applies as well to academic freedom. If abuse of academic freedom could not be curbed, there soon would be no academic freedom for anyone.

With these principles in mind, let us briefly consider a major issue which has caused the greatest controversy in the last ten years. It is raised by reliance of some teachers on the Fifth Amendment in refusing, during legislative investigations, to answer questions respecting their alleged communist activity.

Should these teachers be retained in our schools and colleges? We know, as the Supreme Court has often held, that the power of Congress to investigate is

essential to the proper exercise of its functions. It can neither legislate wisely, or effectively, unless it has requisite information by which to reach an informed judgment. Just as it is a legal and moral duty of a citizen to cooperate with the police in apprehending a criminal, it is his equal duty to cooperate with an authorized congressional investigation. Particularly is this true here, where the Congress is concerned with enacting laws which will prevent communist infiltration into strategic points of our life and guard our Government from destruction by enemies from within.

Some teachers, who have been summoned to testify, have refused, claiming, first, that the inquiry constitutes a breach of the guarantee of free speech contrary to the First Amendment, and second, that it offends the privilege against self-incrimination protected by the Fifth Amendment to the Constitution. Let us consider these contentions for a moment.

First, it is urged that freedom of speech embraces as well the right to be silent about one's political affiliations. It is true that the Supreme Court has said that "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act, their faith therein".

But, we are not dealing merely with political faith in or expression of political views. Nor are communist teachers merely innocent moderators of a seminar in political theory. The Communist Party is not a tea-drinking society, but is, by scheme and design, a conspiratorial organization. Our schools are one of their prime targets. It was the communist leader Earl Browder who said "who wins the youth, wins the future of America". Just as a conspiracy against our country may not be engaged in under the auspices of freedom of speech or the press or any other freedom, so too, conspiracy may not find shelter under the cap and gown of academic freedom. The Congress, the colleges, the students

and the public alike, are entitled to know where on the campus the communist octopus is hidden. Once it is uncovered, it is up to the college or university to determine for itself whether this strangling hold on academic freedom should be uprooted, or whether the risk may be taken that this influence will not contaminate and taint those who come into contact with it.

A communist teacher forfeits the privileges of academic freedom, because his training, purposes and design are all at odds with it. He starts off with the intention, not of teaching, but of twisting and torturing the truth. Since he is committed by oath and disciplined obedience to conform to the "Party Line," he lacks the capacity to engage in honest inquiry and of rendering an objective judgment. Since his own mind is enslaved, how can he possibly be sympathetic to, or concerned with, stimulating an open, searching, free mind in his students? Since he has only contempt for the ideals of our Republican form of government, how can we expect him to inculcate principles by which we maintain our liberty and by which we may develop intelligent, loyal and devoted citizens? Is it, then, contrary to academic freedom for a university to separate a man from service whose thinking and teaching are dictated from Moscow? I do not think so.

Most frequently, reliance by silent witnesses rests on the privilege against compulsory self-incrimination under the Fifth Amendment. This Amendment, you will recall, declares that "no person * * * shall be compelled in any criminal case to be a witness against himself * * *." It is only if the testimony will incriminate him in a criminal proceeding, that he is relieved of testifying and from legal punishment. But as the Supreme Court has held, reliance upon the privilege against self-incrimination was not intended to protect a person from disgrace. Nor does the Constitution save him from unfavorable inferences which the public may draw from his silence, or from professional condemnation.

Recently, the Supreme Court had before it the case of a professor who invoked the privilege against self-incrimination while appearing before an investigating committee of the United States Senate. When called to testify, he stated

that he was not a member of the Communist Party, indicated he was willing to answer all questions about his associations or political beliefs since 1941, but refused to answer questions concerning his membership during 1940 and 1941 on the ground that his answers might tend to incriminate him.

This professor was teaching in a college maintained by the City of New York. He was discharged on the basis of a provision in the Charter of the City of New York which provided for the summary dismissal of any city employee who resorted to the privilege against self-incrimination to avoid answering questions relating to his official conduct.

In a 5-4 decision, the Supreme Court held that the summary dismissal of the professor without a hearing violated due process of law. The Court observed that the practical effect of the City Charter was to take as confessed the questions by all who exercised their constitutional privilege, thereby automatically converting the claim of privilege into a conclusive presumption of guilt. No consideration was given, the Court stated, to such factors as "the subject matter of the questions, remoteness of the period to which they were directed, or justification for the exercise of the privilege." Nor did it matter, the Court noted, "whether the plea resulted from mistake, inadvertence, or legal advice conscientiously given, whether wisely or unwisely." As the Court declared: "The heavy hand of the statute falls alike on all who exercise their constitutional privilege, the full enjoyment of which every person is entitled to receive."

However, although setting aside the professor's summary dismissal, the Court made it clear it was not holding that the petitioner had a constitutional right to his position as an associate professor on the college faculty. The Court recognized that "the State had broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show the [petitioner's] continued employment to be inconsistent with a real interest of the State."

In effect, what the Court held was that, where a faculty member asserts the privilege, a university may be justified in inquiring into the teacher's associations and political beliefs, and to consider his testimony in this connection, or his refusal to speak, along with other circumstances as relevant in determining whether he is a person whose loyalty, character, responsibility and professional fitness are such that he can any longer be depended on to teach the truth.

Thus, if a professor now taught that the earth is flat, a university would quickly get rid of him, because academic freedom does not shield professional incompetence, or the teaching of untruth. Should the same result not follow where a teacher's communist activities, or associations, are inconsistent with intellectual honesty and where he is dedicated to deceiving students and to leading them into acceptance of dogmas and false causes?

It has been suggested that the University should not rely on inferences of guilt, but rather wait until it catches the teacher engaged in communist propaganda. Communist methods are far too subtle for easy detection. Moreover, we do not want to establish a system of spying and informing in our classrooms. Surely, if the clerk in your bank consorted with thieves, gamblers, dope peddlers and other unsavory characters, you would not wait until he had embezzled the bank's money before discharging him.

Does this mean that, if a teacher was once a Communist, he should now be disqualified forever from the teaching profession? This is a most difficult problem for our colleges to decide. It has been claimed that there were many young men during the last depression who embraced communism and later were disillusioned by its false promises, its false hopes and by its denial of freedom; and that, realizing their mistake, they withdrew from their early associations and are now fully dedicated to the principles of our Government. It is also argued there are many teachers who were innocently misled and lent their names to communist causes which masqueraded under the banner of civil liberties, or other

attractive titles.

Obviously, each case must stand on its own facts. In our society, a man is not branded for life for his mistakes. We must be vigilant, but neither revengeful, nor vindictive. Under our law, it is always a basis for mitigating punishment when a person confesses his wrongs. It seems to me that if a teacher who was previously a Communist, or communist sympathizer, came out openly, admitted his past associations and disavowed any present association, he should be entitled to greater consideration than one who persisted in shielding his prior activities under the Fifth or other Amendments.

Once the teacher frankly admits his prior associations, his retention then becomes a matter for the sound discretion of the university board and faculty. In this connection, the university will unquestionably inquire and determine with care whether the person was guilty merely of "youthful indiscretions, mistaken causes, misguided causes - all long forgotten," or whether he continued for a long period to work for the Communists until he felt the hand of the law on his shoulder; whether his abandonment of communist membership and associations is bona fide, or whether he has merely gone underground until it is safe to reappear; and whether, from all the circumstances of the case, including the extent and duration of his activities, the teacher has compromised his fitness to discharge his professional responsibilities and duty as a citizen, or whether he still can be entrusted to shape the minds and character of his students.

Sometimes we have heard it said that teachers refuse to testify not to save themselves, but to avoid informing on others. This attitude may not be justified on legal grounds. The constitutional guarantee is personal and may not be relied on to protect others from being incriminated. Nor can this refusal to testify be sustained on moral grounds, even though no one likes to be an informer. Without knowledge of the facts, the University cannot judge whether the

refusal to disclose information is based on evasion and a desire to withhold evidence which may discredit the faculty member himself rather than the associates he claims to be shielding. We do not think more of a kidnapper who refuses to implicate his confederates. Why impute higher principles to a teacher who subordinates the security of his country to that of his friends or associates?

Moreover, even if we assume that he wishes to protect his friends, this is not the sole consideration to be accommodated. Apart from the country's welfare, there is the university to consider, its reputation, its traditions, its alumni, its students. To the extent that the accused teacher refuses to testify about his activities and fails to name his accomplices, suspicion may attach to any member on the faculty and distrust engendered among them. It may reflect adversely on the character of the institution in which he teaches. It may impair its ability to attract the more gifted minds among the teaching profession and students.

These are some of the many considerations which must be weighed by all of us in reconciling the needs of academic freedom with the needs of national security and welfare without which there could be no freedom of any kind for anyone.

Our legacy of freedom and liberty is great. We place it in dangerous jeopardy when we shrink from truth, shackle research, interfere with free inquiry, refuse to reassess and reappraise existing theories and ideas, or surrender fundamental principles.

We preserve our liberties when we permit our scholars to continue unhampered their search for wider areas of cultural, economic, political, scientific and religious freedom.

Given such a broad range and climate, academic freedom will serve as the open sesame leading to all other essential freedoms - not only here, but in

other countries as well. It will be the beacon light of liberty by which we may keep alive the faith, hope and will to live of those who are now enslaved, and secure the rights and dignity of all mankind. In the words of the great Greek Philosopher Epictetus:

"The rulers of the state have said that only free men shall be educated; but Reason has said that only educated men shall be free."