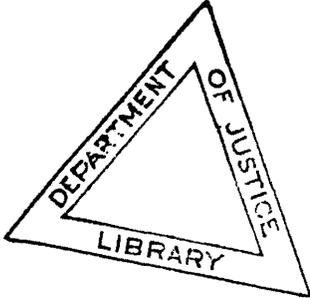


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REMARKS
OF

HONORABLE J. HOWARD McGRATH
ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

at

FRANKLIN D. ROOSEVELT

FOUR FREEDOMS AWARD

DINNER

Honoring

MRS. FRANKLIN D. ROOSEVELT

Hotel Waldorf-Astoria

New York City

Thursday Evening, May 11, 1950

Mr. Chairman, Mrs. Roosevelt, Distinguished Guests, Ladies and Gentlemen:

I deem it a distinct privilege to be here this evening and to participate in honoring a distinguished lady for her notable services in the cause of humanity--in the cause of the Four Great Freedoms to which emphasis and form were given by her late illustrious husband.

It is certain, Mrs. Roosevelt, that no one is more deserving of the unique honor which comes to you today. Your indefatigable efforts and your sincerity and zeal in the cause of these basic principles of human dignity are unparalleled. I join with those assembled here, and with the countless others whose hearts are here, in wishing you a long, healthy and happy life so that you may continue your noble contributions to humanity.

To me has been assigned the happy task of commenting on the first of these Four Freedoms--Freedom of speech and expression--everywhere in the world. Like the others, this Freedom is part of the core of true democratic government.

As you are well aware, the United States Constitution originally did not contain any express guarantee of personal liberty. But dissatisfaction with this omission was proclaimed in every state of the new union. Indeed, the States of Virginia, New York and Rhode Island embodied positive declaration of personal freedoms as a condition of their ratification of the Constitution.

Accordingly, it is not surprising that the Bill of Rights became a part of our Constitution only two years after adoption of the Constitution. Freedom of speech and press therefore may be said to have been recognized by the United States as an inherent right of mankind from the

beginning of our government. From the beginning we have had a national policy in favor of the public discussion of all public questions. Freedom of speech and press has become a basic principle of our American heritage and a symbol of our most fundamental belief--the belief in the dignity of the individual. Throughout the world, in part through our example, it has become the symbol of free men.

The test of time has demonstrated the wisdom of our forefathers. While the world has changed beyond the imagination of the men who wrote the immortal Bill of Rights, freedom of expression, important among the basic rights which that document preserved, has enabled us to make tremendous advances in every field of art, science and culture. It has enabled us to infuse popular sentiment into the administration of our government; it has served to cause our government to correct errors and to provide the implements of progress required from time to time.

The importance of the continued preservation of this freedom cannot be overemphasized. While the present generation faces the colossal task of defending the world community and its traditions against corrosion and decay and our own most cherished institutions against attack from within and from without, we know that dissemination of the truth will, as in the past, be the most effective weapon in overcoming the dangers which threaten. The vandals who would take away our spiritual and intellectual rights, as well as our physical liberties, will surely be repulsed if truth speaks out their motives.

The social unrest which is being felt throughout the world following the upheaval of two great wars has demonstrated in most emphatic manner

the necessity of recognition of the human rights and freedoms of all individuals. It is no wonder that the guarantee of those rights constitutes an emphatic and important item on the agenda of the United Nations.

Technological progress has been so rapid, economic and social problems have become so complex, our world has become so narrowed in space and time that it is impossible for any individual or group of individuals to solve its problems without unhampered information as to what is happening. Free speech and a free press are necessary vehicles for such information.

As was reported by the President's Committee on Civil Rights:

"Where the right is generally exercised, the public benefits from the selective process of winnowing truth from falsehood, desirable ideas from evil ones. If the people are to govern themselves their only hope of doing so wisely lies in the collective wisdom derived from the fullest possible information, and in the fair presentation of differing opinions."

The effective preservation of freedoms in our own country carries a message of universal importance, a message of good will among men, of brotherhood, and of mutual respect. The continued existence of our freedoms demonstrates how people, though different in background, race, color or creed, can live side by side in peace, in amity and in mutual esteem. A workable democracy in the United States will eventually result in a workable democracy among all mankind.

The genuineness of our democracy has brought about our present undisputed leadership in world affairs. This leadership, in turn, has brought an obligation to mankind, the obligation to demonstrate the efficacy of democratic government.

We are already doing a better job for our people than any of the police states behind the Iron Curtain. Our people are free and enjoy a remarkably high standard of living--theirs are oppressed, and wretched and half-starved. Freedom of speech and expression has been a telling factor in our success, and in their failure.

What is this freedom of speech and expression which has made the difference? It is a matter of mind and of spirit which develops with the advance of time. We have drifted considerably from the old Blackstonian theory that liberty of the press forbids nothing except censorship. But how far may we go beyond that?

It is clear that in a modern democratic society a man's freedom cannot be absolute and without regard for the right to freedom of his neighbors, for that is anarchy. I remember the oft-quoted aphorism of Mr. Justice Holmes: "The most stringent protection of free speech would not protect a man in falsely shouting 'Fire!' in a theatre and causing a panic." Freedom is hedged about by the competing rights of others and by the demands of social welfare. There must be a balance maintained between the two conflicting interests--that of the individual and that of society as a whole. The balance may be lost by leaning backward equally as by leaning forward. The retention of the requisite balance is the function of law-enforcement officers and the courts.

However, we must be extremely cautious that in providing the limitations necessary for balance we are not governed by the vicissitudes of transient circumstances. Today we have stormy criticism of those responsible for carrying out our foreign policy. Whatever be the basis of such criticism, whether it be for political profit or otherwise, it demonstrates one direction in which the pendulum of free speech must be permitted to swing if the people of this country are to breathe air that is truly free. Public opinion, informed through free speech and a free press, will return this pendulum to a balance. We must not permit the heat of such controversy to affect the solidity of the principle of true freedom of speech and expression.

Our history is replete with examples of courageous stands taken by statesmen of renown in the defense of such exercise of freedom even though the words spoken were contrary to their own deepest beliefs. That is why John Adams defended the British soldiers involved in the Boston massacre, and why Alexander Hamilton defended the British loyalists. They exemplified, with other friends of true democracy, the soundness of the view the first expression of which is attributed to the philosopher Voltaire: "I do not agree with a word that you say, but I will defend to the death your right to say it." No matter how far we may disagree with the views of a minority, it is the duty of all of us, and particularly of those who have sworn to defend and uphold the Constitution of the United States, to protect the right of that minority to express its views.

Even more important, and of tremendous significance today, is that one upholding such rights of a minority must not be subjected to the accusation of sharing the opinion of those who utter an unpopular view. This does not mean unbridled license; what is said must be within the periphery of what is termed the legal sphere. But hysteria and passion must neither fade nor color the determination of this legal sphere.

As it must under our Constitution, the ultimate determination of that delicate boundary between what one can and cannot freely say must be made by our Supreme Court. And the Supreme Court doctrine of "clear and present danger," meticulously applied with regard to its substance is sound and reassuring. The words of Mr. Justice Holmes in that historic Schenck decision of 31 years ago, that there can be no limitation on freedom of expression unless "the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent," have application to present-day problems. To be sure, there can be wide variation in the application of this basic principle, but there will be no misapplication if we follow the sage advice of Justice Brandeis with respect to the "clear and present danger" doctrine, to wit: "Like many other rules for human conduct, it can be applied correctly only by the exercise of good judgment, and in the exercise of good judgment, calmness in time of deep feeling and on subjects which excite passion, is as essential as fearlessness and honesty."

There are many who assert that with respect to freedom of speech, press and religion the Supreme Court has gone too far in applying the

doctrine as a touchstone of constitutionality. Freedom-loving people should rejoice that our precious civil rights have been elevated in the hierarchy of legal values. I am certain I voice the opinion of all present when I express unequivocal approval of the expanding area of judicial guardianship of our fundamental liberties. Our Supreme Court today, as a whole, has given sanctuary to civil liberties that were not vindicated even by the Courts on which sat such apostles of liberalism as Holmes, Brandeis, Cardozo and Stone. The Court has always recognized, however, that such freedoms are not absolute. Freedom of expression and the other great freedoms secured by our Constitution do not carry with them the right to destroy the Government which makes such freedoms possible. With full confidence in the integrity of our Courts, I pledge you that as Attorney General of the United States I shall direct every effort to the protection of these sacred liberties.

The heritage of freedom, forged by many through the centuries, defended by the blood of our countrymen and many in other lands, must be preserved. That is not to say that we have achieved it and perfected it. The principles of freedom may find, as they have in the past, new forms of expression, but the goal is clear. With "eternal vigilance" as our continuous watchword we shall remain free.

The attention of the world is upon us as we strive toward the goal. We have become the hope of all enslaved people; our great Nation is deemed the embodiment of the ultimate ideal of freedom and equality.

Let us be worthy of this. Let us mobilize all our moral and spiritual forces and we shall triumph in that great struggle now being waged between

freedom and slavery, between the concept of man as an inert thing and the certainty of man as an inviolate creature of God. Let us fortify ourselves with the tried and tested moral weapons and we shall be victorious in the present duel between the two clashing philosophies of good and evil. The battle will be hard, the road to freedom is always gruelling; but armed with truth reinforced with freedom of speech and expression, we shall win in this impact of colliding civilizations.

With the help of God and under such inspired leadership and devotion to our free institutions as evidenced by you, Mrs. Roosevelt, we can be assured that we shall long continue to sing:

"Yet, Freedom! Yet, thy banner, torn, but flying,
Streams like the thunderstorm against the wind."