

Summary of Remarks

by

The Honorable Francis Biddle  
Attorney General of the United States

Fifty-Third Annual Dinner  
of the  
Brooklyn Bar Association

Hotel St. George, Brooklyn, N. Y.

February 5th, 1942

In times of war the State becomes cohesive. The function of the State has an added significance. This function is felt deeply by the people who look to the State for greater leadership, and their aspirations are fused by a clearer singleness of purpose. William James has suggested that some "moral equivalent of war", as he called it, which could stir and hold that unified spiritual energy should be found for the easier going ways of peace. For war may bring out brutality; but also it develops a plane of self-sacrifice that the ideals of peace do not reach.

In times of peace lawyers are officers of the Court; in times of war they become officers of the State. This process is inevitable. For, especially in the United States, lawyers have largely dominated our legislatures, and manned the executive offices of the Government. They are trained craftsmen, with the skill of minds trained to think, and with a sense of the continuity of law, which is but to say the continuity of our customs, our folkways and our traditions. Therefore in war, in this war in particular, they become the leaders of a society bent on preserving those traditions.

The bundle of traditions with which we, as lawyers, are particularly concerned, are gathered in the Bill of Rights. Preservation of impartial courts, trial by jury, defense against unjust search and seizure, freedom of speech and of the press - these are matters peculiarly close to the hearts of lawyers, for they begin and end in the just administration of the law. We lawyers, then, particularly when these rights are threatened from without by war, and from within by the resort to war in self-defense, become the leaders of a society bent on holding the rights that are most dear to it.

Our responsibility to lead the public, particularly in this field, becomes very great. More than ever we are looked to in exercising this leadership; and, infinitely more than when we are at peace, we must accept and exercise this responsibility - the responsibility of leadership.

As the chief legal officer of the Government, I realize fully the immense task which rests on me, a duty which must be accepted without faltering and daily exercised - the obligation of affording leadership by speech, by example, and above all by consistent action in the field of law enforcement and protection of our rights, of the great group of civil rights built up so laboriously over the centuries.

I am constantly being attacked or commended for what I say and what I do in fulfilling this duty of sane and wise leadership which I owe to the American public. It becomes appropriate, therefore, that from time to time, I report to that public the policies that I hold valid and the actions I take to enforce those policies. This I do tonight.

Those who blame find that I am not "tough" enough, whatever that may mean. Or they may criticize, if they happen to dislike Government restraints, on the ground that I am interfering with certain types of freedom of expression or action by enforcing laws which, though passed by the Congress, they do not approve of. Thus many believe that a program of discrimination against aliens is more realistic in war time; and on the other hand the extreme liberals believe that wire-tapping to catch saboteurs is deeply immoral - Pearl Harbor notwithstanding.

I think it an over-simplification to test a policy by whether it is tough or liberal. These are emotional classifications, based often on our own prejudices or hidden disappointment. Rather we should ask is the policy wise? Will it unify us as a nation? Will it protect our interests? What effect will it have on our internal structure of civilized living?

I suggest two such policies for your consideration. First, how should the Government handle seditious utterances? Secondly, how should we treat aliens, and particularly alien enemies?

Traditionally America has always avoided the use of sedition laws. We have believed that they express the use of star chamber methods which we have always disliked - the persecution by the sovereign of opinions not palatable to sovereignty. Of course, war changes the picture - or at least adds a new consideration. Nothing must hamper the war - whether acts or words. The problem necessarily becomes largely one of wise administration.

The test I believe should be a practical one. Do the words really interfere with selective service, or the behavior of enlisted men? Do they lead to violence, or resistance, or treacherous or subversive acts? If they do not - a matter of cool judgment - as a matter of policy I think it better to let men talk, however critically, or even maliciously. The experience of England has proved that. It is sensible to let men blow off steam - up to a point.

Accordingly, I have directed that no sedition indictments be brought without my prior express approval. That tends to curb the often over-zealous United States Attorneys. No sedition cases have been begun since the war.

The other policy I have in mind deals with our treatment of alien enemies. We have 1,100,000 of them in the United States. My tough critics would doubtless be satisfied only if I interned all of them. I have the power to do so, but I shall not. That would be profoundly unwise, let alone

that it would be profoundly un-American. Many of those "enemies" - technically so classified - have sons fighting in the Army and Navy. There are many million Americans of German and Italian origin in our population who would be deeply shocked by and resentful of such treatment. And the effect would be severe retaliation on Americans living in Axis countries. We have arrested and will continue to arrest the potentially dangerous and the disloyal. The rest we shall let alone and continue to absorb into our American family.

In the course of the war, it is quite likely that groups of frustrated people, in an attempt to magnify their own importance or their own fears and prejudices, will take on the hood of the Vigilante. It makes little people feel bigger to decry a religious or racial group, to attack the Catholics or the Jews or the Negroes or Jehovah's Witnesses or some other minority. The Nazi way of life, in so far as it can penetrate our shores, will encourage such activity.

Some such vigilantism is perhaps inevitable in a time of great national crisis; the strains and stresses of war bring out the worst as well as the best in men. But it is well worth noting that equally inevitable is the retribution which awaits both the enemies without and the betrayers within our democracy. The Federal Government is well prepared to deal with vigilantism. Within the Department of Justice the Civil Rights Section has fought and will continue to fight to defend the rights and the liberties of all those entitled to the protection of our borders—citizens and aliens alike.

Twenty-four years ago, in 1918, President Woodrow Wilson delivered a stinging rebuke to the men of small minds and even less morals who debased American democracy by taking the law into their own hands — for then, as today, there were outcroppings of vigilantism.

"No man who loves America," he said "no man who really cares for her fame and honor and character, or who is truly loyal to her institutions," he said, "can justify mob action while the courts of justice are open and the governments of the States and the Nation are ready and able to do their duty.

"We proudly claim to be the champions of democracy. If we really are, in deed and in truth, let us see to it that we do not discredit our own. I say plainly that every American who takes part in the action of a mob or gives it any sort of countenance is no true son of this democracy, but its betrayer, and does more to discredit her by that single disloyalty to her standards of law and of right than the words of her statesmen or the sacrifices of her heroic boys in the trenches can do to make suffering peoples believe her to be their savior."

No truer or more appropriate words could be spoken in the great crisis which faces our democratic way of life today!

And there is even less justification today than there might have been 24 years ago for a vigilante spirit. The menace, real or imaginary, of fifth-column activity by enemies within our borders has been and is being swiftly neutralized. On the Pacific Coast, where tempers and dangers are highest, the Department of Justice has acted promptly on every recommendation of the military authorities. Strict prohibitions have been placed upon the movements of alien enemies, with whole areas barred to them

and others established where they may enter or remain only under the most stringent limitations. Similar prohibitions will be ordered promptly upon receipt of recommendations by the War Department or the Navy Department, within the authority of Presidential proclamations governing the activities of alien enemies. No steps deemed necessary to protect the internal security of the nation will be neglected.

The Government is well-equipped, too, to handle this over-all problem of internal security. In addition to the military authorities, local and state police, the Federal Bureau of Investigation has a large and specially trained force which, in its last 50,000 cases, has attained a percentage of successful prosecutions as high as that of any constabulary in the world, even though its field of activities has included the extremely difficult pursuit of spies and kidnapers. Of the last 50,000 persons brought to trial as a result of FBI investigations, 96% have been convicted. I am proud of the success, measured by convictions, that is reflected in the FBI's record, but I am far prouder of the fact that in but very few cases out of 50,000 have persons apprehended by the FBI claimed the use of third degree methods — and in those few cases the claims proved to be unfounded!

Roger Baldwin, the director of the American Civil Liberties Union, has authorized me to quote him as follows:

"After close scrutiny, we have been unable to find a single case of violation of civil liberties by the FBI."

That is a record, I am sure you will all agree, of which we, as Americans and lovers of democracy, have every right to be proud. We are, and should be proud, likewise, of another democratic process upon which we Americans insist: that all persons arrested for violations of the law be protected by counsel.

This is -- or at least, should be -- more than a hollow phrase, more than mere lip service to the democratic way of life. We know that certain types of law violation are, to the so-called "sophisticated" class of our society, no more than petty and occasionally expensive annoyances: polite crimes. We know that to many no stigma is attached to the defense of the heads of large companies which have ganged up on the price of necessities. We know that the most flagrant income tax violator, if he is rich enough, has no difficulty in employing competent counsel. And by "we" I mean we lawyers.

Is it too much to wish, therefore, that the poor and humble violators of our social sanctions had as much protection? Is it too much to suggest that the duty of our profession is to guarantee that all persons accused of crime have adequate legal protection? Is it too much to say that with such protection guaranteed through your aid we who enforce the law will be induced to remain vigilant in the American way?

I urge on you this duty in defense of liberty.