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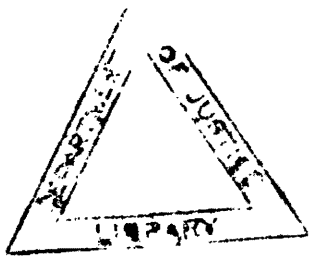

ADDRESS

BY

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We all learned in our school days that there are two factors which distinguish our free, political society from those of many other countries. The first is that the structure of this government is based upon the doctrine of separation of powers of the Executive, Congress and the Courts. This means that each branch of the government may exercise its powers free from undue interference from any other branch. The second, closely related to the first, is that this is a "government of laws and not of men." These two principles were adopted by the practical, common sense framers of our Constitution, because they knew that this was the only way to preclude the exercise of arbitrary power and to save the people from autocracy.

Recent events have engendered a good deal of confusion and controversy about these doctrines. What do they mean as applied to today's problems?

First, a few words about the background of the doctrine of separation of powers.

Our founding fathers were fully aware of the history of usurpation of power in England. From their deep reading, they had learned how the King had often exercised legislative power and dominated the judiciary. They were mindful of the Magna Charta, the Petition of Right and Bill of Rights, each of which had become necessary by reason of abuse of power either by the Crown or by Parliament, to reaffirm and reassert the native right of the people to liberty and freedom.

Yet, strangely enough, many of our early great statesmen such as Thomas Jefferson and James Madison were attracted to the idea of separation of powers, not primarily as a safeguard against the tyranny of Kings,

but against the tyranny of legislatures. Thomas Jefferson said:

> "The concentrating these (the three powers) in the same hands is precisely the definition of despotic government. It will be no alleviation that these powers will be exercised by a plurality of hands, and not by a single one. 173 despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the government we fought for, but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced...as that no one could transcend their legal limits, without being effectually checked and restrained by the others."

John Adams advocated the separation of powers because he too knew that the people could not long be free or ever happy under a single branch of government. He knew how wild the ambition of man or any body of men could run when left uncontrolled; how the Long Parliament in England had tried to keep itself perpetually in power, and how it had dominated the judiciary and oppressed the people. He remembered what happened in Holland whose assembly voted themselves continuing terms of office and that all vacancies be filled by themselves. He knew that a single assembly, possessed of all the powers of government "would make laws for their own interest, execute all laws arbitrarily for their own interest, and adjudge all controversies in their own favor."

The history of the separation of powers in America can also be traced in turn through the Declaration of Independence, the state constitutions, the Articles of Confederation, and the Federal Convention which framed the Constitution.

The Declaration of Independence condemned interference by the English crown with colonial legislatures as well as courts, and pointed to the need for separation of powers. It stated that legislative bodies were called

together at distant, uncomfortable places for the purpose of fatiguing them into compliance; that representative houses were dissolved for opposing invasions of the rights of the people, and the people denied the right to elect successors in office; that administration of justice was obstructed by refusal to assent to laws establishing judiciary powers; and that judges were made dependent on the crown's will for the tenure of their office and the amount and payment of salaries.

The need for separation of powers was next stressed in the state constitutions. The States of Virginia, New York, and Massachusetts and other states each had provisions in their constitutions that the legislative, executive and judiciary departments should be separate and distinct so that neither branch could exercise the powers properly belonging to the other. In the Massachusetts constitution, the doctrine of separation of powers was adopted "to the end it may be a government of laws and not of men."

In 1778 the Articles of Confederation were adopted, but these were not too successful, largely because of failure to provide for an independent, efficient executive, and an adequate federal judiciary.

In 1787 there assembled in Philadelphia the federal constitutional convention. At this convention, the statesmen recalled instances of legislative tyranny, of executive inefficiency, and of the want of effective and independent judiciary power. Madison reviewed the state practice and concluded that despite their constitutions "the legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex." Almost all the leaders expressed their belief in a separation of powers as part of a system of checks and balances of power.

All the plans presented at the convention provided in some form for separation of powers. The debates were fierce and exciting. Often it appeared that an insurmountable impasse was reached with neither contesting side willing to compromise. Frightened by the possibility of failure, Benjamin Franklin "proposed that the convention open daily with prayer, invoking divine guidance to save it from ruin." Even on this motion, agreement was impossible. When various differences were finally resolved, the new Constitution fully embodied the principle of separation of powers.

In Article I, it was said that all legislative powers herein granted shall be vested in a Congress. In Article II it was said the Executive power shall be vested in a President. In Article III, it was said that the judicial power shall be vested in one Supreme Court and in such inferior courts as Congress shall hereafter establish.

These provisions reflected the view that no man could be fair and objective enough to be the author of laws, to be their administrator, and to judge what they meant. It was felt if all these three powers were ever lodged or concentrated in one man or one group of men we would have tyranny, not liberty.

In order that no one branch should be too powerful, provision was also made by which each branch could apply its own brakes upon abuse of power by the other. At the same time, the Constitution provided for the meshing of the gears of government so that it would operate efficiently, and as an integrated machine. These checks and balances are well known to you. To mention just a few: The federal judiciary was given life-tenure during good behavior as a barrier against encroachment and oppression by

the legislature. The President was given a veto power over legislation enacted by Congress, with a right by the latter branch to override the veto by a two-thirds vote. The Congress was given the right to impeach the President, and control of the public purse.

It was not long after the Constitution was ratified by the States that the principle of separation of powers met its first big test. This was in 1792 when George Washington was President. The House of Representatives had passed a resolution appointing a committee to inquire into the causes of the failure of an expedition under Major General St. Clair. By this resolution the House Committee was authorized to call for such persons, papers and records as may be necessary to assist the inquiry. The House based its right to investigate on its control of the expenditure of public moneys. Shortly after the resolution was passed, the Committee requested President Washington for the papers relating to the General St. Clair campaign. After consultation with his Cabinet Washington concluded that the executive ought to communicate those papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public; and moreover, that it was a matter within the discretion of the executive to decide which to make available and which to withhold.

This position was adhered to in 1796 by President Washington in resisting another demand by the House of Representatives. This time, the House sought to see a copy of Washington's instructions to the United States Minister who negotiated a treaty with England, together with correspondence and documents relating to the treaty. Since it was necessary to implement

the treaty with an appropriation, the House insisted on seeing the papers requested as a condition to appropriating the required funds.

Denying this request President Washington stated that he had no disposition to withhold information from Congress which he was required to furnish under the law; and that it would be his constant endeavor to harmonize the executive branch with the other branches, so far as the trust was imposed upon him by the people to preserve, protect and defend the Constitution. But he pointed out that these treaty negotiations were secret and to admit the House of Representatives into the treaty making power, would establish a dangerous precedent. He closed his message by saying " * * * it is essential to due administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved. * * * "

By the time that President Washington was ready to retire from office, he was fully convinced that each of the branches of government must respect the rights of each other, if the country was to avoid dictatorship. In his Farewell Address, Washington cautioned against invasion upon the powers of one department of the government upon the other. He said, "The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. * * *

" * * * If, in the opinion of the people, the distribution of modification be in any particular wrong, let it be corrected by an amendment which the Constitution designates. But let there be no change by usurpation; for, though, this in one instance may be the instrument of good, it is the

customary weapon by which free governments are destroyed."

The precedent thus established by President Washington based upon the separation of powers has been adhered to by every other President who succeeded him.

The right of the President to withhold papers and other information from members of Congress which are confidential or the disclosure of which would not be in the public interest, has never been questioned by the courts.

Now, one other example: The congressional majority in Andrew Johnson's administration had little regard for the rights of minorities and no regard for the President. In that day Thaddeus Stevens dictated and controlled the Congress. He feared that appointees of President Johnson to the Supreme Court might disagree with reconstruction policies espoused by the Congress. Accordingly, a law was passed in 1866 which deprived the President of his constitutional power to make appointments to the Supreme Court until its membership had been reduced from 10 to 7. In addition, the Congress further invaded the prerogatives of the President by depriving him of authority to remove his own cabinet officers.

When President Johnson resisted this attempt by Congress to encroach upon his powers as Executive, impeachment proceedings were brought. The House quickly adopted a resolution that the President be impeached. But in the Senate the impeachment proceedings were attended by more careful attention and discussion of the issue before it.

In defense of the President, it was urged that his office was one of the great coordinate branches of the government. The Constitution defined his powers to be as essential to the framework of the government as any other. It was said that anything which weakened the President's hold upon the respect of the people and which made it the sport of majorities in Congress was apt to injure our government and inflict a fatal wound upon constitutional liberties. President Johnson escaped impeachment in the Senate by a single vote.

In exercising its great powers, the federal courts as a whole have shown extraordinary self-restraint in refraining from intrusion upon the legislative or executive powers. Again and again we find the Supreme Court saying that the wisdom or expediency of a law is not for it to decide, but is solely a matter for the Congress. But there have been times during which the Supreme Court has encroached into the fields reserved to Congress and the executive branches of government with disastrous results to the nation.

An early example of judicial usurpation of congressional power is to be found in the celebrated Dred Scott decision rendered in 1857. This was the time when the question of slavery was agitating the country. Scott was a slave who had been taken by his master into the upper Louisiana territory.

In those days slavery was forbidden in that region under the Missouri Compromise. After residing in the Louisiana region, Scott returned to Missouri where he sued for his freedom on the ground that he had been in free territory. Before the case reached the Supreme Court, Congress had repealed the Missouri Compromise, declared it to be inoperative and void and stated that it was the intent of the present Act not to legislate slavery into any territory nor to exclude it therefrom. Thus at the stage when the case came to the Supreme Court there was no need for the Court to decide whether the Missouri Compromise was valid. The only question for decision remaining was whether Scott's status as a slave was reinstated upon his return to a slave state. Instead of confining itself to this narrow problem, the Supreme Court, in a decision by Chief Justice Taney held that Scott, a negro, not being a citizen could not sue in the United States Courts, and that Congress could not prohibit slavery in the territories.

This decision cut sharply into the Congress. It raised such a storm of violent condemnation that it took the court many years before its reputation was repaired. The decision was considered a deliberate attempt by the Court to destroy or neutralize the power of Congress in a matter over which the Court had no jurisdiction. It was widely criticized as an immoral effort on the part of the Court to thrust itself into a political contest where it did not belong. Its action was considered to be one of the greatest calamities which this country under our form of democratic government could sustain.

In recent years the Supreme Court has taken its proper position within the framework of the Constitution, and given fuller effect to the doctrine of separation of powers.

We turn now to encroachment by the Executive into fields reserved for the judiciary and the Congress.

In 1936, the President was at the height of his power, having won a great victory in the election. When some Republicans hinted that if elected Roosevelt might attempt to pack the Court, the Chairman of the Judiciary Committee heatedly replied that "a more ridiculous, absurd and unjust criticism of a President was never made." "Court packing," he said, was a "prelude to tyranny." But when the election was over, the President decided to launch his plan for enlarging the Supreme Court. Apparently he believed he had substantial support in Congress for it. Senator Glass then said, "If the President asked Congress to commit suicide tomorrow, they'd do it."

The President had not, however, reckoned with the people or with the character of the men in Congress. From the cities, the "grass roots," from businessmen, farmers, teachers, lawyers, plain citizens from everywhere, the mail poured in to Congress protesting the "packing" of the Court. In its report the Senate Judiciary Committee recommended that the bill be rejected "as a needless, futile, and utterly dangerous abandonment of constitutional principle." The Committee declared that "it would subjugate the courts to the will of Congress and the President and thereby destroy the independence of the judiciary, the only certain shield of individual rights." The Committee concluded "that the plan's ultimate operation, would be to make this Government one of men rather than one of law, and its practical operation would be to make the Constitution what the executive or legislative branches of the Government chose to say it is -- an interpretation to be changed with each change of administration."

The Court packing plan was so emphatically rejected that we doubt that another one will ever be presented to the people.

Another case which illustrates executive usurpation, this time into the legislative province, is the recent Steel Seizure. In 1952, in order to avert a nation-wide strike of steel workers which he believed would jeopardize national defense, President Truman issued an Executive order directing the secretary of Commerce to seize and operate most of the steel mills. This order was not based upon any specific authority granted by Congress. The President claimed that the power to seize these mills rested generally upon all powers vested in him by the Constitution and laws of the United States and as President of the United States and Commander in Chief of the Armed Forces. Judge Pine of the Federal District Court of Columbia issued an injunction restraining the Secretary from continuing the seizure and possession of the plants and from acting under the President's order. The Supreme Court upheld the injunction in an opinion which stressed the importance of observing the doctrine of separation of powers.

Since there was no law enacted by Congress which authorized the seizure, the Court considered the question whether the Constitution conferred the right of seizure under the circumstances. First, it rejected the President's contention that the seizure was in exercise of his military power as Commander in Chief of the Armed Forces. Pointing out that the Commander in Chief lacked the power to take such possession to keep labor disputes from stopping production, the Court said, this was "a job for the Nation's lawmakers, not for its military authorities." The Court ended its monumental opinion with these words:

> "The Founders of this Nation entrusted the law-making power to Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand."

Thus far there has been discussed the more direct instances of interference by one branch of the Government into the others. But encroachments are not always so easy to recognize and sometimes assume subtle forms. These encroachments may be wrapped in a package labelled "in the public welfare" but nonetheless they are just as wrong and harmful as those I have already discussed.

Recently, a Senator stated that he had received classified military information from "an Army intelligence officer." He further stated:

> "As far as I am concerned, I would like to notify 2,000,000 Federal employees that I feel it was their duty to give us any information which they have ***."

This open invitation to violate the laws of the United States would substitute government by an individual for government by law. For there is a law, which makes it a crime for anyone who has lawfully received classified information relating to national security to turn it over to anyone not entitled to receive it. It is found in Section 793 (d) of Title 18 of the United States Code.

Accordingly, I issued the following statement:

> "The Executive Branch of the Government has the sole and fundamental responsibility under the Constitution for the enforcement of our laws and presidential orders. They include those to protect the security of our nation which were carefully drawn for this purpose.

> "That responsibility cannot be usurped by any individual who may seek to set himself above the laws of our land or to override the orders of the President of the United States to Federal employees of the Executive Branch of the Government."

I had in mind that at a very early time in our history, the Supreme Court said:

> "No man in this country is so high that he is above the law. No officer may set that law at defiance, with impunity. All the officers of the Government from the highest to the lowest, are creatures of the law, and are bound to obey it."

The cardinal precept upon which the Constitution safeguards personal liberty is that this shall be a government of laws. A patriotic American best serves his country by cooperating with the law-enforcement agencies and giving them any information he may have -- not by obstructing them or by adding to their burdens.

Three questions have been asked as a result of recent developments. First, will the power of Congress to investigate into and expose any graft or corruption which might arise in the future, be curtailed. The answer is "No".

Congress has, and will continue to have, full authority to examine into charges of graft or corruption. To the best of my knowledge, no Executive Agency has during this administration failed to respond promptly, courteously and fully to every proper request of these Congressional Committees that remotely bears upon these matters. Certainly that is President Eisenhower's policy. I am completely confident that it will continue to be the policy of his Administration.

The second question is whether the above-quoted law and the President's Executive Order protecting classified information will result in a "cover-up" of disloyal or dishonest persons. The answer is emphatically no. The laws now on the books and the Executive Order furnish an indispensable protection to our FBI and our whole system of guarding the national security.

What is classified security information? It consists of documents or information about troop movements, atomic data, military equipment and supply secrets and FBI reports. Under the law such information cannot and should not be turned over to unauthorized persons. I would estimate that less than one percent of Government employees is entitled to handle this classified security information and then only after a full investigation of their loyalty and trustworthiness. If our enemies obtained such information our national security would be jeopardized. It does not make sense to say that anyone in Government can give this information to any person if he thinks it is in the public interest.

You remember the tragic results when in the past persons in government and science decided to use their own judgment as to what security information should be turned over to unauthorized persons.

What would happen if this classified information was handled in such a fashion. For one thing, the effectiveness of the FBI would be destroyed. Its sources of information must be protected. The Department of Justice's effectiveness as a prosecuting agency would be seriously crippled.

Long years of experience have proved that direction and control of military secrets, intelligence and counter-intelligence data and prosecution

of crime must and should belong to the Executive Branch. During all our history the ordinary auditing powers of Congress, plus its powers to legislate and control the purse strings, have sufficed to provide the necessary checks on the Executive Branch. That is a better solution than destroying our Constitutional system of separation of powers - an action which our Founding Fathers warned would result in tyranny.

I was pleased to see that responsible leaders of both major political parties in the United States Senate openly condemned any incitement of government employees to violate the law. When the problem is fully understood against the backdrop of our history, everyone will agree with this conclusion. No Administration has ever been more dedicated to the policy that Communism and corruption have no place in our Government. We have moved quickly and vigorously to carry out this policy. We will continue to fight Communism and corruption wherever it appears.

The members of Congress almost without exception have been most helpful in cooperating with the executive branch of the Government in this regard and I am sure that the executive and legislative branches of government will work well together in the future toward this common goal.

There is a third problem that deserves mention. Under the Government's system of removing any employees who are security risks, every employee against whom derogatory information is found has a right to a hearing. The persons who hear the evidence are government employees selected from a panel maintained by the Civil Service Commission. They serve without extra pay in the thankless job of protecting our country's safety by examining employees who may be security risks. The hearings are not public so as to protect the individual against publicity if he is

cleared. They make a recommendation to the head of the Department or agency who then makes the decision.

The proposal has been made that the hearing officers should be examined by Congressional Investigation Committees and asked to answer questions as to why they voted as they did in any given case.

What would you think if a Congressional Committee called up a Federal judge and cross-examined him on his motives for his court decision?

Our Founding Fathers thought out that problem and decided against giving that authority to the Legislative Branch. Congress has and should have the authority to check on the results of the employee security program. However, we believe that no employee security program would work if the hearing officers had to answer Congressional Committees on television rather than ansering to their superiors in the Executive Department. Here again, this is a joint policy of the President and the Congress, for Public Law 733 upon which the Employee Security Program is based, authorizes the head of each Executive Agency to determine whether his employees are security risks.

It seems very clear that the Congress and the President have drawn the proper line separating the respective powers of the Executive and Legislative Branches of our Government in the field of national security. Anyone who attempts to put himself above the law, and incite government employees to turn over classified information relating to our national security, in violation of Statute and Presidential Order, is tragically mistaken if he believes he is helping to protect our Nation's safety.

Nothing pleases the Communists more than to create division among the people on matters of national security; impair constitutional

government; and encourage disobedience to the law.

Some years ago Chief Justice Hughes was gravely concerned over the danger to our democratic processes in this country and with the rise of totalitarianism in Europe. He said:

> "We still proclaim the old ideals of liberty but we cannot voice them without anxiety in our hearts. The question is no longer one of establishing democratic institutions but of preserving them. * * * The arch enemies of society are those who know better but by indirection, misstatement, understatement and slander, seek to accomplish their concealed purposes or to gain profit of some sort by misleading the public. The antidote for these poisons must be found in the sincere and courageous efforts of those who would preserve their cherished freedom by a wise and responsible use of it."

As you may know, I have spoken out against those in high places who were blind to the danger of Communist infiltration in our Government. I believe it equally important to speak out against those who, regardless of motive break down our system of government by law in an effort to investigate communism. Recent figures announced by the President show that the Communist menace here at home is being steadily, quietly and relentlessly destroyed by our regular law enforcement agents. The members of Congress in many ways have performed outstanding service within the framework of their duties and in giving the Executive Branch of the government the necessary legal tools to do a more effective job against Communism.

So long as we adhere to the principle that this is a government of laws, not men, and so long as we show sober judgment and true courage in resisting encroachment by any branch of the Government upon any other, we can have faith and confidence that the spirit of liberty and of America will win through and be an inspiration for the rest of the world to follow.