Department of Justice

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ADDRESS

BY

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It is an honor to be asked to address this 30th Anniversary Banquet of the Boston College Law School. Recently all of us in Washington have been occupied with and captivated by the visit of President O'Kelly of Ireland. After being exposed to his charm one has to restrain himself from making a speech about Ireland and the distinguished accomplishments of the Irish people -- as I look about the room it occurs to me it might be a good subject to talk about tonight.

I have been asked to speak on the subject of our civil liberties. When one speaks about civil liberties he is speaking about the objectives of government. The highest function of government is to promote and protect the individual's freedom; his freedom to pursue his legitimate interests in peace and in dignity; his freedom to think and to speak, to meet and to worship, in his own way.

Our Constitution -- especially our Bill of Rights -- is a charter of freedom. But a declaration of principles, however eloquent, is not enough; there must also be the determination to make it meaningful in practice. You recognize that the concept of civil liberties is a dynamic one, and you are to be congratulated on the emphasis which you have given to this concept in celebrating your 30th anniversary.

As you know, people under Soviet rule are expressly granted substantial rights by written constitutions. The Constitution of the U.S.S.R. provides for freedom of speech and of the press, the right of assembly for peaceful purposes, the independence of the judiciary and the right to freedom of religious worship. Yet in practice these

declarations have proved meaningless.

Our constitutional system works because our judiciary is its final arbiter. Questions of constitutional rights are determined in the courts. Theirs is the ultimate task of resolving, within the constitutional framework, conflicts between the individual and his government and, also, controversies between the states and between state and nation. It is thus fundamental to the welfare of the country and to the security of our liberties that the strength and independence of the judiciary be maintained and that the decrees of the courts be accorded full respect. No man's liberties are secure if the lawfully determined rights of other men are ignored. No group can be complacent if the rights of any minority are thwarted.

From time to time complaints are directed against the courts on the ground that a criminal conviction has been set aside for reasons which the critic regards as being "technical". Laymen, I think, are prone to regard all procedural matters as a rather technical business. Nothing is more misleading. "The history of liberty," as one of our Supreme Court Justices has stated, "has largely been the history of observance of procedural safeguards."* The acid test of our devotion to civil liberties is a readiness to afford the full measure of the law's protection to all persons -- to the poor as well as the rich, to the guilty as well as the innocent.

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*McNabb v. United States, 318 U.S. 332, 347.

Let me illustrate the importance which we attach to fair procedures.

Recently there came to our attention an intrinsically unimportant case in which a defendant was convicted of possessing distilled spirits on which the federal tax had not been paid. Although the evidence warranted the conviction, the record showed that in final argument the prosecutor had made insinuating comments to the effect that the defendant seemed to have a considerable amount of money. Believing that these comments may have improperly influenced the jury in its deliberations, the Department of Justice consented to the grant of certiorari and to reversal of the conviction.

Another instance involved a case of considerable importance in the field of national security. The charge was conspiracy to advocate the violent overthrow of the government. The trial lasted more than six months and the jury brought in a verdict of guilty. Later, when the case was on appeal, we received information indicating that one of the government's witnesses at the trial lied on various subsequent occasions. However, there was no evidence that his testimony at the trial in question had been false. Yet, we believed that the subsequent indications of the witness' unreliability were so serious as to require further examination of the defendant's conviction. The Department called the matter to the attention of the Supreme Court and as a result the Court directed a new trial.

These illustrations both involved the right to fair trial. As you well know, the courts vindicate many other no less vital constitutional safeguards -- the right to be secure from unreasonable searches and seizures; the right not to be compelled to be a witness against oneself; the right not to be placed in jeopardy for the same offense twice; the right not to be deprived of life, liberty or property without due process of law; the right to the equal protection of the laws. Not least of all, the courts are the guardians of the precious rights embraced by the First Amendment -- freedom of religion, freedom of speech, freedom of the press, and freedom of assembly.

The process of determining the reach of constitutional rights in the particular facts and circumstances of the individual case is rarely a simple or mechanical one. Courts must pass upon difficult and delicate issues involving close questions of judgment. It is thus inevitable that there will often be disagreement as to the merits of particular decisions. No one, of course, questions the right to disagree with a court decision or to criticize it. But it is imperative that controversy as to the merits of decisions shall not be made the occasion for weakening the institution of the judiciary.

No person who understands the role that our courts have played in the history of our country can fail to have profound respect for them. The Department of Justice is involved in approximately one-half of the total number of cases tried in federal courts each year. Based on

that experience and speaking in behalf of that Department -- and I believe the overwhelming majority of lawyers -- let me say that America has reason to be immensely proud of the entire federal judiciary and in the part it is playing in the success of our way of life.

The attempt by the American Negro to realize the full measure of his constitutional rights has been in the forefront of our attention in recent years. It came into full public view as a result of the unanimous decision of the Supreme Court in Brown v. Board of Education. As you know, that case held that the doctrine of "separate but equal" in the field of public education violated the Fourteenth Amendment of the Constitution. Stated more precisely, it held that a state violates the Constitution of the United States when it denies a Negro child who is otherwise qualified for admission to a particular public school, and who seeks admission, the right to enter that school. In so doing the state denies to that Negro child "the equal protection of the laws."

Although during the last year it has been much clarified in the public mind, a great deal of misunderstanding about this case still persists. Let me set forth some things the case did not hold.

The case neither holds nor suggests that the matter of public education has ceased to be the primary responsibility of the states.

The case does not hold that the state may not establish appropriate criteria for determining which children shall attend particular

public schools. What it says is that race is not a permissible criterion.

The case does not attempt to prescribe the means and the manner by which the communities and the states are to bring the operation of their public school systems into compliance with the constitutional principle of equality under law. The Supreme Court took pains to point out that the federal district courts, when called upon to consider a plan submitted to it, are to take full account of local factors in order to permit the necessary adjustments to be made in an orderly and systematic manner. There is an important qualification, however -- that the means worked out and adopted by the various communities be directed toward good-faith compliance with the law's requirement.

No one should attempt to minimize the problems of implementing the decision of the Supreme Court. They are complex. In some areas the principle of law declared in the Brown case runs against long ingrained practices which for more than five decades were thought to be consistent with the Constitution. But, granting the difficulties, the transition must and can be made.

These are the alternatives which have to be faced by those concerned. Will it be done sensibly and reasonably, based on plans worked out by local people in a way best suited to meet local needs; or will it be done under compulsion of a court order, perhaps in a manner and at a time and place not of the state's own choosing? The answer, it seems to me, is obvious because voluntary solutions are so much more satisfactory than imposed ones.

Since last fall there has been considerable progress. I say this not only because many additional schools have admitted Negro children but because there has been a growing awareness:

(1) That the doctrine of "separate but equal" is a thing of the past and that there can be no turning back the clock;

(2) That the so-called "massive resistance laws" designed to circumvent or frustrate the orders of the federal courts will not stand up;

(3) That the choice the state faces is either to abolish the public schools or to formulate reasonable plans of desegregation within the guidelines laid down by the Supreme Court;

(4) That abandoning public schools has tragic consequences for the children, the community, the state, and in the long run, the nation;

(5) That where good faith efforts to comply have been made there has been substantial progress. One governor observed recently that since his state complied its schools are better and are run less expensively than before.

The President has stressed that progress depends not on laws alone but on building better understanding. The leaders of all of our great religious faiths have also emphasized this. The Catholic Bishops of America have stated:

> "The heart of the race question is moral and religious. It concerns the rights of man and our attitude toward our fellow man. If our attitude

> is governed by the great Christian law of love of neighbor and respect for his rights, then we can work out harmoniously the techniques for making legal, educational, economic, and social adjustments."

In view of the developments I have mentioned, we in the Administration do not believe that it is wise at this time for the federal government to seek broad new powers to initiate law suits. The institution of suits by the federal government, as distinguished from suits by aggrieved private parties, might tend to revive tensions which I believe are beginning to subside - they might do more harm than good.

We do, however, attach importance to the proposals by the President, especially the suggested amendment of the criminal statutes dealing with obstruction of justice. This measure would make it a federal offense to interfere forcibly or by threat of force with the exercise of rights, or the performance of duties, under a school desegregation order of a federal court. It is designed to reach persons who are not subject to existing court orders, but who appear at a later date, as, for example, the mob at Little Rock, and take the law into their own hands.

In a democracy, disagreement with the principles announced in decisions of the federal courts can find expression in many legitimate ways. But in no event can our system tolerate the expression of opposition to court decisions in acts of violence.

Making it a specific federal offense to engage in forcible obstruction of school decrees would enable federal marshals to deal with

trouble, should it occur, at its inception, to make on-the-spot arrests. We believe it will deter the formation of mobs and the resort to force, and thus contribute to the safety of the school children involved.

The consequences of discriminatory acts are far reaching. An editorial in an Asian paper recently said:

> "***When an Indian Ambassador is pointedly asked to sit in the 'coloured' section of an American airport, when a Burmese invitee (of the United States) is turned out of a restaurant, the whole of Asia is stirred to its emotional depth."

A newspaper in Africa said:

> "The problem of the status of American Negroes is one that America must settle at once, if she sincerely wants to win the good will of Africans."

We are in the forefront of the struggle to preserve freedom and liberty for people the world over and we must demonstrate to them our unqualified devotion to the ideals which our Nation has long proclaimed.

Let me say one more word about the subject of public school education. Much has been said and written, but not enough has been said of the Negro children and their families. When the history of our times is written, the story of their behavior and their courage will be an impressive chapter. The strength of character shown by the youngsters--the dignity of the children's conduct in the face of open hostility--will, I believe, be long remembered.

Though it is less dramatic than the school issue, the matter of minority voting rights is of basic importance. The right to vote is not

only primary to the democratic process; it occupies a key position because it provides a means of protecting other rights. When minority groups exercise their franchise more effectively, it almost invariably follows that they achieve a greater measure of other fundamental freedoms.

To effectuate the changes in a school system, as I have said, ordinarily takes time and planning. There can be no excuse, however, for frustrating or delaying the exercise of voting rights by Negro citizens. Since 1870 our Constitution has unequivocally provided that the rights of citizens to vote shall not be denied or abridged by the United States or by any State on account of race or color. Yet today there are still places in the United States where a substantial number of the qualified Negroes have been deterred, by one means or another, from exercising the franchise.

Prior to the Civil Rights Act of 1957, federal authority was limited to the bringing of criminal actions against registrars or other officials who could be shown to have systematically discriminated against qualified voters for racial reasons. At best, that approach was unsatisfactory in that a criminal proceeding could only be instituted after the fact, that is, after the discrimination occurred; it could not restore qualified voters to the rolls prior to the election so that they could exercise their franchise.

The Civil Rights Act of 1957 sought to correct this deficiency by conferring on the Attorney General authority to institute civil injunctive

proceedings. The Department has instituted two proceedings under the Act and we are currently investigating some 19 pending complaints.

There are weaknesses, however, in the 1957 Act. It failed to provide authority to inspect voting records, and this has hampered investigations. A new threat to enforcement is evidenced by the enactment of an Alabama statute authorizing local officials to destroy questionnaires and other records of unsuccessful applicants for registration. To meet deficiencies in the present federal statute we have requested Congress to require the preservation for three years of voting records pertaining to federal elections and to give the Department full authority to inspect such records.

It is the duty of all citizens to vote. And public officials have the obligation not merely to permit the exercise of that constitutional right but to encourage it. Certainly I hope that all qualified Negro citizens, notwithstanding discouraging past experiences which some have encountered, will persist in their efforts to vote.

"Justice," Daniel Webster stated many years ago, "is the great interest of man on earth." Scrupulous regard for the rights of others and for the integrity of the law's processes lies at the very core of ordered liberty. We must be unremitting in our efforts to achieve, for all our citizens, the full realization of the freedoms which our Constitution guarantees.