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ADDRESS DELIVERED BY JUSTICE JESSE W. CARTER
OF THE SUPREME COURT OF CALIFORNIA
BEFORE THE STUDENT BAR ASSOCIATION OF THE UNIVERSITY OF SANTA CLARA,
COLLEGE OF LAW, AT BERGIN HALL AT THE UNIVERSITY OF SANTA CLARA
ON OCTOBER 25TH, 1956, ENTITLED
"THE AMERICAN SYSTEM FOR THE ADMINISTRATION OF JUSTICE"

* * * * *

Ladies and Gentlemen:

I wish to thank you for the opportunity to speak to you this evening on a subject which seems to be somewhat controversial in certain segments of present-day society. I would epitomize this subject as the American legal system or the American system for the administration of justice.

About a year ago there appeared in The American Mercury an article by Professor John Barker Waite, a retired professor of law of the University of Michigan, entitled "Why Do Our Courts Protect Criminals?" This article was condensed and republished in the January, 1956 issue of the Reader's

Digest. In this article, after a brief review of several criminal cases in both federal and state courts in which Professor Waite concludes that a miscarriage of justice had resulted because of legal technicalities which had been invoked to reverse judgments of conviction, he makes the following somewhat derogatory statement with respect to our system for the administration of justice: "How are we to halt this travesty on justice, make the guilty pay for their crimes and bolster the public safety? One way would be for the informed and incensed public, through letters and telegrams, through the pulpit and the press, through public forums, radio and television, to cry out against each and every miscarriage of justice and against every criminal turned loose on a mere flyspeck of technicality.

"An outpouring of indignation sooner or later would be heard by the courts, despite their paper buttresses of precedent, and they would cease to encourage criminals and criminality at the expense of the public safety, public decency and public good."

I recently received at my home a circular sent out by a New York publishing company advertising a recent book by Mr. I. P. Callison entitled "Courts of Injustice." This circular contains the following statement: "Today, the giant state framework for the administration of justice is straining visibly under an avalanche of litigation. Crowded calendars, undermanned staffs, astronomical trial costs are the rule, not the exception in our courts. The root of the trouble, according to the writer, lies in the steadily deteriorating role of the trial judge. From a former position of independence and authority, the function of the judge has been debased to that of an impotent referee. His powers have been preempted by the court lawyer, his tenure has been made uncertain by popular election and his selection is generally dictated by political machines. He is to all intents and purposes 'the strangled judge.'"

With both of the foregoing statements I completely and unqualifiedly disagree. Contrary to the views expressed by

Professor Waite and Mr. Callison, it is my considered opinion

the American people have one of the great legal systems functioning in the world today. I do not claim that we have a monopoly on the sense of justice, which is universal; nor do we have a permanent copyright of the means of securing justice,

it is the spirit and not the form of law that keeps justice alive. This American legal system has been nurtured in the ideal of justice and could not last without it. However, no unbiased, fair-minded observer of the functioning of this system will deny that judges are fallible, procedures slow, and many decisions are the product of compromise. Our courts have occasionally misused their great power, but never to the point of justifying its forfeiture. They are kept in line with the other branches of government not only by the words of the Constitution, but by the tradition of self-restraint and impersonality.

I have endeavored in some of my judicial opinions to
give expression to my concept of the American system for the

administration of justice. First, it is based upon law. The history of law is as old as human nature. By the same token, its proper scope is the world. In fact there is no tribe on the face of the earth, however primitive, and no nation, however tyrannical, that is without some customary or formal code of crime and punishment. Several years ago when the United States entered the last world war, I read what purported to be a message sent by British soldiers to American soldiers which read as follows: "We welcome you as brothers in the struggle to make sure that the world shall be ruled by the force of law, and not by the law of force." We might paraphrase this message by familiar statement that "We have a government of law, not men."

Proceeding from the premise that the American system for the administration of justice is based upon law, let us review the origin and background of this system. It is not the result of an overnight creation of any individual genius is true that the founding fathers wrote our Constitution in a single summer, but in doing so they drew upon a wealth of

knowledge bequeathed to them by law makers and political philosophers of the distant as well as the recent past. In fact they created no novel or untested principles, but chose the best of those already known. That is one reason that their work has endured. The idea of due process of law, they owed to Magna Carta; the idea of habeas corpus came to them from sources lost in the midst of the Middle Ages. The natural rights of man explicitly asserted by our founding fathers had long been the common law rights of Englishmen.

With this background in mind let us consider what character of system for the administration of justice was bequeathed to us by the founding fathers. With the knowledge of the past with which they were endowed, they sought to write into our fundamental law specific and definite safeguards, which are contained in what is known as "A Bill of Rights." This bill is embraced within the first ten amendments to the Constitution of the United States and was adopted by the first Congress and later ratified by the several states and made a part of the Constitution of the United States on December 15th, 1791.

The first three amendments contain specific restrictions against infringement by Congress of the fundamental civil liberties which the founders believed essential to a free society. The Fourth, Fifth, Sixth, Seventh and Eighth Amendments contain safeguards against the invasion of what the founders believed were the fundamental rights which should be enjoyed by a free people. They are: the right of privacy; the right to be secure against an unreasonable search or seizure; the right to be informed as to the nature of any criminal charge; security against double jeopardy and self-incrimination; and right not to be deprived of life, liberty or property without due process of law; the right to a speedy and public trial by an impartial jury in the district wherein the crime was committed; the right to be confronted with the witnesses against the accused; the right to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel in his defense; the right to be admitted to bail and the right not to be subjected to excessive fines or cruel and unusual

punishment. These rights form the basis of the American system for the administration of justice. They stand today as stood after their adoption on December 15th, 1791 as a barrier against action by the government to subject a citizen to punishment for the alleged infraction of any law. They still remain a part and parcel of the fundamental law of the land, and since the adoption of the Fourteenth Amendment, all of those rights except the right of privacy have been declared by Supreme Court of the United States as being a barrier against action by the state as well as the federal government.

Notwithstanding the long continued existence of these fundamental rights and their recognition and application by the courts of the land, it is a matter of common knowledge that our Bill of Rights has been during many periods of our national history, and is now, under subtle and pervasive attack. attack comes not only from without but from our own indifference and failure of imagination. Minorities whose rights are threatened are quicker to band together in their own defense

than in the defense of other minorities. The same is true, with less reason, of segments of the majority. Churchmen are quick to defend religious freedom; newspapers are most alert to civil liberties when there is a hint of press censorship in the educators become perturbed at every attempt to curb academic freedom, but too seldom do all of these become militant when ostensibly the rights of only one group are threatened. They do not always react to the truism that when the rights of individual or group are chipped away, the freedom of all erodes.

In a memorable address before the American Bar Association in 1920, the late Senator Beveridge forcefully declared: "If liberty is worth keeping and free representative government worth saving, we must stand for all American fundamentals -- not some, but all. All are woven into the great fabric of our national well-being. We cannot hold fast to some only, and abandon others that, for the moment, we find inconvenient. If one American fundamental is prostrated, others in the end will surely fall. The success or failure of the

American theory of society and government, depends upon our fidelity to every one of those inter-dependent parts of that immortal charter of orderly freedom, the Constitution of United States."

It is in the application of these fundamental rights to specific cases which brings forth the criticism such as that voiced by Professor Waite and Mr. Callison in their recent publications. These critics do not discuss the basis of action of the courts in these individual cases, and by ignoring the rules and principles by which the courts are bound, attempt to make it appear that the courts, through ignorance, wilfulness or weakness are deliberately frustrating the administration of criminal justice by turning criminals loose upon society in the face of overwhelming evidence of their guilt.

My answer to these critics is that under the American system for the administration of justice, the courts are bound to recognize and apply the safeguards contained in the Bill of Rights, and that before it can be said that a person is guilty

of a crime the prosecution must have accorded to the defendant each and every one of those safeguards in attempting to prove him guilty of a public offense. And it is my judicial philosophy, as a member of the Supreme Court of California, in reviewing the criminal cases which are presented to that court, that we must first ascertain whether or not the defendant has been accorded all of his fundamental rights; that is to say, was the determination of his guilt arrived at by a fair and impartial jury after a trial in which all of the fundamental rights of the accused were protected and preserved. And if it should appear that any of those fundamental rights were denied, question of guilt should not be considered, and the case should be remanded for a new trial in accordance with the rules principles established for the administration of justice under the American legal system. I take this position because, to do otherwise, would have the effect of nullifying the constitutional provisions which secure and guarantee those rights to every individual whether he is guilty or innocent.

This principle has been declared so often by the Supreme Court of the United States that I hesitate to entrench upon your time by mentioning any of its decisions. But as recently as March 26, 1956, that court, speaking through Mr. Justice Frankfurter, again restated this doctrine in the following language: "Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process.

"No doubt the constitutional privilege may, on occasion, save a guilty man from his just desserts. It was aimed at a more far-reaching evil -- a recurrence of the Inquisition and the Star Chamber, even if not in their stark brutality. Prevention of the greater evil was deemed of more importance than occurrence of the lesser evil. Having had much experience with a tendency in human nature to abuse power, the Founders sought to close the doors against like future abuses by law-enforcing agencies.

"As no constitutional guarantee enjoys preference so none should suffer subordination or deletion. . . To view a

particular provision of the Bill of Rights with disfavor inevitably results in a constricted application of it. This is to disrespect the Constitution." (Ullmann v. United States.)

In many of the cases mentioned in the article by Professor Waite, in which he stated that a miscarriage of justice had resulted, the courts deciding those cases based their reversals upon the proposition that the convictions were obtained in violation of the rights of the defendants guaranteed by the Bill of Rights. While Professor Waite criticizes these decisions as being based upon "a mere flyspeck of technicality," the holding of the court was that a fundamental right of the defendant had been invaded and that to uphold a conviction in the face of such an invasion, would have the effect of nullifying the constitutional provision which guaranteed and preserved such right. No intelligent, fair-minded person will deny that the safeguards which form the foundation of the American system for the administration of justice place impediments in the path of the prosecutor in establishing the guilt of a person suspected of

committing a crime, and we often hear expressions by
thoughtless persons that a guilty person is not entitled to a
and impartial trial or to the protection afforded by the
safeguards contained in the Bill of Rights which guarantee a
and impartial trial to every person charged with a public
offense whether he is innocent or guilty. I say such expressions
come from thoughtless people, because they ignore another
fundamental principle of our American legal system, that a
person charged with the commission of a public offense is
presumed to be innocent until his guilt is established beyond a
reasonable doubt.

It is obvious to my mind that the fallacy underlying
the article by Professor Waite is that the reversal of a
criminal conviction on the ground that the defendant was
denied one or more of his fundamental constitutional rights, in
a case where proof of guilt is overwhelming, constitutes a
miscarriage of justice because the reversal was based upon "a
mere flyspeck of technicality." I have no hesitancy in stating

that this theory is entirely out of harmony with every concept of justice underlying the American legal system. While this theory may appeal to some laymen, I am sure it will find no support whatsoever among the members of the legal profession or those who believe in the American system for the administration of justice.

Twenty years of my life were devoted to the administration of the criminal law of this state on the side of law enforcement and I have been a member of the Supreme Court of California for over seventeen years. I believe I have a fair knowledge of problems relating to law enforcement. While I concede that there may be some imperfections in our present system for the administration of justice in this state, I am convinced that much of the criticism directed against it is wholly unfounded and ill-advised. It is my observation that most of the failures in obtaining convictions of those guilty of crime is due more to inefficiency in the administration of the existing law than in any defect or imperfection in the

law itself. When we look at our penitentiaries and county jails which are now overcrowded with those who have been convicted of public offenses and whose convictions have been affirmed by the highest courts of this state, and when we consider the very few acquittals compared to the great number of convictions obtained in our trial courts, and the very few reversals of criminal convictions compared to the great number of affirmances in such cases, I again assert that to the fair, unbiased and intelligent observer, our systems for the administration of justice in both our state and federal courts have proven their worth, and while there is no doubt room for improvement, and improvements will be made in the passage of time, these systems will continue to function and those who are familiar with them will continue to recognize them as the bulwark of a free society even though ill-advised critics will continue their mouthings because there may be isolated cases in which a miscarriage of justice occurs.

It must be remembered that the keystone of the arch of our American legal system is the lawyer. Some of you here

tonight are lawyers. Many of you expect to become lawyers
This great institution under whose auspices we meet tonight has
produced many of the greatest lawyers of this state. You who
have the privilege of being students at the University of Santa
Clara School of Law will be richly endowed with knowledge of the
law which will enable you to become better servants of society and
officers of the courts of justice. Your duty will be a much
larger thing than the mere advice of private clients. In every
deliberate struggle for progress you should be the guides of those
who repose confidence in you, ready to give expert and
disinterested advice and to assume leadership in the readjustment
of the frontiers of justice. You, who are lawyers, cannot but
have marked the recent changes in the relation of lawyers to
affairs in this country; and, if you feel as I do about the
great profession to which we belong, you cannot but have been
made uneasy by the change. Lawyers constructed the fabric of
our state governments and of the government of the United States,
and throughout the earlier periods of our national development

presided over all the larger processes of politics. Our political conscience as a nation was embedded in our written fundamental law. Every question of public policy seemed sooner or later to become a question of law, upon which trained lawyers must be consulted. In all our legislative halls debate thundered in the phrases of the written enactments under which our legislators and our governors exercised authority. Public life was a lawyer's forum. Laymen lent their invaluable counsel, but lawyers guided, and lawyers framed the law.

A new type of lawyer has now been created; and that new type has come to be the prevailing type. Lawyers have been sucked into the maelstrom of the new business system of the country. That system is highly technical and highly specialized. It is divided into distinct sections and provinces, each with particular legal problems of its own. Lawyers, therefore, everywhere that business has thickened and had a large development, have become experts in some special technical field. They do not practice law. They do not handle the general,

miscellaneous interests of society. They are not general counsellors of right and obligation. They do not bear the relation to the business of their neighborhoods that the family doctor bears to the health of the community in which he lives. They do not concern themselves with the universal aspects of society. The family doctor is himself giving place to a score of specialists; and so is also what one might call the family solicitor. Lawyers are specialists, like all other men around them. The general, broad, universal field of law grows dim and yet more dim to their apprehension as they spend year after year in minute examination and analysis of a particular part of it; not a small part, it may be, perhaps the part which the courts are for the time most concerned with, but a part which has undergone a high degree of development, which is very technical and many-sided, and which requires the study and practice of years for its mastery; and yet a province apart, whose conquest necessarily absorbs them and necessarily separates them from the dwindling body of general practitioners who used to be our statesmen.

And so society has lost something, or is losing it something which it is very serious to lose in an age of law, when society depends more than ever before upon the law-giver and the courts for its structural steel, the harmony and coordination of its parts, its convenience, its permanency, and its facility. In gaining new functions, in being drawn into modern business instead of standing outside of it, in becoming identified with particular interests instead of holding aloof and impartially advising all interests, the lawyer has lost his old function, is looked askance at in politics, must disavow special engagements if he would have his counsel heeded in matters of common concern. Society has suffered a corresponding loss, -- at least American society has. It has lost its one-time feeling for law as the basis of its peace, its progress, its prosperity. Lawyers are not now regarded as the mediators of progress. Society was always ready to be prejudiced against them; now it finds its prejudice confirmed.

Meanwhile, look what legal questions are to be settled, how stupendous they are, how far-reaching, and how impossible

it will be to settle them without the advice of learned and experienced lawyers! The country must find lawyers of the right sort and of the old spirit to advise it, or it must stumble through a very chaos of blind experiment. It never needed lawyers who are also statesmen more than it needs them now, needs them in its courts, in its legislatures, in its seats of executive authority, -- lawyers who can think in the terms of society itself, mediate between interests, accommodate right to right, establish equity, and bring the peace that will come with genuine and hearty cooperation, and will come in no other way

I was admitted to practice law over forty-three years ago and all of my activity during this comparatively brief period has had direct relationship with the law. I have witnessed many changes in legal processes and in the relationship of the lawyer to the legal profession and society. The present integrated bar organization came into being during this period and I had the privilege and the honor of serving as a member of

its governing board during the first six years of its existence.

I can visualize many changes which will affect the legal

profession in the years to come. The political struggles

throughout the world are bound to affect the law of the future.

Such struggles are of greater proportions than Americans have

known before. In some of our wars, we have briefly succumbed

to the temptation of imitating the vices of our antagonists; but

national sense of justice and respect for law always returned

with peace. The whole question of man's relation to his nation,

government, his fellow man is raised in acute and chronic

form. Each provision of our Bill of Rights, the most precious

part of our legal heritage, will be tested and retested. To

preserve this precious heritage and to vouchsafe that the ideal

of liberty and justice under law may be made stronger and

brighter throughout the years to come will require renewed

dedication of the members of the legal profession to the

concepts underlying the foundation of the American system for

the administration of justice.