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ADDRESS DELIVERED BY JUSTICE JESSE W. CARTER OF THE SUPREME COURT
OF CALIFORNIA BEFORE THE BAR ASSOCIATION OF MONTEREY COUNTY AT A
DINNER MEETING IN THE DINING ROOM OF THE CASA MUNRAS HOTEL, MONTEREY,
CALIFORNIA, ON MARCH 19TH, 1953, ENTITLED "CHALLENGES TO FREEDOM."

The title of this address -- "Challenges to Freedom" -- may seem to indicate that I fear aggression by a foreign foe, or that forces within our borders may threaten our freedom. I want to assure you at the outset that I have no such thought. The challenges of which I am about to speak come not from foreign foes or those engaged in subversive activities within our borders but arise out of the philosophy of fear, suspicion and hatred which certain self-appointed guardians of our liberties are disseminating for the purpose of making themselves indispensable public servants.

Fear is the most devastating and costly force in the world today; it makes puppets out of those who fall under its spell; it makes dictatorships and totalitarian governments possible. War is the aftermath of fear and hysteria. It results in a terrible cost

in lives lost, lives ruined and bodies maimed; it has a terrible cost in dollars and cents in the endeavor to rehabilitate those who have been deprived of loved ones, homes and livelihood; there is the astronomical cost of rebuilding not only cities but entire countries. President Roosevelt was right: The only thing we have to fear is fear itself, because fear leads to hatred of one's fellow men and such hatred leads to war

I believe I can say without reservation that I have no fear of personal consequences. I have a philosophy which I believe is peculiarly American because it is postulated upon the basic concepts of liberty and freedom embraced in our fundamental

law -- the Declaration of Independence and the Constitution of the United States. While these concepts still sway the American heart, they are being challenged by demagogues who are spreading philosophies of fear, hate and intolerance which are praying on the minds of hopeless and frustrated men.

The situation in which we find ourselves now living should be considered in the light of the terrifying power of fear. The world is divided into hostile factions each with its own interests, all of which are adverse one to the other. Nations are spending themselves into bankruptcy not only so far as money is concerned but, more important, so far as manpower is concerned. To paraphrase

Lincoln, a world divided against itself cannot stand.

Fear brings about another grave problem. In a country where fear has the upper hand, and distrust of one's neighbor prevails, any person who has an idea or philosophy different from that shared by the majority of the people is a pariah, one to be shunned, and feared most of all. Inasmuch as this is a country of government by a majority, such fear of new, or different, or unorthodox philosophies leads to legislation directed at suppressing such philosophies or theories. Suppressive legislation is contrary to our Constitution and its Bill of Rights which guarantee freedom and liberty to every man. Suppressive legislation is not in accord with the ideals of democracy and the America which our forefathers sought to establish. Fear, hate and hysteria should not be substituted for evidence, reason and common sense as a basis for legislation and court decisions.

Hatred of unorthodox ideas is not a guarantee of love for

democracy and its ideals. One may vocally protest his faith only to have his actions belie his words. In other words, the truth of democracy must be lived; we must see that our legislation and our court decisions do not controvert the great principles of truth, liberty, justice and democracy for every man laid down for us to follow by the Constitution and the Bill of Rights. Suppressive legislation and qualifying court decisions based on spurious reasoning are, in reality, lies used to conceal the fear and hysteria which engendered them. One falsehood leads to another with the result that more and more concealing must be done to obviate the danger of exposition of the first concealment.

If on the other hand, fear and hysteria is recognized for what it actually is and dealt with accordingly, we shall only be doing what is in consonance with the truth of a democracy and the principles of the Constitution. It appears to me that it is time

again for all of us to remember what Jefferson said in his First Inaugural Address: "If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." Truth brings courage and trust to all who know and love it. God's promise, "Ye shall know the truth and the truth shall make you free," stands as a rainbow of hope and a beacon of light in the stormy darkness of these days. As seekers of truth let us turn to those things which are self-evident -- basic concepts of freedom and liberty which are found in our fundamental law -- the Constitution and Bill of Rights.

When each phrase of the great Preamble to our Constitution is thoughtfully considered, there is no need to resort to far-fetched theories to determine the intent of our forefathers as they framed

it and the first ten great amendments. The Constitution and Bill of Rights were written by men who had suffered persecution and tyranny and were imbued with the firm resolve that this should be a country of free men. They undoubtedly felt as Thomas Jefferson did, when he wrote to Benjamin Rush: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." As depicted by Mr. Justice Brandies in *Whitney v. California* in words that will forever be a part of America's heritage: "Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. To courageous, self-reliant men, with confidence in the power of free and fearless reasoning applied through the process of popular government, no danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may be fatal before there is opportunity for full discussion. If there be time to expose through discussion the

falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence."

The first ten amendments, or the Bill of Rights, were intended by our forefathers as a bulwark, or shield for the individual. It was felt necessary to enumerate certain inalienable rights in order to protect the individual against every form of tyranny, and to insure domestic tranquility, the general welfare, the common defense, so that to us, and our posterity, might be secured the blessings of liberty. What our forefathers fought to achieve for this great country was a democracy. In writing the Constitution and the Bill of Rights, they laid the foundation for our democratic way of life, but that was all they could do because democracy is not a finished project -- it is, and should be, subject to change and growth. As our world changes and progresses, the laws,

their interpretation and construction should change also

It is the duty of the courts of the land, and, in the last analysis, the Supreme Court of the United States, to see that the guarantees of the Bill of Rights are, in fact guarantees, and not mere empty words. It may be conceded at the outset that these freedoms are not wholly unqualified; they must be exercised reasonably with the welfare of the people as a whole in mind. But as Mr. Justice Jackson said in the Barnette case (West Virginia v. Barnette, 319 U.S. 624), "The very purpose of a Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote: they depend on the outcome of no elections."

It is my purpose tonight to tell you how, in my opinion some of the basic freedoms are being challenged, or, in other words, how the qualifications are being extended, thereby leaving less of the freedom which is guaranteed to the individual.

One of the ways in which the individual's freedom is being encroached upon is by injudicious legislation effected by a non-liberal judicial interpretation. The so-called loyalty oaths are an example. The concept that a person exposed to subversive activity may be immunized against such exposure by the taking of a loyalty oath opens the door for vast exploration in the field of metaphysical research. While this process is taking place, the loyalty of every public employee is impugned even though he has taken an oath to uphold the Constitution of the United States and has obeyed it religiously. Conceding that "eternal vigilance is the price of liberty," it should not follow that vigilance against disloyalty of public

employees requires that they be dismissed from their positions without being accorded due process of law. Because of legislation enacted within the last decade, guilt is established by association, organizations may be classified as subversive with no reason therefor disclosed and upon secret information. The trial of the issue of the loyalty of a citizen may be had upon secret, undisclosed information obtained from unknown persons or secret agents and without granting the accused person the safeguards ordinarily afforded in the trial of both civil and criminal cases under our Constitution. The standards by which guilt or disqualification is established have been progressively broadened. Proof of overt acts has been replaced by appraisal of beliefs or expressions. Proof of guilt beyond a reasonable doubt has given way to proof of a reasonable doubt as to innocence.

As standards of guilt have broadened, procedural safeguards

have been narrowed in unprecedented fashion. Persons have met with secret, undisclosed information furnished by anonymous sources, and have been afforded no hearing in any realistic sense. These procedures are alien to our judicial system, so they are being conducted by administrative officials who now possess broad powers to determine the issues of individual liberty -- all of which involves the guarantees contained in the Bill of Rights.

In an excellent article entitled "A Prayer for the New President" (Saturday Review, January 17, 1953), Mr. Herbert Agar says that "worst of all, we commit our follies [legislation] in such a hurry, and at times with such attendant discourtesy, that we suggest to a worried world that we must be scared or hysterical. The suggestion is unjust; but it arises from our own acts and it does us damage. Who wants a frightened ally?" As an example, he cites the law which excludes from the United States (even when on a visit) any alien "who is a member of, or affiliated with, any

organization that displays any printed matter advocating the overthrow by force of the United States Government, the unlawful damage to property, etc. " He notes that this, as he calls "lunatic" provision would, if taken seriously, ban any official of the British Museum, or of any other great library in the world, either public or private, and that it suggests to the world that we were in a "stampede" when we accepted such nonsense. He suggests the hypothetical, but not impossible, case of a famous European man of letters who has been requested to appear in the United States and who is given "insulting" papers to fill out -- insulting because they presuppose that he is a potential enemy who must prove his innocence. He says "Is this the way we want our America to behave? Would any American accept politely such treatment from a foreign government? And in any case, what are we scared about? So long as we exclude our casual visitors from places of secrecy like Los Alamos, what do we care whether they have always admired us? If

they were allowed to see us here at home -- friendly, decent, wanting no harm -- might we not hope to convert them? Or can we improve their opinion of us by insulting them?"

Historical experiences demonstrate that test and inquisitorial oaths are tools in a political battle, that under the pressures of the times their scope expands, that they often injure innocent bystanders, that they are an integral part of an arsenal of legal barbarities. (Samuel M. Loenigsberg and Morton Stavis, members of the New York Bar; from article in 11 Lawyers Guild Review pp. 111-127.) So far as the recent University of California loyalty oath controversy is concerned the dismissal or departure of the professors who refused to sign, and about whom there had never been the slightest stigma of subversive activity or belief, lost to the University the services of some of its most eminent teachers. Is this upholding the freedom of thought, expression, and belief which

are guaranteed to us by the Bill of Rights? Universities, until the recent hysteria and witch-hunting regime became effective, had always taught students what the differing political philosophies of the world were, leaving it to the logic and reasoning of the student to decide, as he must of necessity decide, that the democratic way of life provides the greatest opportunity for advancement. But his reasoning is then based on a knowledge of all the facts. He has not made a decision, if it could be called that, based on the teaching of only one philosophy. A decision which has been made after learning all the facts is in accord with the "freedom of thought" guaranteed to us. Man is a reasoning animal -- he must think things out for himself -- he does not want to have his knowledge, or his education, "spoon fed" to him. He wants to read and listen, and make up his own mind. If we proscribe the teaching of differing philosophies in our universities,

are we also to take the books relating to such philosophies from our library shelves? Does this promote a democracy where every man is entitled to his own belief? Is this freedom of speech?

The torch of the witch hunter is now burning brightly schools, colleges and churches are now the objects to which inquisition is directed -- teachers who have given expression to unorthodox ideas are called to account -- suppression and conformity is the price of job security in this era of hysteria and fear. New ideas are offensive and reprehensible -- the status quo must be maintained. It may be true that a Socrates would not now be forced to drink hemlock; a Jesus of Nazareth would not be crucified; a Galileo would not be subjected to physical torture; a Columbus would not be put in chains, -- but there is little doubt that they would all be hailed before investigating committees, forced out of their positions and probably put in prison as being dangerous to public security.

This is not idle chatter. It is a definite trend recognized by leaders of thought who have the courage to speak. Mr. Justice Douglas of the Supreme Court of the United States stated recently in an address to the Authors' Guild of America in New York: "that the Nation is witnessing 'perhaps the most widespread suppression of views' in its history." "The suppression," Justice Douglas said, "comes not from fear of being jailed, but from fear of being dismissed from employment, banned from radio work, disqualified for teaching or found unacceptable for the lecture platform. Those sanctions are effective and powerful. They often carry as much sting as a fine or a jail sentence."

The San Francisco Chronicle which certainly cannot be said to have any left-wing leanings, made the following editorial comment on this address: "Justice Douglas acknowledged what everyone of course knows--that concern about the threat of American institutions of Communism and Communist activity is responsible for the development of the situation he described and

deplored. Whether the current suppression of views is the most widespread in the Nation's history is a matter of opinion and might be convincingly disputed by an argument that it is no worse than it was in the post-World War I time of Attorney General A. Mitchell Palmer. But regardless of any disputing about the degree of suppression of views, it seems correct to say that fear of the consequences of speaking out does lead to a mumness in this once voluble country and that the spread of this ominous silence is as difficult to prevent as it is intangible to measure.

"No one can doubt that there is far more truth than there should be in Justice Douglas's allusion to the effects of fear on teachers. Teachers are perhaps the most numerous of the groups that have been made targets of the forces of American fear mongering. An incessant onslaught against the public schools, teachers, teaching methods, course of study and textbooks is being conducted today. Few communities are entirely free of it. The suppression

of freedom of teachers which results is both immeasurable and immeasurably bad.

"No teacher in any American community should be fearful of expressing an honest opinion; that is, an opinion of the teacher's own and not the parrot words of the Communist party line. This freedom of the teacher is an ideal going back to Jefferson and even farther. Yet in Los Angeles today, to take one example, it is professionally unwise and possibly dangerous in terms of job security for a teacher to express in the classroom an enthusiastically favorable opinion of UNESCO, the United Nations agency, because anti-U. N. fear makers have succeeded in obtaining the removal from the Los Angeles curriculum of printed material dealing with UNESCO.

"The Chronicle submits that the creation and instillation of fear leading to the suppression of opinions are not helpful, but rather in the long run will be found dangerously hurtful, to

the security and strength of the Nation. This Nation cannot endure on a limited diet of freedom, for freedom is the positive, creative force that animates our democracy and makes it vital.

"Hitler felt that the strength of totalitarian governments was that their opponents would have to use totalitarian methods in opposing them; having done so, there would cease to be any real difference between the contenders. One sure way to establish this Hitler thesis is to keep on going in the direction of further suppression of freedom, individuality, conscience, opinion--all the qualities that together make up the dignity of the individual human being. The fear makers, who think that strength resides in fear, whose slogan, again on the Hitler analogy, might be said to be 'strength through fear,' are wrong, and Justice Douglas is right in exposing the drift of the current."

In California's recent loyalty oath cases where the loyalty oaths were upheld on the theory that they did not differ

from that prescribed by the California Constitution, I dissented. I say the theory was ridiculous, and merely a means to an end, because the loyalty oath under consideration looked backward and demanded to know what organizations any prospective, or present, employee had belonged to in the past preceding five-year period, whereas the constitutional oath merely required the employee to support the Constitutions of the United States and California, and to undertake the duties of his employment to the best of his ability. It now appears that the Supreme Court of the United States, in *Wieman v Updegraff*, has held an Oklahoma loyalty oath unconstitutional. The Oklahoma loyalty oath is almost identical to that involved in the California case and that which is now prescribed by our Constitution as the result of an amendment adopted on November 4th, 1952. It should be of interest to you folks here tonight, that right here in Monterey 104 years ago the framers of the first Constitution of California rejected a similar proposal in the form of a test oath as a part of that Constitution and the same was true of the framers of the Constitution of 1879.

The Supreme Court in the Wieman case specifically held that "indiscriminate classification of the innocent with knowing activity must fall as an assertion of arbitrary power. The oath offends due process." In other words knowledge of the illegal nature of the organization is now directly made an indispensable element.

At this point, I cannot refrain from quoting the words of warning contained in the powerful concurring opinion of Mr. Justice Black in the Wieman case: "History indicates that individual liberty is intermittently subjected to extraordinary perils. . . . The first years of our Republic marked such a period. Enforcement of the Alien and Sedition Laws by zealous patriots who feared ideas made it highly dangerous for people to think, speak, or write critically about government, its agents, or its policies, either

foreign or domestic. Our constitutional liberties survived the ordeal of this regrettable period because there were influential men and powerful organized groups bold enough to champion the undiluted right of individuals to publish and argue for their beliefs however unorthodox or loathsome. Today, however, few people and organizations of power and influence argue that unpopular advocacy has this same wholly unqualified immunity from governmental interference. For this and other reasons the present period of fear seems more ominously dangerous to speech and press than was that of the Alien and Sedition Laws. Suppressive laws and practices are the fashion. The Oklahoma oath statute is but one manifestation of a national network of laws aimed at coercing and controlling the minds of men. Test oaths are notorious tools of tyranny. When used to shackle the mind they are, or at least they should be, unspeakably odious to a free people. Test oaths are made still more dangerous when combined with bills of attainder which like this Oklahoma statute

impose pains and penalties for past lawful associations and utterances.

" . Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more people than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost." (Emphasis added.)

Is freedom of speech only the right to speak to others who will agree with what you have to say? Throughout the history of this country, ideas have been freely expressed to anyone who would listen. Some of them have been adopted by the majority of the people; some of them have not. If the ones which looked forward and told of things to come, or which might be accomplished through change,

had not been heard, or promulgated, we might still be living in horse and buggy age, without telephones, without modern conveniences, and we might also have been living under a dictatorship or in a totalitarian state.

In its 175 years, America has weathered many storms, both from within and without. But in my opinion never has the security of our nation as well as our personal security been more severely threatened than it is at the present time. This threat to our security is the growing tendency toward limitation of the principles guaranteed by the first ten amendments. The threat grows out of bias, ignorance and fear. It has been observed that a person is immediately suspect if he takes too keen an interest in the Bill of Rights and civil liberty. Our Constitution was conceived in a of revolution because reason proclaimed that men should be free; experience indicated that merely saying so was not enough!

The men who wrote the Bill of Rights did not intend that any such challenges to the freedoms set forth therein should ever be promulgated. Again I can do no better than to quote Mr. Justice Black when he said that "It seems self-evident that all speech criticizing government rulers and challenging current beliefs may be dangerous to the status quo. With full knowledge of this danger the Framers rested our First Amendment on the premise that the slightest suppression of thought, speech, press, or public assembly is still more dangerous. This means that individuals are guaranteed an undiluted and unequivocal right to express themselves on questions of current public interest. It means that Americans discuss such questions as of right and not on sufferance of legislatures, courts or any other governmental agencies. It means that courts are without power to appraise and penalize utterances upon their notion that these utterances are dangerous. In my view this uncompromising interpretation of the Bill of Rights is the one

that must prevail if its freedoms are to be saved. Tyrannical totalitarian governments cannot safely allow their people to speak with complete freedom. I believe with the Framers that our free Government can." (Wieman v. Updegraff, supra.)

The reason for the present trend of court decisions interpreting the Bill of Rights is a simple one. Judges are men who live in the same world as we; they do not exist in a vacuum, but are the products of their backgrounds, education, environment; and their thinking is influenced, perhaps unconsciously, by the political conditions under which we are all living. This is a time of national hysteria, general suspicion and distrust. As I have said earlier, it is for the courts in almost every instance to invalidate unconstitutional legislation -- legislation which deprives the individual of the rights guaranteed to him. But, the circle is a small one, because courts are made up of judges who are human beings. This country has survived other crises, and will do so again, although to some of us the present one seems needless

since inner strife is the thing which will please our enemies the most. We need to put up a united front, looking toward our Constitution as the cohesive factor which it was intended to be. It should be borne in mind that the philosophies expressed in dissenting and concurring opinions, do not always remain the views of a minority; they frequently become the law of the land. So long as we have groups of persons who will fight, as our forefathers fought, that the freedoms enumerated in the Bill of Rights shall remain inviolate, whatever the penalties and stigma attached thereto, we shall not lose, but shall go forward toward that America which our forefathers envisioned.

In conclusion I would like to leave with you the thought that we are living in a changing world, not only in the fields of science and economy, but social, political and even religious concepts are reexamined and restated in each succeeding generation. This has been the course of events since the beginning of time. Concepts which are unpopular and unorthodox in one generation become

popular, acceptable and orthodox in succeeding generations. Barring adversity or insufferable evils, the desire to maintain the status quo is paramount with the average person. This accounts for the reluctance on the part of some to accept new ideas regardless of their merit, and hence, many of the greatest leaders of thought have suffered persecution, torture and death as the result of the ignorance and intolerance of their contemporaries. What has happened in the past may happen again, and for this reason I have resolved to exert all the power I possess against the suppression of ideas whether I agree with them or not.

The man is thought a knave or fool,
Or bigot, plotting crime,
Who, for the advancement of his kind,
Is wiser than his time.
For him the hemlock shall distil;
For him the axe be bared;
For him the gibbet shall be built;
For him the stake prepared:
Him shall the scorn and wrath of men
Pursue with deadly aim;

And malice, envy, spite and lies,
 Shall desecrate his name.
But truth shall conquer at the last,
 For round and round we
And ever the right comes uppermost,
 And ever is justice done.

Face through thy cell, old Socrates,
 Cheerily to and fro;
Trust to the impulse of thy soul
 And let the poison flow.
They may shatter to earth the lamp of clay
 That holds a light divine,
But they cannot quench the fire of thought
 By any such deadly wine;
They cannot blot thy spoken words
 From the memory of man,
By all the poison ever was brewed
 Since time its course began.
To-day abhorred, to-morrow adored,
 So round and round we run,
And ever the truth comes uppermost,
 And ever is justice done.

Plod in thy cave, gray anchorite:

Be wiser than thy peers;

Augment the range of human power,

And trust to coming years.

They may call thee wizard, and monk accursed,

And load thee with dispraise:

wert born five hundred years too soon

For the comfort of thy days.

But not too soon for human kind;

Time hath reward in store;

And the demons of our sires become

The saints that we adore.

The blind can see, the slave is lord;

So round and round we run,

ever the wrong is proved to be wrong,

And ever is justice done.

Keep, Galileo, to thy thought,

And nerve thy soul to bear;

They may gloat o'er the senseless words they wring

From the pangs of thy despair:

They may veil their eyes, but they cannot hide

The sun's meridian glow;

The heel of a priest may tread thee down,

And a tyrant work thee woe;

never a truth has been destroyed:
They may curse it and call it crime;
Pervert and betray, or slander and slay
Its teachers for a time.
But the sunshine aye shall light the sky,
As round and round we run,
And the truth shall ever come uppermost,
And justice shall be done.

And live there now such men as these--
With thoughts like the great of old?
Many have died in their misery,
And left their thought untold;
And many live, and are ranked as made,-
And placed in the cold world's ban,
sending their bright far-seeing souls
Three centuries in the van.
They toil in penury and grief,
Unknown, if not maligned;
Forlorn, forlorn, bearing the scorn
Of the meanest of mankind,
yet the world goes round and round,
And the genial seasons run,
And ever the truth comes uppermost,
And ever is justice done.