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## Address Delivered at the Testimonial Dinner in Honor of Judge Stanley Mosk Entitled "The Administration of Justice"

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ADDRESS DELIVERED BY JUSTICE JESSE W. CARTER  
OF THE SUPREME COURT OF CALIFORNIA  
AT THE TESTIMONIAL DINNER IN HONOR OF JUDGE STANLEY MOSK  
AT THE STATLER HOTEL IN LOS ANGELES ON AUGUST 19TH, 1958,  
ENTITLED "THE ADMINISTRATION OF JUSTICE"

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Ladies and Gentlemen:

It is a great privilege and honor for me to be here tonight and pay my respects to my good friend Judge Stanley Mosk whom I have known for over twenty years. I had the privilege of administering the oath of office to him when he was appointed a superior judge of Los Angeles County in 1942. He has made an enviable record on the bench and has won the respect and admiration of the bench, the bar and the lay public alike. So, I am indeed happy to join with this group of his many friends and admirers tonight in extending to him our felicitations and best wishes for the continuation of his successful career in the administration of justice

Speaking of the administration of justice, I am convinced that there is no function of government which affects our fundamental rights to life, liberty and the pursuit of happiness to the extent that these rights are affected by administration of justice. From the humblest villager to the capitalist and millionaire, the manner in which justice is administered in this land of ours determines his course of conduct in his relation with his fellow man and his devotion and loyalty to his government and his support of the institutions provided by our government for the protection and advancement of the general welfare of our people.

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. 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.

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. It is true that the founding fathers wrote our Constitution in a single summer, but in so doing 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 Charta; 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 rights postulated by this bill form the basis of the American system for the administration of justice. They stand today as they 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 the 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. The 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 air; 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 any 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 the United States."

It is in the application of these fundamental rights to specific cases which brings forth criticism by some people of prominence that our system for the administration of

justice is so fettered with technicalities that many guilty persons escape punishment. These critics do not discuss the basis of the action of the courts in 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;

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, the question of guilt should

be considered, and the case should be remanded for a new trial in accordance with the rules and principles established

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.

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 almost nineteen 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, 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 attacks because there may be isolated cases in which a miscarriage of justice occurs.

A democracy is founded upon the fundamental principle that all human beings, although similar in many respects, are essentially each different. The government of a democracy exists and acts by the decisions of the majority, but it serves not the majority alone but all the people. A democracy recognizes that the decisions of the majority are achieved by many people, each an individual unlike any other, and that in the minorities there also are individuals, only fewer, who are equally important and equally different

Upon carefully examining nature the observer finds that no two existing things are precisely alike. In all the

billions of snowflakes that fall to earth, each crystal is unique; there is no duplication. One can observe a multitude of flowers of one kind and see all the similarities, yet no two are ever the same. Throughout all of nature there is variety, never an identity.

Man himself, with all his wondrous knowledge of science, can never make two things the same. He cannot say the exact same sounds of a word again after he has once spoken them. He makes fine tools for measurement only to create more accurate instruments which show how different his "identical" tools really are. He can only strive for greater fineness of accuracy; perfection can never be achieved

How infinitely more complex human beings are than their own creations and the other creatures and things of nature. And because of this complexity each man is distinctively different. The people who are members of the same political party, or social organization, or church will agree with each other in many respects, yet each will think

his own thoughts, a little dissimilarly from anyone else. And even two people who are "identical" twins, and who are mistaken by others for each other, are different individuals with unlike personalities, thoughts and beliefs.

In our democracy it is the Bill of Rights of our Constitution which guarantees that these differences among individuals shall be recognized and preserved. The first Ten Amendments to the Constitution were adopted because the people wanted the power of the federal government limited and the rights of the minorities safeguarded. They specifically state what the government cannot do

The Bill of Rights founds our democracy on the differences of each individual. By beginning with the liberty to differ, we progress to cooperative and unified action. Because it acknowledges the basic fact of the uniqueness of each individual of the human race, the Bill of Rights builds the structure of our entire government on the foundation of the natural. It is because of our right to dissent and differ

that we are strong. By guaranteeing to us these freedoms, the Bill of Rights assures our country of a firm government. Our very differences constitute our greatest strength; the Bill of Rights is our greatest guarantee of them.

our government will continue to exist strong only as long as we have the Bill of Rights protecting the differences which are the very nature of human beings. The Bill of Rights can be effective in protecting our rights only when we as individuals and as citizens preserve those rights and liberties. We are obligated to see that these rights are the possession of every single person in our country. We cannot -- we must not take them for granted. No government gives so much liberty to its individual members as America's, yet to keep it, no government makes greater demands of the individual.

There is, therefore, a duty and an obligation cast upon every citizen to assert and fight for the rights guaranteed to him by the Bill of Rights. When public officials

usurp power and attempt to destroy or abridge the rights of the individual, there should be no hesitancy on the part of the individual to resist such usurped power, because, in so doing, he is upholding the Constitution and forcing arrogant officials to recognize, if not respect, the restrictions placed upon them by the Constitution for the protection of the individual. In so doing, the individual thereby demonstrates the difference between a government of law and not of men

The American republic was the first government established on the fundamental basis of government by law instead of government by men. The Constitution of the United States was adopted by the people as the supreme law of the land. The Congress, the Chief Executive, and the Supreme Court, as well as the people themselves, were all to be subject to the Constitution. It was given authority only over the civil and social relationships between man and his fellow beings. Religion was made a personal matter between the individual and his God, and it was completely divorced from

the jurisdiction of the government. The conscience of the individual in religious matters was regarded as paramount, above government authority, and not subject to governmental functions so long as the individual respected the equal rights of his fellow men and the common decencies of society.

The American republic blazed a new trail in the exercise of governmental authority when it decided to be governed by a written Constitution rather than by the whims and decrees of men. The American way of life was in striking contrast to the European way of life. The American plan placed a limitation upon the powers of the highest law-making body, prohibiting it from legislating in the domain of religion and in the realm of the natural rights of man. Man was left to be judged by God in matters of conscience. The state was prohibited from dominating the church, and was required to withdraw its financial support from the church, and the church was not permitted to manipulate the state or to secure special favors through legal processes.



However there has been a tendency of late to deprive the people of the rights guaranteed to them under the Constitution, and to centralize governmental power and authority in the hands of a few men, and thus to transform our government into a government of men instead of law. That is exactly what happened in the democracies which were established by the League of Nations in Europe after the first World War. The World War was fought ostensibly to make the world safe for democracies. But the democracies which were created after the World War are no more, and have become governments of men instead of governments of law.

A government of men is afflicted with all the whims and caprices, all the passions and cruelties of men. A government of law is not subject to the weaknesses and prejudices of men, nor is it swayed by the policies of any party which may be in power for a short period of time. It is a government by constitution, under which men's natural and inalienable rights are protected no matter who the chief

executive is or what political party constitutes the majority.

branches of the federal as well as the state governments and courts are subject to the Constitution, and not to men who are in office. Neither peace nor war can legally set aside the Constitution of the United States. Public officials are servants of the people, and not the people the servants of public officials. The liberties and property rights of the people do not rely upon men for their security, but are protected by the laws and constitutions of the land, which survive, in theory if not in practice, all the frailties and prejudices and weaknesses of men.

The dictator who rules says, "I am the State." He is subject to none, but all are subject to him. The theory is that the ruler can do no wrong. His will, none may oppose. To criticize is an unpardonable crime. To offer opposition is treason. The penalty is the firing squad. The people are slaves and pawns, and are moved about upon the political chessboard at the will of a few politicians. Such is a government of men instead of a government of law

A government of men regards the rights of none as sacred. There is no right too sacred for the rulers to abridge or invade. They assume the absolute right to rule in all things both temporal and spiritual. The ancient governments were all governments of men instead of governments of law. A government of law makes it next to impossible to invade and abridge the natural rights of the people when their constitutions safeguard those rights. The people who refuse to surrender their right of sovereignty to men, but hold public men subject to the fundamental law, preserve their liberties and their own free institutions. They have the power in their hands, as long as the Constitution is held supreme, and the love of liberty has not died out in their hearts, and the ballot box is not corrupted. When the Constitution and the ballot box are destroyed, the people are no longer free and independent

A government of men means the complete destruction of both civil and religious liberty. We should view with

alarm the first encroachment upon our liberties. It is a dangerous step, even though it is the first step, as it may lead to the last step which is the Inquisition and a reign of terror.

I do not wish to be understood as conveying the impression that a government of law may not be so administered as to destroy or abridge the liberties of the people for a brief period of time at least. All of us here tonight may recall instances in which public officials, who have taken a solemn oath to support the Constitutions and laws under which we are governed, have nevertheless usurped their official power and rode roughshod over the rights of individuals until they were restrained by the courts. We also know of instances where the courts have been loath to interfere with the abuse of official power until it reached an intolerable impasse. So we must recognize the force and effect of the human element in the administration of our laws and endeavor to safeguard our liberties by the selection of people for public office who

will exercise only the powers granted to them under the Constitutions and laws of the state and nation.

The great philosopher Macaulay declared: "The highest form of virtue is to possess boundless power without abusing it." This philosophy should be the rule and guide of all those entrusted with the exercise of power even under our constitutional form of government.

I have no hesitancy in stating that so long as we have men of the stalwart character and outstanding ability of Judge Stanley Mosk administering our department of justice, we need have no fear that our precious liberties will be destroyed or even restricted

In my opinion he is the type of man the poet Holland had in mind when he wrote these words:

"God give us men. A time like this demands  
Strong minds, great hearts, true faith, and ready hands;  
Men whom the lust of office does not kill;  
Men whom the spoils of office cannot buy;  
Men who possess opinions and a will;

Men who have honor; men who will not lie;  
Men who can stand before a demagogue  
And damn his treacherous flatteries without winking;  
Tall men, sun-crowned, who live above the fog  
In public duty and in private thinking."