2-2-1952

Address Delivered Before the American Friends Service Committee at Their Conference on Liberty and Loyalty

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AT THE CALIFORNIA CLUB, SAN FRANCISCO.

You have asked me to speak on "Civil Liberties and the Courts." It is my opinion that before one can understand the term "civil liberties" one must have some slight understanding of the historical background leading up to the adoption of the first ten amendments to the Constitution of the United States, which are known as the Bill of Rights. The Constitution and its Amendments 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 alter of God eternal hostility against every form of tyranny over the mind of man." As the Constitution was written by men, it, of necessity, must be construed and interpreted by men -- the judges of yesterday, today and tomorrow. It is my purpose this morning to endeavor to tell you something of the background which led up to the framing of the Constitution and its Amendments -- to point out to you how that great document has been interpreted in the past and why the interpretation

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has changed and will constantly change throughout the history of the United States. 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. Social conceptions must constantly be retranslated and re-expressed in contemporary idiom to accord with contemporary conditions. The framers of the Constitution had the ideal of freedom for every man in mind -- it is the duty of the lawmakers and the courts of today to preserve those freedoms set forth in the Bill of Rights by their interpretation in the light of present day conditions.

**HISTORICAL BACKGROUND**

Governor Edmund Randolph of Virginia, in the Constitutional Convention, proposed, in the form of fifteen resolutions the Randolph Plan -- that a national government be established to possess supreme executive, judicial and legislative powers. The word "national" bothered the delegates who were chary of anything impinging on state's sovereignty. Randolph explained that his purpose was to give the national government power to defend and protect itself and to take from the states no more power than was absolutely essential to the well-being of a national government. The Constitution as adopted provided for
specific legislative powers which might be exercised by Congress; the judiciary powers were limited, as were the executive powers.

To Charles Pinckney goes the credit for the resolute manner in which the delegates had refused to impose religious or property qualifications for membership in either house of Congress. One proposal by Charles Pinckney, which was never acted on by the Convention, was that "Each branch of the Legislature, as well as the Supreme Executive, shall have authority to require the opinions of the Supreme Judicial Court upon important questions of law and upon solemn occasions." Adoption of this resolution might easily have changed the course of American history. It was the sense of the Convention that the court should be called on only to decide cases and not to pass upon hypothetical questions. Another proposal of Pinckney's that a Bill of Rights be incorporated in the Constitution was also considered unnecessary. Failure to heed this suggestion later resulted in stubborn opposition to ratification, and it was only after assurances were given that the deficiency would be remedied through amendments that the opposition relented.

When the finished draft of the Constitution was presented to the Convention, it was accompanied by a letter "to the United States in Congress Assembled" in the course of which there appeared these words "Individuals entering into society, must
give up a share of liberty to preserve the rest." If we substitute the word "states" for "individuals" and "national government" for "society" we have an epitome of the spirit of compromise which finally brought the labors of the Convention to a fruitful close. At the very first session of the New Congress, James Madison invoked the machinery to amend. In speaking of the Constitution, he said: "I believe that the great mass of people who opposed it, disliked it because it did not contain effectual provisions against the encroachment on particular rights and those safeguards which they have been long accustomed to have interposed between them and the magistrate who exercises the sovereign power.

The ten original amendments were declared a part of the Constitution in December, 1791. The essence of the Bill of Rights (1) guaranteed freedom of speech, of the press, of religion, and the right of peaceful assembly; (2) provided for the right of the people to keep and bear arms; (3) protected the people against the quartering of troops in their homes which had been one of the causes of the Revolutionary War; (4) regulated the right of search and seizure -- a man's home is his castle; (5) gave an accused person the right to trial by jury and provided against the loss of life, liberty or property without due process of law; (6) set forth the rights
of accused persons in criminal cases, including the right to a speedy trial; (7) confirmed the right to trial by jury in suits at common law; (8) prohibited excessive bail or fines; outlawed cruel and unusual punishment; (9) preserved for the people all their fundamental unwritten rights; (10) reserved to the states and people all rights not delegated to the federal authority.

The Constitution declares itself to be the supreme law of the land, but to Chief Justice John Marshall of the United States Supreme Court, goes the honor of expounding, for the first time, the theory that the federal judiciary enjoyed the power of passing upon the constitutionality of the acts of Congress. In the famous case of Marbury v. Madison, decided in 1803, he said: "... the powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the Constitution is written. To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time be passed by those intended to be restrained? It is a proposition too plain to be contested, that the Constitution controls any legislative act repugnant to it; or, that the legislature may alter the Constitution by an ordinary act. Between these two alternatives there is no middle ground. The Constitution is
either a superior paramount law, unchangeable by ordinary means, or it is on a level with ordinary legislative act, and, like other acts, is alterable when the legislature shall please to alter it. If an act of the legislature, repugnant to the Constitution, is void, does it, notwithstanding its invalidity, bind the courts, and oblige them to give it effect? It is emphatically the privilege and duty of the judicial department to say what the law is. . . . So, if a law be in opposition to the Constitution; if both the law and the Constitution apply to a particular case, so that the court must either decide that case conformably to the law, disregarding the Constitution, or conformably to the Constitution, disregarding the law; the court must determine which of these conflicting rules shall govern the case. This is of the very essence of judicial duty." Marshall's logical reasoning has withstood every assault until the present day. Although this was the first instance in which the court had invalidated an act of Congress, as early as 1791, the lower federal courts had invalidated state laws which were found to be contrary to the mandates of the Constitution

The Bill of Rights -- the first ten amendments -- is a limitation upon the federal government only. The Bill of
Rights of each state's Constitution limits that state's government only. The necessary effect of limiting the power of government to regulate and control the conduct of individuals is to create an area within which individual interests are immune from governmental regulation and control. The legal problem of defining the extent of that immunity is in form that of construing the constitutional provisions conferring it. Since the Federal Bill of Rights prohibited federal action only with respect to the freedoms enumerated therein, any state was left free to do as it chose. Something more was needed, that need was fulfilled by the adoption of the Fourteenth Amendment in 1868. That amendment provides in part that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." One of the judicial processes has been that of construing the meaning of this section as it involved action by the states. And in so construing the section certain important provisions of the Bill of Rights have been read, by implication, into the Fourteenth Amendment with the result that now no state may encroach upon the freedom of religion, speech or the press or the right of
the people to peaceably assemble.

Although the framers of the Constitution could not possibly have foreseen, in 1787 and 1868, the problems which would arise in the future, the language used by them, because of its elasticity, has enabled the court sitting when a proper case was presented, to construe the provisions in the light of present-day problems. The term "liberty" as used in the due process clause of the Fourteenth Amendment has been construed to include the right of an individual to be immune from unreasonable interference with his physical person, his privilege of associating with others to promote common objectives, and freedom of learning and teaching. A state may, however, subject the exercise of these powers and privileges to reasonable regulation. The due process clause of the Fifth Amendment undoubtedly protects the individual against unreasonable interference by the Federal Government. The due process clause (of the Fourteenth Amendment) prohibits a state from unreasonably interfering with individual freedom, but by court decision, permits it to so regulate it that its exercise shall be compatible with the public welfare. It is impossible to define just what due process means -- the courts have not, and never will, attempt to enumerate the liberties which it is designed to protect. Each case must be decided on its own facts. It has been stated
to include freedom from bodily restraint, freedom of contract and of following the common occupations of life, the right to acquire useful knowledge, to marry the person of one's choice and establish a home and bring up children, to worship God according to the dictates of one's own conscience, and, generally, to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men. It must be remembered, however, that the crucial problem is usually whether the particular restraint upon personal liberty is reasonable and for the protection of the welfare of the people as a whole. 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."

These basic, personal liberties are guaranteed to us. But as the times change, so do our concepts of personal liberties. Values change from one generation to another and social
concepts must be changed to keep step with the times. Due to the foresight of the framers of the Supreme Law of the Land in the use of such elastic words and phrases as "privileges or immunities", "due process of law" and "equal protection of the laws", the court is left free to interpret them as the needs of the times dictate. The interpretation depends on the philosophy of a majority of the members of any Supreme Court. The laws are written, but their interpretation depends on the human element which is always variable. The interpretation may be liberal or hidebound, depending on the present make-up of any court.

Each judge's philosophy depends on his heredity, background, education, religion, political beliefs and his process of thought. As the individual judges differ in personal characteristics, so do they differ in their thinking. This accounts for the difference in interpretation given to our Constitution and laws by the Supreme Court of the United States and of California. In Chief Justice Marshall's time, it was imperative, in order to develop the court as a strong department of justice, that there should be unanimity, but now that the court is established in power and the doctrine of judicial supremacy is secure, the court is dependent on no one. It has been said that unanimity is not worth its cost in conscience.
and personal pride. And so as philosophies differ, there will be dissenting opinions. Dissents are competing opinions in their own right and have, in the past, often pointed the way to the future. The dissenter, on any court, is often a man who looks past the present and sees that conditions, economic, political and social, are changing and that the interpretation of the law must, too, look forward. Justice Oliver Wendell Holmes was one of the great dissenters of the United States Supreme Court. Today many of his dissents are now the law and not just the expression of a minority opinion.

FREEDOM OF RELIGION

When the first great Amendment was adopted in 1791, it is crystal clear that its framers, who had fought so valiantly for liberty and the right to govern themselves, had no thought that any citizen of the United States of America would ever, because of religious dictates, refuse to salute the Stars and Stripes. And yet that very situation was before the Supreme Court of the United States in the case of Gobitis v. Minersville School District (310 U. S. 586 [1940]) wherein the Supreme Court held that the training of children in patriotism was a matter of educational policy and within the legislative authority. But in 1943, in West Virginia v. Barnette (319 U. S. 624),
Gobitis case was overruled with the court holding that the object of national unity did not justify compulsory acceptance of a belief, symbolized by the pledge and salute, which is contrary to one's religious beliefs.

Freedom of religion is the right to believe as one chooses, or the right not to believe, plus the freedom to act. (Cantwell v. Connecticut, 310 U. S. 296.) Freedom of religion, however, is not absolute -- it may not be made a cloak for immorality, vice or crime, under the guise of conscientious belief. The Mormon Church, insisting upon the contention that the plural wife system was a part of its religion, fought to the last ditch every national statute for the suppression of polygamy. The United States Supreme Court, speaking through Mr Justice Bradley (Mormon Church v. U. S., 136 U. S. 1) refused to extend the constitutional guarantee of religious freedom to cover the practice of polygamy. He pointed out that many practices in the past, such as the suttee of Hindu widows, the offering of human sacrifices by our own ancestors in Britain had no doubt been sanctioned by an equally conscientious impulse, but that now no one would hesitate to brand those practices as crimes against society. The guarantee of religious liberty is therefore not an absolute right, but one which is qualified by what is best called the welfare of the people as a whole.
One should do, therefore, as his conscience dictates, if by so doing he is not causing harm to others.

Another instance of a qualification on freedom of religion is found in the majority opinion in Gospel Army v. Los Angeles (27 Cal.2d 232). There, an ordinance, regulating the business of junk and secondhand dealers, required a license, the payment of a fee, a bond and detailed information about the solicitor. The Gospel Army was a religious organization which collected salvage for resale and solicited funds from the public. The net proceeds were used for religious and charitable purposes. The majority of the California Supreme Court held that the provisions of the ordinance were not unreasonable and could be applied to the Gospel Army because the practice of charity was not exclusively a religious activity and that if a religious organization engaged in such activities they were not free to do so without the regulation which applied to others engaging in the same activity. Justice Schauer, Justice Edmonds and I dissented. I felt, in brief, that charity conducted as part of a religious practice was inseparable from the religion itself -- and that a regulation of the charity was a regulation of the religion. In Rescue Army v. Municipal Court (28 Cal.2d 460), the majority of my court again held valid a permit requirement before charitable contributions
could be solicited by means of receptacles in public places. I again dissented. The United States Supreme Court (331 U. S. 549) refused to pass upon the constitutional questions involved in either case, but said enough to cause the city of Los Angeles to withdraw its requirements so far as religious organizations were concerned. Probably the law in California today is in line with my dissent: That the licensing requirements constituted an unreasonable regulation of a religious activity.

The First Amendment declares that a state shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. Most of the litigation in recent years has centered around the "free exercise" of religion, but two recent cases have explored the background of the other part of the Amendment. In Everson v. Board of Education (330 U. S. 1, 15, 16) the Supreme Court of the United States said: "The 'establishment of religion' clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbelief,
for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.' In McCollum v. Board of Education (333 U. S. 203), the court added that "the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere." In the McCollum case, a county board of education in Illinois instituted a plan of "released-time" religious education in its public schools. This meant that instructors of various faiths were furnished without charge to the school authorities and instruction was given each week for half hour periods in the classrooms during regular school hours to children whose parents had signed requests. The attendance of these children was required and reports of absences were made, but children who did not choose to take the religious instruction were required to leave their classrooms and go elsewhere in the building for the regular secular studies.
The Supreme Court held that this program violated the First Amendment. Both of these cases were 5 to 4 decisions.

RIGHT TO PEACEABLE ASSEMBLY

In Danskin v. San Diego Unified School District (28 Cal.2d 536) the Supreme Court of California upheld the rights of free speech and assembly for political dissenters. The Civic Center Act required that school boards allow the free use of school auditoriums, but prohibited such use by organizations seeking forcible overthrow of the government. Petitioners, who were affiliated with the American Civil Liberties Union, sought the use of a school auditorium for meetings to discuss the "Bill of Rights in Postwar America." Permission was denied when they refused to sign an affidavit of nonadvocacy and nonaffiliation with subversive organizations. The court held the statute unconstitutional, and said that no matter how objectionable the groups or doctrines may be, free speech and assembly cannot be prohibited unless they come within the rule of "clear and present danger." The clear and present danger test is that freedom of speech shall not be abridged unless the conduct sought to be restrained will bring about one of the substantive evils -- destruction of life or property, or invasion of the right of privacy -- and the evil itself must be substantial.
As Mr. Justice Holmes said in his dissent in Abrams v. U. S. (250 U.S. 616), "we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."

As I said in my concurring opinion in the Danskin case, the effect of the legislation there involved was to permit a prior censorship on the right of assembly and expression. In my opinion this cannot be done without violating the provisions of the First and Fourteenth Amendments to the Constitution of the United States. The First Amendment unqualifiedly guarantees freedom of speech and freedom of assembly. No restriction on the exercise of these rights is mentioned in the Constitution or the amendments thereto. The restrictions which have been placed upon these rights are found in the judicial decisions interpreting the "freedom" provisions. I will agree, however, that some restrictions are necessary for the best interest of the public. As Mr. Justice Holmes said (Schenck v. U. S., 249 U. S. 47, 52): "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect
of force. The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

Picketing has long been declared to fall within the protection of the First and Fourteenth Amendments -- the right to freedom of speech and to peaceably assemble. These freedoms are qualified in this field to some extent -- the picketing must be for a lawful purpose and, by the terms of the amendment, it must be peaceful. Picketing is a means by which members of labor organizations communicate to others the existence of a labor controversy (Thornhill v. Alabama, 310 U. S. 88). The most stringent qualification has been in the use of the words "for a lawful objective" and the right is by no means as liberal as it once was. Under the holdings in the most recent cases, state governments may pass laws declaring certain objectives to be unlawful purposes, and if the state courts uphold the legislative determination, picketing for those purposes may be prevented even though picketing itself is still declared to be within the protection of the First and Fourteenth Amendments.

A case which embodies a broad concept of the principle of freedom of speech is that of Terminiello v. Chicago (337 U. S. 1)
There, an ordinance made it a misdemeanor to assist in making any improper noise, riot, disturbance, breach of the peace or diversion tending to a breach of the peace. Petitioner addressed a meeting of over 800 persons, with about 1,000 opponents of his views gathered outside in protest. The police were unable to maintain order. The trial court instructed the jury that breach of peace included speech which stirs the public to anger, invited dispute, or brought about a condition of unrest or created a disturbance. The United States Supreme Court held that that type of speech could not be constitutionally prohibited because a function of free speech under our governmental system was to invite dispute. The court said: "It may indeed best serve high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger." This case, too, was decided by a divided court.

**FREEDOM OF THE PRESS**

In *Near v. Minnesota* (283 U. S. 697), a law of Minnesota provided for the abatement, as a public nuisance, of a "malicious, scandalous and defamatory newspaper, magazine or other periodical." It was also provided that such publication could be enjoined -- is, that a court order could be had restraining publication. The United States Supreme Court held that liberty of the press
and of speech was within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action. The court there said: "If we cut through mere details of procedure, the operation and effect of the statute in substance is that public authorities may bring the owner or publisher of a newspaper or periodical before a judge upon a charge of conducting a business of publishing scandalous and defamatory matter -- in particular that the matter consists of charges against public officers of official dereliction -- and unless the owner or publisher is able and disposed to bring competent evidence to satisfy the judge that the charges are true and are published with good motives and for justifiable ends, his newspaper or periodical is suppressed and further publication is made punishable as a contempt. This is of the essence of censorship." The court continued, and said: "The question is whether a statute authorizing such proceedings in restraint of publication is consistent with the conception of the liberty of the press as historically conceived and guaranteed. In determining the extent of the constitutional protection, it has been generally, if not universally, considered that it is the chief purpose of the guaranty to prevent previous restraints upon publication." The court quoted Blackstone when he wrote "The liberty of the press is indeed essential to the nature of
a free state; but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous or illegal, he must take the consequence of his own temerity." The court concluded that the statute in question imposed an unconstitutional previous restraint upon the freedom of the press. Note that it is only a previous restraint which is protected -- the person publishes the material may still be held liable in damages for libel after the publication has been made if the matter published is not true or privileged. Note, too, that the decision in the Near case was rendered by a divided court -- there were four of nine members of the court who did not agree that freedom of speech should be so protected. I mention this to illustrate to you the differing philosophies of members of the Bench and also to point out that the views of the minority could, possibly, become the law of tomorrow.

In framing the Bill of Rights, the framers sought to protect the rights of the people from federal action. Forefathers had been through a long struggle for individual
freedom against persecution and tyranny and they feared, because of past events, that a too powerful national or federal government would again place them in such a position.

Ever since Chief Justice Marshall's time, the court has been standing between the legislative body and the individual citizen. The legislative body, of any state, or of the federal government, makes laws which are designed for the welfare and protection of the people as a whole. At times, this legislation which is so beneficially intended, encroaches upon the rights of the individual. In such a situation, when a proper case is presented to a court, it is the duty of the judge, or judges, in obeying the constitutional mandates to decide whether due process of law has been observed. Criminal laws are designed for the protection of society, and yet in a criminal case, the person accused has the right to counsel, to a speedy, fair and impartial trial, to a jury if he so desires. The courts must see that no person is deprived of his life or liberty unless he has been accorded every safeguard that he has been guaranteed by the Constitution. Some judges, because of the differing philosophies of which I have spoken, have differed on just what constitutes due process of law in a criminal case. It is my own belief that the court plays, or should play, a most important part in the preservation of individual rights to the
end that every man shall be accorded the utmost in the safeguards provided in the Constitution for his protection.

A dramatic example of what can happen when courts do not properly observe those safeguards is found in the case of People v. Rochin. There, Rochin, who had been suspected by the police of having narcotics in his possession, was arrested without a warrant, taken to the police station where his stomach was forcibly pumped out. The contents of his stomach, found to contain traces of a narcotic, were used in evidence against him. This procedure, to my mind, violated the constitutional provision against illegal searches and seizures -- the right of the people to be secure in their homes, their persons and their effects unless a warrant has been issued upon probable cause. The trial court found nothing wrong with the conduct of the police, and when an appeal was taken to the intermediary appellate court, it, of necessity, affirmed the conviction had on the illegally obtained evidence because of an earlier decision by the Supreme Court of California. When a hearing was sought by the Supreme Court of this state by the defendant, Rochin, Judge Schauer and I dissented from the denial of that petition. The case was finally taken to the Supreme Court of the United States and it was there held that the defendant had not been accorded due process of law.
Justices Black and Douglas, concurring in the reversal of the conviction, were of the opinion that Rochin had been compelled to be a witness against himself in violation of the provision contained in the Fifth Amendment. Twenty judges, all with different philosophies, have had a hand in the final outcome of this case. Nine of them felt that due process of law had been observed. California permits the introduction of evidence illegally obtained in a criminal case, although our state Constitution has the same provision against illegal searches and seizures as is contained in the Fourth Amendment to the Constitution of the United States. It is my position, and I hope that such a statute will soon be passed by the Legislature of this state, that any evidence obtained in violation of the constitutional mandate should be inadmissible in any court of this state.

I have not attempted to give a concise list or summary of the cases construing the liberties protected by the Constitution. I have tried to tell you of a few of the great cases that you may know the difficulties which have confronted the members of the Bench in their honest attempts to fulfill their oaths to support the Constitution of the United States and, in my case, the State of California. One other great case which, in my opinion, was a long step in the right direction, is that
of Shelley v. Kraemer (334 U. S. 1), where the United States Supreme Court practically invalidated racial covenants restricting occupancy of real property, by holding that judicial enforcement of the covenants was a denial of equal protection of the laws. One of the arguments made in support of the enforceability of the covenants was that negroes were free to make covenants excluding white persons from occupancy of property, and that the principle of the segregation laws relating to schools and vehicles -- equal facilities and treatment -- should apply. The court rejected this argument, declaring that the rights created by the Fourteenth Amendment are personal and guaranteed to the individual, and that equal protection "is not achieved through indiscriminate imposition of inequalities." Again, three members of the court did not concur in the decision. Another case which is worthy of mention is that of Perez v. Sharp (32 Cal.2d 711), where the California Supreme Court held unconstitutional a statute which prohibited, among other things, marriages between white and colored persons. It was held there that the right to marry a person of one's choice was within the scope of the equal protection clause of the Fourteenth Amendment.

A reading of the Bill of Rights will show you that the freedoms enumerated therein are, for the most part, completely
unqualified. The qualifications have been placed upon them by judicial construction. While I feel that some qualification is both necessary and beneficial in the interests of the public welfare and protection, I feel, too, that a liberal construction is necessary that the purposes of our forefathers may be carried out. I have tried to explain to you that the judges on the courts are the ones who, in the last analysis, place the interpretation and construction on the phrases which were meant to give these freedoms to the people of the United States.

I have tried to make it clear that in order to obtain a broad construction and liberal interpretation of the Bill of Rights, it is necessary to have judges who entertain that kind of philosophy on the Bench. That problem, when all is said and done, rests upon you, the people. It is up to you to see that the right type of men are appointed to the courts, not only of this state, but of our sister states, and to the federal courts, and to see that the men, with whose philosophies you agree, are kept on the Bench once they have been appointed. The untimely deaths of Justices Murphy and Rutledge of the United States Supreme Court constituted a great loss to the people of the United States. Their absence from that Bench is deeply felt by those of us who feel that a broad interpretation of the Constitution and its Amendments is necessary for a free and united
country. A broad interpretation of the Bill of Rights does not mean that such an interpretation would not be a literal one -- for, as I have shown you, the freedoms there enumerated are unqualified -- the qualifications arise through judicial construction.

Judges of any Supreme Court constitute the guardians of the Constitution of the United States and its Amendments, and of the constitutions of the respective states of the Union. It is their privilege and duty, and your right, to have them so act. As Bacon said (Essay "Of Judicature"): "And let no man weakly conceive that just laws and true policy have any antipathy: for they are like the spirits and sinews, that one moves with the other. Let judges also remember that Solomon's throne was supported by lions on both sides. Let them be lions, but yet lions under the throne." Our Constitution is the throne of liberty and justice and, like Solomon's lions, our judges should support it -- not rewrite it.