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Address Delivered Before the Jewish Professional Men's Club of Los Angeles Entitled "The 107th Anniversary of the Constitution of the United States"

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ADDRESS DELIVERED BY JESSE W. CARTER,
ASSOCIATE JUSTICE OF THE SUPREME COURT OF CALIFORNIA,
BEFORE THE JEWISH PROFESSIONAL MEN'S CLUB OF LOS ANGELES,
ON OCTOBER 16, 1957, ENTITLED
"THE 170TH ANNIVERSARY OF THE CONSTITUTION OF THE UNITED STATES"

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On September 17th, 1787, 39 men who had been assembled at Independence Hall in Philadelphia for approximately 4 months concluded their labors by signing a document which they had prepared and designated "The Constitution of the United States." Over 170 years have elapsed since this historical event took place, and this document, with some 22 amendments, still stands as "the fundamental law of the land."

It seems fitting and proper, however, in the present atmosphere of world tension, that we reappraise our constitutional form of government in the light of present day conditions.

It should be remembered that the Constitution of the United States was prepared by a group of men who had endured
tyranny under a monarchial form of government for over three
generations. They were the leaders in the struggle which
overthrew that government and they sought to establish a
government of the people, by the people, and for the people,
which would derive its just powers from the consent of the
governed. They sought to establish justice, insure domestic
tranquillity, promote the general welfare, provide for the
common defense and secure the blessings of liberty to themselves
and their posterity -- a government which would govern without
tyranny and without oppression and which would guarantee to
the governed all the liberty that a free people in a homogenous
society could enjoy.

The men who drafted the Constitution were adherents
of the philosophy declared in the Declaration of Independence:
"We hold these truths to be self evident: That all men are
created equal; that they are endowed by their Creator with
certain unalienable rights; that among these are life, liberty
and the pursuit of happiness; That, to secure these rights
governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and to institute a new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem more likely to effect their safety and happiness."

Many of the delegates at the Constitutional convention had been members of the Continental Congress which adopted the Declaration of Independence on July 4th, 1776. They were revolutionists in the truest and most dignified sense.

It is not my purpose to dwell upon the historical background of the Constitution. Many books have been published setting forth in great detail the events leading up to the Constitutional convention of 1787 and the record of what took place during that Convention. Most of you have probably read some of these books and are as familiar with these historical facts as I am.
We know that great diversity of opinion existed among the delegates as to the form of government they sought to establish. Days and weeks were consumed in debate on many of the provisions which subsequent events proved wise and salutary. Historians tell us that the Constitution, as a whole, was in the main a compromise. The concept of division of power between three branches of government was new although it had been advanced by students of government for many years. The concept had really never crystallized in the form of a Constitution of an established government. The objective of the concept was to establish a governmental system of checks and balances which would prevent any branch of the government from exercising autocratic powers which might give birth to a new reign of tyranny. There was strong opposition to the concentration of power in the executive branch of the government. In view of the opposition expressed by many of the delegates against power in the executive branch of the government, it is fortunate that this department fared as well as it did. The legislative branch
was also the subject of great diversity of opinion. Some of the delegates favored a one-house legislature selected by the several states in such manner as the states saw fit. The idea of direct election of members of Congress was adopted only after bitter opposition and by a very narrow margin of votes. A study of the Convention proceedings leads one to believe that many of the delegates did not believe in the sort of popular government we have today. The President and Vice-president were to be chosen by electors and the members of the Senate by the legislatures of the respective states. Considering the conflicting views of the delegates and the various theories of government entertained by them, it seems nothing short of miraculous that a Constitution of the form which was ultimately drafted could have been approved by the 39 delegates who finally signed it on September 17th, 1787.

Historians agree that the Constitution, as finally drafted, did not meet with the unqualified approval of the delegates. Even James Madison, who was said to be the father
of the Constitution, at first declined to sign it because it did not portray the ideal of government which he had envisioned. He evidently changed his mind as his name appears on the original draft as one of the delegates from Virginia.

It may be said that the drafters of the Constitution did a better job than they thought they had accomplished because it has stood the test of 170 years with only 22 amendments. Generally speaking, the Constitution of the United States, as originally written, has been acclaimed as a great work of draftsmanship by men who exhibited unusual ability as statesmen. Prime Minister Gladstone of England once declared that the Constitution of the United States was the greatest document ever struck off at any one time by the mind or purpose of man.

Like many of the great products of the human mind, the greatness of its achievement increases as it is tested by the passage of time. It stands today as an everlasting monument to the vision of its Framers who sought to establish a government of the people, by the people and for the people -- a government
where life, liberty and the pursuit of happiness may be enjoyed by all.

Immediately after the Constitution was adopted by the states and the government was organized pursuant to its provisions, the first ten amendments, known as the Bill of Rights, were submitted to Congress and shortly thereafter adopted. These Amendments became a part of the Constitution on December 15th, 1791. These Amendments, and the so-called Civil War Amendments, consisting of the Thirteenth, Fourteenth and Fifteenth Amendments, have played a more important part in the preservation of human rights and the establishment of what is known as the American way of life than the provisions contained in the original draft of the Constitution.

The Bill of Rights, or first ten amendments to the Constitution of the United States, have been declared the charter of our civil liberties. 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:

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 the 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 for 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 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
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
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 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 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."

In a recent decision, the late Mr. Justice Jackson of the Supreme Court of the United States, declared: "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."

Human experience has demonstrated the wisdom of the Framers of the Bill of Rights in writing these fundamental
principles of civil liberties into the Constitution. During different periods of our national history we have witnessed waves of emotional disturbances which have brought about legislation designed to limit or abrogate many of the freedoms guaranteed by the Bill of Rights. We are now in the midst of one of these emotional trends and we have recently witnessed legislation by both Congress and our own state Legislature designed to restrict and suppress freedom of thought and speech. We are constantly reminded by press and radio that this or that activity is un-American and subversive. People are being labelled according to the ideas they express. The concepts of freedom of speech, press and assembly embraced within the Bill of Rights are being challenged by demagogues who are spreading philosophies of fear, hate and intolerance which are preying on the minds of hopeless and frustrated men. We hear from every side that there are those among us who would overthrow the government and destroy our liberties. Many people are afraid to speak their thoughts because of the fear of being classified as
un-American or subversive. It appears to me that it is time again for all of us to remember what President Thomas 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 undistrubed as monuments of safety with which error of opinion may be tolerated where reason is left free to combat it." The Constitution and the 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 Jefferson did, when he wrote to Benjamin Rush on April 21st, 1803: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." And the same thought was admirably expressed by the late Mr. Justice Brandeis about 30 years ago 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. In the Oklahoma loyalty
oath case, Mr. Justice Black stated: "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."

In its 170 years, America has weathered many storms, both from within and without. But in my opinion never has 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. 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.
I have been told by many school teachers that the teaching profession today is subjected to a gag rule which precludes teachers from discussing anything in the nature of a social, economic or political philosophy which does not conform to present day concepts. So they are afraid to discuss these subjects at all for fear of being misquoted or misunderstood. This, in my opinion, is the result of tyranny in the administration of our public school system. The inculcation of fear in the subject inevitably flows from any form of tyranny -- to be afraid to be one's self -- to be afraid to speak one's thoughts and beliefs -- to be afraid to criticize -- to be afraid to have and express a controversial thought -- to argue with one's friends and acquaintances.

This is not the American way of life. Nor is the American way of life to be found in the present day talk of "guilt by association" "guilt by inference" -- or "guilt because of a refusal to conform." The great strides forward this country has made in almost every field of endeavor were not
made by men and women who were afraid to think and express independent ideas or by those who wanted only to conform to what was considered fifty or one hundred years ago the "proper" or "correct" thing to do! Our scientists in every field have looked for the new, the different, and the ideal. They have failed time and again to find what they were looking for, but they have not been afraid of failure. We must not be afraid to try over and over again, if necessary, to make our democracy work. And democracy cannot work if its safeguards are overthrown and destroyed.

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 re-examined 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
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. I am convinced that this was the philosophy of those who drafted the Constitution and the Bill of Rights. They charted a new course both in the formation of government and in the preservation of civil liberties, foundation stone of which is freedom of expression and the right of every person to enjoy life, liberty and the pursuit of happiness restricted only by those bounds which must necessarily be imposed by organized society for the public good.
Devotion to Americanism often calls for something other than conformity. There have been many instances in the history of this country where it was apparent that to assert a right under the Constitution, indeed, merely to invoke the protection of the Bill of Rights for all Americans, required courage, because it meant resistance of government agents acting under color of authority, but in violation of the constitutional guarantees of the citizen. The hardihood to challenge such wrongs is as indispensable to good citizenship as is unquestioned obedience under other circumstances. This concept was admirably expressed by Thomas Jefferson in his letter to Benjamin Rush on April 21st, 1803. He said: "It behooves every man who values liberty of conscience for himself, to resist invasions of it in the case of others; or their case may, by change of circumstances, become his own. It behooves him, too, in his own case to give no example of concession, betraying the common right of independent opinion, by answering questions of faith which the laws have left between God and himself."
In the last analysis, when the moment of decision comes, to the private citizen as well as to the public official, it is in the quiet of his own mind and in the glow of his own courage that Americanism thrives. And it is in the cumulative decision of millions, citizen as well as official, that Americanism is reborn each moment.