

from the office of

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of Massachusetts*

ADDRESS OF SENATOR EDWARD M. KENNEDY

LAW DAY EXERCISES

UNIVERSITY OF GEORGIA SCHOOL OF LAW

Athens, Georgia

May 4, 1974

FOR IMMEDIATE RELEASE

It is a great pleasure to be here this morning at the University of Georgia School of Law. I am honored to share this forum with President Davison, with Dean Beard, with my friend Professor Rusk, for whom President Kennedy had such high regard, with Jackie Hinton and David Garrett and the other members of the Student Bar Association, and with so many members of the Georgia Bar and distinguished public officials and private citizens of this State.

It is a special honor to be here on Law Day with so many friends, scholars and students who will carry the banner of the law in years to come, with its great power and awesome responsibility.

There are many famous ties between Georgia and Massachusetts. Harvard was the first private college in the nation, but Georgia was the first State University. Old Ironsides, the namesake of the Constitution and the most famous ship in American naval history, rests in its permanent berth today in Boston Harbor, but it was built with Georgia timber. And in the early days of the Revolutionary War, the battle of Bunker Hill was fought in Massachusetts, but it was fought with powder captured from the British in Savannah and shipped to Massachusetts by the patriots of Georgia.

But the tie I like the best is the story of the little band of Puritans who left Dorchester, Massachusetts in 1692 to seek a better life in America's early days. They travelled South, and eventually, crossing the Savannah River, they came to Georgia and founded the Midway Colony. That tiny Puritan colony prospered here in Georgia, and played such a leading role in the War for Independence that their county was christened "Liberty". In the generations that followed, these descendants of Massachusetts gave Georgia some of its greatest leaders, including Senator Augustus Bacon, one of the earliest graduates of this law school, who had the distinction of being the first United States Senator elected by the people under the 17th Amendment to the Constitution.

Driving in from Atlanta this morning, seeing the famous red hills of Georgia, the beautiful Southern homes for which Athens is renowned, recalling the famous history of this great State and University, it is easy to understand the strength of Georgia and her people, and the role of leadership that Georgia has assumed in the South and throughout the nation.

Over the years, this School of Law has been a source of excellence in legal education, a training ground of public servants for Georgia and for America as a whole. United States Senators like Augustus Bacon, Walter George, Richard Russell and Herman Talmadge are among the finest gifts that any law school ever gave the nation. You can be proud of your record in the past. You can be proud of the expansion of recent years, the growing scholarship and endowment program, and your strong new senior faculty. You can be proud of the role the school of law will be playing in the future in State and national and international affairs.

In 1961, a few weeks after he became Attorney General of the United States, Robert Kennedy came to Athens to address the Law Day exercises. It was his first formal address as Attorney General, and he emphasized America's historic debt to law as the source of freedom:

"Law is the link between man and freedom," he said. "We know that it is law which enables men to live together, that creates order out of chaos. We know that law is the glue which holds civilization together."

If that glue seems weaker now, we can take comfort from our common history. In our most challenging moments in the past, the rule of law in America has been a fighting faith.

--Two centuries ago, the people of Massachusetts and Georgia and eleven other tiny colonies fought together to create this new experiment in democracy, and America became a testament of liberty and a beacon of freedom to all the world.

-- A century ago, in America's darkest night, sons of Georgia and Massachusetts fought against each other and died for their beliefs, but the Republic survived intact, stronger than before.

-- A generation ago, men of Georgia and Massachusetts stood together once again, from the trenches of Western Europe to the jungles of the South Pacific, fighting to preserve our freedom against the world-wide threat of tyranny and foreign domination.

Today, we share a different kind of struggle. It is not a struggle with arms and bombs and tanks and planes against a threat without. Instead, we fight against a deeper threat within, where the only battleground is the procedures of the Constitution, where the only weapons are principles and ideas, where the only injuries are self-inflicted wounds. It is a fight for the conscience of America, for the preservation of the rule of law, for the foundation on which all our other freedoms rest.

But that is the sort of challenge that has always summoned forth the best in us. Too often in these days, it is the fashion to see America only as a troubled nation, searching for its soul.

But that diagnosis is not complete, because it misses the most important truth about America and the rule of law in 1974.

Yes, we are a troubled nation. We struggle under the first Presidential impeachment proceedings in a century. We struggle under the endless seige of inflation and unemployment that plagues the economy in every section of the country. We struggle under the racial and social tensions that deny the blessings of our heritage to so many of our citizens.

All that is true, but there is a brighter and more important side. Those who look at America and see only the troubled face do not see the real America, because they do not see our basic strength. They do not realize that Watergate is more of a challenge than a crisis.

And the heart of our strength today -- as it has always been before -- is in our people and their deep and abiding faith in the rule of law, the faith that our system of government is equal to any challenge.

We believe in a government of laws, not of men. We believe in equal justice under law. We believe in robust and open debate on every issue. We believe in freedom of the press.

Above all, we believe in our Constitution and Bill of Rights and the rule of law. They are the source of our greatness in the past. They are the source of our present strength today. They are the source of our hope for tomorrow and the future.

That is why the process of impeachment is not a process to be feared. It is a process provided by the Constitution, subject to all the rights and obligations familiar to the law. So long as the process is thorough, fair and open and guided by the law, the nation can have full confidence that through the process, our democracy will not only heal itself, but emerge stronger than before.

Jefferson said, the price of liberty is eternal vigilance. Years from now, the truly lasting effect of the impeachment process may well be its effect on our children and future generations, as a historical reminder of how easily liberty is lost where vigilance is weak.

As Goya said in his famous etching, when reason sleeps, monsters take control. Because reason slept in recent years, we have passed through an era of profound abuse of freedom's basic principles.

Although we see the facts still dimly, it is not too much to say of this period, that America is now emerging from the most dangerous attack on our liberties and our free institutions in our history.

I do not say this lightly, nor do I say it necessarily as an indictment of any particular President or Administration. We know that all the evidence is not yet in. We also know that long before the current Administration came to power, the seeds of Watergate had been planted, in the excesses of the Cold War era and the McCarthy period of the Fifties. The seeds of Government repression were nourished by the methods used to still the controversy over America's deepening involvement in Vietnam and to halt the violence in our cities in the decade of the Sixties.

But it was not until Watergate that the abuses threatened to swallow up the rule of law. As students and scholars of the law, you know the pattern as well as I.

In recent years, dragnet grand jury investigations and conspiracy prosecutions were brought by an Administration bent on undermining freedom of the press and stifling dissent and free assembly. Wiretapping was aimed at journalists and others who opposed the actions of the Administration. Privacy became a forgotten basic right.

Enemy lists were put together. Respected Federal agencies were subverted in the name of politics. Justice wept, as unnecessary mass arrests were used to sweep the streets of the nation's capital, in the very shadow of the great monument to Washington and the memorial to Lincoln made of Georgia marble.

In each instance, men of conscience in and out of public life stood up in protest against these assaults on the Constitution and our basic liberties. But it was not until a lone night guard detected adhesive tape on an exit door in Washington's wealthiest office building -- it was not until two young news reporters of almost unbelievable tenacity took up the trail -- it was not until a Federal District Judge refused to allow the cover-up to stain his court -- it was not until these events that the alarm was sounded and America's eyes were opened to what had been happening to our country.

Watergate has many heroes, but there are two other public servants I would single out today. Rarely has the nation been better served, rarely has the rule of law had two more eloquent or more faithful and persuasive teachers, than the two great lawyers from the South who led the Senate in its historic investigation of the crisis, Sam Ervin of North Carolina and Herman Talmadge of Georgia.

Day after day, witness after witness, while the nation watched, their Senate Committee developed the facts of Watergate. They laid the foundation for the growing national awareness and understanding we have today.

Sam Ervin and Herman Talmadge gave us all a living lesson in the rule of law. They helped to teach the world the way democracy works. Thanks to them, we know that the Constitution is alive and well in 1974, and America is in their debt.

Now, the course of justice is in its channel once again and the current is flowing swiftly. But we cannot relax our guard or be distracted from our mission.

In the short run, a major test of the rule of law is yet to come -- the way in which Congress deals with the future steps of the impeachment process. Impeachment is a strict procedure of the Constitution, and we cannot bend the process. We can never allow impeachment to become a political weapon in the hands of a willful Congress, or a vote of no confidence in the President or his Administration. Instead, it will be the high responsibility of each member of the Senate and the House to carry out his duty with the fullest possible regard for the rights of the President and all the other individuals caught up in the investigation.

In a "Man for All Seasons," Sir Thomas More was urged by a well-meaning friend to bend the law to serve another end. Refusing, he asked:

"What would you do? Cut a great road through the law to get after the devil?"

And his friend replied:

"I'd cut down every law to do that."

More answered:

"When the last law was down, and the devil turned round on you -- where would you hide, the laws all being flat? This country's planted thick with laws from coast to coast, and if you cut them down do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil the benefit of the law, for my own safety's sake."

This is why, for the country's sake, the benefit of the laws must be applied at every step of the impeachment process.

That's why impeachment can never be just a trial of the President by Congress. It is also a trial of Congress by the country, as we exercise the solemn responsibility entrusted by the Constitution to the Senate and the House of Representatives.

At the present time, the House of Representatives is setting an excellent example of the dignity, impartiality, skill, caution and even-handed justice that the Constitution requires and that Congress owes the country as the investigation proceeds, and I am confident the Senate will do likewise, if and when the occasion should arise.

In the long run, however, once the impeachment issue is resolved, the even greater challenge of Watergate is whether America can still muster the strength and skill to carry on the work of rebuilding the people's shattered confidence in the integrity of their government.

Ironically, it is the institutions most central to our security and most central to the rule of law that have been tarnished most by Watergate. It is the Justice Department, the Federal Bureau of Investigation, the Central Intelligence Agency, and the Internal Revenue Service that have been the primary victims of the lack of respect for institutions and for law.

There are five important steps to take, if we are to insure that these and other Federal agencies play their proper future role.

First, we should institutionalize the office of the special federal prosecutor on a continuing or at least a readily available basis. The outstanding role performed by Archibald Cox and Leon Jaworski can and should be carried into other areas, in a new office of a new Federal special prosecutor, independent of the executive branch of government.

While the principal responsibility for preventing and exposing wrongdoing in the executive branch lies with the President as chief executive, occasionally, as we have seen, the responsibility is ignored. That is when the danger to freedom and the rule of law is greatest. That is also when the need for an independent prosecutor is most deeply felt.

Difficult questions arise in terms of jurisdiction, authority, accountability, and conflict and cooperation with other Federal agencies, but the need is too great for us to miss the opportunity. A permanent special prosecutor would provide constant vigilance against abuse of power within the government. Only in that way can we guarantee that those who rule will be subject to the rule of law. Only in that way can we convince America that our freedoms are safe, and that we have taken the most effective step to insure that there will be no more Watergates.

Second, we must revitalize the FBI within the Department of Justice. We need greater safeguards to insure that the FBI is free of political influence. Its operations and activities should be opened to far more public scrutiny and Congressional oversight.

Some have advocated that the FBI be taken out of the Department of Justice and made into an independent agency. I do not agree. The Bureau's basic investigative purpose is best served as part of the Department of Justice.

The danger of independence is that it would breed isolation and unresponsiveness and greater secrecy. Just as in the Department of Defense we adhere to the basic principle of civilian control over the professional military establishment of the nation, so we must adhere in the Department of Justice to the basic principle of civilian control over professional law enforcement. The Huston plan, the Plumbers, and all the other evils of Watergate are too fresh in mind for America to take a step today that could lead to the creation of a national police force in the future.

Third, in the case of the Internal Revenue Service, unlike the FBI, there is strong justification for the IRS to be independent of the Administration in power. The IRS does not develop tax policy; it does not regulate; it does not prosecute. Those tasks are reserved to the Justice Department of the Department of the Treasury.

Therefore, I advocate that consideration be given to establishing the IRS as an independent agency, with its Commissioner appointed for a term of years.

In an area as sensitive and basic as taxation, there can be no special treatment for any taxpayer. Rich or poor, individual or corporation, Republican or Democrat, friend or enemy -- all must be treated alike, and the public must have full confidence that this is so. To that end, the rulings and activities and statistics of the IRS should be disclosed fully to the public. We must end the discriminatory and burdensome procedures by which too many citizens today are singled out for audit. In turn, the IRS should be subject to audit by Congress's own watchdog, the General Accounting Office. New procedures should be developed to insure that all tax returns remain closed to political prying. Only in this way can we guarantee the fair and even-handed enforcement of the tax laws of the nation.

Fourth, on the CIA, there is no need whatever for that agency to involve itself in any way in America's internal affairs. Its mission must be renewed and confined by emphatic legislation.

Never again can we allow the CIA to engage in domestic activities here at home or drag us into secret wars abroad. Never again can we allow it to gather information or prepare psychiatric profiles on American citizens. Never again can we allow it to provide materials and support for White House political operations. Congress and our oversight committees sit today in Washington to guarantee that the CIA has put its house in order, and I am confident we are equal to the challenge.

Finally, most difficult but also most important for the future role of law, we need a new approach to the concept of Federal justice and the role of the Department of Justice.

"Of all the officers of the Government," wrote President Theodore Roosevelt in 1904, "those of the Department of Justice should be kept most free from any suspicion of improper action on partisan or factional grounds."

For the Office of the Attorney General, the answer does not lie in insulation or separation or creation of an independent agency. Instead, the answer lies in the quality of the Attorney General. The President must set his sights high, reaching for honest men, learned in the law. The Senate must use its own power of advice and consent to insure that the qualifications for appointment are amply met. The Bar Associations too must play a greater role, suggesting candidates, advising on the qualifications to be sought.

To me, a nominee for Attorney General should receive at least the same high scrutiny reserved today for Justices of the Supreme Court of the United States. That is the road of return to excellence in Federal justice, and Congress should demand no less.

The same return to excellence must also be our challenge in every other area, and the law will help us find the way. Oliver Wendell Holmes of Massachusetts, who stands tall as a Georgia pine in the pantheon of American jurisprudence, who was also the grandson of an early pastor of the Midway Colony in Georgia, put it best when he said that laws are the wise restraints that make us free.

In the life of the law, we do not pray for easy lives. We pray to be stronger men and women. There is no secret formula waiting to be discovered to guide us to the future or to make the law prevail.

The ancient virtues that built this country and made it great are the self-same virtues that will keep it great today -- courage and hope, work and duty, faith and sacrifice, truth and justice, the worth of the common citizen.

Without these virtues, the rule of law is helpless. The Constitution becomes just another parchment under glass. But with these virtues, we can rekindle the true patriotic spirit of America, and the flame of liberty will burn as brightly as before. The Constitution will come alive again. The people will find leaders able to bring back the greatness in our nation's character. America will prosper, North and South together.

Long ago, in another Athens, the land where the idea of democracy was born, Pericles, the great statesman and military commander of the ancient world, paid tribute to the citizens of Athens who had fallen in the first year of the terrible war with Sparta. In the immortal words of his funeral oration honoring those fallen heroes, Pericles said:

"The secret of happiness is liberty,
And the secret of liberty is courage."

Across the centuries, across two thousand years, those words are as true for America today as they were for ancient Greece. That is the real message of the rule of law in 1974, and that is the message I leave with you on Law Day here in Georgia.