

Clarence Darrow's Unreported Case

by

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This is the most recent in a series of public lectures on distinguished Chicago lawyers, sponsored by the Law School.

Tonight, I shall discuss with you a hitherto unreported legal controversy of Clarence Darrow's. One can hardly believe that any matter Darrow was involved in could have escaped public notice. He was to the press what cheese is to mice. Whenever he was an actor on the scene, reporters could always count on his picturesque personality to illuminate some human interest story against the background of a tragedy or a stirring public event. And yet, strangely enough, an intimate detail of one of the most important civic functions Clarence Darrow ever performed has not heretofore been chronicled. I shall do so, not so much because its recounting will add to the present growing Darrowania, but because past encroachments on individual liberty are so closely paralleled by present ones of even greater proportions and more terrifying consequences that we need to be reminded of Santayana's words "Those who cannot remember the past are condemned to repeat it."

Current events crowding upon us make it later than you think. Law Day in the year of our Lord 1959 is none too soon a time and the campus of the University of Chicago (Darrow's home neighborhood) is none too close a place for the matter at hand to be

put down in black and white.

Generally speaking, Darrow functioned by applying macroscopic ideals in a microscopic way. For instance, the universal right of a man to defend his own home was exemplified in his defense of one person, Dr. Ossian Sweet of Detroit. We can picture Darrow's battle against tyranny over the mind of man, in his advocacy of one Tennessee school teacher, John T. Scopes. We can appreciate his exposition of the futility of capital punishment in the McNamara, Loeb and Leopold cases and more than a hundred other capital offense trials in which he participated. But in the instant matter, the process was reversed, except that, as usual, Darrow was still on the unpopular side. In the matter I shall speak of tonight Darrow was dealing with broad ideals unrelated to the life or welfare of a single person but in support of the broad principles of free enterprise. And this right after the crash of '29 when the words "free enterprise" were dirty words.

The incident took place one bright, sunny afternoon in the spring of 1934. This is the way Clarence Darrow described it after visiting the White House that day.

"Mr. Darrow, you are doing a wonderful job."

It was the President of the United States speaking. The two of them were having tea together in one of the small parlors of the White House. The President had appointed a Citizen's Committee to investigate NRA, and Darrow, its Chairman, was making his first, of what he hoped would be three reports.

Mr. Roosevelt, in the course of a long political career, would appoint a good many committees to investigate a good many things and he would have to listen to a good many reports. The occasion called

turned out a bundle of reports. The first, early in May, set the tone. It was no measured appraisal of the program, but rather a scathing attack on NRA as the instrument of monopoly."^o

None of us were so naive as to expect the President to endorse the report. Up to now the whole force of the Administration had been behind NRA. To approve the Darrow report, would have meant an about face for the President when public opinion had not been conditioned for it. And no one knew better than a President versed in the art of democratic leadership that "The movement of opinion is always slower than the movement of events". Besides this, we were painfully aware of the fact that the President set great store by Hugh Johnson and his Blue Eagle N. R. A. We also realized (which is hard to appreciate in today's Washington) that with the exception of a few stalwarts, such as Wheeler, Hiram Johnson, Borah and Nye, the so-called rubber stamp Congress would enact nearly anything Roosevelt desired. If he had wanted greater latitude in the management of private industry, he would have received it, for the main concepts, principals and precepts of economic democracy—what Walter Lipman in his recent book "The Public Philosophy"^{**} calls "Civility", were never at a lower ebb than in '33 and '34. Big and Little business were blatant in their demands for the right to fix prices and channel trade through set pattern. They had to have these powers (they claimed) in order to secure the continued existence of free enterprise. (How incongruous can people get!). Labor demanded more than fair treatment to compensate for the past when labor had not got what it felt it was entitled to. This "generous" and "reassuring" state of affairs was guaranteed to both organized capital and organized labor by Congress delegating its legislative powers to groups of private citizens, whose public aims were sometimes obscured by private directions. In answer to the few protests that this was no way to run a country, the supporters of N.R.A. replied that ultimate control of private industry was still subject to the approval of a Bureaucracy under the direction of the Chief Executive. Of course, its supporters did not call it "Bureaucracy." They used the more euphonious word "Government."

The day when Darrow walked into the White House with his report under his arm, he was in somewhat the same position as that of Archimedes when the Romans invaded Syracuse and killed the great mathematician. You remember the story. The Centurions came upon

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for the usual amenities and Mr. Roosevelt was not one to ignore them.

"Mr. Jones—Mr. Smith—Mr. Darrow—(as the case might be), you are doing a wonderful job."

According to protocol, Mr. Darrow should have bowed his head, rubbed his hands together and murmured, "Thank you, Mr. President, you are very kind." But Darrow (never much on the amenities) had reached that advanced age in life when policies were more important than politics and people were more important than the offices they held.

His reply, if not ungracious, was certainly full of concern and (let me add) considerable incredulity.

"Do you think so, Mr. President?"

How typical of Darrow. Here were two men, one the most powerful (and the most popular) of his era, and the other, to use Darrow's own words: "A man who had stood with the hunted all his life." Men who stand with the hunted generally find their utterances vanish into oblivion. No doubt, if my assistant, Richard Carr and I, had not been waiting at the west gate of the White House to pick up Darrow after his visit with the President, the short but pregnant conversation, as he recounted it to us, would have remained lost to posterity.

That day, I played Boswell to Darrow's Johnson—and for good cause. As General Counsel for the Darrow Board, I had a hand in drafting the Darrow report and I knew it was very bad—very bad for NRA.

I think Arthur Schlesinger describes its genesis and tone pretty accurately:

"Darrow, his associates and his staff, headed by Lowell Mason * * * * worked day and night. In four months they held nearly sixty public hearings, considered about three thousand complaints, inquired into thirty-four codes and

^oSchlesinger's "The Coming of the New Deal" 1958 Riverside Press Cambridge.

^{**}Walter Lippman, *The Public Philosophy*, (Boston, Little, Brown & Co., 1955)

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Archimedes while he was working a geometric problem in the sand. As they drew their swords, he exclaimed "Wait until I have finished my circle." The most we could hope for, was that the President would let Darrow finish his circle. By that, I mean if the President rejected the first Darrow report out of hand without waiting for the second and third and without giving public opinion a chance to catch up with events, the march to the corporate state might well have gone on to entirely eclipse the free enterprise system. For NRA like any other kind of economic fascism (as was later proved in Italy and Germany) carried to its ultimate end, could only lead to a total state.

Those who remember, or who have studied the economic history of the 1930's, will bear in mind that in the face of a terrifying financial debacle, American industry undertook to raise wages and employ more people in exchange for the privilege of fixing prices and regulating production. I am inclined to believe the frenzy of support for the NRA whipped up by its head, General Hugh Johnson, did help to get our stalled economy off dead center, and I am also inclined to believe that as the enthusiasm died down and Bureaucracy moved up in the industrial scene, if it had not been for Darrow's castigation of NRA, supported later by the Supreme Court's Schechter decision, our loss of personal liberty would not have been limited to one pants presser being sent to jail because he would not charge what his competitors told him to charge.

No need to waste your exasperation on evils that now we know came to nothing. But that you may sense just a bit of the tension—pretend it is the year 1934, you have just invented a marvelous new ink well. Your financial backers are convinced it will capture the market. You are all set to go.

What are you waiting for? You are waiting for Mr. Mason.

"Who's Mason? Glassblower? Banker? Building Contractor? I have my labor already hired—money in the bank—factory roofed. I need no Mason. I have everything. I start tomorrow."

"Better wait until you get permission from Mr. Mason first—remember the pants presser. He went to jail for charging less than the Central Government said he must charge. Don't make ink wells, don't do anything, without getting the O.K. from Big Brother in Washington, or you will go to jail too."

"All right, I will see Mason and get my permit. Who is he? Mayor? County Judge? Federal Something or Other?—Say, you don't mean *Lowell* Mason do you? He's no government inspector. He's the biggest ink well maker in the country. He's my competition. He'll

see me dead before he'd give me a permit."

"Well, he's on the Code Authority and the NRA says no permit—no ink well factory. This is what a controlled economy means."

Sounds silly doesn't it? It makes me laugh every time I think of it—a nervous laugh—like when you get knocked down by a big wave at the sea shore. Back safe on the beach, you can laugh, but it is not funny in the breakers. Nor was it funny in those NRA days. We were not safe on the shore, nor did we know the direction of the current.

It takes a backward look to pinpoint a change of tide. As I saw it then, Darrow's visit only persuaded the President to sit out the change of public sentiment if there was to be one. As I see it now, it was the beginning of the end of NRA.

What manner of man was this who could persuade another to retreat from a position as vigorously advocated as Roosevelt had advocated NRA? I am convinced the President regarded Darrow as a man of great spiritual depth, for without power he had tremendous influence. Another man could have uttered the same words that Darrow had uttered before hundreds of juries and lost nine out of every ten cases. Someone else could have marshalled logic and economic facts far more cogently than Darrow's that day he sat in the White House parlor with the President. And that someone else, with the President's compliments still ringing in his ears would have most likely found both himself and his report out in the street.

Was Darrow an atheist, radical, non-conformist? Here was one place, Fundamentalists and Atheists could agree: yes, he was. It ought to be quite obvious why Atheists called Darrow an Atheist. They sought company and confirmation of their own disbelief by acribing it to him. But if there were room for other

interpretations of Darrow's views why didn't the Fundamentalists do likewise. Why shouldn't they claim as their own, this man of pity, this advocate of tolerance, of charity, this living parable of the good Samaritan, this man who did not live by bread alone. But to Fundamentalists, his good deeds were irritating—irritating because unexplainable in terms of their own motivations. "What! No heaven! Then why be good?". They could ignore his heresies and forgive his derelictions, but his workable, durable acts of kindness were an anathema to the anointed. To make matters worse, Darrow would not let them alone. For Darrow was an intolerant man. He was intolerant of intolerance. His son Paul and I discussed this one time. Paul held much the same views as his father, but Paul didn't try to reform every witch burner or Fundamentalist he met. Paul took people as they were. He had his views and they were entitled to theirs. But his father could never resist the missionary spirit. That's why he liked to be around Fundamentalists—not that he wanted to join them, but because he wanted them to joint him. Few of them were as well informed on the Bible as he, and he delighted in overwhelming them with Scripture and Verse while he ridiculed their dogma.

Spending his time in court persuading men to reject the inhumanities of man was not enough. He wanted to proselytize men away from a God, who after the Amorities were defeated, bade the sun stand still for twenty-four hours so Joshua could see to lay the sword on to all the Amorite women and children in Libnah, Gezer and Hebron or, if I were to use modern localities, Buchenwald and Lidice. In exasperation at his cruel logic, Fundamentalists would lash back at him with the worst epithet they could use:

"Darrow?—Atheist, of course"!

Certainly in the sense that Darrow would not acribe anthropomorphic characteristics to a supreme power, he and every other non-member of H. L. Mencken's Bible Belt could be called atheists.

But those who were an intellectual notch above such literal interpretations of the Bible generally classed Darrow as an agnostic—a doubter. If he were here today and you asked him, that would be the impression he would want you to have. And I think if you were to ask a hundred people who knew him casually or had read his books, they would agree, "Darrow was not an atheist, he was an agnostic."

Call him what you will, Darrow had an inner strength to undergird him far beyond what adrenalin or what he called his "protoplasm" could vouchsafe.

Despite the role of radical, Darrow was the most conservative lawyer I ever saw in a courtroom. Unlike Charles Sumner who, when he felt he was right, could see no obstacles in the limitations of a hostile

Constitution, Darrow was a great respecter of the law; just as much when it ran against him as when it ran with him.

His cross examination was a delight to behold, apparently stumbling, aimless and friendly; he would never cross examine an adverse witness unless he could sense in advance what the man would say. I must admit that his prescience was uncanny. What sounded like a most innocuous query to the opposing witness would often produce devastating answers—devastating to the opposition.

Darrow was what I would call a master in Reverse English. In court, instead of complimenting and fawning upon a jury—a cheap and common enough trick to pettifoggers, I have seen Darrow absolutely berate a jury—and then go on to win his case. Years ago, when I was the youngest Senator in the Illinois State Senate, he used to come out to Oak Park and campaign for me. After I had fulsomely introduced him, he would not only refuse to say anything nice about

me, but what was worse, he would blast the daylights out of my audience. They loved it and I won. I introduced a bill in the Senate appropriating funds to establish a state farm for the mentally retarded. The press asked Darrow for comments. "If Lowell puts every moron on a state farm, he will cripple manufacturing, tie up transportation, and completely close all legislative halls."

I considered myself of a happy disposition. One day in court Mr. Darrow looked first at me and then at my partner, Floyd Lanham—a man of serious countenance—"Lowell", he said, "there are two kinds of people in this world—the well informed or the happy—you can't be both."

I was his friend. He never spared friends when they were on top of the world, but when they were the underdog, whoso'er asked him to go a mile, he would go the twain.

But enough of personal reminiscing. Let us compare the May Day of a quarter of a century ago with the Law Day of today. In the thirties one element alone, pushed us toward the total state—economic collapse. I was going to say—the threat of economic collapse. But you can't blink it—we had it. Banks closed, our capital structure—farm, home and corporate mortgages, besides equities and stocks, all caved in. I know—I lost my house and the Mid West Utilities I bought on margin with the money I had borrowed.

The popular answer to our troubles then was NRA. To the Governing Elite this meant government control of private enterprise. To the Financial Elite (or what was left of them) this meant private enterprise control of government. Either way it added up to the Corporate State and, but for Darrow's Tea Party, the near miss might well have been a hit.

Perhaps you have wondered why I entitled tonight's talk "Mr. Darrow's Unreported Case." There has been some personal reminiscing—an opinion or two of Darrow's beliefs—but I have outlined neither the pleading, the issues, the evidence nor the verdict in Darrow's Unreported Case. Except for general background I have given you only one statement and one question to ponder.

"Mr. Darrow, you are doing a wonderful job."

"Do you think so, Mr. President?"

As a matter of fact, that is all in this case that is important today.

Mr. Darrow's denunciation of NRA and his reaffirmance of a belief in free enterprise was labelled by Mr. Roosevelt as a "Marvelous Job". The important question was: "Do you think so, Mr. President?" Or in blunter words, "Is your praise a sincere endorsement of a stand against the total State, or are you merely engaging in the amenities of the occasion, and trying to soothe the ruffled feelings of a querulous old man?"

Today the scene is no longer the microscopic picture of a tea party—"Two men in a Parlor." It is the macroscopic picture of, "All America proclaiming "A Marvelous Job".

May Day with its Bread Lines, its Red Flags, Marching Anarchists and Singing Socialists has been supplanted by Law Day.

Thank heavens a financial debacle of such pandemic proportions as November 1929 is now impossible.

Federal Deposit Insurance keeps people from standing in lines ten blocks long to draw out their savings accounts just because somebody saw the bank cashier with his hat on. Collective bargaining, Fringe Benefits, stock margin restrictions, S.E.C.—F.T.C.—Social Se-

curity and dozens of other alphabet agencies keep all of us financial Mortimer Snerds reasonably secure and safely dormant.

Law Day 1959 is a Safe Day. It's a Free Day. It's a Rich Day. It's a Secure Day. My speech, a Law Day speech, should contain a short review of the principles of liberty we Americans hold sacred and perhaps I should include some overtones of regret that other nations are not as blessed as we.

The whole atmosphere of the occasion is set for expressions of confidence in our future liberties, and calls for congratulations. On this day, twenty thousand ceremonies are being held in schools, court houses, city halls, clubs and universities throughout the United States. These meetings are a reaffirmance of our reliance upon law in private and governmental affairs as contrasted with the tyranny and oppression of the individual in the Communist world. Mayors of countless cities are issuing proclamations that "the greatest heritage of American citizenship is a system of government under laws devised by elected representatives of the people for their protection, and administered by courts in which every citizen enjoys equal standing."

As a fitting climax to my speech I felt it only proper to quote from the official document designating the first of May as Law Day. In fact, I thought so well of the idea that late last night, like Demosthenes practicing oratory by addressing the waves, I went to the nearest body of water (the pond in Jackson Park) to try it out. It was very dark and there was no one around. I don't know how I happened to be near Wooded Island where Darrow's ashes are scattered—but there I was reciting the President's Law Day proclamation.

"WHEREAS by directing the attention of the world to the liberty under law which we enjoy and the accomplishments of our system of free enterprise, we emphasize the contrast between our freedom and the tyranny which enslaves the people of one-third of the world today."

From out the midnight gloom brooding over Wooded Island there came a still, small voice.

"Do you think so, Mr. President?"

Many things come to your mind when a ghost talks to you. Should I call the police? No, they would probably just give me the alcohol breath test. How about contacting the Committee for Extra Sensory Perception, or should I tell the Press I had finally accomplished at Wooded Island what many of Darrow's friends had attempted there. But when I got back to the Shoreland and considered the matter calmly and in its true light, I decided any of these alternatives would completely frustrate the purpose of Darrow's message to me. The significance of his communique would be lost in the bizarre surround-

ings of its delivery. The manner of its presentation would become more important than the message itself.

For believe me, I am sincere when I say it was a message. If it offends your intelligence to accept my poetic interpretation; that words came from across the dark waters of Wooded Island, then take the more modern explanation. Informed Psychologists would say anyone brought up to hate tyranny, suffers an inner conflict if called upon to boast of Freedom—Liberty—Bill of Rights—Constitution—Right of Trial by Jury—Protection to Personal Liberty, etc., here in America on Law Day.

For if Clarence Darrow was not talking to me across the pond, it is too bad he wasn't. If he were, maybe he could ask twenty thousand mass meetings across the country, "Just what do you mean by all your fulsome praise? Are you engaging in the amenities of the Occasion? Are you soothing the feelings of a few querulous carping critics? Are you giving aid and support to our free institutions? No, to tell the truth you are playing right into the hands of the Communists."

Here lies the key to expose one of the Great Fallacies which Communists want us to destroy ourselves with. If you prefer that I don't explain by putting words in the mouth of the departed, then let me give you the words of someone very much alive,—"In our fat, dumb, and happy fashion," (if we praise ourselves enough) "and damn the Communists enough, right will surely prevail in the end." Mr. Adlai Stevenson in his introduction to his new book *Friends and Enemies*¹ then points out that Athens, an infinitely superior civilization, lost to Sparta on just such a Pollyanish note.

As one advocate of the Total State put it:

"We want people to brag about Freedom of Speech, Freedom of Worship, Freedom of Assembly, Freedom to Petition Congress and the other Freedoms that are on everybody's lips today.

"There is an awkward adolescence for nations as well as for children. In the transition from free to total state, you have to up-Santa Claus people slowly. When they first become aware that government is not by them individually they need assurance that it is at least *for* them en masse. As the state circumscribes man's private choice of action, the repetition of certain phrases gives that assurance. It takes the place of religion, formerly the soporific of the masses."

Thus it is that many speeches made by innocent zealots of democracy may, in fact, play right into the hands of communism. This facility to utilize the energy of democracy against itself is a favorite ploy of the totalitarians.

¹As quoted in New York Times Sunday Magazine March 1, 1959

It's a ploy Mr. Stevenson does not fall for, and I must say I admire his Darrowesque quality in referring to us as "dumb, fat, and happy." Some more honest opinions like this and the Republicans might still win the coming national election.

But most of the other Fallacies the Communists rely on to defeat us, give Mr. Stevenson more trouble. He admits they present hard questions for him to answer. Here are his questions:

Can our American system prevail in competition with the central planning, control and direction of the Soviet system?

Can we mobilize, organize and utilize our human and natural resources as effectively as they can?

Can we do so without imposing controls that imperil the very freedom and values we in the United States are trying to preserve?

Are our institutions adequate to conduct foreign policy in competition with the speed, secrecy and certainty of the Kremlin?

The trouble with these questions is: they are loaded. When you have tried cases around Clarence Darrow you were taught to spot loaded questions with your eyes closed. A loaded question pre-supposes the existence of the very fact which is in dispute. The favorite example of a loaded question amongst law students is that old gag "when did you stop beating your wife?"

If Mr. Darrow were alive today he would tell Mr. Stevenson his group of questions (taken together) assume (first) that we are not already a secret government and, (second) that we have not already lost the freedoms in the U.S. we think we are trying to preserve.

I will wager Mr. Darrow would dispute both assumptions. As to the first: He would probably insist the American government is already a secret government. If there are any doubts about this, read James R. Wiggins's "Freedom or Secrecy."¹

Wiggins says after three centuries of progress away from State secrecy, our government is now moving in the other direction; and that the excuses for this movement are the constant military crisis, changes in the structure of government, expansion of government power in accordance with the peoples' demand for more federal service and the increase in the sheer size of government. Congressman M. John Moss' Committee Reports on Secret Government, (the latest filed last month in the current session of the 86th Congress)² documents the proof that when the state

asserts the right to say which of its acts it will divulge and which it will hide, it has the means of concealing its crimes and exaggerating its virtues. This is a device that accomplishes that greatest of all corruptions—the corruption of the mind of the public. "A people so corrupted is a people no longer free."

I wonder if we have been so busy "directing the attention of the world to the liberty under law which we enjoy" and "emphasizing the contrast between our freedom and the tyranny which enslaves the people of one-third of the world" that we don't realize this corruption of the public mind has been going on in our own backyard for over five years. But the Twentieth Century Fund's recent report called "Arms and The State," Civil—Military—Elements in National Policy realizes it and in effect says so. Discussing the confluence of civil and military factors in determining national policy, the report admits it cannot intelligently discuss what has happened in this country since the Korean War because "the facts as to most of these episodes and issues are still hidden in the top-secret papers*** and too little information is available to permit of much useful comment."

Now, if Publisher Wiggins, Congressman Moss and a great research organization can't find out what's going on in Washington, what chance have you as a citizen to inform yourself?—considerably less than my congressman, the late Chauncy Reed, one-time Chairman of the House Judiciary had. He noticed an item in a Washington paper about a traffic jam 15,000 government clerks in a super-secret agency created when they went to and from work on a certain public highway. Chairman Reed wrote enquiring whom the clerks worked for, what pay roll they were on, and what they did. Mr. Reed was told it was none of his business, and that was that.

I don't say you can do much about this. Just be aware of it the next time you hear a speech about the "right of assembly," the "right to petition Congress," and the "right to your own religion." Ask the speaker if he would like to add "the right to know" in his bill of particulars.

Now, let us turn to the second assumption implicit in Mr. Stevenson's questions—that we still have the freedoms—the protections to liberty, in the United States that we would like to preserve. In judicial and quasi-judicial matters you can get your teeth in this area for there is no claim of Executive privilege and, therefore, there is no cloak of secrecy—only the veil of indifference,—the indifference recognized by Mr. Stevenson in his characterization of us and furthered by our own constant repetition of self-praise. But the veil of indifference can be pierced, for judicial and quasi-judicial cases are fully reported in public records. We do not need to rely on the conclusions of a newspaper publisher, chairman of a congressional

¹Oxford University Press, New York, 1956

²Second Report by the Committee on Government Operations, 85th Congress, 1st Session, House Report 234.

committee, or of a research organization. The veriest tyro can walk to the nearest law library and run down the citations to prove for his own satisfaction that many time-honored protections to liberty still carried on our books as assets really do not belong to us any more. Or, if we still claim title to them, they have been so heavily mortgaged that they are mere empty shells.

First, let us be explicit as to what protections to liberty we are talking about. Do we mean in economic matters a man is entitled to counsel and may not be clapped in jail after a secret inquisition without trial? Do we mean a man may not be tried in absentia and wake up some morning to find a \$5,000 a day penalty staring him in the face without ever being near a court and, of course, without ever having a chance

to defend himself against the original charge? Do we mean that prosecutors may not sit as judges in the cases they prepare and file? Do we mean there are statutes of limitations which prevent a man from being charged with offenses dating so far back that he would be unable to marshal testimony in his favor? Are there prohibitions against ex-post-facto trials?—that is, can government punish a man for doing something that was not declared wrong until after he did it? Are there rules against conviction by hearsay—that findings of facts against a man must be based on legally accepted evidence? Does everyone have the right to his day in court? What about double jeopardy.

Those who think these fundamental concepts of Anglo-American jurisprudence in the world of commerce are the breath of life in the United States are

forty years behind the times and should be brought up-to-date. This is neither the time nor place to document the citable judicial and quasi-judicial decisions to support the contention that a series of administrative court decisions have been quietly built up in the world of commerce which provide precedents for judicially abrogating every one of these rights. The fallacy that these rights still exist lures us toward the Total State.

We have forgotten that liberty is a fragile thing. It cannot stand alone. It calls for constant help and surveillance. Chief Justice Earl Warren, of the U. S. Supreme Court, is one man who obviously is devoted to due process. Apparently he resigned membership in the American Bar Association because of a committee report criticizing the court's defense of due process. But I can see no advantage in leaving the field to those zealots who whine at the bar of public opinion for the curtailment of rights they feel confident they themselves will never need. Why don't some members of the American Bar Association think very much of the Bill of Rights? Is it because constant association of due process with alleged communists, thieves, kidnapers, and bank robbers has degraded the high regard this basic concept of liberty and justice once commanded? This denegation occurs simply because such protections to liberty are seldom dramatized except when called into play by the arrest, indictment or trial of those charged with crime. People do not realize that the Bill of Rights and due process deal only collaterally with accused persons. Their major function is to protect democracy, not persons. Due process is the only way a democracy can insure itself against the blunders, tyrannies, and the officiousness of those who think they can use totalitarian means to achieve democratic ends.

Except for describing a last great fallacy which endangers our Country, this is the end of my speech. But in a way it is only a beginning for all of us. There is no finish line in the race for Liberty. It is a relay our ancestors started and our heirs will be running long after. All you and I can do is to carry the baton as well as we can for our share of the distance.

To drop the poesy and be very practical, I mean to say: Every person in this room has some special resource, some special talent that sets him or her apart from everyone else in the world. That talent is needed not just to give full expression to our own lives, but to see that others have a like opportunity. In what manner and when your voice will speak is hidden, even from you, until the time presents itself.

Then you must speak.

Perhaps as a teacher inculcating in others a working respect for the Bill of Rights. Perhaps as a lawyer in court or on platform advocating the principles of Constitutional freedom. Perhaps as a student prepar-

ing for democratic leadership, or as a voter or constituent. When Clarence Darrow's voice was heard in the parlor of the White House twenty-five years ago he qualified for all of these roles, but none of them were as important as the one he assumed that day—the role of a citizen.

When your destiny requires you to take this role, do not labor under the last great Fallacy the Communists encourage and with which many people in this country needlessly burden themselves.

This Fallacy? I have never heard anybody put it in words before. It is the hidden quiet fear of total extinction that triggers a "What the Hell's the difference" attitude in people when they are confronted with the tyranny of their own state. They accept the false aphorism, "The democratic process is fast withering in the nuclear blast. We must have total, secret, monolithic government; the individual no longer counts."

Just how aping the Russians in their debasement of human rights and their glorification of the state will save us from total extinction is not made clear. Yet few there are who seem willing to challenge the value of totalitarianism as a stop gap to destruction.

What is there so new about death that its threat now makes obsolete the greatest instrument of freedom ever created by the mind of man—The Constitution of the United States.

If we are riding to extinction, groveling on the floor of the tumbrel will not slow the journey.

Perhaps the system our Founding Fathers created, which promised us Life, Liberty and the Pursuit of Happiness will fail in all of its three commitments.

Perhaps Mr. Stevenson's fears are well founded. Perhaps our Constitution—our machinery of government—the written and unwritten rules protecting the sanctity of the individual are not adopted to saving our skins.

We, the fat, happy and dumb who are about to die, salute you! You! the denizens of the Ant State will inherit the earth.

Across the waters of Wooded Island, I hear the still small voice of Mr. Darrow.

"Do you really think so?"

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