

Part 6 **The Difference Between Talk and Action**

With all the talk these days about the use of violence as a means of bringing about change in the cities, the universities, and the Nation, the Supreme Court's decision Monday in a Ku Klux Klan case from Ohio is a useful reminder of what the constitutional guarantee of free speech means. The Court unanimously held unconstitutional a 50-year-old Ohio law that punished anyone who advocated "the duty, necessity or propriety of crime, sabotage, violence or unlawful methods of terrorism as a means of accomplishing industrial or political reform."

That law, like similar ones passed in 19 other states during the post-World War I Red scare, was regarded then as a tidy way of imprisoning those who shook the status quo by talking about communism and the desirability of overthrowing the government by violence to install it. Such laws, no doubt, would provide an easy way today to remove from the scene some of the most rigorous opponents of the status quo. A lot of them have been talking about violence and a good many advocating it as the only way they see in which the conditions they do not like can be changed.

Unfortunately, a Supreme Court decision in 1927 which held such laws to be constitutional has led some officials to think that suppressing mere talk of violence is that easy. Ohio used its law to send a Klan official to prison for a speech he made at a "rally" attended by a dozen Klansmen and two newsmen. But the Court decision of 1927, which was bad law when it was announced, as Justices Brandeis and Holmes then made clear, began to be undermined within five years, and clearly was relegated to the scrap heap by the mid-50s. The Court, in opinions written by Chief Justices Hughes

and Vinson, among others, had made it clear that advocating violence, without actually practicing it or inciting others to commit it immediately, is speech with which government cannot interfere. The First Amendment was written, after all, to encourage, not suppress, opinions and ideas and to guarantee that every person is free to advocate whatever he will, including the need for violence, unless he crosses the line, in Justice Brandeis's words, "between advocacy and incitement, between preparation and attempt, between assembling and conspiracy."

In light of the angry words now coming from some black and student radicals and of the responses to them, it is worthwhile to recall what Brandeis had to say about the problem of free speech and violence:

Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine. . . .

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 processes 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 befall 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.