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Civil Disobedience: Prelude to Revolution?

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Southern Company
Conference of Directors and
Executives
Point Clear, Alabama
October 5, 1967
Lewis F. Powell, Jr.

CIVIL DISOBEDIENCE: PRELUDE
TO REVOLUTION?

This will be a lawyer's talk about law and order and civil disobedience. The subject is related to complex social and economic problems - some of the most perplexing of any age. But there is no hope of solving these problems unless an ordered society is preserved.

There is deep concern today about the disquieting trend - so evident in our country - toward organized lawlessness and even rebellion. One of the contributing causes is the doctrine of civil disobedience.* This heresy was dramatically associated with the civil rights movement by the famous letter of Martin Luther King from a Birmingham jail.**

*There are, of course, other causes - social, economic, psychological and emotional. But this discussion is limited to a lawyer's analysis of causes related to the law.

**See Powell, "A Lawyer Looks at Civil Disobedience", 23 Washington & Lee Law Review, 205 et seq. (1966).

The Disobedience Doctrine

As rationalized by King, some laws are "just" and others "unjust"; each person may determine for himself which laws are "unjust"; and each is free - indeed even morally bound - to violate the "unjust" laws.

Coming at a time when discriminatory state and local laws still existed in the South, civil disobedience was quickly enthroned as a worthy doctrine. It met the needs of intellectuals and theologians for a moral and philosophical justification of conduct which, by all previous standards, was often lawless and indefensible.

The Escalation

Initially, disobedience tactics were directed specifically against discriminatory laws. The sit-ins and demonstrations were aimed primarily at segregated facilities and denial of voting rights - largely in the South. But as the use of disobedience tactics expanded, the relationship between the act of protest and the law protested became increasingly attenuated. Indeed, as the protest movement expanded to northern and western cities, its objectives broadened from

specific discriminatory laws and practices of the South to the age-old social and economic problems of bias, poverty and unemployment. Predictably, disobedience tactics were soon employed in other causes - on the campus and across our country.

Few voices spoke out against civil disobedience. Because of its association with the cause of civil rights, criticism of disobedience and its tactics was largely muted. Many persons of goodwill - including many clergymen and campus intellectuals - were so enchanted by the "causes" that they gave little thought to the means employed or to where the disobedience road would lead.

But all who advocated civil disobedience were not so naive. Political activists and extremists of all kinds were quick to recognize the potential of this doctrine as an extra-legal means of attaining goals - and even of promoting revolution. Moreover, a doctrine which tolerates and justifies disobedience of law - implemented by sit-ins and street mobs - is made to order for cynical leaders promoting rebellion and other extremist causes.

Few Recognized the Danger

One of the few national leaders, who had both the insight and the courage to speak out against civil disobedience tactics, was Mr. Justice Hugo Black.* Writing early in 1966, he said:

"Governments like ours were formed to substitute the rule of law for the rule of force. Illustrations may be given where crowds have gathered together peaceably by reason of extraordinarily good discipline reinforced by vigilant officers. 'Demonstrations' have taken place without any manifestations of force at the time. But I say once more that the crowd moved by noble ideals today can become the mob ruled by hate and passion and greed and violence tomorrow. If we ever doubted that, we know it now. The peaceful songs of love can become as stirring and provocative as the Marseillaise did in the days when a noble revolution gave way to rule by successive mobs until chaos set in. . . . It . . . [is]

*Others who did were former Supreme Court Justice Charles E. Whittaker, who spoke out strongly and with prescience against civil disobedience. See Whittaker, Law and Order, Address delivered before Tennessee Bar Association, June 17, 1965; and Whittaker, Will Civil Disobedience Lead to Chaos in Our Society, Trial, December/January 1965, p. 10. For other articles by nationally known lawyers critical of civil disobedience, see Leibman, Civil Disobedience: A Threat to Our Law Society, Vital Speeches, Oct. 1, 1964, Vol. 30, No. 24 at 766; Waldman, Civil Rights-Yes; Civil Disobedience-No, 37 N.Y. State Bar Journal 33 (1965); and Fuchsberg, Editorial in Trial, December/January 1965, p. 8.

more necessary than ever that we stop and look more closely at where we are going."*

It is notable that Mr. Justice Black wrote these prophetic words in February 1966, before the emergence of black power as an overt doctrine, and prior to the riots of 1966 and 1967.

But few heeded his warning. Despite clearly visible danger signals, political, religious and intellectual leaders continued to tolerate and justify civil disobedience - even after such major eruptions as Watts, Cleveland and Chicago.

There seemed to be a curious unawareness that once lawlessness is tolerated and justified it feeds upon itself and leads either to revolution or violent repressive measures.

It has been said wisely:

"Once you give a nervous, hostile and ill-informed people a theoretical justification for using violence: in certain cases, it is like a tiny hole in the dike; the rationales rush through in a torrent, and violence becomes the normal, acceptable solution for a problem. . . . A cardinal fact about violence is that once initiated it tends to get out of hand. Its limits are not predictable."**

*Brown v. Louisiana, 383 U.S. 131, dissenting opinion, p. 168. The case involved sit-ins in a public library, and was a companion case to one involving a street demonstration in front of a courthouse.

**Dr. Howard Zinn, Chairman, Department of Social Science, Spelman College, *The Nation*, March 17, 1962, pp. 227, 229, 230.

So much for a review - obviously incomplete - of the origin and escalation of contemporary civil disobedience. This brings us to the year 1967 - a year of crisis in which the symptoms of incipient revolution are all too evident.

Tactics of Revolution

Two movements have been emerging: (i) a militant Negro nationalist movement, summed up in the slogan "Black Power"; and (ii) a radical political movement called the "New Left" or "New Politics", which hopes to change our form of government. The two movements have been converging, and now pursue the common causes of Black Power and frustration of America's attempt to contain Communism in Vietnam. Both of these movements rely heavily upon civil disobedience tactics.

The public is widely aware of the Negro revolt. There is far less awareness of the New Left, its organizations and its radical goals. There are a number of New Left groups* with varying degrees of militancy. Although not yet coalesced into

*Two of the original civil rights national organizations, SNCC and CORE, are often counted among the New Left. Certainly SNCC is one of the most militant. Other New Left groups include the DuBois Clubs of America, Students for a Democratic Society (SDS), Progressive Labor Party, Vietnam Day Committee, Vietnam Summer, Student Peace League and Youth Against War and Fascism.

a single organization, they are moving toward a united front - certainly on race and Vietnam issues.

Most Americans - of both races - have been shocked and dismayed by a summer of unprecedented discord. The great majority of Negro citizens have been as dismayed as the whites. Yet, the average citizen, preoccupied with his own problems and pleasures, assumes that domestic tranquility is an inalienable right. There is a child-like disbelief that this land of the free - internally secure for 100 years - ~~is actually~~ ^{may be} confronted with strife and violence on a massive scale.

The Militant Leaders

Complacent Americans would be well advised to heed the warnings of the militant leaders. Here are some random examples of what they are saying and planning - quite openly:

Carmichael

Carmichael has allied himself and Black Power with revolutionary Communism. Speaking at Havana he said: "There are no longer any isolated struggles. They are all correlated.

. . . The only solution is armed struggle."*

H. Rap Brown

Still at large, and even invited to speak in churches, Brown openly advocates violence and revolution. In language more racist than that of a Klansman, he urges:

"Get you some guns - (and) burn this town down."

"We'll make the Viet Cong look like Sunday school teachers - violence is necessary."**

Martin Luther King

The prophet of civil disobedience, King seems bewildered at times by the escalation of his own doctrine. On occasion he has joined moderate Negro leaders in criticizing riots.***

*Other examples of Carmichael's gentle ideas include: "Black power . . . is a movement that will smash everything western civilization has created." "To hell with the laws of the United States . . . if a white man tries to walk over you, kill him." See Richmond Times-Dispatch, Sept. 9, 1967; Wall Street Journal, July 27, 1967; N.Y. Times, Aug. 3, 1967. See also comment by James Reston that Carmichael is now "allied with the radical revolutionary Communists in Latin America", Richmond Times Dispatch, Aug. 2, 1967; and statement by Ralph McGill that Carmichael's organization, SNCC, is composed of the "new Klansmen". N.Y. Times, July 23, 1967.

**Times Dispatch, July 27 and Aug. 16, 1967; Richmond News Leader, Aug. 1, 1967; Richmond News Leader, Sept. 2, 1967.

***Roy Wilkins of the NAACP and Whitney Young of the Urban League.

But he is arm-in-arm with Carmichael and McKissick in slandering his own government and in inciting violation of draft laws. He has said:

"America is the greatest purveyor of violence in the world today."*

And he has compared the use of new American weapons in Vietnam to the Nazi testing of "new tortures in the concentration camps of Europe."

King's favorite role is organizing disruptive demonstrations.** He is now urging ^{massive} ~~mass~~ civil disobedience" for the purpose of "dislocating" northern cities. He is planning such "nonviolent" tactics as weekly school boycotts, blocking plant gates with unemployed Negroes, and disrupting governmental operations with sit-in demonstrations in federal buildings.***

*See Freedom House News Letter, May 1967. Freedom House, under its Chairman former Senator Paul H. Douglas, characterized King as follows: "King has emerged as the public spear carrier of a civil disobedience program that is demagogic and irresponsible in its attacks on our own government." It further said: "King has fanned the flames of racial tension by predicting riots in the cities this summer." King has always said that civil disobedience should be "nonviolent" but one wonders how he expects the line to be drawn by those whom he leads in demonstrations and whom he exhorts to disobey "unjust" laws.

**He was charged by the City of Chicago with a large responsibility for the 1966 disorders in Chicago. See complaint, City of Chicago v. King, pending in the Appellate Court of Illinois.

***N.Y. Times, Aug. 16, 1967; Richmond Times Dispatch, Aug. 16, 1967.

CORE Leaders

received support from the Ford

Although CORE has ~~recently received a grant from the~~
Foundation and other responsible parties,
~~Ford Foundation~~, its leaders are now committed to Black Power
extremism.

McKissick, replying to a question by a white reporter
as to what the Negro wanted, put it quite simply in the classic
terms of revolution:

"The answer is - everything you got right now,
and everything you hope to get."

A New York Times story reported that CORE's number
two leader, Wilfred Ussery, believes that:

"Armed conflict between black and white can no
longer be averted".*

*The quotations attributed to McKissick and Ussery appear in
an article by Fred C. Shaprio, New York Times Magazine, Oct. 1,
1967, p. 32, 105.

Father Groppi

A newcomer to dubious prominence is Father Groppi, a Milwaukee Catholic priest. Working with the NAACP Youth Council, he has organized and led paralyzing demonstrations for open housing.* The liberal mayor of Milwaukee, Henry W. Maier, charges that Groppi is "trying to incite riots", and that "rational discussions with him are impossible."** Father Groppi has recently been quoted as saying: "Morally, I have no argument against the black man's right to use violence."***

*The tendency of even moderate Negro leaders to become increasingly militant is evidenced by Roy Wilkins support of Groppi and his tactics in Milwaukee. Richmond Times Dispatch, Sept. 24, 1967.

**Groppi has openly violated proclamations against night demonstrations. Some of the young thugs in his movement invaded and vandalized the mayor's offices. According to the New York Times, "they took over the inner-office telephone switchboard and the receptionist's desk." They "daubed lipstick and hand lotion" on the walls; they "broke windows"; "ripped the stuffing out of every chair in the reception room"; and threatened to attack anyone who interfered. New York Times, Sept. 8, 1967. For other news accounts of Father Groppi and the situation in Milwaukee, see Times Dispatch, September 9, 1967; New York Times, Sept. 7, 1967; and Homer Biggart writing in the Times of September 17, 1967.

***Richmond Times Dispatch, Sept. 22, 1967.

Dr. Benjamin Spock

Spock, a New Leftist dilettante, also has joined those who condone rebellion. Speaking at the recent convention on New Politics, he said:

"The situation in America is desperate. The principal sign of it is the revolt of our black fellow citizens. . . . The founding fathers declared that people who are oppressed, and can find no other redress, must rebel."*

Staughton Lynd

Lynd, a Yale faculty member on leave and an intellectual leader of the New Left, made an unauthorized trip to Hanoi. He insists that representative democracy is outmoded; that we must substitute a "participatory democracy" - which apparently would function through mass meetings and demonstrations. In a revealing article ~~in~~ ⁱⁿ the New York Times magazine section, Lynd argues that the uprisings in the cities have been "rebellions" and not riots; and - citing the American Revolution and other irrelevant precedents -

*The Worker, Sept. 12, 1967. In the same address, repeating his support for draft resisters, Spock said: "We should support in every substantial way the draft resisters. . . ."

he justifies the Carmichaels and the Browns and their call for revolution.*

* * * * *

The foregoing are only a few - if among the better known - of the leaders of militant civil disobedience. Their roles and views differ, and I do not suggest that each is equally responsible for the lawlessness which threatens to engulf our country. Yet these, and hundreds of lesser known leaders, are men determined to remake America - not by the democratic processes of our institutions but by varying forms and degrees of coercion. The more radical of these leaders, like Carmichael and Brown, are openly advocating revolution.**

*New York Times Magazine, Sept. 10, 1967, p. 50 et seq. See also Walsh, What the Students Want, Commonweal Magazine, Nov. 19, 1965, pp. 206, 207.

**It is paradoxical that this threat of rebellion should come at a time of unprecedented progress towards equal rights and opportunities for Negroes. Moreover, as the New York Times has stated editorially: American Negroes "are economically the most prosperous large group of non-whites in the world, enjoying a higher average income than the inhabitants of any nation in Africa, Asia or Latin America." N.Y. Times editorial, July 24, 1967. Yet, as noted by William V. Shannon of the N.Y. Editorial Board: "Mere economic gains will not relieve the anger" of alienated people, and "concessions . . . tend to encourage stronger demands" as the "dynamics of revolution" usually "work in favor of the extremist leaders." News Analysis, Richmond Times Dispatch, July 30, 1967.

Extremism in Action

Let us turn now from the leaders to examples of extremism in action.

Vietnam Week

The first is Vietnam Week of last April, when tens of thousands marched in New York and San Francisco. Draft cards were burned, placards of hate displayed, and vicious anti-American speeches made by King, Carmichael and Spock.

The initial planning for Vietnam Week took place at a Chicago conference, instigated and dominated by Communists and fellow travelers.* The Communist line objectives of Vietnam Week were to undermine United States opposition to Communism in Vietnam and to ferment racial discord.**

*See Report entitled Communist Origin and Manipulation of Vietnam Week, Committee on Un-American Activities, House of Representatives, March 31, 1967, p. 53; see also testimony of J. Edgar Hoover, Hearings before Subcommittee of Committee on Appropriations, House of Representatives, 90th Congress, Part 1, p. 610 (1967).

**Report, supra pp. 53, 54; Buckley, Richmond New Leader, April 21, 1967; policy statement by Freedom House, supra, released May 9, 1967, N.Y. Times, May 21, 1967. Secretary of State Rusk, in commenting on Vietnam Week, said: "I have no doubt at all that the Communist apparatus is very busy indeed in these operations all over the world and in our own country." Richmond Times Dispatch, April 17, 1967.

Shortly following these marches, King announced the formation of "Vietnam Summer" - a coalition of opponents to American policy and includes well-known Communist allies and other luminaries of the "hate America" left. The avowed objective is "to organize opposition to the war in ghetto areas", and encourage our youth to "refuse to fight".*

As Dean O'Meara of Notre Dame Law School has said, many of those who thus aid the Communist enemy "give themselves away":

"For never once do they condemn the terrorist tactics of the North Vietnamese; never once do they condemn Hanoi's rejection of all peace proposals . . .; never once do they lament the suffering and death borne by our forces in Vietnam. These persons weep only for the enemy."**

Conference for New Politics

Having attained some success and notoriety through Vietnam Week, the New Leftists then planned and held what was called "The National Conference for New Politics", attended by some 5,000 delegates.*** Its stated purpose was to create

*See Freedom House Statement, supra p. 2.

**Dean Joseph O'Meara, Law Day 1967, Vietnam and the Draft, 53 ABA Journal _____ (1967).

***Held in Chicago, Aug. 31-Sept. 3, 1967.

a united front among groups supporting the Black Power* and "peace" movements. King and Spock were among the principal speakers.** The Communist Party, as in the case of Vietnam Week, was active in the planning and manipulation.***

The Conference, dominated by Black Power militants, condemned "the savage and beastlike character that runs rampant

*The Black Power Conference at Newark in July 1967 irrevocably committed this movement to black racism in its most virulent form. After physically roughing up and excluding all white reporters, this Conference - with representatives in attendance from leading Negro organizations - adopted a resolution to study splitting America into two nations, one black and one white, with the black society to be "distinctly anti-white and anti-Christian." One resolution advocated "paramilitary training for all Negro Youth." See N.Y. Times editorial, July 24, 1967; Richmond News Leader editorial and AP story, July 24, 1967.

**Others associated with the Conference included Julian Bond, Robert Scheer, Simon Casady (former California Democratic Council President), Paul Booth (former President of SDS), Floyd McKissick, James Forman (Secretary of SNCC), Donna Allen (Women's Strike for Peace) and John Abt.

***The DuBois Clubs were involved in the plans. Arnold Johnson, CPUSA public relations director, communicated with Party district leaders, urging them to send delegates. Party representatives were active at the Conference and elated over its results. See stories on the Conference featured by The Worker, Sept. 10, 12, 17, 1967. See editorial, Richmond Times Dispatch, Sept. 1, 1967; and see revealing article by Walter Goodman, N.Y. Times Magazine, Sept. 24, 1967, p. 28.

through America as exemplified by the George Lincoln Rockwells and the Lyndon B. Johnsons". It also adopted a straight CP line resolution, which pledged:

"Total and unquestioning support to all national peoples liberation wars . . . particularly in Vietnam."*

The flavor of the New Politics Conference was summed up by Walter Goodman, writing in the N.Y. Times Magazine, who said:

". . . it stunk of totalitarianism."**

Disruption of War Effort

Vietnam Week and the Conference on New Politics are chilling examples of growing extremism in this country. The dominant themes of both were hatred of fellow Americans and contempt for our institutions. Their goals are to be attained

*Richmond Times Dispatch, Sept. 3, 1967. Another resolution "condemned the imperialistic Zionist war" between Israel and the Arab nations. This dismayed Jewish delegates. Led by Robert Scheer, managing editor of Ramparts, a clause was added inconsistently stating that "this condemnation does not imply anti-Semitism". Still another resolution ambiguously called for "immediate reparation for the historic physical, sexual, mental and economic exploitation of black people."

**New York Times Magazine, Sept. 24, 1967, pp. 28, 128.

not by democratic processes but by various techniques of civil disobedience.

One of the major targets is American policy in Vietnam, now under virulent attack. Reasonable men may well differ as to the wisdom of this policy. But only those who are blinded by their prejudices, or who are indifferent to the consequences of lawlessness, will deliberately incite disobedience of valid laws. A most recent example of this irresponsibility is the public demand by a group of some 320 clergymen, educators and writers that churches and synagogues be used as "sanctuaries" for youths who defy the draft law.* If thousands of young men refused to fight for their country, as pointed out by Tom Wicker of the New York Times:

" . . . the power (of the Government) to pursue the Vietnam war or any other policy would be crippled if not destroyed. The Government would then be faced, not with dissent, but with civil disobedience on a scale amounting to revolt."**

Or, suppose the campaign against payment of income taxes gains widespread support.*** This is not an illogical possibility, as this relatively bland form of civil disobedience has appeal to a broad spectrum of disaffected citizens. But however appealing it may be, widespread refusal to pay taxes could bring orderly government to a halt.

*New York Times, Oct. 3, 1967. The leader of this group is Rev. William S. Coffin, Jr., Yale chaplain.

**Wicker, New York Times, May 2, 1967.

***Defying income tax laws, by failing to pay a specified percentage of the tax due, is gaining favor with opponents of the Vietnam war. See Richmond Times Dispatch, Sept. 17, 1967.

Violent Civil Disobedience

So much for examples of non-violent - though potentially disastrous - disobedience. But the greater concern has been the violent eruptions in our cities - where civil disobedience has reached its ultimate form. I do not know whether any of the persons or groups named above was legally implicated in any of these riots.* Let us assume no such implication. Yet few can doubt that the cumulative effect of the black nationalist movement, and of the incitements to hatred and disobedience were major contributing factors. As J. Edgar Hoover has said:

"Those who espouse the theory of civil disobedience and authorities who free guilty violators must share a portion of the blame and responsibility for the turmoil in our streets."**

There have been riots or major disorders in some 75 cities in 1967. Detroit was the shocker, with 43 killed, 386 injured and part of a great city destroyed. A less likely city for a race riot would be hard to find. Detroit had "no housing ghetto"; its Negro population was largely prosperous; and its race relations considered excellent.

*For an example of a militant charged and convicted of conspiracy to incite rioting, see People v. Epton, 281 N.Y.S. 2d 9, 19 N.Y. 2d 496 (1967), now pending in the U. S. Supreme Court.

**See excellent statement of Mr. Hoover - long prophetic on this subject - in the FBI Bulletin, October 1967, p. 1.

The recent NBC documentary* - in which Daniel P. Moynihan participated - contains a frightening analysis of the riot and the future prospects. Although apparently spontaneous in its inception, militant organized groups took over promptly, supplied the weapons, the Molotov cocktails, and directed the sniping and the arson.** This was no revolt of oppressed people against local conditions. It was armed rebellion against American society.

Although the underlying causes are complex and deep-seated, America's acceptance of civil disobedience was both a cause and a justification. Mr. Moynihan, former Assistant Secretary of Labor, put it this way:

"We have legitimized opposition to the police and disobedience to law. Now in the North it has become massive opposition to the rules of white society."***

The Negro militant viewpoint, gaining increasing support, is that America is "irredeemably racist"; that Negroes should "forget America"; and that the only course for Negroes is to

*NBC documentary entitled "Summer '67: What We Learned", reported by Frank McGee and with Daniel P. Moynihan, Director of the Joint Center on Urban Studies, Harvard-MIT, as special consultant. References herein will be made to this study as "NBC documentary, p. ____."

**Frank McGee of NBC stated that there were at least five to ten organized incendiary groups, planning and carrying out fire bombing of different areas in Detroit. Supra pp. 24, 25.

***NBC documentary, pp. 5 and 6.

bring about a final, violent apocalyptic confrontation of black and white."*

The NBC investigating team ~~confirmed~~ ^{concluded} that extremists already are planning future violence. Next time, it is said, they will attack and destroy the white sections of Detroit and other cities. As Frank McGee described it:

"These black extremists are willing and eager to risk a bloody showdown with white society."**

Sharing the same pessimism, Roscoe Drummond recently said:

"The black militants and their white associates are irreversibly committed to the destruction of American democratic society to achieve their racist goals."***

One may hope that the views of these observers - competent as they are - exaggerate the danger. But none can doubt that America faces a crisis of lawlessness with the gravest potential for disaster.

Self-Evident Truths

No man knows all the answers, but to me - as a lawyer - some simple truths are self evident:

*NBC documentary, p. 6. In a speech before the Council of Americans for Democratic Action, Mr. Moynihan warned that "we must prepare for the onset of terrorism", and called on liberals and conservatives to unite to preserve "stability of the social order". N.Y. Times, Sept. 24, 1967.

**NBC documentary, p. 37.

***Citing Daniel P. Moynihan. Richmond Times Dispatch, Oct. 1, 1967.

An ordered society governed by the rule of law must be preserved. Without law and order none of the liberties guaranteed by the Constitution can be safeguarded - for whites, liberals or blacks, radicals /or conservatives. History has demonstrated that once a society condones defiance of law and due process, the liberties of all are lost in the excesses of anarchy which follow.

America Must Act

With these truths in mind, and if our cherished institutions are to be preserved, Americans of good will - of both races - must act together to assure the following:

1. Toleration of civil disobedience and justification of lawlessness must end - in government, in the pulpits, among the media, and on the ivory towered campuses.*

2. Those who incite riots and rebellion should be treated as the most dangerous of criminals and relentlessly prosecuted. The irresolution of our society is attested by the

*Former President Eisenhower, commenting on riots and lawlessness, recently wrote: "Some of our leaders of both races tend to excuse such behavior. Not only is such an attitude extremely dangerous; it sets back the cause of the underprivileged many years." Eisenhower, We Should be Ashamed, Reader's Digest, Aug. 1967, pp. 67, 70.

fact that we hasten to put petty criminals in prison, and yet permit the Carmichaels and Browns to remain free. Indeed, some still dignify their criminality by inviting them to speak in our schools and churches.

3. Those who participate in riots and rebellion should also be prosecuted with vigor, particularly the arsonists and the snipers.

4. Criminal laws, at all levels of government, should be reviewed and strengthened to deal specifically with the foregoing crimes in light of present conditions. Penalties should be adequate to deter criminal conduct and justice should be swift and certain.

5. Effective gun control laws should be adopted at state and federal levels; sniping at policemen and firemen should be made special offenses with severe penalties; and possession or use of Molotov cocktails should be serious crimes.

6. Those who incite and participate in nonviolent civil disobedience should also be subjected to criminal sanctions. Where needed, laws should be clarified and strengthened with appropriate penalties provided. This is a more difficult area, as First Amendment freedoms must be carefully safeguarded. But

rights of free speech and peaceful assembly do not justify incitement to revolt or the wilful violation of draft laws*, income tax laws or court decrees.

7. Laws, especially against those who engage in non-violent civil disobedience, should be enforced uniformly and promptly. A few draft law violators have been prosecuted but most have been ignored - ^{including} ~~especially~~ the radical leaders who incite draft evasion. Public authorities have also failed to prosecute the growing number of dissidents who wilfully refuse to pay all of their income taxes.** How can officials sworn

*Federal statutes prohibit obstruction of "recruitment and enlistment" [18 U.S.C.A., Sec. 2388(a)] and consoling, aiding or abetting in the evasion of military service [50 U.S.C.A., Sec. 462(a)]. See and compare Schenck v. U.S., 249 U.S. 47 (1919). See interesting discussion of these statutes and of relevant Supreme Court cases by Dean Joseph O'Meara, Law Day 1967, Vietnam and the Draft, 53 ABA Journal p. _____ (1967). For recent cases involving burning of draft cards [under clause (b) of Section 462] see U.S. v. Miller, 367 F.2d 72, cert. den. 386 U.S. _____ (1966), and O'Brien v. U.S., 376 F.2d 538 (1967). These draft card cases involve the delicate "symbolic speech" issue and express conflicting opinions - although sustaining convictions in both. Neither case involved the urging or incitement of others to violate the law. See O'Brien v. U.S., supra, note 9, p. 542.

**According to a N.Y. Times Service story, there have been no prosecutions of any of a group of more than 400 who publicly announced their intention not to pay taxes in 1966. Richmond Times Dispatch, Sept. 17, 1967.

to uphold the law ignore its wilful violation? In justice, how can a Cassius Clay be sent to jail for draft evasion while prominent self-styled intellectuals who refuse to pay their taxes are allowed to remain free?

8. In summary, America needs to awaken to its peril; it needs to understand that our society and system can be destroyed. Indeed, this can and will happen here unless Americans develop a new impatience with those who incite and perpetrate civil disobedience; unless laws against violence and disorder are strengthened, and enforced with vigor and impartiality; and unless we return once more to the orderly and democratic processes which alone can preserve our freedoms.

Final Caveat

Now, a final caveat. I have spoken as a lawyer, deeply conscious that the rule of law in America is under unprecedented attack. There are, of course, other grave problems and other areas calling for determined and even generous action. The gap between the prosperous middle classes and the genuinely underprivileged - both white and black - must be narrowed. Many

mistakes have been made in the past, and there is enough blame for all to share. But we have passed the point where recriminations and bitterness will solve problems.

We must come to grips realistically with the gravest domestic problem of this century. America has the resources, and our people have the compassion and the desire, to provide equal justice, adequate education and job opportunities for all. This, we surely must do.

At the same time, we must avoid the mindless folly of appeasing and even rewarding the extremists who incite or participate in civil disobedience. There must be a clearer understanding that those who preach, practice and condone lawlessness are the enemies of social reform and of freedom itself. In short, the one indispensable prerequisite to all progress is an ordered society governed by the rule of law.

"CIVIL DISOBEDIENCE: PRELUDE TO REVOLUTION?"

Are the militant advocates of "black power" and the New Left blazing a trail that will lead to the destruction of this country? A distinguished attorney examines the implications of their calls for defiance of the law—and warns of the results.

By Lewis F. Powell, Jr., Former President, American Bar Association

This will be a lawyer's talk about law and order and civil disobedience. The subject is related to complex social and economic problems—some of the most perplexing of any age. But there is no hope of solving these problems unless an ordered society is preserved.

There is deep concern today about the disquieting trend—so evident in our country—toward organized lawlessness and even rebellion. One of the contributing causes is the doctrine of civil disobedience. This heresy was dramatically associated with the civil-rights movement by the famous letter of [the Rev. Dr.] Martin Luther King from a Birmingham jail.

As rationalized by Dr. King, some laws are "just" and others "unjust"; each person may determine for himself which laws are "unjust"; and each is free—indeed even morally bound—to violate the "unjust" laws.

Coming at a time when discriminatory State and local laws still existed in the South, civil disobedience was quickly enthroned as a worthy doctrine. It met the need of intellectuals and theologians for a moral and philosophical justification of conduct which, by all previous standards, was often lawless and indefensible.

How Protest Movement Has Changed

Initially, disobedience tactics were directed specifically against discriminatory laws. The sit-ins and demonstrations were aimed primarily at segregated facilities and denial of voting rights—largely in the South. But as the use of disobedience tactics expanded, the relationship between the act of protest and the law protested became increasingly attenuated.

Indeed, as the protest movement expanded to Northern and Western cities, its objectives broadened from specific discriminatory laws and practices of the South to the age-old social and economic problems of bias, poverty and unemployment. Predictably, disobedience tactics were soon employed in other causes—on the campus and across our country. Few voices spoke out against civil disobedience. Because of its association with the cause of civil rights, criticism of disobedience and its tactics was largely muted. Many persons of good will—including many clergymen and campus intellectuals—were so enchanted by the "causes" that they gave little thought to the means employed or to where the disobedience road would lead.

But all who advocated civil disobedience were not so naive. Political activists and extremists of all kinds were quick to recognize the potential of this doctrine as an extralegal means of attaining goals—and even of promoting revolution. Moreover, a doctrine which tolerates and justifies

disobedience of law—implemented by sit-ins and street mobs—is made to order for cynical leaders promoting rebellion and other extremist causes.

One of the few national leaders who had both the insight and the courage to speak out against civil-disobedience tactics was Mr. Justice Hugo Black [of the Supreme Court]. Writing early in 1966, he said:

"Governments like ours were formed to substitute the rule of law for the rule of force. Illustrations may be given where crowds have gathered together peaceably by reason of extraordinarily good discipline reinforced by vigilant officers. 'Demonstrations' have taken place without any manifestations of force at the time. But I say once more that the crowd moved by noble ideals today can become the mob ruled by hate and passion and greed and violence tomorrow. If we ever doubted that, we know it now. The peaceful songs of love can become as stirring and provocative as the 'Marseillaise' did in the days when a noble revolution gave way to rule by successive mobs until chaos set in. . . . It . . . [is] more necessary than ever that we stop and look more closely at where we are going."

It is notable that Mr. Justice Black wrote these prophetic words in February, 1966, before the emergence of "black power" as an overt doctrine, and prior to the riots of 1966 and 1967.

But few heeded his warning. Despite clearly visible danger signals, political, religious and intellectual leaders continued to tolerate and justify civil disobedience—even after such major eruptions as Watts [in Los Angeles], Cleveland and Chicago.

There seemed to be a curious unawareness that once lawlessness is tolerated and justified it feeds upon itself and leads either to revolution or violent repressive measures. It has been said wisely:

"Once you give a nervous, hostile and ill-informed people a theoretical justification for using violence in certain cases, it is like a tiny hole in the dike; the rationales rush through in a torrent, and violence becomes the normal, acceptable solution for a problem. . . . A cardinal fact about violence is that once initiated it tends to get out of hand. Its limits are not predictable."

So much for a review—obviously incomplete—of the origin and escalation of contemporary civil disobedience. This brings us to the year 1967—a year of crisis in which the symptoms of incipient revolution are all too evident.

Two movements have been emerging: (1) a militant Negro nationalist movement, summed up in the slogan "black

power," and (2) a radical political movement called the New Left or New Politics, which hopes to change our form of government. The two movements have been converging, and now pursue the common causes of "black power" and frustration of America's attempt to contain Communism in Vietnam. Both of these movements rely heavily upon civil-disobedience tactics.

The public is widely aware of the Negro revolt. There is far less awareness of the New Left, its organizations and its radical goals. There are a number of New Left groups with varying degrees of militancy. Although not yet coalesced into a single organization, they are moving toward a united front—certainly on race and Vietnam issues.

"The Warnings of Militant Leaders"

Most Americans—of both races—have been shocked and dismayed by a summer of unprecedented discord. The great majority of Negro citizens have been as dismayed as the whites. Yet, the average citizen, preoccupied with his own problems and pleasures, assumes that domestic tranquility is an inalienable right. There is a childlike disbelief that this land of the free—internally secure for 100 years—may be confronted with strife and violence on a massive scale. Complacent Americans would be well advised to heed the warnings of the militant leaders. Here are some random examples of what they are saying and planning—quite openly:

Stokely Carmichael—Mr. Carmichael has allied himself and "black power" with revolutionary Communism. Speaking at Havana, he said:

"There are no longer any isolated struggles. They are all correlated. . . . The only solution is armed struggle."

H. Rap Brown—Still at large, and even invited to speak in churches, Mr. Brown openly advocates violence and revolution. In language more racist than that of a Klansman, he urges:

"Get you some guns—(and) burn this town down.

"We'll make the Viet Cong look like Sunday-school teachers. Violence is necessary."

Dr. Martin Luther King—The prophet of civil disobedience, Dr. King, seems bewildered at times by the escalation of his own doctrine. On occasion he has joined moderate Negro leaders in criticizing riots. But he is arm-in-arm with Mr. Carmichael and Mr. McKissick [Floyd McKissick, national director of the Congress of Racial Equality] in slandering his own Government and in inciting violation of draft laws. He has said: "America is the greatest purveyor of violence in the world today."

And he has compared the use of new American weapons in Vietnam to the Nazi testing of "new tortures in the concentration camps of Europe."

Dr. King's favorite role is organizing disruptive demonstrations. He is now urging "massive civil disobedience" for the purpose of "dislocating" Northern cities. He is planning such "nonviolent" tactics as weekly school boycotts, blocking plant gates with unemployed Negroes, and disrupting governmental operations with sit-in demonstrations in federal buildings.

CORE leaders—Although CORE has received support from the Ford Foundation and other responsible parties, its leaders are now committed to "black power" extremism.

Mr. McKissick, replying to a question by a white reporter as to what the Negro wanted, put it quite simply in the classic terms of revolution:

"The answer is—everything you got right now, and everything you hope to get."

A "New York Times" story reported that CORE's No. 2 leader, Wilfred Ussery, believes that: "Armed conflict between black and white can no longer be averted."

Father James Groppi—A newcomer to dubious prominence is Father Groppi, a Milwaukee Catholic priest. Working with the NAACP [National Association for the Advancement of Colored People] Youth Council, he has organized and led paralyzing demonstrations for open housing. The "liberal" mayor of Milwaukee, Henry W. Maier, charges that Father Groppi is "trying to incite riots," and that "rational discussions with him are impossible." Father Groppi has recently been quoted as saying: "Morally, I have no argument against the black man's right to use violence."

Dr. Benjamin Spock—Dr. Spock, a New Leftist dilettante, also has joined those who condone rebellion. Speaking at the recent Conference on New Politics, he said:

"The situation in America is desperate. The principal sign

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Photo: Dementi Studio

of it is the revolt of our black fellow citizens. . . . The Founding Fathers declared that people who are oppressed, and can find no other redress, must rebel."

Staughton Lynd—Mr. Lynd, a Yale faculty member on leave and an intellectual leader of the New Left, made an unauthorized trip to Hanoi. He insists that representative democracy is outmoded; that we must substitute a "participatory democracy"—which apparently would function through mass meetings and demonstrations. In a revealing article in "The New York Times Magazine" section, Mr. Lynd argues that the uprisings in the cities have been "rebellions" and not riots; and—citing the American Revolution and other irrelevant precedents—he justifies the Carmichaels and the Browns and their call for revolution.

The foregoing are only a few—if among the better known—of the leaders of militant civil disobedience. Their roles and views differ, and I do not suggest that each is equally responsible for the lawlessness which threatens to engulf our country. Yet these, and hundreds of lesser-known leaders, are men determined to remake America—not by the democratic processes of our institutions but by varying forms and degrees of coercion. The more radical of these leaders, like Mr. Carmichael and Mr. Brown, are openly advocating revolution.

Let us turn now from the leaders to examples of extremism in action.

The first is Vietnam Week of last April, when tens of thousands marched in New York and San Francisco. Draft cards were burned, placards of hate displayed, and vicious anti-American speeches made by Dr. King, Mr. Carmichael and Dr. Spock.

The initial planning for Vietnam Week took place at a

. . . "There have been riots in 75 cities in 1967"

Chicago conference, instigated and dominated by Communists and fellow travelers. The Communist-line objectives of Vietnam Week were to undermine United States opposition to Communism in Vietnam and to ferment racial discord.

Shortly following these marches, Dr. King announced the formation of "Vietnam Summer"—a coalition of opponents to American policy and includes well-known Communist allies and other luminaries of the "hate America" left. The avowed objective is "to organize opposition to the war in ghetto areas," and encourage our youth to "refuse to fight."

As Dean Joseph O'Meara of Notre Dame Law School has said, many of these who thus aid the Communist enemy "give themselves away":

"For never once do they condemn the terrorist tactics of the North Vietnamese; never once do they condemn Hanof's rejection of all peace proposals; . . . never once do they lament the suffering and death borne by our forces in Vietnam. These persons weep only for the enemy."

Further Inroads by Communists

Having attained some success and notoriety through Vietnam Week, the New Leftists then planned and held what was called the "National Conference on New Politics," attended by some 5,000 delegates. Its stated purpose was to create a united front among groups supporting the "black power" and "peace" movements. Dr. King and Dr. Spock were among the principal speakers. The Communist Party, as in the case of Vietnam Week, was active in the planning and manipulation.

The conference, dominated by "black power" militants, condemned "the savage and beastlike character that runs rampant through America, as exemplified by the George Lincoln Rockwells and the Lyndon B. Johnsons." It also adopted a straight Communist Party line resolution, which pledged "total and unquestioning support to all national peoples' liberation wars . . . particularly in Vietnam."

The flavor of the New Politics Conference was summed up by Walter Goodman, writing in "The New York Times Magazine," who said: "It stunk of totalitarianism."

Vietnam Week and the Conference on New Politics are chilling examples of growing extremism in this country. The dominant themes of both were hatred of fellow Americans and contempt for our institutions. Their goals are to be at-

tained not by democratic processes but by various techniques of civil disobedience.

One of the major targets is American policy in Vietnam, now under virulent attack. Reasonable men may well differ as to the wisdom of this policy. But only those who are blinded by their prejudices, or who are indifferent to the consequences of lawlessness, will deliberately incite disobedience of valid laws.

A most recent example of this irresponsibility is the public demand by a group of some 320 clergymen, educators and writers that churches and synagogues be used as "sanctuaries" for youths who defy the draft law. If thousands of young men refused to fight for their country, as pointed out by Tom Wicker of "The New York Times," "the power (of the Government) to pursue the Vietnam war or any other policy would be crippled if not destroyed. The Government would then be faced, not with dissent, but with civil disobedience on a scale amounting to revolt."

Or, suppose the campaign against payment of income taxes gains widespread support. This is not an illogical possibility, as this relatively bland form of civil disobedience has appeal to a broad spectrum of disaffected citizens. But however appealing it may be, widespread refusal to pay taxes could bring orderly government to a halt.

So much for examples of nonviolent—though potentially disastrous—disobedience. But the greater concern has been the violent eruptions in our cities—where civil disobedience has reached its ultimate form.

I do not know whether any of the persons or groups named above was legally implicated in any of these riots. Let us assume no such implication. Yet few can doubt that the cumulative effect of the black-nationalist movement, and of the incitements to hatred and disobedience were major contributing factors. As J. Edgar Hoover [Director of the Federal Bureau of Investigation] has said:

"Those who espouse the theory of civil disobedience and authorities who free guilty violators must share a portion of the blame and responsibility for the turmoil in our streets."

There have been riots or major disorders in some 75 cities in 1967. Detroit was the shocker, with 43 killed, hundreds injured and part of a great city destroyed. A less likely city for a race riot would be hard to find. Detroit had no housing ghetto; its Negro population was largely prosperous, and its race relations considered excellent.

Demonstrators in New York in April. Mr. Powell says "reasonable men" may differ on Vietnam, "but only those blinded by prejudices or indifferent to the consequences of lawlessness will incite disobedience of valid laws."

—Wide World Photo



... "Our society and system can be destroyed"

The recent NBC documentary—in which Daniel P. Moynihan [director of the Harvard-MIT Joint Center for Urban Affairs] participated—contains a frightening analysis of the riot and the future prospects. Although apparently spontaneous in its inception, militant organized groups took over promptly, supplied the weapons, the Molotov cocktails, and directed the sniping and the arson. This was no revolt of oppressed people against local conditions. It was armed rebellion against American society.

Although the underlying causes are complex and deep-seated, America's acceptance of civil disobedience was both a cause and a justification. Mr. Moynihan, former Assistant Secretary of Labor, put it this way:

"We have legitimized opposition to the police and disobedience to law. Now in the North it has become massive opposition to the rules of white society."

The Negro militant viewpoint, gaining increasing support, is that America is "irredeemably racist"; that Negroes should "forget America," and that the "only course for Negroes is to bring about a final, violent apocalyptic confrontation of black and white."

The NBC investigating team concluded that extremists already are planning future violence. Next time, it is said, they will attack and destroy the white sections of Detroit and other cities. As Frank McGee described it: "These black extremists are willing and eager to risk a bloody showdown with white society."

Sharing the same pessimism, [columnist] Roscoe Drummond recently said: "The black militants and their white associates are irreversibly committed to the destruction of American democratic society to achieve their racist goals."

"Gravest Potential for Disaster"

One may hope that the views of these observers—competent as they are—exaggerate the danger. But none can doubt that America faces a crisis of lawlessness with the gravest potential for disaster.

No man knows all the answers, but to me—as a lawyer—some simple truths are self-evident:

An ordered society governed by the rule of law must be preserved. Without law and order, none of the liberties guaranteed by the Constitution can be safeguarded—for whites or blacks, "radicals," "liberals" or "conservatives." History has demonstrated that once a society condones defiance of law and due process, the liberties of all are lost in the excesses of anarchy which follow.

With these truths in mind, and if our cherished institutions are to be preserved, Americans of good will—of both races—must act together to assure the following:

1. Toleration of civil disobedience and justification of lawlessness must end—in government, in the pulpits, among the media, and on the ivory-towered campuses.

2. Those who incite riots and rebellion should be treated as the most dangerous of criminals and relentlessly prosecuted. The irresolution of our society is attested by the fact that we hasten to put petty criminals in prison and yet permit the Carnichaels and Browns to remain free. Indeed, some still dignify their criminality by inviting them to speak in our schools and churches.

3. Those who participate in riots and rebellion should also be prosecuted with vigor, particularly the arsonists and the snipers.

4. Criminal laws, at all levels of government, should be reviewed and strengthened to deal specifically with the

foregoing crimes in light of present conditions. Penalties should be adequate to deter criminal conduct, and justice should be swift and certain.

5. Effective gun-control laws should be adopted at State and federal levels; sniping at policemen and firemen should be made special offenses with severe penalties, and possession or use of Molotov cocktails should be serious crimes.

6. Those who incite and participate in nonviolent civil disobedience should also be subjected to criminal sanctions. Where needed, laws should be clarified and strengthened with appropriate penalties provided. This is a more difficult area, as First Amendment freedoms must be carefully safeguarded. But rights of free speech and peaceful assembly do not justify incitement to revolt or the willful violation of draft laws, income tax laws, or court decrees.

7. Laws, especially against those who engage in nonviolent civil disobedience, should be enforced uniformly and promptly. A few draft-law violators have been prosecuted, but most have been ignored—including the radical leaders who incite draft evasion. Public authorities have also failed to prosecute the growing number of dissidents who willfully refuse to pay all of their income taxes. How can officials sworn to uphold the law ignore its willful violation? In justice, how can a Cassius Clay [former heavyweight boxing champion] be sent to jail for draft evasion, while prominent self-styled intellectuals who refuse to pay their taxes are allowed to remain free?

8. In summary, America needs to awaken to its peril; it needs to understand that our society and system can be destroyed. Indeed, this can and will happen here unless Americans develop a new impatience with those who incite and perpetrate civil disobedience; unless laws against violence and disorder are strengthened, and enforced with vigor and impartiality; and unless we return once more to the orderly and democratic processes which alone can preserve our freedoms.

Now, a final caveat. I have spoken as a lawyer, deeply conscious that the rule of law in America is under unprecedented attack. There are, of course, other grave problems and other areas calling for determined and even generous action. The gap between the prosperous middle classes and the genuinely underprivileged—both white and black—must be narrowed. Many mistakes have been made in the past, and there is enough blame for all to share. But we have passed the point where recriminations and bitterness will solve problems.

We must come to grips realistically with the gravest domestic problem of this century. America has the resources, and our people have the compassion and the desire, to provide equal justice, adequate education and job opportunities for all. This we surely must do.

"Avoid Folly of Rewarding Extremists"

At the same time, we must avoid the mindless folly of appeasing and even rewarding the extremists who incite or participate in civil disobedience. There must be a clearer understanding that those who preach, practice and condone lawlessness are the enemies of social reform and of freedom itself. In short, the one indispensable prerequisite to all progress is an ordered society governed by the rule of law.

Foregoing is full text of an address, "Civil Disobedience: Prelude to Revolution?" by Lewis F. Powell, Jr., a Richmond, Va., attorney. He delivered the speech at Point Clear, Ala., on Oct. 5, 1967.