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Virginia Manufacturers Association
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Lewis F. Powell, Jr.

THE DISORDERED SOCIETY

It is interesting to speculate on what historians will say about America in the mid-20th Century. Only in the long perspective of history can there be a detached evaluation. But we can be certain, I think, that future historians will be puzzled indeed by the startling paradoxes of our time.

We live in the age of the Great Society - where there is more prosperity, more productivity, more education and more progress in science and technology - than at any other time in all history. Nor can it be said that we are concerned only with material things. There is more genuine concern by man for his fellow man, more determined efforts to wipe out poverty, and disease, and far more progress in minimizing discrimination and injustice - than at any other time in all history.

Nor is the concern of Americans limited to our fellow citizens. No other country has ever so generously aided and assisted mankind throughout the world.

Yet, despite our unprecedented material progress and the equally unprecedented humanizing of our attitudes towards less fortunate people, there are also sobering symptoms of decadence and decay. There are many manifestations of these symptoms. But I will talk this morning only about certain of these which relate particularly to the deterioration of an ordered society.

First, there is the paradox of ever mounting crime. There has never been a time where there were more serious crimes against persons and property. Crime is increasing six times faster than the rate of population growth. Organized crime still operates largely beyond the reach of the law.

And juvenile crime is a national disgrace, with nearly 50% of all arrests involving teenagers 18 years of age and under.

More than two and one-half million serious crimes were reported in 1965, and there were hundreds of

thousands of unreported crimes.*

The total cost of crime to citizens and government - directly and indirectly - is estimated by the FBI to exceed 27 billion dollars annually.**

I have been talking about the types of crimes reported in FBI and police statistics - murder, arson, rape, robbery, assault and larceny (of \$50 or more). The growing incidence of these crimes is frightening enough. But let us reflect, briefly, on some of the types of crimes - or law violations - that rarely make the record books.

Shoplifting is one example. It is estimated that the annual shoplifting take in this country is from two to three billion dollars. This is exclusive of refund chiseling and other frauds practiced on storekeepers. The reverse of this coin is the practice, by many unscrupulous merchants, of defrauding customers - both as to price and quality of merchandise.

*A recent study in New York City indicated that accurate records and reporting would have increased crime for the month of March 1966 in two categories as follows: burglaries - 96%; robberies - 89%.

**President's Crime Commission, March 9, 1966.

Every businessman knows that petty thieving by employees (at all levels) is a not insignificant cost of business. The estimate for last year is that one billion dollars was so embezzled - in items ranging from stamps and stationeries to machine tools and truck loads of employers' products.

Every hotel keeper is painfully familiar with the petty thief mentality. It is reported that one New York hotel lost more than 53,000 separate items of hotel silver during the first year of its operation. Only 100 Bibles were stolen during the same period.

Cheating on insurance claims also has become a familiar American pastime. The claims bureau of the American Insurance Association estimates that 75% of all claims are dishonest in some respect, and that some 350 million dollars of dishonest claims are paid annually.

The largest single business enterprise in America today is organized crime. Some of you may have seen the recent television documentary on this subject. It was a

graphic and shocking reminder that organized crime exists, prospers - and is often protected by police and politicians - because the public demands its products. The two products upon which the entire structure is based are gambling and narcotics. The demand for both is widespread and pervasive.

The use of drugs does carry social stigma, but not so with gambling. Millions of otherwise respectable citizens regularly violate gambling laws - with personal zest and community approbation.

I have been talking about widespread dishonesty and disregard of law by people who otherwise are considered - not as criminals - but as average Americans. The conduct of these millions of our fellow citizens reflects an ambivalence of moral and ethical values which, it seems to me, is more disturbing than the hardened attitude of professional criminals.

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Let us now take a look at another paradox of this age. Among our deepest concerns, and rightly so, are the youth of this country. At all levels of community and government activity, enormous effort is devoted to improving health, recreational and educational opportunities of the young. Nothing could be more important.

Yet, at a time when more is being done for the well being of young people than ever before in history, they find themselves undisciplined at home and in school, and in a society cynically addicted to "permissiveness" - in morals and ethical standards.

I will cite only one example, namely, the flood of pornography which is now readily available - indeed which is thrust upon every American youth. This relates not merely to sex, but to erotic sex, and to crime, depravity and sadism. Under current concepts of free speech and free press - which many think have distorted great ideals of freedom into uncontrolled license - the law is basically helpless to control this problem.

One would have hoped that literary and artistic tastes - by authors, publishers, television and movie producers - would have developed self-imposed restraints on this flood of vulgarity and obscenity. Certainly one would have expected that the moral indignation of parents and decent people would have insisted upon a higher level of literary and amusement diet. Yet, there is little evidence of such restraint or of genuine public indignation.

The relationship between pornography and crime - particularly juvenile crime and delinquency - may be difficult to measure by empirical facts. Yet few would deny that the relationship is both insidious and significant.

There was a revealing article on this subject recently by Pamela Hansford Johnson, British novelist and wife of famed author C. P. Snow. Miss Johnson was writing about the "Moors killers" in England - a perverted man and his mistress who tortured and murdered three children. The evidence at the trial disclosed that the murderers

were addicts of pornographic and sadistic books. As one of the defendants testified:

"They can be bought at any book stall."

Miss Johnson described the libertarian atmosphere of our times as follows:

"Under the big top of the all-permissive, 'swinging society', we have the whole garrish circus of the new freedom - freedom to revel, through all kinds of mass media, in violence, in pornography, in sado-masochism."*

Miss Johnson wrote in bitterness - wondering "what price would we pay to save a life". A lighter jab, at both the permissiveness and hypocrisy of our times, was recently attributed to poet Kenneth Rexroth:

"The kids pick up a paper and read some editorial condemning the Free (filthy) Speech movement (at Berkeley), and then turn the page and find (advertisements) an entertainment section that look like the wall paper in a Hungarian whore house."**

*Life, August 12, 1966.

**Time, September 9, 1966.

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I have mentioned, to this point, the spiraling rate of reported crimes and some of the facts about submerged or unreported dishonesty by otherwise respectable people. I have also cited one example - among many - of eroding standards of morals and tastes.

There are many other striking contrasts - or paradoxes - which are of special concern to a lawyer in the age of the Great Society. I will now mention only one of these. This is the escalating tendency to resolve problems in the streets, rather than by orderly and lawful means.

We are blessed in this country by a system of government which provides for greater liberties than are guaranteed any other people in all history. We have an independent judiciary which assures protection of these liberties. Our system also provides, through legislation and by constitutional amendment when necessary, a remarkably flexible and resilient charter of government. Change can^{be} and regularly is accomplished by orderly processes.

But reckless and impatient leaders of various causes are not content to resolve differences in the courts, or to accomplish change and reforms by rational debate or through the ballot box. Rather, in the name of a false doctrine called "civil disobedience", they prefer the direct coercion of the sit-in and the street demonstration.

Civil disobedience was practiced first in the South against racial discrimination, where there were many examples of injustices protected by state and local law. But one may recognize and deplore these injustices (as most of us in Virginia did), without condoning a means of correcting them which - in the end - could undermine all liberties and result in greater injustices.

At first, the sit-in directed against specific laws, was the tactic generally employed. More recently, as civil disobedience has spread across the country, and as its "causes" ^{have} escalated, the standard technique has become the street demonstration. It is but a short step from such demonstrations to lawless mobs in the streets.

The mob and massive civil disobedience, so familiar in countries not governed by the rule of law, have had no place in the history of our country. The question now being anxiously asked is whether we are making a place for these techniques.

The facts are not reassuring. Commencing with relatively peaceful marches in a few southern communities, use of the street demonstration has expanded and proliferated (i) geographically, (ii) in the causes in which it is employed, and (iii) in the character of its tactics.

Civil disobedience is no longer limited to the civil rights movement. It is now practiced by a widening spectrum of groups and persons - ranging from the irresponsible to the sinister. Too many militant leaders have found in its techniques a sure road to personal publicity and power.

The anti-Vietnam protest is an example. Here I refer - not to legitimate dissent (which must always

be welcomed) - but to the extremist groups who have sought to undermine their own country's war effort by street demonstrations, sit-ins, attempts to stop troop trains, incitements to burn draft cards, and even by anonymous telephone calls to the families of servicemen. Many who speak for this movement bitterly attack their own country, and rarely - if ever - criticize the conduct or record of the Communist enemy.

Closely associated with the anti-Vietnam protest is the movement called the New Left. This is a conglomeration of activist organizations which reflect varying degrees of leftist thought and action. The movement is to be distinguished from traditional American liberalism, regarded by the New Left with disdain.

There are many examples of New Left employment of civil disobedience tactics and demonstrations. A nationally known leader, a faculty member at a great university, has called for "wave after wave of massive

civil disobedience" to remake America. Another nationally known New Leftist leader has ~~recently~~ been jailed on a charge of inciting the recent rioting in Atlanta.

A significant new development, and one which may surprise those who have encouraged civil disobedience, is the emerging participation by the "Radical Right". The marching of Martin Luther King's legions in Chicago has produced a counter force. George Lincoln Rockwell and his American Nazi Party have apparently decided to employ similar tactics.

Rockwell has announced a march and demonstration into a southside Chicago Negro neighborhood. An injunction was sought against this conduct on the ground that it would "create a breach of the peace and provoke disorderly conduct". The federal judge, as recently as one week ago today, denied the injunction and held that the right of free speech and assembly entitled Rockwell to march.*

*Chicago Tribune, September 10, 1966.

The judge could hardly have held otherwise in the face of precedents allowing others to march.

It may not be inappropriate to remember that street demonstrations have enjoyed a special respectability. Many people - including politicians, scholars and large segments of the clergy - have been so enchanted by the "causes" that apparently they have given little thought to the means employed or to where the disobedience road could lead.

Those drawn to civil disobedience by the worthiness of causes may, at long last, begin to reflect that the doctrine must be one of universal application, with its moral imperatives and techniques available to all. If sit-ins and massive demonstrations are justified for the "worthy", they are equally justified for the "unworthy", as under this concept each man may determine which laws are unjust and each has the "right" to disobey them/ or march in protest.

If civil rights leaders may take to the streets, it is now evident that so also may the New Leftists,

the American Nazi Party, the Ku Klux Klan, the Communist Party, and indeed any group which purports to be exercising rights of free speech and assembly.

Perhaps the most serious aspect of the expanding use of demonstrations in the name of civil disobedience is the resulting incitement to mob violence. No one knows the extent to which the preachments of disobedience, and especially the widespread resort to the streets, has contributed to the general deterioration of respect for law and order and specifically to major outbreaks - such as the riots in Harlem, Rochester, Philadelphia, Cleveland, Chicago and Watts. Yet few objective observers doubt that the contribution has been significant.

The California Commission, in commenting on the "aggravating events" leading up to the Watts riot, said:

"Throughout the nation, unpunished violence and disobedience to law were widely reported, and almost daily there were exhortations here and elsewhere to take the most extreme and even illegal remedies to right a wide variety of wrongs, real and supposed."

A nationally known leader of civil disobedience recently spoke glowingly of the political power of "marching feet". This, we must recognize, is a new concept in American democracy. Traditionally political power has been exercised here - not by the street demonstration - but by the ballot box.

If one is interested only in "power" much can be said for the use of "marching feet". The validity of this premise has been demonstrated by some of the leading tyrants of history. But are we prepared, in the age of the Great Society, to abandon traditional concepts of due process in favor of coercion in the streets? In simplest terms, it seems to me that we are talking about the foundations of an ordered society. As Mr. Justice Goldberg has said:

"The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy."

There can be no public order if every group, pursuing its own selfish ends and causes, may compete for

power by demonstration techniques. No one has warned more eloquently against this danger than another member of the Supreme Court. Mr. Justice Black has said:

"Experience demonstrates that it is not a far step from what to many seems the earnest, honest, patriotic, kind-spirited multitude of today, to the fanatical, threatening, lawless mob of tomorrow. And the crowds that press in the streets for noble goals today can be supplemented tomorrow by street mobs pressuring . . . for precisely opposite ends."

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We have preserved individual freedom under the Anglo-American system of law for perhaps the longest sustained period in human history. We have done so by accepting the rule of law and by adherence to lawful means. The fundamental difference between a totalitarian society, and one in which the individual is protected from arbitrary force, is that "means" are of the essence. Under our system, the "end," however worthy, should never justify resort to unlawful means.

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I have now reviewed some of the astonishing paradoxes of this age of the Great Society. As a lawyer, I have spoken only of those paradoxes which relate to law and order: namely, crime, juvenile delinquency, white collar chiseling and dishonesty, pornography, and most disquieting of all, the expanding use of coercion in the streets as a substitute for due process and the orderly procedures of democracy.

While these are matters of special concern to lawyers, they relate to the principles upon which our society is organized. They must therefore be the concern of every thoughtful citizen.

Unfortunately, there are no easy solutions, and yet I think most of us would agree upon certain essentials: America needs to re-examine, and I think to reject, the prevailing philosophy of permissiveness, which knows no discipline and draws no line between liberty and license.

America also needs a genuine revival of public morality and decency, a rededication to law and order, a reawakening of individual responsibility, and a new impatience with those who violate and circumvent laws. Finally, we need - and must have - a determined insistence that the courts and legislative halls, rather than the streets, must be the places where differences are reconciled and individual rights are ultimately protected and secured.