



5-2-1966

Notes For Law Day Speech

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Richmond Kiwanis Club
Richmond, Virginia
May 2, 1966
Lewis F. Powell, Jr.

X

NOTES FOR LAW DAY SPEECH

Future historians, studying the 1960's, will be bewildered by much that is now going on in this turbulent time. Among the paradoxes which they will have to rationalize is the spiraling crisis in crime.

We live in the Great Society - where there is more prosperity, more productivity, more education, more progress in science and technology, and more genuine concern by man for his fellow man, than at any other time in all history.

And these good things are not limited to the few - as in so many other countries. They are more widely enjoyed and shared - with greater equality in fact and in opportunity - than in any other county or civilization at any other time in history.

Yet, the objective historian will also have to record the following:

Crime - serious crime against persons and against property - has become our number one domestic problem.

Crime is increasing nearly 6 times the rate of population growth.

Increases occur annually in the vicious crimes of murder, rape, robbery and aggravated assault.

Organized crime - despite heroic efforts by the Department of Justice - still operates largely beyond the reach of the law.

Juvenile crime is a national disgrace, with more than 45% of all arrests involving teenagers - 18 years of age and under.

Crime is not confined to the slums or committed only by the underprivileged. Its incidence is increasing in all areas - including suburban and rural.

More than two and one half million serious crimes were reported in 1965, and there are tens of thousands of unreported crimes.

A recent study in New York City indicated that accurate records and reporting would increase (for the month of March) burglaries by 96% and robberies by 89%.*

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

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*N.Y Times, April 5, 1966.

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

These, in brief summary, are the almost unbelievable facts of crime. Now what are some of the consequences?

The most obvious is the tragedy for the victims - in death, injury, anguish and loss of property.

But crime is also changing the face and mores of our civilization. Fear and apprehension of personal safety have become hallmarks of our time.

Double locks, door chains, and bars on windows are standard hardware for our homes. Law abiding citizens are afraid to walk city streets at night, and public parks are often deserted - even in the daytime.

In our most beautiful city (our nation's capital) - and elsewhere across the land - women study judo and carry tear gas in their handbags.

In short, in the mid-1960 - when our nation has attained pinnacles of success and a level of civilization never reached before - we are also a frightened and crime-ridden people.

Measures to Combat Crime

One is tempted - perhaps as I have been - to over paint the sordid side of this disgraceful picture. One is also tempted to place the blame anywhere except upon ourselves. We criticize the police, the courts and the ineptness of government at all levels. We also blame parents, the church and the schools.

The truth is that there is indeed enough "blame" to go around, - and enough for all to share some of it.

But little is solved by recriminations. We are dealing with extremely complex and deep-seated problems: These concern the basic, underlying causes of crime; the difficulties of detection and successful prosecution; and the need for far more effective methods of rehabilitating criminals.

Public attitudes are also central to this entire problem. I am thinking of prevailing attitudes toward responsibility of parents, discipline in the home, tolerance

of obscenity, of indolence, of gambling, and the widespread erosion of moral and ethical values. This can be summed up as the general "permissiveness" which is so characteristic of our society.

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Obviously, we cannot discuss these complexities here today. Nor can I deal, in any detail, with the quite substantial effort being made, on many fronts, to ameliorate the crime problem.

There is, at long last, an awakening to the seriousness of the problem - by law enforcement authorities, by governments at all levels, by indignant citizens groups and commissions, and by the legal profession.

President Johnson has taken a personal interest.* He has delivered two special messages on the subject; he

*Mr. Johnson has said: "Crime has become malignant enemy in America's midst."

has created a National Crime Commission, and he has requested certain legislation.

Federal legislation enacted or recommended includes:

1. The Law Enforcement Assistance Act (1965).
2. The Prisoner Rehabilitation Act (1965).
3. The Federal Gun Law - to stop the dangerous flow of firearms in interstate commerce.
4. The Federal Bail Reform Act.
5. Legislation relating to narcotics.
6. Legislation relating to organized crime.
7. Provision for expanded education and training of police in cooperation with state and local authorities. (FBI National Academy is being increased to train 1,200 per year rather than 200).

The foregoing is only a partial list, at the national level, of what is being undertaken.

Civil Disobedience

I have been talking, to this point, about conventional crime.

At least the public is beginning to understand the seriousness of this problem, and is demanding remedial action.

Lawyers - in particular - also are concerned about a different aspect of deteriorating law and order. This relates not to crime as such, but to the growing lack of respect for law and for due process, and the increasing unwillingness of many to resolve differences by established legal means.

Much of the public appears to be quite unaware of the scope and implications of this dangerous trend. There are a good many contemporary symptoms of this

deterioration. The single most disquieting one is called "civil disobedience".

This is the specious doctrine that some laws are "just" and other laws "unjust"; that each person may determine for himself, in accordance with his own conscience, which laws are just; and that each is free to violate the unjust laws.

The sit-in and the street demonstration are the standard techniques of civil disobedience. It is but a short step from these to lawless mobs in the streets.

We live in a period of unprecedented unrest and discord. Throughout the world change is being accomplished at a reckless pace - and far too often by force and revolution. The street mob - demonstrating against everything from visiting dignitaries to the ruling regime - is the symbol of our times. These mobs ^{sometimes} reflect spontaneous uprisings by oppressed peoples; more often, they are synthetically created and deliberately manipulated by cynical leaders seeking personal power.

We are blessed in America by a system of government which provides expressly for the accomplishment of change by orderly processes. The Constitution, both by amendment and interpretation, has proved to be a remarkably flexible and resilient charter of government, ^{and} of personal liberty. The street mob and massive civil disobedience, so familiar in countries not governed by the rule of law, have had no place in our country.

The question now being seriously asked is whether we are making a place for these techniques of coercion and lawlessness. We have witnessed an ever growing diffusion and expansion of the use of civil disobedience, of the causes in which it is employed, and in the character of its tactics.

There are no indications that this trend has abated. Too many militant leaders have found in civil disobedience a sure road to personal publicity and power. Moreover, many people of good will - including scholars and large segments of the clergy - have become so enchanted by the "causes" that they give little thought to the means employed or to where the disobedience road could lead.

In simplest terms, 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."

The logical and inescapable end of civil disobedience is the destruction of public order, and in the anarchy which follows, all liberty would be lost.

Although many voices still call, irresponsibly I think, for "enlargement of the role of civil disobedience", we may assume that most of these would draw the line at some point - if they could. But there may be real doubt whether the forces and passions already set in motion can be reversed short of grave damage to basic values of a free society.

The very rights and causes now sought to be vindicated through disobedience tactics can, in the end, be assured only so long as laws are observed and due process followed. It has been wisely said that "minority groups . . . are the ones who always suffer the most when street multitudes are allowed to substitute their pressures for the less glamorous but more dependable and temperate processes of the law."

The ultimate danger is to the rule of law and the framework of government which sustains it. Extremists groups of the New Left, already bold enough to counsel draft evasion, carry Vietcong flags and tolerate Communist participation, now threaten the massive use of civil disobedience - rather than the ballot and rational debate - to attain their objectives.

While we need not, at this time, view this threat with undue alarm, the principles involved go far beyond any particular group or groups.

History has demonstrated that once a society condones organized defiance of law and due process, it becomes increasingly difficult to protect its institutions and to safeguard liberty.

One may hope, with reason, that America has not yet reached this point of no return. And yet we would be foolish indeed not to heed the recent warning of a great liberal judge, whose concern for civil rights

and freedom of dissent is exceeded only by his concern for our country. Mr. Justice Black has recently 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."*

*Brown v. Louisiana (Feb. 1966)