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REMARKS BY  
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at the  
UNIVERSITY OF COLORADO SCHOOL OF LAW  
75th Anniversary Celebration  
November 10, 1967

### YOUTH PROTESTS

These remarks have revealed, in their preparation, marked schizophrenic tendencies. A 75th Anniversary should be a gala occasion, set in diamonds, warmed by champagne, tuned to the waltz, bathed in the bathos of nostalgia, toasted rather than talked at. Yet a speaker brought a long distance, especially from capitol to campus, feels the conflicting compulsion to "be with it" -- to speak to the present instead of the past -- to try, in terms of today's issues, to throw at least a pontoon bridge of oratory across "generation gap," to recognize the current escalation to national proportions of the traditional strain between "town and gown," to counter-march from Washington and meet youth's protest on youth's terms and its home field. What you are about to hear may be the Anniversary Waltz as it might be played by Walter Mitty's Ragtime Band.

The wiser counsel would be to opt squarely for the anniversary tradition. Few are competent as witness, none respected as judge, in the litigation between the ages. For an

incumbent bureaucrat on the wrong side of thirty to so much as question today before a university audience the sanctity of unrestrained, unbridled, unhousebroken protest would be for him to envy the more favorable auspices under which an illegitimate son of immigrants would rise to speak at a D.A.R. convention on the irrelevancy of geneology or in a maternity ward on the triviality of motherhood.

Yet I confess, borrowing Gladstone's phrasing of it, that "I have a speech on this subject fermenting within me, and feel as a loaf might in the oven." Not a somber speech. The times are blighted by dreary speeches. The nation's sense of humor seems to be on vacation. This is a joyous occasion. And Protest is a subject on which we have taken not only the subject but sometimes ourselves too seriously. It will comport with both tonight's circumstance and Gladstone's yeasty metaphor to leaven pertinence a little with impertinence -- to proceed on the basis that half a laugh is better than none.

Herein, then, of sit-ins in deans' offices, graffiti picket signs, marching on the Pentagon; of the comforting middle-aged view that most young Americans must be somebody else's children, the convenient faculty view that they should all have matriculated

someplace else, and the strong endorsement of both of those views by the young Americans.

The place to start is with the conventional wisdom that reminds of the proneness to exaggerate current vicissitude. "Generation gap" is unquestionably wider than it used to be, but if there is novelty here it is more in the phrase than in the fact. And it helps read the temperature of protest to note some of the things that happened 75 years ago -- in 1892.

\* That summer at Homestead, Pennsylvania, ten people were killed in a 13-hour pitched battle between striking steelworkers and 300 Pinkerton detectives, before the State militia took over; and Federal troops were moved into the Coeur d'Alene silver mines in Idaho because of violence there between strikers and strike-breakers.

\* The Populist Convention met at Omaha, with the leading 'agitators' of the time in attendance: "Pitchfork Ben" Tillman, "Sockless" Jerry Simpson, and Mary "Yellin" Lease, from Kansas, "rousing the West to enthusiasm and the East to terror by exhorting the farmers to 'raise less corn and more hell'."

\* Jacob Riis was fighting, almost single handedly, the war against poverty and typhus fever in New York's slums -- issuing his "remonstrances."

\* President Harrison's 1892 State of the Union Message was about "the frequent lynching of colored people accused of crime" and about "lawlessness (that) is not less such but more, where it usurps the functions of peace officers and the courts."

Two years later, Jacob Coxey led his ragged "army" from Ohio to Washington -- to demand the issuance of half a billion dollars in paper money, and to be arrested, when they reached their destination, for "not keeping off the grass" at the White House.

Accepting history's soothing condolence that there is nothing new about protest, we mark, too, the realization that a lot of current attention, especially to inter-generational differences,

involves what Gerald Johnson would call its "superficial aspects." Our differences, for example, about deviationism from yesterday's -- and almost certainly tomorrow's -- tonsorial and sartorial norms. My own strong preference for the crew-cut is manifest. I also confess the prejudices that mini-skirts are attractive only on the very young, that knees are the ugliest part of most anatomies, and that net hose distract the roving eye from its true objectives. But if youth decides, at least partly in protest against more mature hypocrisies, to press the logic of men wearing their hair as long as Daniel Webster or English barristers, and the reasoning that decency's hemline must be the same in the ballroom and on the beach -- this seems insufficient cause for more than passing concern.

There remains, nevertheless, the hard fact of a fever of protest different from any this nation has known before, or at least for a long time. There is particular poignancy, and more than that, in its involving so large an element of loss of confidence -- and of love -- between those who are older and those who are younger; so that age seems suddenly a higher wall than nationality, or religion, or sex, or race. There is bitter cruelty and deep hurt -- to individual human beings and to the society -- and this without fairness or effect -- when picket signs

pervert legitimate disagreement about Viet Nam into the ugly accusation that older men are willing to roll dice with younger men's lives, and when the equally irresponsible reply -- even from some who seek national leadership -- is that one reason for declaring war is that it would stop this kind of protest.

This fever is rising. Looking only at youth's protest:

- \* Where there were all-night teach-ins and solemn picketing a year ago protesting the nation's foreign policy, there is now the "trapping" of Navy and CIA recruiters and those whose companies make napalm.
- \* Where there were peaceful protests two years ago against university policies regarding Selective Service, there is now the burning of draft cards and the refusal to serve when called.
- \* Where there were sit-ins and freedom schools and the Mississippi summer project three years ago to express youth's deep commitment to civil rights, there are now black power rallies, riots -- and a significant, meaningful fall-off in white student participation.

\* Where student protest against university "bureaucracy" started off at Berkeley as a free speech movement, it became then a filthy speech movement, and appeared in gross caricature last week in CCNY's muddy ditch affair -- with a spokesman shouting through the bull horn:

"The name of the game is: Confront the policy makers"

-- about, apparently, whatever is convenient at the moment.

\* I don't know how large the element of protest is in the developing degeneration of insistence on social freedom that has led to wherever we are now in the "experimentation" with marijuana, LSD, STP.

I reject the Cassandra counsel of those who look at the signs of escalating protest and increasing unrest -- especially in the slums but in their other manifestations as well -- and warn, as one of them put it recently: "We must prepare for the onset of terrorism."

Surely, though, it would be grossest negligence to disregard what is emerging plainly as one of democracy's recurrent, critical testings.

I feel, almost guiltily, the frustration of being unable to match description with proposal. Yet there is more than rationalization in suggesting that there is quite a lot of understanding



left to be done here as the necessary preliminary to confident prescription. It is in this limited respect that I suggest tonight what seem to me two essential elements in this understanding:

First, recognition that youth's contemporary protest is not properly appraised -- whether in criticism or condonation -- in terms of the acts of protest alone, but only in the significant context of the central fact of the times -- which is kaleidoscopic CHANGE;

Second, recognition that this protest reflects -- but often distorts -- an emerging ethic which has much to commend it and which is strikingly true to the free and responsible society's authentic tradition.

It would be perhaps presumptuous, but probably not wrong, to suggest that this is a hard, frightening, time to grow up in -- and that difficulty and fear are plausible, reasonable, elements in protest. It is more reservedly analytical to find a constructive understanding -- but by no means a condonation -- of contemporary youth's convulsive protest in the facts of contemporary convulsive change -- change not only in the technological and scientific spheres but also in the far reaching, deep reaching social, political, psychological and philosophical spheres.

The facts of mid-20th century technological and scientific revolution are clear. Its effects are anything but clear:

- \* What, for example, is the effect of automation on the inner satisfaction which is probably essential to life's making sense and which craftsmen traditionally took from the work they did with their hands?
- \* What is the effect on individuals and on the family of television -- with its obsession for what is bad and wrong and shoddy -- becoming a larger influence on children's minds than their parents or their peers or their teachers? Is there ever a perpetrator of violence on the streets at night, or a purchaser of heroin, who hasn't seen the thing he does done a hundred times before -- in living, dying, color?

What of the impact of scientific discovery on traditional philosophical and political notions?

- \* How much of an influence is it on the philosophy of this generation of youth that its members know -- what none knew before because it wasn't true before -- that they are committed to live their lives a single spark away from the incineration of the earth?
- \* Or what does it do to democracy when more and more of the decisions the majority has to make hinge on the

possession of sophisticated knowledge shared in fact by fewer and fewer members of that majority?

As the astronaut's rocket carries him beyond the effective force of gravity he enters a state of "weightlessness" in which the principles of balance and motion and stabilization he had previously relied on are no longer applicable. There is only a starting consciousness of the disorienting and unstabilizing effects on his earth-bound counterparts -- especially those who are still getting their bearings -- of a dozen recent achievements of the physical and life scientists.

The sharpest critics of youth's protest associate it with the protestors' alleged lessened sense of values.

If by this it is meant that some of the extremes of protest are what happens in a vacuum of values created in the eye of a hurricane of change, there is unquestionably evidence of that.

There is other evidence -- evidence that youths' protest, except for those few for whom protest is an end or a "game" in itself, is against valuelessness -- that its opposition to particular inherited values is that they are identified with antique forms of institutionalism -- that youth is seeking as earnestly as desperate humanity always has for values that give life sense.

If I understand at all what is happening in the philosophy of thinking American youth, it centers on the insistence that the individual must have the opportunity for direct participation, for involvement, for actual engagement, for commitment, in some felt experience -- and that institutions and procedures are valid only as they provide this opportunity.

Youth is persuaded that government, church, corporations, labor unions, political parties, universities, even the family, have come to be considered too much as ends and individuals too much as means to those ends; that as these institutions now operate they offer too little opportunity for actual, direct involvement of the individual in the conduct of his own and the community's affairs.

Young Americans count a civil rights sit-in more "relevant" than a civil rights decision by a court or a civil rights enactment by Congress -- because they can themselves take part in the sit-in; and the Peace Corps more relevant than a foreign aid program because they can be the Peace Corps.

"I think," the older philosopher reasoned, "and therefore I am."

"I act," the youth says today, "and therefore I am."

Does the record of youth's protest in fact bear out its base

in ethics, in a search for values, in a renewed insistence on the central meaningfulness not of institutions but of individuals, in a desire not only to believe but to be involved?

I think the answer is that it did reflect such a base during the first half of this decade. Surely, then, there was full reason for youth to feel that its desire to participate in "the shaping and molding of the world" was being fulfilled.

The civil rights sit-ins, boycotts, marches, and freedom schools did help create not only a wave of conscience across the country, but the Civil Rights Act, the Voting Rights Act, and the Economic Opportunity Act.

The student free speech movement and complaints about the growing impersonality of the university bureaucracy did help to produce specific changes in university regulations and practices.

The early teach-ins on the war and the early sit-ins on the draft did help to produce a wider and more serious debate on Viet Nam and a deeper examination by universities of their policies with respect to Selective Service.

In the last few months, however, it is manifest that impatience, frustration, and now bitterness, have set in. The feeling has grown that speaking out is no longer enough, that democracy's channels no

longer carry youth's message, and that all bureaucrats and politicians are by definition, 'nasty', brutish and short.' New forms of protest have emerged: teach-ins have been replaced by sit-ins and sleep-ins and lawlessness and acts of civil disobedience; integrated freedom schools by black power rallies; peaceful demonstrations for peace by active resistance and draft card burnings. At the same time, new objects of protest have been fixed: visibly discriminatory Southern laws have lost center stage to less visibly discriminatory Northern practices and then to the whole system of allegedly "undemocratic institutions;" specific debatable issues on Viet Nam policy have given way to personal and symbolic supporters and critics of that policy; specific complaints against certain conventional social values have been replaced increasingly by expressed rejection of the whole notion of social values.

It would be much less than candour not to express the deep conviction that in its present extreme forms -- and particularly in the apparent decision to change the present order of things from without instead of working from within -- student protest finds no excuse in the "weightlessness" which change creates, and reduces the ethic of doing-as-being to a claimed license for what amounts to nothing much better than individual anarchy.

Whether we like it or not, part of the necessary adjustment to change, to an increasing tempo of even dubious "progress," is more self-discipline, not less. Insisting on participation in the setting of those new disciplines is one thing; denying all responsibility is another. Nobody is going to be excused, if he puts a car in the ditch or kills someone with it, by his explaining that he took his hands off the wheel because he was going too fast.

The pragmatics of it are that the current extremes of protest dis-serve their purposes -- seriously.

The riots in the slums this summer hurt the poverty program and the advance of civil rights as much as the marches on Washington and Selma four years ago helped those causes.

If the objection of some members of Congress to the presently pending poverty bill appropriation is based on considerations of economy, the unspoken objection of others -- utterly wrong in my judgment -- is that the war on poverty did not prevent the riots.

The march on Washington three weeks ago hurt the cause of most of the marchers more than it advanced that cause. It all ended so meanly -- with the walls covered with filth, the air full of dead fish and vegetables and sputum and tear gas, and the jails full of young men and women whose offense -- more against

themselves than the society -- was the inciting of synthetic violence. It was youth's protest, and youth could not have been proud. A generation of decency was discredited by a few who degraded legitimate dissent into obscenity and anti-reason.

The net of it is that the youth's increasingly extreme form of protest and the adult's increasingly bitter recrimination and retribution are now creating an infinitely more bitter inflationary cycle -- with human costs and prices.

There is debate about the draft -- then a decision -- then expressed disagreement and counter-argument -- all in democracy's truest tradition. But then, suddenly, a despicable burning of draft cards and the barricading of recruiters behind doors held shut by students who thereby deny the one absolute tenet of the university: that reason must never bow to force. And now, the retributive action of threatening the students with a choice between being drafted or going to the penitentiary.

I resent with everything in me the abuse by those students of the ideals I hold highest. I think they are dead wrong about what is necessary to win freedom and peace in Viet Nam, and wrong about what freedom offers and demands. To the extent that their action does in fact violate the Selective Service Act, I support



completely the firm and full carrying out of the law. But when those who administer the law say: "It may be that we are assuming just a little" by adding a new pressure to what the law provides, and when it is then put that the boy "may always go to the penitentiary if he likes," this isn't what I understand democracy to mean.

It is all so senseless, this spiraling of protest and recrimination.

There has never been a large commonalty of purpose in this country. In a very real sense much of today's protest -- at least about our condition in this country -- reflects not only the technological progress of recent years, but the unprecedented social gains as well -- in educational and economic opportunity, increasingly equal opportunity. We have learned that in the most developed -- as well as the least developed -- countries there will come with new opportunity, a further revolution of still faster rising expectations. In large measure, today's dissatisfaction results from the increasing realization that the true measure of achievement is not how much better things are than they were last year, but how much the country is still short of the realization of its full potential. We were determinists once. Now we believe in the idea that Man is made with the competence inside to control his destiny.

But neither words nor philosophy -- nor protest against protest

against protest -- will be enough this year, or next, or ever.

You are lawyers, present or future -- and I perhaps return, in closing, to the schizophrenia acknowledged at the start about fashioning an instrument which might both let me speak to you whose interest and love is the law and still let loose with the concern fermenting inside me.

Yet in a very real sense, all I have said here is the setting up of a case which requires your professional attention. For law is not only the application of precedents, but even more centrally the development of procedures and institutions which serve the inexorably changing human desire and purpose.

There is a "weightlessness" today, and meeting it will require social and legal invention as curious and bold and effective as the scientific invention which created it.

Youth's protest may carry it outside any reasonable boundaries. It has. And it is partly the lawyer's obligation -- as not only artisan but architect -- to better refine the rules and principles and practices regarding protest so as to distinguish between dissent and disorder.

Beyond this, I press youth's case for changes in established institutional concepts which make the individual more clearly the

master and the institution more clearly the servant; and changes in established procedural concepts which give the individual a more active role in his own and the community's affairs.

But new "concepts" are not enough.

There is the need for new programs which will provide the young people of the country the opportunity they ask to make both it and the world better, safer, more sensible. The Peace Corps is a precedent. So is VISTA. So is Israel's two-year national service program.

There is the need for better lines of communication between academic and political forums.

Max Lerner's proposal this week of a university procedure in which administration, faculty, and students would participate on a 7-5-3 ratio basis in making some decisions deserves careful consideration.

There are further experiments to be made, new programs devised, to meet the necessity of full participation -- and more than that, the assumption of full responsibility - by the residents of slums and ghettos in making their own repairs against the ravages -- more psychic than physical -- of centuries of bigotry.

These are only seed suggestions, meagre illustrations of the kind of new institution and procedure building that is required.

This is a job for citizens -- yes, but most particularly for lawyers. For what is raised most centrally in youth's protest today is the free society's essential legal question: how to achieve under constantly changing circumstance that balance of rights and responsibilities which will maximize individual opportunity and significance.

There has been constant reminder, in the preparing of these remarks, of Wiley Rutledge. Of three pictures I see every night above my dresser, his is one. I wouldn't be here tonight, nor doing what I do, if my life had not touched and then drawn heavily upon his. More than any but a few, I know what this School meant to him.

Wiley Rutledge believed in the individual -- every individual -- the very idea of the individual -- more devoutly than any other man I have known. He would take, today, youth's case -- but with due recognition of his obligation to serve his client by recognizing fully the common interest. He would say, as he did, now twenty-two years ago, in Thomas v. Collins:

"This case confronts us... with the duty to say where the individual's freedom ends' and the State's power begins. Choice on that border is always delicate .. It is the character of the right, not of the limitation, which determines what standard governs the choice.

"It is in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly."