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Georgetown

Remarks by
Senator Hubert H. Humphrey
at the
Georgetown Law Day Dinner
May 1, 1958
National Press Club, Washington, D.C.

Judge John Sirica *James*
Judge Davies, Mr. Nash, Mr. Sullivan, and friends of

Georgetown, and friends of the law: The very idea of celebrating

Law Day in the United States on May 1 was an inspired idea. This

morning as part of the worldwide Communist May Day celebration

tanks and missiles and tens of thousands of regimented Soviet

citizens ~~are~~ ^{ed} parading before the Kremlin in Moscow. *The Adherents*
~~are~~

of Communism around the world are joining in their May Day

celebration of ~~the~~ Communist ideology and Soviet power.

Superficially, at least, nothing could be more fitting

than for us here in the United States to celebrate Law Day

at ~~the~~ same time. Nothing symbolizes the differences between

us and the Communists more than their glorification of revolution *and force*

and our *dedication to* ~~glorification of~~ law *and order*

Frank NASH

I said "superficially at least" this is true. Because
as soon as we think about the matter a little more seriously,
we realize ^{that} it is not merely a question of revolution on the
one side versus law and order on the other. For there are
different kinds of revolution, just as there are different
kinds of law, and these two great ideas are contesting in
the world in different shapes and different forms.

But It is this tension between revolution and law which
I want to talk about this noon. The best place to begin is
to ask ourselves what kind of law we are talking about on
Law Day.

After all, there are laws, too, in the Soviet Union ^{*and the Dictator States*} ~~this~~
~~morning~~ which people will obey. There are laws in Communist
China, in Hungary, in ^{*(South Africa)*} Cuba, ~~and~~ which people are obeying.
Hitler and Mussolini enforced laws, as did the Caesars of Rome.

So I assume to begin with that we must ~~at the outset~~ be
a little sophisticated by what we mean by law. I assume that
when you and I talk about laws we mean laws based upon the
consent of the people, laws which can be ^{repealed} ~~changed~~ when that
■ consent disintegrates, laws which themselves are the subject
of growth and peaceful change. We in this country have been
engaged since our beginnings in ^{an} ~~the~~ historic struggle to prove
that government can rest upon reason and choice rather than upon
accident and force. — ~~upon~~

Fortunately we are not the only people involved in this
great and continuing experiment. Not only our close friends
and allies in Western Europe and the British Commonwealth, but
many new independent governments in Asia and Africa ~~xx~~ are
struggling to work out a system of law based upon reason and
choice. It is ⁱⁿ ~~the~~ ~~context~~ of this basic question that I
want to think out loud about the state of our law today ^{about} ~~--~~ ^{the}
basic question ^{of} ~~how well~~ we are doing in carrying out our
commitment to law through persuasion rather than force. Let

Law observance - Law Enforcement

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us take a good hard look at the state of our law today, and consider soberly the conditions that the law itself needs for its own healthy operation.

h Basically this means ^{hard} looking at ourselves, judging how we and our actions and attitudes are helping or hindering

the law. # It is satisfying, I think, that we do this in ^{honoring} ~~the~~

~~presence~~ of so distinguished a Jurist as Judge Davies who

himself, a mere eight months ago, occupied the spotlight of

national and world attention as he wrestled with this very

problem. No one, I will venture, knows better than ~~he~~ just

how difficult and delicate are the relations between law

and society. He was called upon to act, and act decisively

in an historic situation. Few of us are given that opportunity.

We can only hope ^{that} if given it, we would have acted ~~not only~~ as

correctly ^{and constructively} ~~but as persons~~ as he did. I suspect that some

of the things that I am about to say ^{may} ~~would~~ have occurred to

courageously,

Judge Davies when he wrestled with his own decisions last

September, *in former Little Rock Case*

It is easy to say, as I said at the beginning, that we
in this country believe in the law, that this is what dis-
tinguishes us from our Communist adversaries, and that ~~this~~ ^{this} is
what makes these two contrasting May Day celebrations so

important. Yet, as we looking around us we hear many voices

that seek to obstruct ~~that seem to be~~ [#] ~~subversive~~ of the law. We hear a distinguished

conservative Senator call for "massive resistance" to the law.

We see a Governor invite such resistance to a Federal court

order. Yesterday we found a Committee of the Senate of the

United States voting ¹⁰⁻⁵ ~~2-1~~ to report a bill to curtail the

jurisdiction of the Supreme Court, ^{something which has been done only} ~~an act almost unique in~~

once before in

our history. Last month we found a Subcommittee of that same

Senate Committee publishing without comment or criticism a

document identified as "A Study Entitled 'The Supreme Court

*after civil
war 1867,
Empire jurisdiction
Habeas
corpus
to lower courts*

As an Instrument of Global Conquest' by SPX Research Associates."

see p. 9
if used

This latter document, ~~which~~ ~~that~~ I have here in my hand, attempts to show that the Supreme Court is an instrument of Communist conspiracy. The pattern of Supreme Court cases, it says, fits the Communist party line. It is an appalling and distorted piece of writing, made more so by the fact that the mysterious-sounding "SPX Research Associates" who produced it are never identified or described.

What disturbs me is not ^{that} ~~that~~ someone would vigorously disagree with a decision of the Supreme Court or with the pattern of current decisions. It would not even disturb me if people were invoking Thoreau's theory of civil disobedience to peacefully resist some particular law or court decision. The registering of dissent is part of the process of government by the consent of the governed. And one way of registering dissent is by saying, "I consider this law wrong and unjust, I will not obey it, I accept the alternative of going to jail

in protest, doing this in the hope of persuading public opinion or Congress or the courts to change their mind." The abolitionists did this in protest against the fugitive slave law; Negroes in Montgomery, Alabama, did this in protest against a bus segregation law they believed to be unconstitutional; and some white Southerners may yet do this in protest against the Supreme Court's desegregation decision. *This is their right*

the manner
But the way dissent is expressed is just as important as the way minorities who do dissent are treated. These are two sides of the same coin. In a government based on force dissent usually has to take the form of conspiracy to overthrow the government, for no other process of changing the minds and hearts of people and of the government is available. Mahatma Gandhi might disagree with me and say that peaceful jail-going is an effective way to resist even a Stalin or a Hitler. But a strong case can be made that the reason Gandhi succeeded in

bringing about fundamental changes in India is because he operated within the system of British law, because he was not simply crushed as a conspirator, because he did not simply try to overthrow the existing law. He tried to change it. He saw his civil disobedience as part of the process of persuasion. ~~and he ref~~

What disturbs me is that we seem to be forgetting that the foundation of our system of government and laws is the belief that men are capable of governing themselves by reason reflection and choice. Once we treat the law as an alien force which we can only obey, evade or try to overthrow, then we will truly be conspirators against the law whenever we disagree with it. Once we look upon dissent as a conspiracy, we will make it a conspiracy. And if we let this happen we will have taken on the worst trait of the Soviet adversary with whom we are contending in the world.

Nat. RAS
God given
RAS

I am afraid that the habit of treating those with whom we disagree as conspirators now goes very deep in our public life. When I said that I held in my hand a certain document I am sure it recalled the waving of documents by the late Junior Senator from Wisconsin. Senator McCarthy's methods finally backfired, ~~him~~. But I wonder if we have gotten to the heart of what was wrong with his methods. It is said that his accusations injured innocent people and I have no doubt that this is correct. But it seems to me that what was wrong was not the inaccuracy of his accusations but the kind of accusations themselves. Basically it seemed to me he turned all disagreement into a charge of conspiracy.

As I look at the ~~torrent~~ of mail, including hate literature, which comes into my office, as I travel in various parts of this country, as I read the newspapers about current racial conflict in the South and some northern communities as well,

it seems to me that we are increasingly clouding all of the
real issues at stake under competing smokescreens of conspiracy.

The White Citizens' Councils in the South who are shouting
most loudly and most extravagantly are always crying "conspiracy"
and are waving documents to show that the unanimous decision
of the Supreme Court in the school case was a part of an inter-
national Communist conspiracy.

But there is an equal danger on the other side. In the
midst of their understandable grievances and frustrations,
Self appointed spokesman on civil rights
many ~~negroes and Northern white liberals~~ have at times, it
seems to me, blanketed ~~out~~ all Southern opposition to
desegregation as a conspiracy ~~and~~ against the Constitution
and against fundamental human rights -- equally ignoring,
on their side, the varying degrees of ^{of} opposition, understanding
^{of} and possible cooperation which ~~may~~ still exist.

At times this almost seems to be a mutual determination
to solidify differences, to freeze antagonisms, and to set up
barricades against those ~~compromises~~ ^{adjustments & compromises} upon which progress

usually depends. The result is that in this domestic cold
war of ours in the ~~racial~~ ^{human} relations field, we are increasingly
getting little more than propaganda and counter-propaganda.

Somewhere in the process law, respect for the law, and above
^{respect} all, for the process of persuasion on which our law fundamentally
depends -- these are forgotten.

yes, The opportunity for persuasion, indeed the necessity for
persuasion, is lost in the meantime.

The role of the law as a catalytic agent in resolving
human differences is forgotten. The role of the law as a
teacher through the process of ^{reason} ~~reflection~~ and choice is lost.

It is almost as though we had picked up one of those inoperable
aspects of our foreign policy -- "massive retaliation" -- and

let it permeate our thinking so that in the civil rights field we are faced with demands for "massive resistance" against demands for "massive enforcement" of the law.

The people who talk this way, my friends, are simply reducing the whole argument to ^{a battle} ~~one~~ fundamentally ~~unhelpful~~ ^{hostile} to the legal process. They are in fact turning the debate into a competition between conspiracies -- conspiracies against the spirit of our laws. [It is not very difficult to know how that kind of debate will end. The end result is bayonets in Little Rock and bombing^s in Jacksonville.]

Yet the spirit of our laws is faith in human reason.

"The principle of an aristocracy is honor," says Montesquieu;

"of a tyranny, it is fear; of a republic, it is learning."

Aristocracy is withering everywhere in this age of the common

man, this age of mass production, industrialization, and the

universal franchise. But tyrannies we have with us, and the

only antidote to tyranny is still a republic of learning. As

I read reports from the South, I see alarming signs in many

communities that we are heading into a kind of tyranny, that is,

that in ^{all too many} ~~many Southern~~ communities the minority which supports

the Supreme Court decision is being silenced by intimidation

and force, and that the white South itself will be won over to

compliance with the Constitution not by persuasion but by force.

How do we break this vicious circle? It is undoubtedly

beyond the power or capability of any institution of government,

or private group. It will take the combined initiatives of

many people.

In the field of civil rights I am hopeful that the newly-created
Federal Civil Rights Commission, as it sets about its job
of inquiry and appraisal, will be an important persuasive
instrument for progress. The wide diversity of background of
the Commission's members, combined with their common reputation
for reasonableness and decency, should give the Commission great
persuasiveness with the American people---if it will set is
goals and chart its course.

But it is not ~~in~~ the civil rights field alone that
is endangered by ~~the~~ current competing doctrines of conspiracy.
As I have said, it is the whole fabric of American law and
respect for the processes of reason and choice on which our
law must rest. To restore and revitalize these processes it
seems to me that lawyers have the first responsibility, or
at least that lawyers and educators share it jointly. They, by
their profession, are dedicated to the process of persuasion,

to the idea of a republic of learning. By their conduct and example, by their fearlessness in the face of intimidation and their respect for the resolution of issue^s through peaceful reasoning, by their refusal to treat their adversaries as conspirators, by their insistence upon entertaining the ideas of their adversaries no matter how much their adversaries try to act like conspirators, perhaps they can create a new climate. If this spirit is radiated from the courtrooms and the schoolrooms of the country, the subversion of our republic caused by the doctrine of conspiracy may be checked.

However, beyond this defense of the process of persuasion is another dimension to the problem. We must take an active role in the whole process of persuasion, not just in demonstrating respect for the process itself.

As Lincoln said, "In this and like communities public sentiment is everything. With public sentiment, nothing can fail;

without it nothing can succeed. Consequently he who moulds public sentiment, goes deeper than he who enacts statutes or pronounces decisions. He makes statutes and decisions possible or impossible to be executed."

President Eisenhower is right in stressing that the solution of any great issue such as desegregation depends on changing the minds and hearts of people. And of course enforcement of the law is one good way of changing people's minds and hearts. People learn to drive on the right side of the street by obeying the law requiring them to drive on that side. But, is he right in going no further than this? ??

He says he has told no one, not even his wife, whether he thinks that the Supreme Court's desegregation decision is right or wrong. It is the law of the land, he insists, and that is that. But that is not enough for the President to say, I am afraid. For what controversial law was ever obeyed just

because it was a law? Prohibition was not, nor was the
Fugitive Slave Law. The ultimate basis for the support of
any law is the people's belief that it is right.

It is in this area that those of us who want to
see the Constitution, as ~~now~~ interpreted by the Supreme Court,
upheld and enforced, also have a job to do. Lawyers and
educators cannot just cry Law, when in part of the country
there is no law that is accepted. A law - or court decision -
is a teacher in that it asks of each of us a question: is this
a good, proper, just law? But the answer must come from us.
In a republic the answer comes from "We the People". And on
a fundamental question of law like this, it seems to me that
the American bar has a responsibility that it cannot escape.
In this regard, so far, it seems to me that it is we who have
not been good to the law, it is we who are failing the law.

"The law will never make men free," Thoreau said;

"it is men who have got to make the law free". I would add that
it is lawyers and teachers of law who have got to persuade their
fellow citizens to keep the law free.



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