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ADDRESS

FORMING A MORE PERFECT UNION*

LEON JAWORSKI**

I have chosen as the title of my remarks a phrase from the Preamble of our Constitution—"in order to form a more perfect Union." George Washington believed that the adoption of the Constitution enhanced the goal of achieving an "intimate union" and in his farewell address he exhorted the people "indignantly" to resist any effort "to alienate any portion of our country from the rest or to enfeeble the sacred ties which now link together the various parts."

In these troubled and difficult times of domestic tension and conflict, it appears appropriate for us to reflect upon this basic constitutional objective and to rededicate ourselves, in our lives and our work and our thoughts, to a greater fulfillment of this noble common purpose.

Much of what I say is stimulated by my own retrospection on matters that have come before Presidential Commissions in recent years as well as other forms of inquiry and investigation. In the cross-currents of contention before such bodies, one is left to wonder whether common public purposes are still our objectives and whether we still "indignantly" resist "efforts to enfeeble the sacred ties" that bind us.

In my exposure to the sessions of the National Violence Commission, in particular, I frequently listened in disbelief to proposals for courses of action that I viewed as completely foreign to the basic principles and concepts on which our government was founded. Some of the proponents held important public office. Most of these espousals, in the vernacular of the times, were so extremely to the left as in my judgment to be inimical to the preservation of our society. Some suggestions, coming from the far right, were insupportably repressive. Both types signified the readiness in these times on the part of some individuals and some groups to adopt measures that serve to alienate and to divide rather than to combine and to unify.

Concern about these matters, however, does not come to mind solely by virtue of what transpires in official inquiries into the

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troubles and conflicts of our time. It comes to us daily as the panorama of our society's life unfolds.

Let me take the liberty of briefly engaging in a retrospective review that will enable me to discuss more clearly the thoughts I want to share with you.

The quarter of the century following the Second World War brought our nation perhaps its most significant economic and social transformation. We have witnessed the appearance of unprecedented dissemination of freedom of speech, freedom of movement from one place to another, freedom of assembly, freedom of political action and freedom from the restrictions and disabilities of discrimination on account of race, sex and age. The degrees of freedom in all these matters and many others, and the abilities to exercise them, are incomparably greater for each individual who enjoys them today as compared to any previous era.

In the areas of health, education and welfare, we have succeeded in making such changes that the country is barely recognizable compared to what it was in 1945: high school education has become almost universally accessible; college education is available for almost all of those qualified to pursue it; medical assistance is widely available for the aged and increasingly so for the poor; and legal assistance is provided on a scale unimagined even ten years ago.

All of these progressive measures to help the individual were designed, if properly used, to bring equality and, with equality, a greater unity to our people. They were also designed to open the doors to greater individual interest and individual initiative.

Individual strivings are not only to be secured and protected but also to be commended and encouraged. Individual initiative and the protection of individual interest are the principal means of realizing common goals as well as common interests. They also are the ultimate aim and objective of a free society.

Nevertheless, even as we encourage and protect individual initiative and individual interest, it must not be at the expense of preserving an effective social community and maintaining our structure of government. The unbridled exercise of self-interest on the part of individuals and individual groups cannot of itself bring about the more perfect union the Constitution reminds us is our mutual endeavor. We know that self-serving action unrestrained by concern for the common good can, and often does, degenerate into division and disunion—all components of a strikingly imperfect union.

Recognition of this fact is not new. It has never been expressed better than by James Madison, when, commenting in the *Federalist*

Papers on the evils of disunion that confronted the framers of the Constitution, he referred to:

An attachment of different leaders ambitiously contending for preeminence and power . . . persons [who] have . . . divided mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and depress each other than to cooperate for their common good . . .

The inspiration for looking to common interests and common rights stems from a willingness to forbear the exalting of one's own interests and one's own rights over those of everyone else. Such a viewpoint was expressed by Judge Learned Hand—one of the great legal luminaries of this century—when he reminded us that:

"The spirit of liberty is the spirit which is not too sure that it is right; . . . which seeks to understand the minds of other men and women . . . which weighs their interest alongside its own without bias."

To translate this into current terms, the spirit of liberty is not that which involves non-negotiable demands, disobediences of law to achieve gains and violence to force change. Neither is it the spirit that is indifferent to the needs of changing times and deaf to injustices that exist. The spirit of liberty, on today's scene, is that which inspires confidence in meeting the challenges in a free society; it is that which strives to reunify where schisms occur; it is that which recognizes, as did the British philosopher John Locke, as early as the Seventeenth Century, that "where there is no law, there is no freedom."

If every individual and every family, if every laborer and every executive, if every layman and every professional, if every organization and every political group were to act only to serve their own interests and in disregard of the welfare of our society, obviously the goal of achieving a more perfect union would become an idle pursuit. Still the stubborn truth requires us to acknowledge that today's tendency in many segments of our society is to embrace unilateral approaches and to demand self-serving solutions.

The most critical challenge facing America today arises from an attitude formed in recent years among both young and old, of all races, that it is unnecessary in our society to be unwaveringly respectful of law; it is grave because this attitude has been the spawning-ground for ever-increasing disobediences of laws so as to strain the rule of law as never before. It is a development that flings a direct challenge at our profession because we, more so than any other group or body, are endowed with the capacity to offer leadership to stem this menacing trend.

A popular form of lawlessness involves the flouting of court decrees and the disobediences of whatever laws happen to constitute a barrier to the social or economic ends that are sought. Such attitudes, far from producing a more perfect union, are calculated to create a disordered, even chaotic one. Recently, I noted that the leader of a Teachers Federation expressed concern over the disruptions and disorders breaking out in high schools. Yet it was he who disobeyed court orders in the wake of teachers' strikes, thus setting an example of defiance of authority which he should not now be surprised to find our high school students emulating. One of the most tragic occurrences of mass disobedience involved the walkout of over twenty thousand policemen in the City of New York—men sworn to uphold the public safety. Their refusal to work was in direct violation of a state law, and their reason for breaking the law was based on an adverse court decision involving a monetary demand. The example was especially destructive because it involved the disobedient conduct of trusted servants of government.

Also disquieting in these times are the voices that extenuate acts of violence that are politically motivated. Some social scientists are working overtime in idealistic and mitigating explanations of the group violence that has scarred our nation. Their dissertations obviously disregard the basic nature of our system of government. One is driven to the conclusion that some of these scientists, who are in positions of leadership because of their professional stature, either lack an understanding of the nature and basis of our democratic processes or choose to ignore them.

So we come to the question natural for lawyers to consider when contemplating these escalating imperfections in our union. Where does the legal profession find itself in this setting? Has it contributed, either by acts of omission or commission, to these failures? Have its members deplored and condemned and done no more?

The reasons advanced for this surge of disrespect for law and the law's enforcers are manifold. We cannot hope to find the antidote for each of them. But it is our responsibility to undertake to cope with those that are within our sphere of influence. One that rests squarely on our shoulders pertains to the functioning of our legal system.

We were admonished by Presidential Commissions over the past few years and of late by no less an authority than the Chief Justice of the United States that our legal machinery needs overhauling, especially as it relates to criminal justice. But these charges are not just of recent vintage. Seventeen years ago, Mr. Justice Robert H. Jackson, then Associate Justice of the Supreme Court of the United States, on the occasion of the cornerstone ceremony of the American Bar Center, uttered this jolting indictment:

"The administration of our criminal law, from one cause or another, is a humiliation and a discredit to our profession and our country. And even civil justice is still delayed or denied, and often beyond the reach of deserving men and women."

Exactly fifty years ago, James M. Beck, then Solicitor General to the United States, asserted that delays and laxity in the administration of justice breed a spirit of contempt for law. He was not the first to so conclude—nor the last. We have been reminded of it repeatedly in current times by public officials, editorial writers and other concerned citizens.

The problems of maintaining an efficient system of administering justice have been with us for decades and constitute a never-ceasing concern, not only to enforcement officials, but as well to our profession and to all other citizens interested in law enforcement. Because of the fast changing conditions of American life, no sooner are some solutions found than new problems arise. The constant rise in the crime rate over the past several years has added burdens to an already overburdened system, resulting in court congestion and undue delays in trials, shortcomings in the prosecution function, failures in rehabilitation responsibilities and other inadequacies and inefficiencies which, unless remedial measures are instituted, are sure to produce increased injustices to society or to the individual, or both.

The bar has not stood idly by and passively observed these developments without counteracting efforts. Much effort has been expended by the bar at various levels and through various media, and considerable good has been achieved. But it has been too little to meet the demand. What is needed is an all-out effort in which the Bar organizations at all levels and in all places join forces to offer the leadership for accomplishing the various improvements that are needed. The support to make this leadership effective must come from citizen involvement. Bar leadership without public response usually is fruitless, but it does not follow that an aroused citizenry could not impose its ideas of reforms without Bar leadership and, what is worse, with unsound leadership.

How heartening it was to learn, after this address had been cast, of the work of Marquette University law students in furtherance of their "Project Outreach." It deserves strong support from the Wisconsin Bar so that it will eventually reach into every city and hamlet in your State.

There came to my desk recently an announcement of a book written by two sociologists, neither of whom is trained in law. The announcement stated, *inter alia*, that in their book they were proposing "formulas for change that would bring about significant improvements in the nation's judicial system." With full appreciation of contributions sociologists can make within their proper sphere of endeavor, my strong

reaction was that it would be most unfortunate if the job of refurbishing our judicial system were left to social scientists. There then arises the real danger that our system of justice would no longer be governed by law and constitutional structures but by sociological dogmas. But if our profession is not to exert a full measure of leadership in the administration of justice, we must not be surprised to see our default result in a preemption by others of what is now our high prerogative.

The wave of disobediences that have swept our country and the attitudes of disrespect for law and the law's enforcers naturally are affecting the discipline of the child. Additionally, the once-existing salutary influence of the home in instilling in the child strong bonds of discipline is waning. As noted by the President's Crime Commission, "what appears to be happening throughout the country . . . is that parental, and especially paternal, authority over young people is becoming weaker. The community is accustomed to relying upon this force as one guarantee that children will learn to fit themselves into society in an orderly and peaceable manner."

How are the destructive examples of some groups of elders to be offset, and how is the effect of diminishing parental guidance to be counteracted? I suggest that, burdened as they may be, we must turn to the schools to serve as the bridge to good citizenship. They must teach—and teach well—that constructive change is attainable by working through our institutions rather than against them. They must aid in rescuing the child from the influences of disobediences and demonstrations of lawlessness.

The American Bar Association, recognizing the great need for inculcating in our youths a better conception of good citizenship, recently adopted a resolution to create a Special Committee on Youth Education for Citizenship. The Committee's function will be "to foster and further high quality programs for the teaching of the legal processes in America's primary and secondary schools." The role of this Committee would be to develop and circulate acceptable guidelines for creating and using curriculum materials; to review, evaluate and promote existing programs and materials; and to develop liaison with state and local bar associations so that there would be a wide circulation of these programs. The Criminal Law Section of the American Bar Association has addressed itself for several years past to this particular endeavor, and the Special Committee on Youth Education for Citizenship will be coordinating its efforts with that of the Criminal Law Section.

But what the American Bar Association is sponsoring will wither on the vine of indifference, unless there is leadership at the grassroots level to supply implementation. School officials must be conferred with to adopt such programs—teachers must be given special courses of

instruction—lawyers and others versed in the processes of our governmental institutions must be available to instruct the teachers—and in every respect, the program must be so conducted as to become an effective medium of transmitting to the child his stake in our society and in its future.

Your organization, which can proudly point to a history of achievement in serving the role of leadership, and others like you, will have the responsibility of spearheading endeavors of the kind I have reviewed with you in response to society's needs. Indeed this is your high prerogative. I know that you will embrace and faithfully discharge these responsibilities.

These remarks can best be closed by repeating these words of Mr. Justice Harlan spoken in 1963 and applicable with even greater force today:

The leadership of the Bar at the community level is becoming more and more a thing of importance in connection with many of the burning issues of the period . . . Their solution requires objectivity, understanding, patience, willingness to reckon with the just demands of history and, above all, insistence upon steadfastness to the orderly processes of our system. The Bar has a peculiar responsibility for furnishing these qualities in great measure.