COMMISSION STATEMENT -

"CIVIL DISOBEDIENCE"

Final Version

COMMISSION STATEMENT ON CIVIL DISOBEDIENCE

DR. MILTON S. EISENHOWER

CHAIRMAN

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NATIONAL COMMISSION ON
THE CAUSES AND PREVENTION OF VIOLENCE

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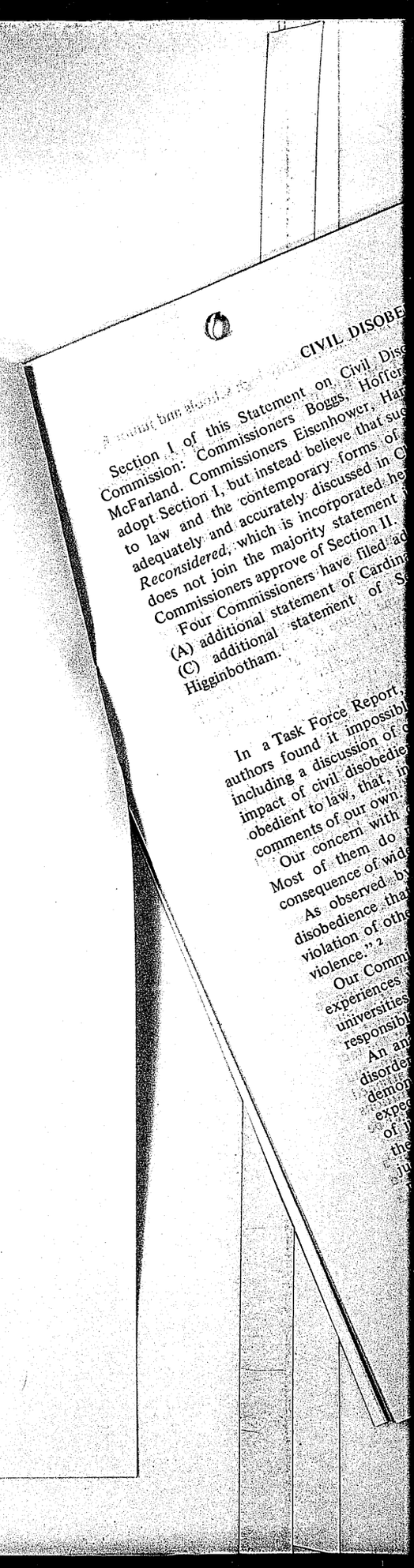

CIVIL DISOBEDIENCE

Section I of this Statement on Civil Disobedience is adopted by a majority of the Commission: Commissioners Boggs, Hoffer, Hruska, Jaworski, Jenner, McCulloch and McFarland. Commissioners Eisenhower, Harris, Hart, Higginbotham and Menninger do not adopt Section I, but instead believe that such relationships as may exist between disobedience to law and the contemporary forms of violence occurring in the United States is more adequately and accurately discussed in Chapter 2 of the Task Force Report, *Law and Order Reconsidered,* which is incorporated herein as Section II of this Statement. Cardinal Cooke does not join the majority statement in Section I but does approve of Section II. Thus, all Commissioners approve of Section II.

Four Commissioners have filed additional statements, appearing in section III as follows: (A) additional statement of Cardinal Cooke, (B) additional statement of Ambassador Harris, (C) additional statement of Senator Hart, and (D) additional statement of Judge Higginbotham.

I

In a Task Force Report, *Law and Order Reconsidered*, presented to our Commission, the authors found it impossible to present a discourse on law and law enforcement without including a discussion of civil disobedience as contemporarily practiced. We, too, regard the impact of civil disobedience practices so relevant to the problem of maintaining our society obedient to law, that, in addition to endorsing the Staff Report,[1] we feel impelled to add comments of our own.

Our concern with civil disobediences is not that they may involve acts of violence *per se.* Most of them do not. Rather, our concern is that erosion of the law is an inevitable consequence of widespread civil disobediences.

As observed by a legal scholar, "... it is necessary to persuade those bent on civil disobedience that their conduct is fraught with danger, that violation of one law leads to violation of other laws, and eventually to a climate of lawlessness that by easy stages leads to violence." [2]

Our Commission heard the testimony of a number of noted educators who described their experiences with and causes of campus disruptions. The head of one of the nation's largest universities summed up his views in this comment: "I think that civil disobediences are mainly responsible for the present law-breaking on university campuses."

An analysis of widely publicized defiances of law antecedent to the eruption of campus disorders supports that conclusion. For several years, our youth have been exposed to dramatic demonstrations of disdain for law by persons from whom exemplary conduct was to be expected. Segregationist governors had disobeyed court orders and proclaimed their defiance of judicial institutions; civil rights leaders had openly disobeyed court injunctions and urged their followers to do likewise; striking teachers' unions members had contemptuously ignored judicial decrees. It was not surprising that college students destroyed scientific equipment and research data, interfered with the rights of others by occupying laboratories and classrooms, and in several instances temporarily closed their colleges.

1. Incorporated herein as Section II.
2. Norman Dorsen, Professor of Law and Director of the Arthur Garfield Hays Liberties Program, New York University School of Law.

The cancerous growth of disobediences has now reached many high schools and junior high schools of the nation.

Pointing out that force and repression are not the only threats to the rule of law, the Dean of one of the nation's largest law schools observed:

> The danger also arises from those groups whose commitments to social reform and the eradication of injustices lead to the defiance of law and the creation of disorder. We are learning that the rule of law can be destroyed through lack of fidelity to the law by large numbers of citizens as well as through abuses of authority by governmental officials.[3]

In our democratic society, lawlessness cannot be justified on the grounds of individual belief. The spectrum of individual consciences encompasses social and political beliefs replete with discordant views. If, for example, the civil libertarian in good conscience becomes a disobeyer of law, the segregationist is endowed with the same choice of conscience, or vice versa. If this reasoning is carried to its logical conclusion, we must also make allowance for the grievances of numerous groups of citizens who regard themselves shackled by laws in which they do not believe. Is each group to be free to disregard due process and to violate laws considered objectionable? If personal or group selectivity of laws to be obeyed is to be the yardstick, we shall face nationwide disobedience of many laws and thus anarchy.

We regard the right of peaceful dissent to be fundamental, not only to the individual freedoms we enjoy, but to the social progress so essential to our nation. Yet, just as fundamental are the disciplines that must control our individual and group actions, without which individual freedoms would be threatened and social progress retarded.

The United States Supreme Court, in upholding convictions for contempt of court of civil rights leaders, admonished all our citizens in these words:

> . . . . no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics or religion . . . . One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom.[4]

Every time a court order is disobeyed, each time an injunction is violated, each occasion on which a court decision is flouted, the effectiveness of our judicial system is eroded. How much erosion can it tolerate? It takes no prophet to know that our judicial system cannot face wholesale violations of its orders and still retain its efficacy. Violators must ponder the fact that once they have weakened their judical system, the very ends they sought to attain—and may have attained—cannot then be preserved. For the antagonist of the disobeyer's attained objectives most likely will proceed viciously to violate them, and since judicial institutions would no longer possess essential authority and power, the "rights" initially gained could be quickly lost.

It is argued that in instances where disobeyers seek to test the constitutionality of a legislative enactment or a court decree, and are willing to accept punishment, their acts should be condoned. We suggest that if in good faith the constitutionality of a statute, ordinance or a court decree is to be challenged, it can be done effectively by one individual or a small group.

3. Francis A. Allen, Dean of the Law School and Professor of Law, University of Michigan.
4. Walker v. City of Birmingham, 388 U.S. 307, 320-321.

While the judicial test is in progress, all other dissenters should abide by the law involved until it is declared unconstitutional.

We commend to our fellow citizens of the words of Richard Cardinal Cushing: ". . . observance of law is the eternal safeguard of liberty, and defiance of law is the surest road to tyranny . . . .Even among law-abiding men, few laws are loved, but they are uniformly respected and not resisted." If we are to maintain and improve our democratic society, the government, including the judiciary, must have the respect and loyality of its citizens.

II*

Over the past two decades increasing numbers of people seem to have embraced the idea that active disobedience to valid law—perhaps even violent disobedience—is justified for the purpose of achieving a desirable political goal. This idea found widespread support in the South as the white majority in that region resisted enforcement of the constitutionally defined rights of Negroes, and some such notion was probably not far from the minds of the Alabama State Troopers when they attacked Dr. King's peaceful demonstration at Selma in 1965. No doubt it was also prominent in the thinking of the Chicago policemen who administered punishment to the demonstrators in Chicago during the Democratic Convention of 1968.

The same idea—that disobedience to law is justified in a good cause which can be furthered in no other way—is also widely held by many students, black citizens and other groups pressing for social change in America today. It is the illegal and sometimes violent activities of these groups that have been most perplexing and disturbing to the great majority of Americans. Their actions have prompted the most intense interest in the ancient philosophical question of man's duty of obedience to the state. Business lunches and suburban cocktail parties have come to sound like freshman seminars in philosophy, as an older generation has argued back and forth over the rightness and the wrongness of "what the kids and the Negroes are doing."

When deliberate, active disobedience to duly enacted, constitutionally valid law is widely engaged in as a political tactic, and when "civil disobedience" is a topic hotly debated on every side, it is impossible for a Task Force on Law and Law Enforcement to file a report that does not discuss this age-old subject, however briefly.

The American Ideal

In a democratic society, dissent is the catalyst of progress. The ultimate viability of the system depends upon its ability to accommodate dissent; to provide an orderly process by which disagreements can be adjudicated, wrongs righted, and the structure of the system modified in the face of changing conditions. No society meets all these needs perfectly. Moreover, political and social organizations are, by their nature, resistant to change. This is as

*This section reproduces Chapter 2 of the Report of our staff Task Force on Law and Law Enforcement *Law and Order Reconsidered*, (U.S. Government Printing Office: Washington, D.C., 1969). The chapter was prepared by the Directors of the Task Force, James S. Campbell, Joseph R. Sahid, and David P. Stang; based in part on contributions by Francis A. Allen, Dean of the Law School, University of Michigan; Charles Monson, Associate Academic Vice President, University of Utah; and Eugene V. Rostow, Professor of Law, Yale University.

it should be, because stability—order—is a fundamental aim of social organization. Yet stability must not become atrophy, and the problem is to strike the proper balance between amenability to change and social stability.

Every society represents a style of living. The style is represented by the way in which people relate to the social structure, the way in which social decisions are made, the procedures which govern the ways people in the society relate to each other. In a democratic society such as ours, the governing ideals are government by the rule of law, equality before the law, and ultimate control of the law-making process by the people. We depend upon these principles both to accommodate and to limit change, and to insure the style of living we prefer.

As Tocqueville observed, America is peculiarly a society of law. The law has played a greater part among us than is the case in any other social system—in our restless and jealous insistence on the utmost range of freedom for the individual; in our zeal to confine the authority of the state within constitutional dikes; and in our use of law as a major instrument of social change. The practice of judicial review in the United States has had an extraordinary development, with no real parallels elsewhere. It has kept the law a powerful and persistent influence in every aspect of our public life.

We believe with Jefferson that the just powers of government are derived—and can only be derived—from the consent of the governed. We are an independent, stiff-necked people, suspicious of power, and hardly docile before authority. We never hesitate to challenge the justness and the constitutional propriety of the powers our governments and other social institutions assert. In the robust and sinewy debates of our democracy, law is never taken for granted simply because it has been properly enacted.

Our public life is organized under the explicit social compact of the Constitution, ratified directly by the people, not the states, and designed to be enforced by the courts and by the political process as an instrument to establish and at the same time to limit the powers of government. As Justice Brandeis once observed, "[t]he doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power. The purpose was not to avoid friction, but by means of the inevitable friction incident to the distribution of the governmental powers among three departments, to save the people from autocracy. . . . And protection of the individual . . . from the arbitrary or capricious exercise of power . . . was believed to be an essential of free government."

The social contract of our Constitution goes beyond the idea of the separation of powers, and of enforceable limits on the competence of government. The governments established by the national and state constitutions of the United States are not omnipotent. A basic feature of the Constitution, made explicit in the Ninth and Tenth Amendments, is that rights not delegated to governments are reserved to the people. The amendments may not be directly enforceable in the courts, but the idea they represent animates many judicial decisions, and influences the course of legislation and other public action.

In a multitude of ways, the Constitution assures the individual a wide zone of privacy and of freedom. It protects him when accused of crime. It asserts his political rights—his right to speak, to vote, and to assemble peaceably with his fellows to petition the government for a redress of his grievances. Freedom of speech and of the press are guaranteed. Religious liberty is proclaimed, and an official establishment of religion proscribed. And the Constitution seeks assurance that society will remain open and diverse, hospitable to freedom, and organized

around many centers of power and influence, by making the rules of federalism and of liberty enforceable in the courts.

The unwritten constitution of our habits is dominated by the same concern for preserving individual freedom against encroachment by the state or by social groups. The anti-trust laws; the rights of labor; the growing modern use of state power to assure the equality of the Negro; the wide dispersal of power, authority, and opportunity in the hands of autonomous institutions of business, labor, and education—all bespeak a characteristic insistence that our social arrangements protect liberty, and rest on the legitimacy of consent, either through the Constitution itself, made by the people, and capable of change only by their will, or through legislation and other established methods of social action.

In broad outline, such is the pluralist social compact which has evolved out of our shared experience as a people. It has its roots in our history. And it grows and changes, in accordance with its own rules and aspirations, as every generation reassesses its meaning and its deals.

Our Contemporary Discontents

Today there are many who maintain that these ideals, and the institutions established to maintain them, no longer operate properly. In recent years, increasing numbers of Americans have taken to the streets to express their views on basic issues. Some come to exercise their right to dissent by parades and picketing. Some dramatize their causes by violating laws they feel to be wrong. Some use the issues being protested as drums to beat in a larger parade. For example, the Vietnam war has been used on one side as a dramatic moment in the ubiquitous, always-evil Communist conspiracy; on the other as an exemplar of the fundamental diabolism of western capitalist nations. Some take to the streets in the belief that the public, if made aware of their grievances, will institute the necessary processes to correct them. Others come in anger; not hopeful, but insistent; serving notice, not seeking audience. Finally, there are even a few who take to the streets to tear at the fabric of society; to confront, to commit acts of violence, to create conditions under which the present system can be swept away.

Out of the widening protest, one disturbing theme has repeatedly appeared. Increasingly, those who protest speak of civil disobedience or even revolution as necessary instruments of effecting needed social change, charging that the processes of lawful change built into the system are inadequate to the task.

The American response to this disobedience to law—to events which are contrary to our fundamental beliefs about the mode of social and political change—has been ambivalent. The reason lies in the fact that the American people are going through a crisis of conscience. The issues in whose name violence has been committed have deeply disturbed and divided the American people. The tactics of the demonstrators have encountered angry opposition, but many Americans continue to sympathize with some or all of the goals sought by the demonstrators. After all, although one might argue that the Negro has advanced in the last ten years, few would maintain he has attained full first-class citizenship. And who would say the ghettos are not an agonizing disgrace? Similarly, Vietnam is hardly an open-and-shut case. The only point of view from which it is clearly praiseworthy is the self-interest of ourselves and our allies. The draft, another key issue, is at best a regrettable and clumsily administered system. Finally, when the young charge that our system—political and social—is shot through with hypocrisy, only the most fanatic feels no twinge.

We must, of course, realize that civil rights demonstrations arise from great suffering, disappointment, and yearning. We must recognize the importance to the democratic process,

and to the ultimate well-being of our nation, of young people combatting hypocrisy and indifference. But when these emotions become a basis for action and when that action creates social disorder, even the most sympathetic are forced to judge whether and to what extent the ends sought justify the means that are being used.

The difficult problem in this endeavor is to maintain perspective. The issues have reached a stage of polarization. Partisans on each side constantly escalate the rhetorical savagery of their positions, adding nothing but volume and abuse. There is a great temptation to take sides without thoughtful inquiry—if for no other reason than because it is simpler. What are some of the considerations which should guide us in this inquiry?

Moral Justifications for Disobedience to Law: The Needs of the Individual

The idea that men have the right to violate the law under certain circumstances is not new. The oldest justification for such action seems to have been through appeal to a higher "natural law" which is the only proper basis of human law. This theory, which dates at least as far back as Plato, and which is in our own Declaration of Independence,[5] has recently found expression in thought of Martin Luther King: A just law is a man-made law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of Saint Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.[6]

For St. Thomas, political authority was derived from God and hence binding in conscience, but where authority was defective in title or exercise, there was no obligation of conscience.[7] Such a condition arose in the case of a ruler who had either usurped power or who, though legitimate, was abusing his authority by ruling unjustly. Indeed, when the ruler contravened the very purpose of his authority by ordering a sinful action, the subject was under an obligation *not* to obey. In the case of abuse of authority, St. Thomas apparently endorsed nothing more than passive resistance by the citizen; but where the ruler illegitimately possessed himself of power through violence, and there was no other recourse for the citizen, then St. Thomas allowed active resistance and even tyrannicide.

Later Catholic thinkers, such as the Jesuit, Francis Suarez, denied the divine rights of kings, holding that the ruler derives his authority immediately from the people and only ultimately from God. These doctrines led logically to the conclusion that in any circumstances in which a ruler turns into a tyrant, whether originally a legitimate ruler or not, he may be deposed by the people, by force if necessary. This conclusion became, of course, the generally accepted view in the secular world, with the theories of Locke and Jefferson and the American and French Revolutions in the eighteenth century and the rise of liberal democracy in the nineteenth.

The notion of a "social compact" was always closely bound up with the emerging ideas of popular sovereignty.[8] This theory, especially prominent in John Locke, expresses the view that governments evolve by the consent of the governed and that the constitution establishing a government is a contract or agreement which, once it is established, is binding upon all men, both those opposed to it and those who favor it. When government's laws are consistent with

5. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."
6. King, "Letter from the Birmingham Jail" (1963).
7. See generally the illuminating article by MacGuigan, "Civil Disobedience and Natural Law," 11 *Catholic Lawyer* 118 (1965).
8. See Copleston, *History of Philosophy*, Vol. 3, (Westminster, Md., 1953), pp. 348–49.

terms of the covenant, then the people must obey them. But the people "are absolved from obedience when illegal attempts are made upon their liberties or properties, and may oppose the unlawful violence of those who were their magistrates when they invade their properties contrary to the trust put in them. . . ."[9]

Most of the unlawful opposition today to the Vietnam war is justified on the ground that the war is itself immoral and "unlawful" in various respects. Since it is immoral, the argument goes, there is no moral duty to obey those laws which are in the aid of the conduct of the war. Indeed, the argument continues, one's true moral duty is to resist the war and to take affirmative action to impede its prosecution. On theories of this kind, Americans have refused to be drafted; they have disrupted Selective Service facilities and destroyed Selective Service records; they have vilified the President, the Secretary of State and the Secretary of Defense and attempted to disrupt their public speeches; they have attempted to bar companies and governmental agencies participating in the war effort from university campuses and to disrupt the universities that refused to accede to that demand.

At the level of individual morality, the problem of disobedience to law is wholly intractable. One is tempted to suggest that even if the war is immoral, the general level of morality of the country is not much improved by the conduct described above. Moreover, if we allow individual conscience to guide obedience to the law, we must take all consciences. The law cannot distinguish between the consciences of saints and sinners. As Burke Marshall has said: "If the decision to break the law really turned on individual conscience, it is hard to see in law how Dr. King is better off than Governor Ross Barnett of Mississippi, who also believed deeply in his cause and was willing to go to jail."[10]

Where issues are framed in purely moral terms, they are usually incapable of resolution by substantially unanimous agreement. Moral decisions are reached by "individual prudential application of principle, with the principles so general as to be only of minimal assistance and with almost the whole field thus left to prudence."[11] This fact is illustrated by the story of the exchange that occurred between Emerson and Thoreau, the latter of whom had in 1845 personally seceded from the United States in protest against slavery. As part of his anti-slavery campaign, Thoreau was spending a night in jail. Emerson paid him a visit, greeting him by saying, "What are you doing in there, Henry?" Thoreau looked at him through the bars and replied, "What are you doing out there, Ralph?"[12]

But the issue raised by conscientious disobedience to law also has some more tractable social dimensions. What is the effect upon our society of this kind of conduct? For instance, how does it affect the people who engage in the disobedience? Does it have an effect upon other people? What does it do to our system of laws?

The Problem of Contagion: The Needs of Society

Although there are some who argue that tolerating any form of law violation serves as an encouragement of other forms of anti-social or criminal behavior by the violators, some research in this area suggests precisely the opposite. A series of studies of approximately 300 young black people who engaged in a series of acts of civil disobedience was undertaken in a western city. On the basis of their observations, the authors concluded: "[T]here have been

9. Locke, *Second Treatise on Civil Government*, ch. 19, "Of the Dissolution of Government," sec. 228.
10. Marshall, "The Protest Movement and the Law," 51 *U. Va. L. Rev.* 785, 800 (1965).
11. MacGuigan, *supra* note 3, at 125.
12. *Ibid.*

virtually no manifestations of delinquency or anti-social behavior, no school drop-outs, and no known illegitimate pregnancies. This is a remarkable record for any group of teen-age children of any color in any community in 1964."[13]

In any event, the evidence is insufficient to demonstrate that acts of civil disobedience of the more limited kind inevitably lead to an increased disrespect for law or propensity toward crime. In fact, some experts have argued that engaging in disciplined civil disobedience allows people to channel resentment into constructive paths, thereby reducing the propensity for engaging in antisocial behavior.

But the fact that disobedience to law does not appear adversely to affect the attitudes of the people who engage in it is only one small part of the problem. For such conduct does have a serious adverse effect both upon other people in the society, and, most importantly of all, upon the system of laws upon which society must inevitably depend.

The effect of civil disobedience upon others in the community is clear. Except in the case of those acts designed solely to appeal to the conscience of the community, the purpose of much contemporary disobedience to law is to influence community action by harassing or intimidating the members of the community into making concessions to a particular point of view. In the case of the opposition to the Vietnam war, for example, those engaged in acts of disobedience are largely bent upon making miserable the lives of public officials who support the war, upon bringing economic pressure to bear on commercial enterprises participating in the war effort, and upon generally inconveniencing the public to dramatize a disaffection for war and convince others that the war is not worth the trouble it is causing. To the extent that these efforts succeed, others are obviously adversely affected.[14] But the most serious effect of all is suggested in the following question: "[W]hat lesson is being taught to the wider community by the precept and example of civil disobedience? It is tutelage in nonviolence or in defiance of authority, in rational confrontation of social ills or in undisciplined activism?"[15] There is every reason to believe that the lesson taught by much of the current disobedience to law is disastrous from the standpoint of the maintenance of a democratic society.

The experience of India in this regard is instructive because that country has had such a long and widespread familiarity with the practice of civil disobedience:

> The fact is that the effect of protest behavior on the functioning of the political system has been palpable. We have already seen that Indians compel official attention and constrain decision-making by deliberately engaging in activities that threaten public order. Violence or the threat of violence has become an important instrument in Indian politics. Public protests involving a threat to public order and nonviolent civil disobedience have become habitual responses to alleged failures by government to do what a group of people want. While it is true that political accommodation is real in India, it is achieved at a higher level of political disorder than in any other of the world's democracies.[16]

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13. Pierce and West, "Six Years of Sit-Ins: Psychodynamics Causes and Effects," 12 *International Journal of Social Psychiatry* 30 (Winter 1966).
14. Even in the narrowly defined situation of acts designed solely to appeal to the conscience of the community, adverse effects frequently flow to others. Thus a refusal to accept induction into the armed services means that someone else must serve.
15. Allen, "Civil Disobedience and the Legal Order," Part 1, 36 *University of Cincinnati Law Review* 1, 30 (1967).
16. Bayley, *Non-violent Civil Disobedience and the Police: Lesson to be Learned from India*, at 15.

The experience of India seems to indicate that civil disobedience has a strong tendency to become a pattern of conduct which soon replaces normal legal processes as the usual way in which society functions. Put in American terms, this would mean, once the pattern is established, that the accepted method of getting a new traffic light might be to disrupt traffic by blocking intersections, that complaints against businessmen might result in massive sit-ins, that improper garbage service might result in a campaign of simply dumping garbage into the street, and so on. Of course, these kinds of actions are not unknown in America today, but in India they have become a necessary part of the political system. Without a massive demonstration to support it, a grievance simply is not taken seriously because everyone knows that if the grievance were serious, there would be a demonstration to support it.

The adverse effect upon normal democratic processes is obvious. Though not intended to destroy democratic processes, civil disobedience tends plainly to impair their operation. This is a fact to which those who engage in civil disobedience should give consideration lest, in seeking to improve society, they may well seriously injure it.

This observation, however, will not answer the arguments of those who believe that the urgency of their message is so strong that illegal tactics are weapons that must be used—whatever the risks that such use may entail. But even urgent messages too frequently repeated lose their appeal. Where once people at least listened patiently, now only deaf ears are turned. Moreover, as Martin Luther King recognized, violence against an oppressor only tends in the long run to justify the oppression. Repeatedly putting one's body "on the line" does not enhance, but diminishes, the worth of that body to the dominant society. Those militants who now advocate revolution as the only alternative have recognized this truth.

The belief that a violent revolution is necessary to achieve social justice depends on the assumption that certain injustices are intrinsic to our system and therefore not amenable to change within the system. For revolution is justified only as a last resort, when justice is achievable by no other means.

We agree with the overwhelming majority of the people in this country that our problems, serious as they are, are not of the kind that make revolution even thinkable, let along justifiable. We believe that political and social mechanisms do exist and have produced significant change in recent years. The remedy for the discontented, we believe, is to seek change through lawful mechanisms, changes of the kind that other chapters of the Task Force report suggest.

But our beliefs and our words are really beside the point. What is important is rather the beliefs of those diverse, alienated groups in our society for whom the political and social mechanisms do not seem to work. We can only hope that the majority will respond convincingly to the needs of the discontented, and that the discontented will remain open to the possibility of achieving this response through peaceful means.

Conclusion

Official lawlessness—by some southern governors, by some policemen, by corrupt individuals in positions of public trust—is widely recognized as intolerable in a society of law, even if this recognition is too infrequently translated into the effective action to do something about the problem. We believe that the time has also come for those participating today in the various protest movements, on and off the college campuses, to subject their disobedience to law to realistic appraisal. The question that needs to be put to young people of generous

impulses all over the country is whether tactics relying on deliberate, symbolic, and sometimes violent lawbreaking are in fact contributing to the emergence of a society that will show enhanced regard for human values—for equality, decency, and individual volition.

For some in the protest movement, this is not a relevant inquiry; their motivations are essentially illiberal and destructive. But this is not descriptive of most of those engaged today in social protest, including most who have violated the law in the course of their protest; their intention is to recall America to the ideals upon which she is founded.

We believe, however, that candid examination of what is occurring in the United States today will lead to the conclusion that disobedience to valid law as a tactic of protest by discontented groups is *not* contributing to the emergence of a more liberal and humane society, but is, on the contrary, producing an opposite tendency. The fears and resentments created by symbolic law violation have strengthened the political power of some of the most destructive elements in American society. Only naive and willful blindness can obscure the strength of these dark forces, which, but for the loosening of the bonds of law, might otherwise lie quiescent beneath the surface of our national life. An almost Newtonian process of action and reaction is at work, and fanaticism even for laudable goals breeds fanaticism in opposition. Just as "extremism in defense of liberty" does not promote liberty, so extremism in the cause of justice will extinguish hopes for a just society.

III

A. Additional Statement of Cardinal Cooke

Our democratic society is based on the concept and common agreement that civil law deserves the respect and obedience of every citizen. Civil disobedience as an act of conscience expressed by public acts of defiance is permissible only as a last resort to obtain justice when all the other remedies available in our system of representation and checks and balances have been exhausted. Civil disobedience can only be justified when a civil law is conscientiously regarded as being clearly in conflict with a higher law—namely our Constitution, the natural law, or divine law. In this extreme case, non-violent forms of civil disobedience, accompanied by willing acceptance of any penalty the law provides, are the only means that can be justified in our democratic society. These principles are not only the foundation of an ordered society under law, but they guarantee our freedom and our social progress as well.

B. Additional Statement of Ambassador Harris

I must take exception to the majority statement of the Commission dealing with civil disobedience. No data developed by or presented to this Commission show a significant relationship between civil disobedience based upon conscience and violence, as the statement itself admits when it says that most civil disobedience does not involve acts of violence *per se.* Furthermore, governmental commissions should tread very lightly, if at all, in fields where individuals make claims of conscience. Those who have urged civil disobedience, from Gandhi to Martin Luther King, and including those who supported the trials of Nazi leaders at Nuremberg, have asserted that there are some laws so repugnant to the dignity of man that regardless of the concurrence of the majority, the law must not be obeyed. A nation whose

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Cardinal Cooke

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history enshrines the civil disobedience of the Boston Tea Party cannot fail to recognize at least the symbolic merit of demonstrated hostility to unjust laws.

I am not nearly so certain as are the supporters of the Commission statement that the legal process will always respond effectively to those who resort only to petition and lawsuit. Perhaps my uncertainty is due to the fact that I see a relationship between the civil disobedience of anti-segregation sit-ins and the eventual elimination of laws requiring segregation of the races. Certainly, black Americans had used legal process at least as early as the Dred Scott case. Yet, despite a Civil War, constitutional amendments, and court decisions, black Americans at the beginning of this decade were still faced with laws and practices treating them as second-class citizens. The majority statement condemns acts such as the sit-ins if they were not for the purpose of instituting a specific test case.

This statement lumps together refusals to obey a law because of the fundamental demands of conscience, on the one hand, and the simple refusal to obey a law because one disagrees with a particular law, on the other. Although I agree that both law violators are to be punished, I believe there is a difference in incidental wilfull violation of the law, and carefully considered violation based upon clearly stated objections that have been brought to the attention of government through traditional legislative-legal process and have nonetheless been ignored..

It should be clear that extensive acts of civil disobedience based upon the demands of conscience are a symptom, and not a cause of societal ills. When otherwise law-abiding citizens claim that conscience will not permit them to obey laws supported by the majority, that majority must, if the society is to remain healthy, examine the laws to ascertain whether they are fair and just, and change them if they are not. This is the process followed in reacting to the civil disobedience of black Americans, and it is a process no less necessary in dealing with others who resort to civil disobedience because of a claim that their conscience will not permit obedience to the law.

I believe, as stated in the Commission Statement on Violence and Law Enforcement, that "every society, including our own, must have effective means of enforcing its laws, whatever may be the claims of conscience of individuals." But law enforcement, without continuing review and modification of law, is not the hallmark of a democratic society.

Those who adopted the majority statement on civil disobedience have never belonged to a group required to sit in the back of the bus, or excluded from restaurants because of race, with the approval of legislatures, courts and administrators. I am a member of such a group, and I refused to obey those segregation laws, even though I knew they had been approved by the Supreme Court in *Plessy* v. *Ferguson* and affirmed by decades of acceptance by the majority. It seems unlikely that the segregation law would have been changed had only one person or a small group indicated opposition to it.

It is not inconceivable to me that other persons may feel as deeply about other subjects as I did about racial segregation, and with equal justification. Such well-founded opposition, even if expressed through the ultimate recourse to civil disobedience, is a reflection of the highest respect and hope for a democratic society. It manifests a faith that if the majority understands the real consequences of its intransigence, the majority will change.

Willingness to incur the wrath and punishment of government can represent the highest loyalty and respect for a democratic society. Such respect and self-sacrifice may well prevent, rather than cause, violence.[17]

17. "In fact, some experts have argued that engaging in disciplined civil disobedience allows people to channel resentment into constructive paths, thereby reducing the propensity for engaging in antisocial behavior." *Law and Order Reconsidered*, Chapter 2, "Disobedience to Law," p. 19 (p. 8 of this statement).

Additional Statement of Senator Hart

Despite the compelling logic of the majority opinion on civil disobedience, I feel that history will continue to note circumstances when it is not immoral to be illegal.

Certainly, it is risky for a society to tolerate the concept of civil disobedience, however non-violent it may be. The British governors of India will testify to that. But my faith in the flexibility of the American democratic system just will not allow me to get terribly "up tight" about the prospect of massive disobedience.

We all revere the rule of law. Yet, legal absolutism is as hard to swallow as straight whisky. A drop of water not only improves the flavor of the grain but diminishes the strain on the system that must absorb it.

Perhaps unfortunately, this issue of unquestioning respect for law arises at a moment of history when the civil rights movement has proven the social efficacy of occasional, selective civil disobedience.

As Ambassador Harris points out in her views, legal absolutism would have had an equally difficult time achieving full consensus after the Boston Tea Party.

If an American citizen honestly feels his conscience to be offended by a law, I would have difficulty disputing his right to dramatize his dissent through disobedience provided that:

a. His disobedience is absent violence on his part, and

b. He is willing to submit to the sanctions that disobedience may visit upon him.

Understand, any tolerance that I might feel toward the disobeyer is dependent on his willingness to accept whatever punishment the law may impose. This willingness provides the test of moral conviction and is the safeguard against capricious lawlessness.

If the dramatic act attracts no sympathy from the public that is its audience, if it raises no issue that evokes mass response, if it makes no constitutional point that the courts can agree with, then little harm is done to the fabric of society.

And if the act illuminates a wrong, some good could come of it. My experience in Congress tells me that remedial legislation is not always enacted in response to the cool logic and moral concepts of the legislators.

Reputable scholars tell us that there are indeed occasions when public "heat" has prodded leadership bodies into actions they may otherwise have avoided—a theory I find difficult to dispute.

My faith in the Constitution is great. And our constitutional system will certainly admit of fewer Joans of Arc than less enlightened structures.

Still, a close scrutiny of my own failings—at the risk of unfairly projecting a generalization from a single specific case—leads me to have some doubts about the infallibility of Congress.

It is even conceivable that I might concur in a bill that history comes to regard as an immoral measure. And if one or several citizens truly feel their consciences so offended by that law that they are willing to accept punishment rather than obey it, then I find it difficult to condemn them in advance.

D. Additional Statement of Judge Higginbotham

1

When this Commission has been unanimous on so many matters of fundamental importance, it is indeed unfortunate that a majority of seven has caused a minority of six to get involved in

Statement of Senator Hart

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an extended debate on the tangential issue of non-violent civil disobedience.[18] The Task Force chapter on "Disobedience To Law,"[19] which apparently all of the Commissioners today adopt, clearly states: "In any event the evidence is insufficient to demonstrate that acts of civil disobedience of the more limited kind lead to an increased disrespect for law or propensity toward crime."

Of course, it is always easier to blame the failures of our society on those who protest than it is to accept our responsibility to create a just society.

Is non-violent civil disobedience, as the majority suggests, the major factor to single out as leading inevitably to the erosion of law and the onset of violence? It was not non-violent civil disobedience which caused the death of the Kennedys and Dr. King. It is not non-violent civil disobedience which causes millions to go to bed ill-housed, ill-fed, and too often with too little hope.

Only last month in their superb report on *Poverty Amid Plenty: The American Paradox*, the President's Commission on Income Maintenance Programs found that in 1968, twenty-five million Americans were living in poverty as measured by the federal government's own poverty index. The Commission further found that:

> . . . severe poverty and its effects throughout the nation and among all ethnic groups. This poverty is not only relative to rising American living standards, but is often stark and absolute. There are too many American families with inadequate shelter, inadequate clothing, absolute hunger, and unhealthy living conditions. Millions of persons in our society do not have a sufficient share of America's affluence to live decently. They eke out a bare existence under deplorable conditions.[20]

The major problem in our country thus is not non-violent civil disobedience; rather, as the National Advisory Commission on Civil Disorders (the Kerner Commission) noted, it has been our failure to have "a realization of common opportunities for all within a single society," and the failure to have a "commitment to national action" which is ". . . .compassionate, massive and sustained, backed by the resources of the most powerful and the richest nation on this earth. From every American it will require new attitudes, new understandings and, above all, new will."[21]

2

During the early 1960's, John Fitzgerald Kennedy, Martin Luther King, Robert Francis Kennedy and Lyndon Baines Johnson gave great hope to many who were weak, or poor, and particularly to those who were non-white.

As I read one portion of the majority's statement, there appears to be an implicit call for a retreat from the spirit of the early 1960's when our country was finally starting to face up to

18. There is no disagreement among any of the Commissioners in our unanimous condemnation of civil disobedience accompanied by violence. I sincerely regret that due to the pressure of our adjournment time, we were not able to have an additional Commission meeting wherein my present separate statement could be presented and considered. For I know that by their *deeds*, some members of this Commission's majority, such as Congressman William M. McCulloch, have been great profiles in courage to all men interested in equal justice under the law. Congressman McCulloch, one of the most distinguished members of the United States House of Representatives, was a member of the Kerner Commission, and for decades he has been a champion for the human rights of all.

19. This chapter is a portion of the extraordinarily excellent and well-balanced report of the Task Force on Law and Law Enforcement under the superb leadership of James S. Campbell, Esquire.

20. Report of the President's Commission on Income Maintenance Programs, *Poverty Amid Plenty: The American Paradox*, (Prelim, Ed., November 12, 1969). p. 1.

21. *Report of the National Advisory Commission on Civil Disorders* (U.S. Government Printing Office: Washington, D.C., 1968), p. 1.

its obligation to right the wrongs which had been imposed on black Americans for more than three centuries. Nowhere is that retreat more evident than in the majority statement that:

> We suggest that if in good faith the constitutionality of a statute, ordinance or a court decree is to be challenged, it could be done effectively by *one* (emphasis added) individual or a small group. While the judicial test is in progress, all other dissenters should abide by the law involved until it is declared unconstitutional.

Is it the majority's position that while Rosa Parks litigated her refusal to take a back seat in 1955 on the Montgomery, Alabama, bus, all other Negroes were obligated to continue to accept the degradation of the rear seats assigned them?

Is the majority suggesting that when the first Negroes sat in at a lunch counter in Greensboro, North Carolina, all other Negroes were forbidden to seek an integrated lunch until the issue reached the Supreme Court? Does the majority suggest that there is no correlation between the march in Selma, Alabama, and the ultimate passage of the 1965 Civil Rights Act?

So that no one will misunderstand me, let me make clear my concern about the outbreak of riots and other violent public disorders. I do not urge, I do not sanction, I do not suggest violence—spontaneous or planned—as a way to correct injustices in our system. Moreover, I believe that all those adjudicated guilty under constitutionally valid laws, whether for conscientious civil disobedience or for some other violation of law, must bear the penalties.

Of course, a willingness to accept such penalties was an outstanding characteristic of the leaders of the civil rights movement during the last two decades (particularly Dr. King)—unlike many of those who unlawfully sought to frustrate the goals of the civil rights movement. The majority statement ignores the many critical distinctions—of which this is just one—between the actions of the civil rights leaders and their powerful opponents in the South who often used violence or who persistently violated their oath of office to uphold the law of the land.

If the majority's doctrine of "everyone wait until the outcome of the one individual test case" had been applied by black Americans in the 1960's, probably not one present major civil rights statute would have been enacted. I fear that the majority's position ignores the sad actual history of some of the most tragic "legal" repression of the civil rights of Negroes in this country.

Burke Marshall, "one of the late President Kennedy's most valued advisors,"[22] set a standard of commitment to human rights which should be a model for our country during its present troubled times. In 1964, in his illuminating book, *Federalism and Civil Rights*, Mr. Marshall then Assistant Attorney General of the Civil Rights Division, discussed the Mississippi experience on the right to vote:

> For significant portions of a few states, and for most of Mississippi, Negro disenfranchisement is still a current practice, almost ninety-five years after the enactment of the Fifteenth Amendment. This has been true since the removal of direct (meaning, in this case, military) federal control over the voting and registration processes, and the return of those processes to the states.
>
> This year [in 1964] we have seen the Governor of one state interfere with a local registration board because too many Negroes were being registered. It was only two years ago that another state passed a whole new set of laws aimed at restricting

22. Foreword by the then Attorney General Robert F. Kennedy, July 15, 1964, to Marshall, *Federalism and Civil Rights*, (New York: Columbia University Press, 1964) p. x.

Negro registration, and last year that a third issued new instructions for the strict use of the registration form as a kind of aptitude test.

When the will to keep Negro registration to a minimum is strong, and the routine of determining whose applications are acceptable is within the discretion of local officials, the latitude for discrimination is almost endless. The practices that can be used are virtually infinite.

In Mississippi then, the statistics alone are illuminating. In 1899, twenty-five years after the armed maneuvering of 1874 and nine years after the 1890 convention, the number of Negroes of voting age who were registered was down to 9 percent. By 1955, the gap had widened. In only eleven counties were over 10 percent registered (and in one of those counties the figure was to fall to less than 2 percent the following year); in eight counties, the figure was between 5 and 10 percent: in twenty counties it was from 1 to 5 percent; and in forty-three counties less than 1 percent of Negroes of voting age were registered. The total Negro registration in the state was slightly over 4 percent. These figures are approximately accurate today.

After the invalidation of the white primary, Negroes were prevented, until 1955, from registering by repeated uses of devices so absurd as to be drearily cynical. They were asked to define, for county registrars themselves without training or education, terms such as ex post facto, habeas corpus, due process of law, impeachment, and to interpret the preamble to the Mississippi Constitution. Some were told that they could not register until they could repeat the entire Mississippi Constitution by heart. In one county, Negro applicants were invariably informed that the registrar was not in. In another they were simply refused permission to apply at all.

The pattern of such practices had its inevitable effect. Except in a handful of counties, Negroes could not register to vote, and they did not try.

Following the school decisions of 1954, Mississippi changed its voting laws to meet the expected onslaught of federal law. These became effective on March 24, 1955. As of March, 1964, . . . data . . . taken from records analysis in seventy-two of the eighty-two counties in the state, describe individual incidents and designs of behavior that resulted in continued Negro disenfranchisement under the new laws.

The records show . . . a wide variation in the comprehensibility of the sections of the Mississippi Constitution chosen to test applicants, a matter within the complete discretion of the registrar. For example, the simplest section used is the one stating that there shall be no imprisonment for debt. In one county, this was given often to whites, but never to Negroes. On the other hand, Negroes have been given most complex sections to explain, such as Section 236, describing in detail the levee taxes for the state.

Where the same section is used to test members of both races, the results are not fairly judged. The records disclosed repeated examples where Negroes were turned down for having given inadequate answers even though their answers were better than those given by whites who were accepted.

There were many instances, throughout the counties, of assistance being given to whites, but not to Negroes. In some counties, application forms filled out by whites consistently showed, beyond any possibility of coincidence, almost identical answers on the constitutional interpretation test. In addition, on many occasions, illiterate whites who could not read or answer the questions on the application form without

help were registered after being coached by the registrar. At the same time, well-educated Negroes were turned down.[23]

I have cited the Mississippi voting experience in some detail because it demonstrates the tenacity with which injustice can cling to an oppressed group for more than one hundred years when legislative and judicial branches lack the will to destroy injustice.

Recent advances in the field of civil rights have not come about—and could never have come about—solely through judicial tests made "by one individual" while all others in the silent black majority waited for the ultimate constitutional determination.

Rather, the major impetus for the Civil Rights Acts of 1957, 1960, 1964 and 1965, which promised more equal access to the opportunities of our society, resulted from the determination, the spirit, and the non-violent commitment of the many who continually challenged the constitutionality of racial discrimination and awakened the national conscience.[24]

3

A debate on civil disobedience is inexpensive and undemanding. It requires no regeneration of our political and social institutions, no effort to open the doors of opportunity to the disadvantaged, no acts of courage and compassion by dedicated individuals seeking to heal the divisions in our society. It requires neither a reordering of national priorities nor a reallocation of our immense financial resources.

A debate on civil disobedience can be costly in one sense, however: it can distract attention from the real work and the real contributions of this Commission. When legislators and future historians appraise the work of our Commission, I hope that they will remember, not this minor skirmish over a secondary issue, but rather the important recommendations we have made under the unending dedication and great leadership of Dr. Eisenhower.[25] Most fervently of all, I further hope that our nation will find the resolve to support, with decisive action, some of the significant programs which we and other national commissions have recommended, and particularly those of sufficient scope and importance to require a reordering of our nation's priorities and a reallocation of our financial resources.

Despite significant contributions which I think this Commission has made, I must confess to a personal sense of increasing "commission frustration." From having served on three previous national fact-finding commissions, I fear that as some of the conditions in America get worse and worse, our reports about these conditions get better and better. There is too little implementation of the rational solutions proposed, and too often the follow-up is only additional studies.

In the last 25 years our country has been deluged with significant presidential and national fact-finding commissions, starting with President Truman's Commission to Secure These Rights in 1947. Some of the other great commissions have included the Crime Commission

23. *Ibid.*, pp. 15-19. See also the perceptive statement of Stephen J. Pollak, the able Assistant Attorney General in charge of the Civil Rights Division in 1968 in his Emancipation Day speech at Mobile, Alabama, Jan. 5, 1969.

24. I do not, of course, suggest that such protests alone produced the important civil rights legislation of the recent decade, for the support was multi-faceted.

25. Dr. Milton S. Eisenhower has been the president of three great Amerian universities. He has been the perfect model of an effective and impartial chairman. He has devoted hundreds of hours to the Commission's task, and, in addition, he has the extraordinary virtue of being able to listen both intently and patiently.

(President's Commission on Law Enforcement and Administration of Justice), The Council to the White House Conference to Fulfill These Rights, the Kerner Commission (National Advisory Commission on Civil Disorders), the Kaiser Commission (President's Committee on Urban Housing), and the Douglas Commission (National Commission on Urban Problems). Thus, the problems of poverty, racism, and crime have been emphasized and re-emphasized, studied and re-studied, probed and re-probed.

Surveying this landscape, littered with the unimplemented recommendations of so many previous commissions, I am compelled to propose a national moratorium on any additional temporary study commissions to probe the causes of racism, or poverty, or crime, or the urban crisis. The rational response to the work of the great commissions of recent years is not the appointment of still more commissions to study the same problems—but rather the prompt implementation of their many valuable recommendations.

The Kerner Commission concluded its report as follows:

> One of the first witnesses to be invited to appear before this commission was Dr. Kenneth B. Clark, a distinguished and perceptive scholar. Referring to the reports of earlier riot commissions, he said:
>
> "I read that report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of '35, the report of the investigating committee on the Harlem riot of '43, the report of the McCone Commission on the Watts riot.
>
> "I must again in candor say to you members of this commission—it is a kind of Alice in Wonderland—with the same moving picture re-shown over and over again, the same analysis, the same recommendations, the same inaction.[26]

And I must also conclude my comments with the perceptive statement of a distinguished psychiatrist, Price M. Cobbs, who testified before our Commission. In a foreword to one of the Task Force reports submitted to us, Dr. Cobbs and his colleague, Dr. Grier, note:

> The National Commission on the Causes and Prevention of Violence has a grave task. If violence continues at its present pace, we may well witness the end of the grand experiment of democracy. The unheeded report of the Kerner Commission pinpointed the cause of our urban violence, and this report presents the tragic consequences when those in power fail to act on behalf of the weak as well as the powerful.
>
> This country can no longer tolerate the divisions of black and white, haves and have-nots. The pace of events has quickened and dissatisfactions no longer wait for a remedy.
>
> There are fewer great men among us to counsel patience. Their voices have been stilled by the very violence they sought to prevent. Martin Luther King, Jr., the noble advocate of non-violence, may have been the last great voice warning the country to cancel its rendezvous with violence before it is too late.
>
> The truth is plain to see. If the racial situation remains inflammatory and the

26. *Report of the National Advisory Commission on Civil Disorders, op. cit.*, p. 265.

conditions perpetuating poverty remain unchanged, and if vast numbers of our young see small hope for improvement in the quality of their lives, then this country will remain in danger. Violence will not go away because we will it and any superficial whitewash will sooner or later be recognized.[27]

27. *The Politics of Protest* (New York: Simon & Schuster, 1969), pp. ix, x. Drs. Cobbs and Grier are the authors of *Black Rage.*

ALL COMMISSIONERS AGREE THAT VIOLENT OR COERCIVE ACTS OF DISOBEDIENCE TO LAW AS A TACTIC TO FURTHER A POLITICAL GOAL, OR TO FORCE CONCESSIONS, ARE TO BE CONDEMNED AS ENDANGERING THE VITAL PROCESSES OF A DEMOCRATIC SOCIETY AND ITS INSTITUTIONS.[1/]

WHERE THE COMMISSIONERS DISAGREE IS SOLELY ON THE QUESTION OF NON-VIOLENT, NON-COERCIVE DISOBEDIENCE TO LAW AS A MEANS EITHER OF LEGALLY TESTING THE CONSTITUTIONAL VALIDITY OF A LAW, OR OF DRAMATIZING INDIVIDUAL CONSCIENTIOUS OBJECTION TO A LAW OR POLICY -- WITH, IN ALL CASES, WILLING ACCEPTANCE OF ANY LEGAL PENALTIES IMPOSED.[2/]

SOME COMMISSIONERS BELIEVE THAT ANY AND ALL ACTS OF THIS LATTER KIND LEAD TO DISRESPECT FOR LAW AND ULTIMATELY TO VIOLENCE; OTHERS TAKE MORE LIMITED POSITIONS ON THIS QUESTION.

[1/] e.g., Student violence on the campuses; unlawful police actions as in Chicago in August, 1968; Ku Klux Klan and other terrorism against Negroes in the South.

[2/] e.g., Civil rights movement "sit-ins", individual refusals to serve in the armed forces in the Vietnam war.

(Portion of the opening remarks of Dr. Milton S. Eisenhower, Chairman of the NCCPV, at the press conference held to release the Commission Statement on Civil Disobedience, Monday, December 8, 1969.)

THE PHILADELPHIA INQUIRER Mon. a.m. 12-8-69

Violence Commission Splits On Civil Disobedience Role

By SAUL FRIEDMAN
Inquirer Washington Bureau

WASHINGTON, Dec. 7. — The President's Commission on the Causes and Prevention of Violence has had its first nasty disagreement. It came over a report on civil disobedience being released Monday.

As a result, six of the panel's 13 members, including chairman Milton Eisenhower, have refused to approve the report, which condemns civil disobedience in virtually all cases as a threat to society.

The report was signed by seven commission members.

"In our democratic society," the report says, "lawlessness cannot be justified on the grounds of individual belief."

SEPARATE VIEWS FILED

Several commissioners who disagreed filed individual views in which they said nonviolent civil disobedience has often been justified.

One of the dissenters, Leon Higginbotham, a Philadelphia federal judge, suggested out of frustration, a "national moratorium on any additional temporary study commissions."

He added, sarcastically, "I fear that as some of the conditions in America get worse and worse, our reports gets better and better . . . but there is too little implementation . . . and too often the follow-up is only additional studies."

SMOOTHING THE RIFT

The commission was appointed by President Johnson last year following the assassinations of Dr. Martin Luther. King in April and Sen. Robert F. Kennedy in June. The commission, which has issued several reports already, ends its service Dec. 15.

During several heated sessions of the commission, Eisenhower sought to smooth the rift by getting agreement on various drafts of a staff report on civil disobedience.

The staff reports condemned violence and much civil disobedience but acknowledged disobeying the law may be justified on occasion.

The more conservative members of the commission, led by Houston attorney Leon Jaworski, insisted on a more clear-cut denunciation of civil disobedience.

Jaworski was a prosecutor at the Nuremberg war crimes trials, which established the precedent that a man is responsible for his own acts and should disobey unjust laws and commands. He was reminded of this by several commissioners.

But Jaworski argued that such precedents did not apply in this country where there is an established society and a body of law which can be changed through legal means.

Jaworski submitted his own report and in a vote got the support of six other commissioners: Congressmen Hale Boggs (D., La.) and William McCulloch (R., O.): Sen. Roman Hruska (R., Neb.); Chicago Attorney Albert Jenner Jr.; Ernest W. McFarland,

Civil Disobedience Disputed

Violence Commission Splits

Continued from First Page

chief justice of the Arizona Supreme Court; and San Francisco longshoreman-author Eric Hoffer.

In addition to Eisenhower and Higginbotham, the minority included: Sen. Philip A. Hart (D., Mich.); law professor Patricia Harris, former dean of the Howard University Law School; psychiatrist Walter Menninger; and Terence Cardinal Cooke, of the New York archdiocese.

The majority reports say, "our concern with civil disobediences is not that they may involve acts of violence per se. Most of them do not. Rather our concern is that erosion of the law is an inevitable consequences of widespread civil disobedience.

"The cancerous growth of disobedience has now reached many high schools and junior high schools of the nation."

Individual belief cannot justify disobedience, the report continued, because "if . . . the civil liberatarian in good conscience becomes a destroyer of law the segregationist is endowed with the same choice of conscience.

"If this reasoning is carried to its logical conclusion we must also make allowance for the grievances of numerous groups of citizens who regard themselves as shackled by laws in which they do not believe.

"Is each group to be free to disregard due process and to violate laws considered objectionable?"

TO TEST THE LAW

The commission majority made one exception — when tests of a a law's constitutionality are intended.

In that case the disobedience "can be done effectively by one individual or a small group. While the judicial test is in progress, all other dissenters should abide by the law involved until it is declared unconstitutional."

In his dissent Higginbotham ridiculed the notion that Negroes in Alabama ought to have remained in the back of the bus during the years it took to litigate the case of Mrs. Rosa Parks, who was arrested for not moving to the back.

HIGHEST LOYALTY

Mrs. Harris, a Negro, said: "Those who have adopted the majority statement . . . have never belonged to a group required to sit in the back of the bus or who have been excluded from a restaurant because of race with the approval of legislators, courts, and administrators.

"Those who have urged civil disobedience, from Ghandi to Martin Luther King, and including those who supported trials at Nuremberg have asserted that there are some laws so repugnant to the dignity of man that regardless of the concurrence of the majority, the law must not be obeyed," Mrs. Harris added.

"The willingness to incur the wrath and punishment of government," she said, "can represent the highest loyalty and respect for a democratic society."

NON-VIOLENT PROTEST

Sen. Hart, whose wife was arrested recently during an anti war demonstration at the Pentagon, said honestly motivated disobedience can be justified, provided it is nonviolent and the demonstrator is prepared to accept the consequences of his act.

"History will continue to note circumstances when it is not immoral to be illegal . . ." Hart said in his dissent. "I might concur in a bill that history comes to regard as an immoral measure. And if one or several citizens truly feels their consciences so offended by that law that they are willing to accept punishment rather than obey it, then I find it difficult to condemn them in advance."

COMMISSION
STATEMENT
ON
CIVIL DISOBEDIENCE

II

Disobedience to Law

[Chapter 2 of Law and Order Reconsidered]

III.

Minority Views on Civil Disobedience

Commissioners Boggs, Hoffer, Hruska, Jaworski, Jenner, McCulloch and McFarland.

Section I of the Commission statement on civil disobedience is adopted by seven members of the Commission: Commissioners [redacted] Eisenhower, Harris, Hart, Higginbotham and Menninger do not adopt Section I, but instead believe that such relationship as may exist between disobedience to law and the contemporary forms of violence occurring in the United States is more adequately and accurately discussed in Chapter 2 of the Task Force report, "Law and Order Reconsidered", which is incorporated herein as section II of this Statement. Thus, all Commissioners approve of section II.

Cardinal Cooke does not join the majority statement in Section I but does approve of Section II.

Three of the dissenting Commissioners have filed additional statements, appearing in this section as follows: (A) additional statement of Ambassador Harris, (B) additional statement of Senator Hart, and (C) additional statement of Judge Higginbotham.

When this Commission has been unanimous on so many matters of fundamental importance,

"Disobedience To Law," 2/ which apparently all of the Commissioners today adopt, clearly stated:

> "In any event the evidence is insufficient to demonstrate that acts of civil disobedience of the more limited kind lead to an increased disrespect for law or propensity toward crime."

Of course it is always easier to blame the failures of our society on those who protest than it is to accept our responsibility to create a just society.

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2/ This chapter is a portion of the extraordinarily excellent and well balanced report of the Task Force on Law and Law Enforcement under the superb leadership of James S. Campbell, Esquire.

I. III.

A [illegible] civil disobedience is inexpensive and [illegible]. It requires no regeneration of our political [illegible] social institutions, no effort to open the doors of opportunity to the disadvantaged, no acts of courage and compassion by dedicated individuals seeking to heal the divisions in our society. It requires neither a reordering of national priorities, nor a reallocation of [illegible]. In one sense, however, it can distract attention from the [illegible].

It is indeed unfortunate that a majority of seven has caused a minority of six to get involved in an extended debate on the tangential issue of non-violent civil disobedience. 1/ The Task Force chapter on "Disobedience To Law," 2/ which apparently all of the Commissioners today adopt, clearly states:

> "In any event the evidence is insufficient to demonstrate that acts of civil disobedience of the more limited kind lead to an increased disrespect for law or propensity toward crime."

Of course it is always easier to blame the failures of our society on those who protest than it is to accept our responsibility to create a just society. I, member, not this minor skirmish over a secondary issue, but rather the

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sufficient scope and importance to require a reordering of our nation's priorities and a reallocation of our financial resources.

A debate on civil disobedience is inexpensive and undemanding. It requires no regeneration of our political and social institutions, no effort to open the doors of opportunity to the disadvantaged, no acts of courage and compassion by dedicated individuals seeking to heal the divisions in our society. It requires neither a reordering of national priorities, nor a reallocation of our immense financial resources.

A debate on civil disobedience can be costly in one sense, however: it can distract attention from the real work and the real contributions of this Commission. When legislators and future historians appraise the work of our commission, I hope that they will remember, not this minor skirmish over a secondary issue, but rather the important recommendations we have made under the unending dedication, and great leadership of Dr. Eisenhower. 9/ Most fervently of all, I further hope that our nation will find the resolve to support, with decisive action, some of the significant programs which we and other national commissions have recommended, and particularly those of

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9/ Dr. Milton S. Eisenhower has been the president of three great American universities. He has been the perfect model of an effective and impartial chairman. He has devoted hundreds of hours to the Commission's task, and, in addition, he has the extraordinary virtue of being able to listen both intently and patiently.

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A-14

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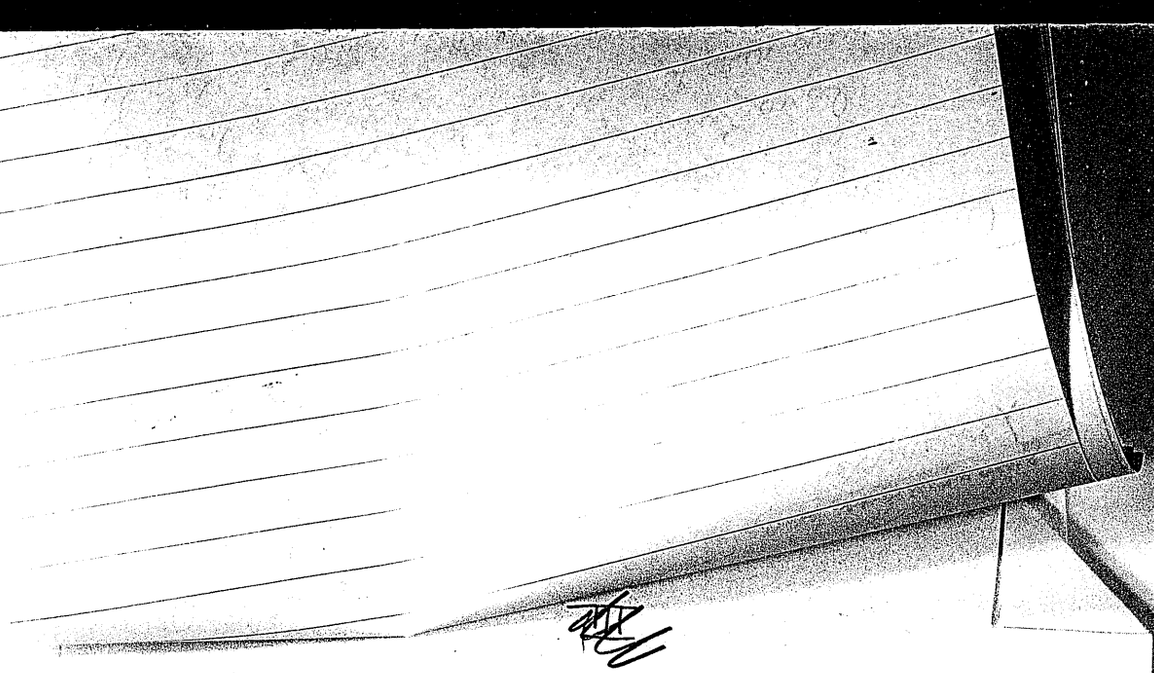

WHEN LEGISLATORS AND FUTURE HISTORIANS APPRAISE THE WORK OF ~~THIS~~ OUR COMMISSION, I HOPE THAT THEY WILL REMEMBER, NOT THIS MINOR SKIRMISH OVER A SECONDARY ISSUE, BUT RATHER THE UNENDING DEDICATION, AND GREAT LEADERSHIP OF DR. EISENHOWER. ~~HAS GIVEN US.~~ THE IMPORTANT RECOMMENDATIONS WE HAVE MADE UNDER I MOST FERVENTLY OF ALL ~~FURTHER~~ HOPE THAT OUR NATION WILL FIND THE RESOLVE TO SUPPORT (WITH DECISIVE ACTION) SOME OF THE SIGNIFICANT PROGRAMS (OF SUFFICIENT SCOPE AND IMPORTANCE TO REQUIRE A REORDERING OF OUR NATION'S PRIORITIES AND A REALLOCATION OF OUR FINANCIAL RESOURCES.) ~~WE RECOMMEND~~ AND PARTICULARLY THOSE ~~WHICH WILL~~ (WHICH WE AND OTHER NATIONAL COMMISSIONS HAVE RECOMMENDED)

~~A DEBATE ON CIVIL DISOBEDIENCE IS INEXPENSIVE. IT DOES NOT REQUIRE A REORDERING OF NATIONAL PRIORITIES, A REALLOCATION OF OUR FINANCIAL RESOURCES.~~

NEITHER A NOR

~~footnote 1~~

1/

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Statement of Cardinal Terence J. Cooke

Our democratic society is based on the ~~xxxxx~~ concept and common agreement that civil law deserves the respect and obedience of every citizen. Civil disobedience as an act of conscience expressed by public acts of defiance is permissible only as a last resort to obtain justice when all the other remedies available in our system of repre- ~~xxxxx~~ sentation and checks and balances have been exhausted. Civil disobedience can only be justified when a civil law is ~~consciously~~ conscientiously regarded as being clearly in conflict with a higher law, -- namely our Constitution, the natural law or divine law. In this extreme case, non-violent forms of civil disobedience are the only means that can be justified in our democratic society. These principles are not only the foundation of an ordered society under law but they guarantee our freedom and our social progress as well.

OK - Kalel

Statement
Separate ~~Views~~ of Senator Hart

Despite the compelling logic of the majority opinion on civil disobedience, I feel that history will continue to note circumsyances when it is not immoral to be illegal.

Certainly, it is risky for a society to tolerate the concept of civil disobedience, however non-violent it may be. The British governors of India will testify to that. But my faith in the flexibility of the American democratic system just will not allow me to get terribly up tight about the prespect of massive disobedience.

We all revere the rule of law. Yet, legal absolutism is as hard to swallow as straight whisky. A drop of water not only improves ~~xxxxxx~~ the flavor of the grain but diminishes the strain on the system that must absorb it.

Perhaps unfortunately, this issue of unquestioning respect for law ari$ses at a moment of history when the civil rights movement has proven the social efficacy of occasional, selective civil disobedience.

As Ambassador Harris points out in her views, legal absolutism would have had an equally difficult time achieving full consensus after the Boston Tea Party.

If an American citizen honestly feels his conscience to be offended by a law, I would have difficulty disputing his right to dramatize his dissent through disobedience provided that:

a. His disobedience is absent violence on his part and

b. He is willing to submit to the sanctions that disobedience may visit upon him.

Understand, any tolerance that I might feel toward the disobeyer is dependent on his willingness to accept whatever punishment the law may impose. This willingness provides the test of moral conviction and is the safeguard against capricious lawlessness.

If the dramatic act attracts no sympathy from the public that is its audience, if it raises no issue that evokes mass response, if it makes no constitutional point that the courts can agree with, then little harm is done to the fabric of society.

And if the act illuminates a wrong, some good could come of it. My experience in Congress tells me that remedial legislation is not always enacted in response to the cool logic and moral concepts of the legislators.

Reputable scholars tell us that there are indeed occasions when public "heat" has prodded leadership bodies into actions they may otherwise have avoided--a theory I find difficult to dispute.

My faith in the Constitution is great. And our constitutional system will certainly admit of fewer Joans of Arc than less enlightened structures.

Still, a close scrutiny of my own [redacted] failings--at the risk of unfairly projecting a generalization from a single specific case-- leads me to have some doubts about the infallibility of Congress.

~~This is a painful decision with an element of fear around the decision,~~

~~but~~ It is even conceivable that I might concur in a bill that history comes to regard as an immoral measure.

And if one or several citizens ~~XXXXXX~~ truly feel their consciences so offended by ~~XXXXXXX the~~ that law that they are willing to accept punishment rather than obey it, then I find it difficult to condemn them in advance.

II

The foregoing statement on civil disobedience was is adopted by seven members of the Commission. Commissioners Cooke, Eisenhower, Harris, Hart, Hesburgh, and Wenmerger do not adopt it, but instead believe that such relationship as may exist between disobedience to law and the contemporary forms of violence occurring in the United States is more adequately and accurately discussed in Chapter 2 of the Task Force report "Law and Order Reconsidered" which is reproduced here as the a section of this Chapter. All Commissioners approve of this Relevant Section.

* * * *

MASTER

I

IT IS INDEED UNFORTUNATE THAT A MAJORITY OF SEVEN HAS CAUSED A MINORITY OF SIX TO GET INVOLVED IN AN EXTENDED DEBATE ON THE TANGENTIAL ISSUE OF NON-VIOLENT CIVIL DISOBEDIENCE.[1] THE ~~COMMISSION~~ TASK FORCE ~~REPORT~~ chapter ON "DISOBEDIENCE TO LAW",[2] WHICH APPARENTLY ALL OF THE COMMISSIONERS TODAY ADOPT, CLEARLY STATES:

> "IN ANY EVENT THE EVIDENCE IS INSUFFICIENT TO DEMONSTRATE THAT ACTS OF CIVIL DISOBEDIENCE OF THE MORE LIMITED KIND LEAD TO AN INCREASED DISRESPECT FOR LAW OR PROPENSITY TOWARD CRIME."

1/ ~~There is no disagreement among any of the Commissioners in their unanimous condemnation of civil disobedience when it is accompanied by violence.~~ New Statement see insert (A)

2/ This chapter is a portion of the extraordinarily excellent and well balanced report of the Task Force on Law and Law Enforcement under the superb leadership of James S. Campbell, Esquire.

(A)

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OF COURSE IT IS ALWAYS EASIER TO BLAME THE FAIL-

URES OF OUR SOCIETY ON THOSE WHO PROTEST THAN IT IS

TO ACCEPT OUR RESPONSIBILITY TO CREATE A JUST SOCIETY.

IS NON-VIOLENT CIVIL DISOBEDIENCE, AS THE MAJORITY SUGGESTS, THE MAJOR FACTOR TO SINGLE OUT AS LEADING INEVITABLY TO THE EROSION OF LAW AND THE ONSET OF VIOLENCE? IT WAS NOT NON-VIOLENT CIVIL DISOBEDIENCE WHICH CAUSED THE DEATH OF THE KENNEDYS AND DR. KING. IT IS NOT NON-VIOLENT CIVIL DISOBEDIENCE WHICH CAUSES MILLIONS TO GO TO BED ILL-HOUSED, ILL-FED, AND TOO OFTEN WITH TOO LITTLE HOPE.

ONLY LAST MONTH IN THEIR SUPERB REPORT ON POVERTY AMID PLENTY: THE AMERICAN PARADOX, THE PRESIDENT'S COMMISSION ON INCOME MAINTENANCE PROGRAMS FOUND THAT IN 1968, TWENTY-FIVE MILLION AMERICANS WERE LIVING IN POVERTY AS MEASURED BY THE FEDERAL GOVERNMENT'S OWN

POVERTY INDEX. THE COMMISSION FURTHER FOUND:

> "...SEVERE POVERTY AND ITS EFFECTS THROUGHOUT THE NATION AND AMONG ALL ETHNIC GROUPS. THIS POVERTY IS NOT ONLY RELATIVE TO RISING AMERICAN LIVING STANDARDS, BUT IS OFTEN STARK AND ABSOLUTE. THERE ARE TOO MANY AMERICAN FAMILIES WITH INADEQUATE SHELTER, INADEQUATE CLOTHING, ABSOLUTE HUNGER, AND UNHEALTHY LIVING CONDITIONS. MILLIONS OF PERSONS IN OUR SOCIETY DO NOT HAVE A SUFFICIENT SHARE OF AMERICA'S AFFLUENCE TO LIVE DECENTLY. THEY EKE OUT A BARE EXISTENCE UNDER DEPLORABLE CONDITIONS." 3/

THE MAJOR PROBLEM IN OUR COUNTRY THUS IS NOT NON-VIOLENT CIVIL DISOBEDIENCE, RATHER, AS THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS (THE KERNER COMMISSION) NOTED, IT HAS BEEN OUR FAILURE TO HAVE "A

Ftnote 3 citation 2(b)

REALIZATION OF COMMON OPPORTUNITIES FOR ALL WITHIN A SINGLE SOCIETY," AND THE FAILURE TO HAVE A "COMMITMENT TO NATIONAL ACTION" WHICH IS "...COMPASSIONATE, MASSIVE AND SUSTAINED BACKED BY THE RESOURCES OF THE MOST POWERFUL AND THE RICHEST NATION ON THIS EARTH. FROM EVERY AMERICAN IT WILL REQUIRE NEW ATTITUDES, NEW UNDERSTANDINGS AND, ABOVE ALL, NEW WILL." 4/

4/ Report of the National Advisory Commission on Civil Disorders (U.S. Government Printing Office: Washington, D.C., 1968), p. 1.

~~Ibid., p. 2~~ 2(c)

II

DURING THE EARLY 1960'S, JOHN FITZGERALD KENNEDY, MARTIN LUTHER KING, ROBERT FRANCIS KENNEDY AND LYNDON BAINES JOHNSON GAVE GREAT HOPE TO MANY WHO WERE WEAK, OR POOR AND PARTICULARLY TO THOSE WHO WERE NON-WHITE.

AS I READ ONE PORTION OF THE MAJORITY'S STATEMENT, THERE APPEARS TO BE AN IMPLICIT CALL FOR A RETREAT FROM THE SPIRIT OF THE EARLY 1960'S WHEN OUR COUNTRY WAS FINALLY STARTING TO FACE UP TO ITS OBLIGATION TO RIGHT THE WRONGS WHICH HAD BEEN IMPOSED ON BLACK AMERICANS FOR MORE THAN THREE CENTURIES. NOWHERE IS THAT RETREAT MORE EVIDENT THAN IN THE MAJORITY STATEMENT THAT:

"WE SUGGEST THAT IF IN GOOD FAITH THE CONSTITUTIONALITY OF A STATUTE, ORDIN-

ANCE OR A COURT DECREE IS TO BE CHALLENGED, IT COULD BE DONE EFFECTIVELY BY ONE INDIVIDUAL OR A SMALL GROUP. WHILE THE JUDICIAL TEST IS IN PROGRESS, ALL OTHER DISSENTERS SHOULD ABIDE BY THE LAW IN VOLVED UNTIL IT IS DECLARED UNCONSTITUTIONAL."

IS IT THE MAJORITY'S POSITION THAT WHILE ROSA PARKS LITIGATED HER REFUSAL TO TAKE A BACK SEAT IN 1955 ON THE MONTGOMERY, ALABAMA BUS, ALL OTHER NEGROES WERE OBLIGATED TO CONTINUE TO ACCEPT THE DEGRADATION OF THE REAR SEATS ASSIGNED THEM?

IS THE MAJORITY SUGGESTING THAT WHEN THE FIRST NEGROES SAT IN AT A LUNCH COUNTER IN GREENSBORO, NORTH CAROLINA, ALL OTHER NEGROES WERE FORBIDDEN TO SEEK AN

Insert for page 15.

Moreover, I believe that all those adjudicated guilty under constitutionally valid laws, whether for conscientious civil disobedience or for some other violation of law, must bear the penalties. Of course, a willingness to accept such penalties was an outstanding characteristic of the leaders of the civil rights movement during the last two decades (particularly Dr. King) -- unlike many of those who unlawfully sought to frustrate the goals of the civil rights movement.

The majority statement ignores the many critical distinctions -- of which this is just one -- between the actions of the civil rights leaders and their powerful opponents in the South who often used violence and who persistently violated their oath of office to uphold the law of the land. HAVE BEEN ENACTED. I FEAR THAT THE MAJORITY'S POSITION IGNORES THE SAD ACTUAL HISTORY OF SOME OF

INTEGRATED LUNCH UNTIL THE ISSUE REACHED THE SUPREME

COURT? Does the majority suggest that there is no correlation between the march in Selma, Alabama and the ultimate passage of the 1965 Civil Rights Act?

SO THAT NO ONE WILL MISUNDERSTAND ME, let me make clear my CONCERN ABOUT THE OUTBREAK OF RIOTS AND other violent PUBLIC DISORDERS. I DO NOT URGE, I DO NOT SANCTION, I DO NOT SUGGEST VIOLENCE AS A WAY TO CORRECT ~~OUR~~ spontaneous or planned injustices in OUR SYSTEM. RIDER (A) ~~However I believe that all those adjudicated guilty under constitutionally valid laws must bear the penalties.~~ IF THE MAJORITY'S DOCTRINE OF "EVERYONE WAIT UNTIL THE OUTCOME OF THE ONE INDIVIDUAL TEST CASE" ~~whether for conscientious civil disobedience or for some other violation of law~~ HAD BEEN APPLIED BY BLACK AMERICANS IN THE 1960'S, PROBABLY NOT ONE PRESENT MAJOR CIVIL RIGHTS STATUTE WOULD HAVE BEEN ENACTED. I FEAR THAT THE MAJORITY'S POSITION ~~IS TOO COMPATIBLE WITH~~ IGNORES THE SAD ACTUAL HISTORY OF SOME OF

THE MOST TRAGIC "LEGAL" ~~AND EXTRA-LEGAL~~ REPRESSION OF

THE CIVIL RIGHTS OF NEGROES IN THIS COUNTRY.

BURKE MARSHALL, "ONE OF THE LATE PRESIDENT

KENNEDY'S MOST VALUED ADVISORS"[5][31],, SET A STANDARD OF

COMMITMENT TO HUMAN RIGHTS WHICH SHOULD BE A MODEL

FOR OUR COUNTRY DURING ITS PRESENT TROUBLED TIMES.

IN 1964, IN HIS ILLUMINATING BOOK, "FEDERALISM AND

CIVIL RIGHTS" THE THEN ASSISTANT ATTORNEY GENERAL OF

THE CIVIL RIGHTS DIVISION, ~~WORKED~~ Discussed THE MISSISSIPPI

EXPERIENCE ON THE RIGHT TO VOTE:

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[5][31] Foreword of the then Attorney General Robert F. Kennedy, July 15, 1964, to Marshall, Federalism and Civil Rights, page x. (Columbia University Press: New York, 1964)

"FOR SIGNIFICANT PORTIONS OF A FEW STATES, AND FOR MOST OF MISSISSIPPI, NEGRO DISENFRANCHISEMENT IS STILL A CURRENT PRACTICE, ALMOST NINETY-FIVE YEARS AFTER THE ENACTMENT OF THE FIFTEENTH AMENDMENT. THIS HAS BEEN TRUE SINCE THE REMOVAL OF DIRECT (MEANING, IN THIS CASE, MILITARY) FEDERAL CONTROL OVER THE VOTING AND REGISTRATION PROCESSES, AND THE RETURN OF THOSE PROCESSES TO THE STATES.

* ** *

"THIS YEAR [IN 1964] WE HAVE SEEN THE GOVERNOR OF ONE STATE INTERFERE WITH A LOCAL REGISTRATION BOARD BECAUSE TOO MANY NEGROES WERE BEING REGISTERED. IT WAS ONLY TWO YEARS AGO THAT ANOTHER STATE PASSED A WHOLE NEW SET OF LAWS AIMED AT RESTRICTING NEGRO REGISTRATION, AND LAST YEAR THAT A THIRD ISSUED NEW INSTRUCTIONS FOR THE STRICT USE OF THE REGISTRATION FORM AS A KIND OF APTITUDE TEST.

"WHEN THE WILL TO KEEP NEGRO REGISTRA-

TION TO A MINIMUM IS STRONG, AND THE ROUTINE OF DETERMINING WHOSE APPLICATIONS ARE ACCEPTABLE IS WITHIN THE DISCRETION OF LOCAL OFFICIALS, THE LATITUDE FOR DISCRIMINATION IS ALMOST ENDLESS. THE PRACTICES THAT CAN BE USED ARE VIRTUALLY INFINITE.

"IN MISSISSIPPI THEN, THE STATISTICS ALONE ARE ILLUMINATING. IN 1899, TWENTY-FIVE YEARS AFTER THE ARMED MANEUVERING OF 1874 AND NINE YEARS AFTER THE 1890 CONVENTION, THE NUMBER OF NEGROES OF VOTING AGE WHO WERE REGISTERED WAS DOWN TO 9 PERCENT. BY 1955, THE GAP HAD WIDENED. IN ONLY ELEVEN COUNTIES WERE OVER 10 PERCENT REGISTERED (AND IN ONE OF THOSE COUNTIES THE FIGURE WAS TO FALL TO LESS THAN 2 PERCENT THE FOLLOWING YEAR); IN EIGHT COUNTIES, THE FIGURE WAS BETWEEN 5 AND 10 PERCENT: IN TWENTY COUNTIES IT WAS FROM 1 TO 5 PERCENT; AND IN FORTY-THREE COUNTIES LESS THAN

1 PERCENT OF NEGROES OF VOTING AGE WERE REGISTERED. THE TOTAL NEGRO REGISTRATION IN THE STATE WAS SLIGHTLY OVER 4 PERCENT. THESE FIGURES ARE APPROXIMATELY ACCURATE TODAY.

"AFTER THE INVALIDATION OF THE WHITE PRIMARY, NEGROES WERE PREVENTED, UNTIL 1955, FROM REGISTERING BY REPEATED USES OF DEVICES SO ABSURD AS TO BE DREARILY CYNICAL. THEY WERE ASKED TO DEFINE, FOR COUNTY REGISTRARS THEMSELVES WITHOUT TRAINING OR EDUCATION, TERMS SUCH AS EX POST FACTO, HABEAS CORPUS, DUE PROCESS OF LAW, IMPEACHMENT, AND TO INTERPRET THE PREAMBLE TO THE MISSISSIPPI CONSTITUTION. SOME WERE TOLD THAT THEY COULD NOT REGISTER UNTIL THEY COULD REPEAT THE ENTIRE MISSISSIPPI CONSTITUTION BY HEART. IN ONE COUNTY, NEGRO APPLICANTS WERE INVARIABLY INFORMED THAT THE REGISTRAR WAS NOT IN. IN ANOTHER THEY WERE SIMPLY REFUSED PERMISSION TO APPLY AT ALL.

"THE PATTERN OF SUCH PRACTICES HAD ITS

INEVITABLE EFFECT. EXCEPT IN A HANDFUL OF COUNTIES, NEGORES COULD NOT REGISTER TO VOTE, AND THEY DID NOT TRY.

"FOLLOWING THE SCHOOL DECISIONS OF 1954, MISSISSIPPI CHANGED ITS VOTING LAWS TO MEET THE EXPECTED ONSLAUGHT OF FEDERAL LAW. THESE BECAME EFFECTIVE ON MARCH 24, 1955. AS OF MARCH, 1964, ... DATA... TAKEN FROM RECORDS ANALYSIS IN SEVENTY-TWO OF THE EIGHTY-TWO COUNTIES IN THE STATE, DESCRIBE INDIVIDUAL INCIDENTS AND DESIGNS OF BEHAVIOR THAT RESULTED IN CONTINUED NEGRO DISENFRANCHISEMENT UNDER THE NEW LAWS.

"THE RECORDS SHOW, ~~FOR INSTANCE,~~ A WIDE VARIATION IN THE COMPREHENSIBILITY OF THE SECTIONS OF THE MISSISSIPPI CONSTITUTION CHOSEN TO TEST APPLICANTS, A MATTER WITHIN THE COMPLETE DISCRETION OF THE REGISTRAR. FOR EXAMPLE, THE SIMPLEST SECTION USED IS THE ONE STATING THAT THERE SHALL BE NO IMPRISONMENT FOR DEBT. IN ONE COUNTY, THIS WAS GIVEN OFTEN TO WHITES, BUT NEVER TO NEGROES. ON THE OTHER HAND, NEGROES

HAVE BEEN GIVEN MOST COMPLEX SECTIONS TO EXPLAIN, SUCH AS SECTION 236, DESCRIBING IN DETAIL THE LEVEE TAXES FOR THE STATE.

"WHERE THE SAME SECTION IS USED TO TEST MEMBERS OF BOTH RACES, THE RESULTS ARE NOT FAIRLY JUDGED. THE RECORDS DISCLOSED REPEATED EXAMPLES WHERE NEGROES WERE TURNED DOWN FOR HAVING GIVEN INADEQUATE ANSWERS EVEN THOUGH THEIR ANSWERS WERE BETT ER THAN THOSE GIVEN BY WHITES WHO WERE ACCEPTED.

"THERE WERE MANY INSTANCES, THROUGHOUT THE COUNTIES, OF ASSISTANCE BEING GIVEN TO WHITES, BUT NOT TO NEGROES. IN SOME COUNTIES, APPLICATION FORMS FILLED OUT BY WHITES CONSISTENTLY SHOWED, BEYOND ANY POSSIBILITY OF COINCIDENCE, ALMOST IDENTICAL ANSWERS ON THE CONSTITUTIONAL INTERPRETATION TEST? IN ADDITION, ON MANY OCCASIONS, ILLITERATE WHITES WHO COULD NOT READ OR ANSWER THE QUESTIONS ON THE APPLICATION FORM WITHOUT HELP

WERE REGISTERED AFTER BEING COACHED BY THE REGISTRAR. AT THE SAME TIME, WELL-EDUCATED NEGROES WERE TURNED DOWN...." 6/

I HAVE CITED THE MISSISSIPPI VOTING EXPERIENCE IN SOME DETAIL BECAUSE IT DEMONSTRATES THE TENACITY WITH ~~WHICH~~ WHICH INJUSTICE CAN CLING TO AN OPPRESSED GROUP FOR MORE THAN ONE HUNDRED YEARS WHEN LEGISLATIVE AND JUDICIAL BRANCHES LACK THE WILL TO DESTROY INJUSTICE.

(A)

...OF CIVIL RIGHTS

See also the perceptive statement of Stephen J. Pollak, the able Assistant U.S. Atty. General in charge of Civil Rights Division in his Emancipation Day speech at Mobile Ala. Jan. 5, 1969 (in 1968)

spoke

...1960, 1964 AND 1965, WHICH ...

6 Ibid., 15-19.

EQUAL ACCESS TO THE ~~BALLOT BOX~~ opportunities of our society, RESULTED FROM THE DETERMINATION, THE SPIRIT, AND THE NON-VIOLENT COMMITMENT OF THE MANY WHO CONTINUALLY CHALLENGED THE CONSTITUTIONALITY OF RACIAL DISCRIMINATION AND AWAKENED THE NATIONAL CONSCIENCE. 7/

7/ I do not, of course, suggest that such protests alone produced the important civil rights legislation of the recent decade, for the support was multi-faceted.

Despite significant contributions which I think this Commission has made, I must confess to a personal sense of increasing commission frustration from having served on three previous national fact-finding commissions. I fear that as some of the conditions in America get worse and worse, our reports about these conditions get better and better. There is too little implementation of the rational solutions proposed, and too often the follow-up is only additional studies. In the last 25 years our country has been deluged with significant Presidential and national fact-finding commissions, starting with President Truman's Commission to Secure These Rights in 1947. Thus the problems of poverty, racism and crime have been emphasized and studied, reemphasized and re-studied, moved and re-moved. Some of the other great commissions have included the Crime Commission (President's Commission on Law Enforcement and Administration of Justice), the Council to the White House Conference to Fulfill These Rights, the Kerner Commission (The National Advisory Commission on Civil Disorders), the Kaiser Commission (President's Committee on Urban Housing), and the Commission on National Urban Problems (Douglas Commission).

Surveying this landscape, littered with the unimplemented recommendations of so many previous commissions, I am compelled to propose a national moratorium on any additional temporary study commissions to probe the causes of racism, or poverty, or crime,

~~From an era of study, let us move forward to an era~~

or the urban crisis. ~~Let us move resolutely from studies to implementation today -- today!~~

AS FOLLOWS.

"ONE OF THE [illegible] TO BE INVITED TO APPEAR BEFORE THIS COMMISSION WAS DR. KENNETH B. CLARK, A DISTINGUISHED AND PERCEPTIVE SCHOLAR. REFERRING TO THE REPORTS OF EARLIER RIOT COMMISSIONS HE [illegible] THE SAME MOVING PICTURE RE-SHOWN OVER AND OVER AGAIN, IN [illegible]. AND IT IS AS IF I WERE READING [illegible] OF THE INVESTIGATING COMMITTEE ON THE HARLEM RIOT OF '35, THE REPORT OF THE INVESTIGATING COMMITTEE ON THE HARLEM RIOT OF '43 AND [illegible] THE MOORE COMMISSION ON THE WATTS RIOT.

I MUST AGAIN IN CANDOR SAY TO YOU MEMBERS OF THIS COMMISSION -- IT IS A KIND OF ALICE IN WONDERLAND -- WITH THE SAME MOVING PICTURE RE-SHOWN OVER AND OVER AGAIN, THE SAME ANALYSIS, THE SAME RECOMMENDATIONS, THE SAME INACTION.[9]

The national response to the work of the great commissions of recent years is not the appointment of more commissions to study the problem but rather the prompt implementation of the many valuable recommendations.

[9] Report of the National Advisory Commission on Civil Disorders (U.S. Government Printing Office: Washington D.C., 1968), p. [illegible].

THE KERNER COMMISSION CONCLUDED ITS REPORT AS FOLLOWS:

> "ONE OF THE FIRST WITNESSES TO BE INVITED TO APPEAR BEFORE THIS COMMISSION WAS DR. KENNETH B. CLARK, A DISTINGUISHED AND PERCEPTIVE SCHOLAR. REFERRING TO THE REPORTS OF EARLIER RIOT COMMISSIONS, HE SAID:
>
> "'I READ THAT REPORT...OF THE 1919 RIOT IN CHICAGO, AND IT IS AS IF I WERE READING THE REPORT OF THE INVESTIGATING COMMITTEE ON THE HARLEM RIOT OF '35, THE REPORT OF THE INVESTIGATING COMMITTEE ON THE HARLEM RIOT OF '43, THE REPORT OF THE McCONE COMMISSION ON THE WATTS RIOT.
>
> "'I MUST AGAIN IN CANDOR SAY TO YOU MEMBERS OF THIS COMMISSION -- IT IS A KIND OF ALICE IN WONDERLAND -- WITH THE SAME MOVING PICTURE RE-SHOWN OVER AND OVER AGAIN, THE SAME ANALYSIS, THE SAME RECOMMENDATIONS, THE SAME INACTION.'" 9/

9/ Report of the National Advisory Commission on Civil Disorders (U.S. Government Printing Office: Washington, D.C., 1968), p. 265.

also

AND I MUST CONCLUDE MY COMMENTS WITH THE PERCEPTIVE STATEMENT OF A DISTINGUISHED PSYCHIATRIST, PRICE M. COBBS, WHO TESTIFIED BEFORE OUR COMMISSION IN A FOREWORD TO ONE OF THE TASK FORCE REPORTS SUBMITTED TO US*, DR. COBBS AND HIS COLLEAGUE, DR. GREER, NOTE:[10]

> "THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE HAS A GRAVE TASK. IF VIOLENCE CONTINUES AT ITS PRESENT PACE, WE MAY WELL WITNESS THE END OF THE GRAND EXPERIMENT OF DEMOCRACY. THE UNHEEDED REPORT OF THE KERNER COMMISSION PINPOINTED THE CAUSE OF OUR URBAN VIOLENCE, AND THIS REPORT PRESENTS THE TRAGIC CONSEQUENCES WHEN THOSE IN POWER FAIL TO ACT ON BEHALF OF THE WEAK AS WELL AS THE POWERFUL.
>
> * * *
>
> ~~"...AN UNDERSTANDING OF VIOLENCE DOES NOT MEAN THAT IT WILL BE CONDONED, BUT THAT THE BETTER INFORMED WILL BE IN A BETTER POSITION TO REMOVE ITS CAUSES...."~~

Drs. Cobbs and Grier are the authors of Black Rage (

[10] The Politics of Protest (Simon & Schuster, New York, 1969), pp. IX, X.

"OUR COUNTRY SEEMS ONLY TO RESPOND TO A VISIBLE DOMESTIC VIOLENCE WHERE PEOPLE ARE KILLED OR INJURED AND PROPERTY IS DESTROYED. IN THE WAKE OF THIS TYPE OF VIOLENCE THERE ARE DEMANDS FOR LAW AND ORDER, AND THEN PROMPTLY FORGOTTEN ARE THE VICTIMS AND CAUSES OF SUCH VIOLENCE.

"...TO ALLOW MILLIONS OF AMERICANS TO REMAIN HUNGRY, TO SUBSIST IN POVERTY AND TO LIVE IN UNFIT HOUSING IS AS DESTRUCTIVE TO THEM AS ACTUAL PHYSICAL VIOLENCE. ...

"...A SOCIETY SOLVES A PROBLEM ONLY WHEN A MAJORITY OF ITS PEOPLE INVOLVES ITSELF IN THE PROCESS OF RESOLUTION. THIS COUNTRY CAN NO LONGER TOLERATE THE DIVISIONS OF BLACK AND WHITE, HAVES AND HAVE-NOTS. THE PACE OF EVENTS HAS QUICKENED AND DISSATISFACTIONS NO LONGER WAIT FOR A REMEDY.

"THERE ARE FEWER GREAT MEN AMONG US TO COUNSEL PATIENCE. THEIR VOICES HAVE BEEN STILLED BY THE VERY VIOLENCE THEY SOUGHT TO PREVENT. MARTIN LUTHER KING, JR., THE NOBLE ADVOCATE OF NONVIOLENCE, MAY HAVE BEEN THE LAST GREAT VOICE WARNING THE

COUNTRY TO CANCEL ITS RENDEZVOUS WITH VIOLENCE BEFORE IT IS TOO LATE.

"THE TRUTH IS PLAIN TO SEE. IF THE RACIAL SITUATION REMAINS INFLAMMATORY AND THE CONDITIONS PERPETUATING POVERTY REMAIN UNCHANGED, AND IF VAST NUMBERS OF OUR YOUNG SEE SMALL HOPE FOR IMPROVEMENT IN THE QUALITY OF THEIR LIVES, THEN THIS COUNTRY WILL REMAIN IN DANGER. VIOLENCE WILL NOT GO AWAY BECAUSE WE WILL IT AND ANY SUPERFICIAL WHITEWASH WILL SOONER OR LATER BE RECOGNIZED."

9/ In August of 1968 the Library of Congress compiled a list of the committees, commissions, boards, councils and task forces created since 1965 to advise the President, the Congress or the Executive agencies. Though the reference to each commission was limited to a one paragraph statement of its mandate, a list of the members and principal staff, and a citation to the commission report, the compilation for this three and one half year period alone nonetheless ran to 218 pages.

In August of 1968 the Library of Congress compiled a list of the ~~#~~ committees, commissions, boards, councils and task forces created (since 1965) to advise the Presidents, the Congress or the Executive agencies. Though the reference to each commission was limited to a one paragraph ~~statement~~ statement of its mandate, a list of the members and principal staff, and a citation to the commission report, the compilation for this three and one half year period alone nonetheless ran to 218 pages.

Recent studies have found that between January of 1964 and the end of May 1968 there were 239 ghetto riots and disturbances, comprising 523 days of hostilities and resulting in 49,607 persons arrested; 7,942 wounded; and 191 killed. Moreover, it has been conservatively estimated by the Permanent Subcommittee on Investigation of the Senate Government Operations Committee that in the period 1965-1967 riots caused property damage estimated at $210.6 million and economic losses of $504.2 million.

LEON JAWORSKI

BANK OF THE SOUTHWEST BLDG.
HOUSTON, TEXAS 77002

November 19, 1969

Dear Lloyd:

On yesterday, I sent you copy of letter to Dr. Eisenhower and a draft of the insert on civil disobedience we discussed at our last meeting.

Perhaps I did not make it clear that the insert that I propose is to be in lieu of everything beginning with the end of the sentence on line two of page 17 and to the end of that subject.

I had made rearrangements in an effort to be with you on Friday, but at the moment it seems that I cannot accomplish it. In addition to other complications, I have contracted a cold that would make it inadvisable to fly that far.

I have not applied the "slicking" process to this draft and doubtless there may be words or phrases that some shifting around may help. For example, the last sentence on page three needs such treatment, and I am enclosing a substitute page for the earlier draft I sent you.

If for any reason, the substance of this draft is not acceptable to the Commission, I will want to exercise the privilege of writing separately on the subject of civil disobedience. Please be good enough to advise me of the action the Commission took so that I may be governed accordingly.

Regretting that I will not see you this week and with every good wish and kindest regards, I am

Sincerely yours,

Original Signed By
Leon Jaworski

Lloyd N. Cutler, Esquire
Wilmer, Cutler & Pickering
900 - 17th Street, N.W.
Washington, D. C. 20006

bcc: Mr. James Campbell
Dear Jim:
Much to my regret, it looks like I will have to leave to the Commission and the staff the consideration

of my draft on civil disobedience without having the opportunity of joining in the discussion for the reasons assigned in my letter to Lloyd. I sent copies of my first draft to all of the members of the Commission. I notice in the draft that a comma here and there would be of some help. I particularly felt that the last sentence on page 3 should be restated, and I am handing you a new page 3.

Would you please have enough copies reproduced so that the Commission members will have this draft before them. Some may have not received the copy I sent, and, besides, there is a change in the last line on page 3.

To make clear just where my excerpt belongs, I propose it follow the sentence on top of page 17 reading "Disruption has become a style, with many eager followers". My insert is to be used in lieu of everything else that appears on pages 17, 18 and 19. The three paragraphs on page 18 are taken from the Task Force Report which we have already embodied the adoption in my insert.

Thanking you and with best wishes, I am

Sincerely yours,

Clear

Pointing out that force and repression are not the only threats to the rule of law, the Dean[3] of one of the nation's largest law schools observed:

> "The danger also arises from those groups whose commitments to social reform and the eradication of injustice lead to the defiance of law and the creation of disorder. We are learning that the rule of law can be destroyed through lack of fidelity to the law by large numbers of citizens as well as through abuses of authority by governmental officials".

In our democratic society, techniques of lawlessness cannot be justified on the grounds of individual beliefs. The spectrum of individual consciences usually encompasses social and political beliefs replete with discordant views. If self-serving selectivity of laws and decrees to obey as well as to defy is to be the yardstick, the rule of law will be emasculated and give way to the course of individual choice.

Those who rest their argument on the right to follow their conscience must realize that there exists no exclusive claim to such a right. If the civil libertarian in good conscience becomes a disobeyer of law, why is not the segregationist endowed with the same choice of conscience? If this reasoning is to be carried to its logical conclusion, we must also make allowance for the grievances of numerous groups of citizens who regard themselves shackled by laws in which they do not believe. Is each group to be free to disregard due process and to violate with impunity such laws as offend consciences?

---

[3] Francis A. Allen, Dean of the Law School and Professor of Law, University of Michigan.

Jerome Skolnick, George L. Saunders,
and Morris Janowitz

November 5, 1968

James S. Campbell
General Counsel

Attached for your information is material from the Justice Department's Civil Disturbance Information Unit, constituting the data underlying the attached press release.

Attachments

Department of Justice

Carol – Mr. Moroni said he would send over the chron reports on which these based. Deliver to me when they come, please. RC

FOR IMMEDIATE RELEASE
THURSDAY, OCTOBER 3, 1968

REPORT BY ATTORNEY GENERAL RAMSEY CLARK

Summer has been the season for riots and other civil disturbances. There were many reasons to believe the summer of 1968 would be the worst in our history. In the spring, most observers thought so.

Yet, there was a clear and significant decline in the number and severity of riots and disorders this summer.

The Civil Disturbance Information Unit of the Department of Justice recorded 19 deaths resulting from civil disturbances during June, July and August of 1968 compared with 87 during the same period of last year.

The National Guard was called in for assistance six times during summer 1968 compared with 18 during summer 1967.

The number of disturbances listed as major or serious by the Information Unit was 25 this summer compared with 46 last summer.

THE TOTALS:

	Major		Serious		Minor		Deaths	
	1967	1968	1967	1968	1967	1968	1967	1968
June	2	2	5	4	12	18	4	2
July	8	3	25	6	66	43	81	11
August	1	2	5	8	14	34	2	6
Totals:	11	7	35	18	92	95	87	19

The accuracy of the statistics concerning minor disorders is questionable. It is believed that reporting of such disturbances has been more complete during 1968 as the report system has developed.

Major disturbances included vandalism, arson, looting or gun fire, the use of outside police force or troops, the use of a curfew, involved more than 300 people and lasted longer than 12 hours. Serious disturbances involved more than 150 people, lasted longer than three hours and included any of these four elements: vandalism, arson, looting or gun fire, or the use of outside police forces or troops.

OVER

However, the riots following the slaying of Dr. Martin Luther King, Jr. made April 1968 the second worst month of rioting in recent years. There were 46 deaths in April compared with 81 in July 1967.

Three riots in 1967--at Cincinnati, Newark and Detroit--caused an estimated $56 million in property damage. This property damage from all disorders during June, July and August of 1968 is estimated at $4 million.

There are many reasons for the improvement this year. In my opinion, the police are entitled to much of the credit.

Despite springtime publicity indicating otherwise, the police response was generally not based on massive repressiveness. When violent outbreaks occurred, they were usually controlled by adequate police manpower trained to neither overact or underact.

It is impossible to count the number of riots that were prevented by police. I believe they were many.

We have seen that through effective police action, riots can be prevented, that prevention failing they can be controlled with minimum loss of life and property. To be effective, police must have adequate manpower. Police must be recruited from all parts of our society. They must be well paid--far better than now. Greater resources for intensive training, for raising personnel standards, for providing modern scientific techniques of prevention, detection and apprehension must be provided. With such support, the police can prevent and control disturbances--providing stability during the critical time needed to remedy the underlying causes of crime and disorder.

The police have earned our support. Our security and our liberty depend on their receiving it.

OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

OCT 23 1968

Mr. James S. Campbell
General Counsel
National Commission on the
Causes and Prevention of Violence
726 Jackson Place, N. W.
Washington, D. C. 20526

Dear Mr. Campbell:

Pursuant to your telephone request to Mr. Kevin T. Maroney of this Department, there is attached hereto for the information of the Commission, a list of the civil disorders which, according to our records, have occurred within the United States during the current year. You will note that the disturbances are categorized as being of type I, II, or III. The criteria which we have assigned for each type of disturbance is set forth on the first page of the attachment.

It is hoped that this information will be of assistance to the Commission.

Sincerely,

John R McDonough

JOHN R. McDONOUGH
Associate Deputy Attorney General

Enclosure

As of 10/21/68

Attached is a list compiled by city and date of those disturbances involving groups of individuals which have occurred during the period January 1, 1968 to September 30, 1968. The list also indicates the number of deaths, if any, during such disturbances and whether or not the National Guard was used. The list divides the disturbances into three categories. The criteria for these categories are as follows:

I. - Necessary Elements:

1) Vandalism
2) Arson
3) Looting or Gunfire
4) Outside police forces or troops
5) Curfew imposed
6) More than 300 non-police
7) More than 12 hours duration

II. - Necessary Elements:

1) Any three of elements 1-4 above
2) Lasts more than 3 hours
3) Involves more than 150 people

III. - Necessary Elements:

1) Any of elements 1-4
2) Less than 3 hours
3) Usually less than 100 people, but more than 5
4) Or otherwise obviously minor

In addition to the deaths during the disturbances listed, there have been approximately 65 deaths during the same period which occurred during isolated incidents of violence. The vast majority of these deaths resulted from normal police action, either in apprehending suspects or in preventing crime occurring in their presence or from gang-type killings, particularly in the Chicago, Illinois area.

JANUARY - 1968

	DATE	CITY	CAT.	DEATHS	NATIONAL GUARD USED
1)	1/5	Melbourne, Fla.	III		
2)	1/19	E. St. Louis, Ill.	III		
3)	1/22	San Diego, Calif.	III		
4)	1/30-31	Muncie, Indiana	III		

January 18, 1968

DISSENT IN A DEMOCRATIC SOCIETY

Lloyd N. Cutler

Two recent events - the indictment of Dr. Spock and Dr. Coffin, and Dr. King's plan to conduct "camp-in" demonstrations in Washington this spring - raise anew a dilemma as old as democracy. What are the legal and moral limits of dissent in a democratic society?

Acts of conscience in defiance of authority have always appealed to our nobler instincts. So have acts of martyrdom. We admire them as proofs of courage, of self-sacrifice, and of the superiority of moral over physical power. Socrates in preferring the hemlock, the early Christians in the Coliseum, the victims in turn of the Holy Inquisition, our own forebears and others who rose against colonial or despotic governments, the suffragettes, Mahatma Gandhi - all became heroes in their own or a later age. Dr. Martin Luther King has already earned a similar place of honor among us.

But despite the bravery and sincerity that distinguish it, conscientious dissent must compete against another value that makes dissent and all else possible - the value of an orderly, representative society in which the view of the majority prevails. In such a society, even protest must have its limits.

In our own society, the legal limits of dissent are still evolving, but the basic principles are clear. Speech, assembly, and the right of the people to petition "for the redress of grievances" are guaranteed by the First Amendment. The 1963 Washington Freedom March in behalf of civil rights and the 1965 march from Selma to Montgomery are shining examples of peaceful yet effective protest in a manner consistent with the orderly functioning of Government.

A second accepted method of protest is to violate a regulation or law in the belief that it is invalid and with the intent of making a court test of that belief. The Negroes who subjected themselves to arrest for riding in segregated buses and for seeking service in segregated restaurants were violating laws and ordinances they believed to be unconstitutional. The courts ultimately sustained their belief. Even if the courts had rejected their claim, our society recognizes their political and moral right to have made the test, subject to the risk of punishment if they had lost.

However, the right to test the validity of a law in court does not include the right to violate a court order, even when the violator believes that the order itself is invalid. Only last June the Supreme Court upheld an Alabama state court contempt order issued against Dr. King and several other leaders of the Easter, 1963, civil rights demonstrations in Birmingham

for violating a court order enjoining the demonstrations. Dr. King and his colleagues had not applied to the court that issued the injunction for an order vacating it, nor had they filed an appeal. Instead, they held a press conference declaring their intention to disobey the injunction because it was "raw tyranny under the guise of maintaining law and order."

The Supreme Court conceded that substantial constitutional questions existed as to the Birmingham ordinance under which the injunction was issued, as well as to the breadth and vagueness of the injunction itself. But by a 5-4 vote, the court upheld the contempt order. Justice Stewart's opinion for the court concluded with the following pertinent paragraph:

> "The rule of law that Alabama followed in this case reflects a belief that in the fair administration of justice no man can be judge in his own case, however exalted his station, however righteous his motives, and irrespective of his race, color, politics, or religion. This Court cannot hold that the petitioners were constitutionally free to ignore all the procedures of the law and carry their battle to the streets. One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom."

As the Court's 5-4 vote shows, it is a very close legal question whether there is any difference between violating a statute in order to test its constitutional validity and violating a court order for the same purpose. A logician

like Socrates might ask why the violator should go free when a statute is found invalid but should be punished when a court order is found invalid. Indeed, the next case to reach the Supreme Court raising this issue may come out the other way. One member of the 5-4 majority in the Birmingham case has now been replaced by Mr. Justice Marshall. As Solicitor General he signed a brief for the United States supporting Dr. King's defiance of the Birmingham order, and his vote as a Justice can well be decisive.

A third and more debatable form of protest is to violate a law acknowledging it to be legally valid but believing it to be morally unjust, and cheerfully to accept the punishment imposed. Thoreau in his essay on Civil Disobedience advocated this philosophy. Such a course is plainly unlawful, but the price for acting unlawfully is paid, and at least where the unlawful conduct risks no injury to the public at large, its morality can be defended.

However, there are few law violations that do not risk injury to others. Perhaps refusal to wear a seatbelt or illegal personal relationships between consenting adults might qualify, and a more debatable case might be made for refusal to enter military service. But clearly, no one can assert a valid moral right to rape women, or to drive down a city

street at 70 miles per hour, or to sell narcotics to minors, merely because he believes the laws against such conduct unjust and is willing to pay the penalty for violation.

Against these standards of legally or at least morally permissible protest, how should we measure Dr. King's scheduled Washington "camp-in" and the conduct of Dr. Spock and Dr. Coffin?

Dr. King's stated program is perhaps the simpler to judge. No one knows whether he has changed his plans, or whether he will carry them out in the end. But he has spoken of plans to organize a series of massive demonstrations in Washington, and to occupy the city's streets and buildings in such numbers that the Government will be unable to function until it promises some specific redress of the demonstrators' well-founded and long-suffered grievances.

To quote Dr. King as reported in the Washington Post: "To dislocate the functioning of a city without destroying it can be more effective than a riot, because it can be longer lasting, costly to the society but not wantonly destructive."

We may assume Dr. King knows that such a course of conduct is unlawful. He cannot believe the laws against obstructing the streets and buildings are invalid or unjust, or intended to oppress any individual or group. He knows he and as many followers as he can assemble can freely parade,

delay traffic for reasonable intervals, speak at the site of a public monument or in a public auditorium, and protest by voice and presence before the Congress and the Executive to the full limit of their powers of advocacy. But he may also believe - and this is the rub - that voice and presence alone will not move the mountain of indifference that delays justice for his people. He has therefore announced plans to paralyze the functioning of society until society agrees to do what in all conscience it should have done long ago.

Granting the enormity of the wrongs to be righted, granting society's indifference to more conventional forms of protest, can such a course be legally or morally defended? I would think not. I would agree with Burke Marshall, who has written: "I frankly do not know how our society can support, or at least as far as law enforcement is concerned, even tolerate a movement which relies on genuine disobedience to law as its source of energy."*

But did not Mahatma Gandhi do exactly what Dr. King proposes? Did not the Congress Party adopt identical tactics to paralyze the British Raj, "filling the jails," in Dr. King's phrase, until independence was achieved? And in our own history, did not our grandmothers win women's suffrage by lying down

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* - Marshall, The Protest Movement and The Law, 51 Virginia Law Review 785 (1965).

in the paths of streetcars and in the offices of the high and mighty?

Indeed they did, and history has accepted the morality of their conduct. But there is a distinction that Professor Archibald Cox and others have noted - one that satisfies at least the lawyers among us and should satisfy the political philosophers as well. Gandhi's India and our grandmothers' America were not representative societies in which Indians or females had a full electoral voice. Shut off from participating in the process of political change, they were not bound by what Eugene Rostow and others have called the "social contract." Perhaps they were morally right to resort to disobedience of laws, even just ones, until they were granted a full share in the lawmaking process.

To a limited extent, Negro Americans can invoke the same distinction. In the South at least they are still largely shut out of the electoral and lawmaking process. But our society has by now recognized their right to participate, and is in the process of making that right more fully effective. As a minority who must ultimately depend on general obedience to just laws to secure their own rights, I do not see how, in the long run, they can legally or morally depend on violating other equally just laws to achieve their ends. Justice Hugo Black has

reminded us that "it is not a far step from . . . 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 causes today can be supplanted tomorrow by street mobs pressuring . . . for precisely opposite ends."*

Dr. Spock and Dr. Coffin are assuming a somewhat different stance. Their goals are no more noble or sincerely pursued than Dr. King's. But while Dr. King must admit that the laws he has talked about violating are just and valid ones, Dr. Spock and Dr. Coffin doubtless believe that the laws they have violated are unjust and they may also claim that these laws are unconstitutional.

If they believe merely that the draft laws are unjust, does such a belief confer a moral right to disobey? If disobedience involved no risk of injury to the public at large, perhaps a moral right to disobey could be tolerated. Admittedly disobedience creates no direct and immediate risk of injury to an identifiable person or class. But self-defense is a communal obligation of society, and a refusal to serve on the terms society prescribes increases the risk of injury not only to those who must serve instead, but to the public at large. Whether a free democratic society can afford to tolerate disobedience of such a law is a close moral question at best.

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* - Cox v. Louisiana, 379 U.S. 559, 584 (Dissent)

The answer to this close question is academic if Dr. Spock and Dr. Coffin should defend the propriety of their conduct on another ground - that the law invoked against them is unconstitutional. As we have seen, our society accepts the moral right to violate a law in order to make a good faith judicial test of its validity.

While there are decisions of considerable vintage to the contrary, a substantial legal claim can be made that it is unconstitutional to exempt from military service, as we now do, those who conscientiously object to all war, and at the same time to deny exemption for those who conscientiously object to a particular war. A substantial claim may also be made that whatever the rights of young men to disobey the draft laws as a matter of conscience, no one may constitutionally be punished merely for urging them to disobey on conscientious grounds.

As long ago as World War I, Mr. Justice Holmes rejected such a claim in Schenck v. United States,* the famous case in which he illustrated the limits of free speech by saying that the constitution does not "protect a man in falsely shouting fire in a theatre", and that when a nation is at war some utterances may "create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." But it would not be frivolous to request that a 50-year old precedent, even one written by Justice Holmes, be reconsidered by the present Court.

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* - 249 U. S. 47 (1917)

It is true, of course, that the case of the draft resistance leaders is unlikely to raise the issue in this simple form. They are accused not merely of advocacy, but of acts that go well beyond speech, such as the delivery of surrendered draft cards to the Department of Justice. While these additional charges do not seem to raise First Amendment issues of comparable substance, the defendants are nevertheless entitled to challenge the portions of the indictment grounded on advocacy alone.

Are Dr. Spock and Dr. Coffin therefore in any different position than the Negroes who violated the Alabama laws against riding in bus seats reserved for whites only? Even if the courts ultimately deny their claims of unconstitutionality, are they not politically and morally entitled to make the test and pay the social penalty if they are found in the wrong?

If that were the sum of the matter, they might validly assert a political and moral right to test the validity of the draft law and suffer the consequences if they lose. But, while we must all reserve judgment until the facts are established at the trial, it may turn out that they have gone further. The core of the indictment is not that they have defied the law, as Thoreau refused to pay taxes, solely as a matter of individual conscience, or, as the Negro bus riders did in Alabama, solely to make a legal test of the segregation laws.

It is that they have done so as a method of mass political action. Like Dr. King in planning his "camp-in," they are charged with urging and assisting students to violate the law in great numbers. They are charged not with attempting to change the law by persuasion or example, but by a mass refusal to obey. In Burke Marshall's phrase, they are accused of seeking to "rely on genuine disobedience to law as their source of energy."

If the charges are well-founded, Dr. Spock and Dr. Coffin would be arguing not for individual liberty but for public anarchy. Their confidence in the rightness of individual conscience may be so strong that they would urge all of us to defy any laws we consider unjust. It is hard to see how, in such a society, their own right to dissent or any other liberty can survive. In a crowded land, liberty ultimately depends on the rule of law, and the rule of law ultimately depends on the willingness of all who share in the lawmaking process to obey even the laws they may, as individuals, oppose.

But for citizens who believe in the rule of law, it is not enough to condemn those whose conscience commands them to defy it. Law itself must be responsive to social change and to the correction of injustice. Our legal system has not yet corrected the many injustices our society inflicts on the Negro, nor has it devised a workable method of permitting individuals

to opt out of fighting in wars a substantial number conscientiously oppose. Accommodation of these bitterly divisive issues is not beyond us. If respect for law is to prevail, we may need to use the law to cut through the paths to peaceful change.

And so we come to the final question of right and wrong. Assume that the goals of Dr. King, Dr. Spock and Dr. Coffin are important ones, and that the present legal system has been slow in responding to the need for peaceful change. Are they then justified in striking at the system itself?

Professor Cox has wrestled with this question in two brief paragraphs that leave nothing to add:

> "Possibly there are a few rare occasions on which the goal would be so important and so plainly right as to outweigh the price which a challenge to the rule of law exacts from the community. I know of none today. The argument is probably strongest where one refuses to do what he believes is a direct moral wrong to others. In all other cases, it would seem to me that the man who is willing to damage the processes of constitutionalism, which guarantee liberty and the chance of repeated change without force, in order to impose his views upon society, must be either peculiarly self-confident or extremely shortsighted.
>
> "Even then the wrong is not the challenge to existing society. Past generations have made a mess of things, ours no less than our fathers'. The hope of mankind is always that a new generation may begin

"to make the world over quickly. The wrong, in the simplest terms, is the damage to the foundation upon which rests the best, if not the only real, opportunity for the making-over." *

* * * * * * *

Lloyd N. Cutler is a member of the District of Columbia and New York Bars. He is Chairman-Elect of the American Bar Association's Section on Individual Rights and Responsibilities, and a co-founder of the Lawyers' Committee for Civil Rights Under Law.

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* - Cox, Howe and Wiggins, Civil Rights, The Constitution, and the Courts. (P. 29 - Harvard 1967)

NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE
726 JACKSON PL., N.W.
WASHINGTON, D.C. 20506

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November 25, 1969

MEMORANDUM FOR THE COMMISSIONERS

Attached is a draft insert for the Group Violence Statement dealing with Civil Disobedience. It would go at the end of Section II (The Rationale of Group Violence) following the quotation from John Gardner.

The insert is based on Mr. Jaworski's draft and the discussion of the subject at the last Commission meeting on November 21. It distinguishes among the various types of non-violent disobedience, listing those points on which all Commissioners agree and those on which the Commission is divided. It also states the central arguments on both sides of each division. If thought desirable, the references to the various divisions could identify the majority and the minority. It would also be possible for the names of the Commissioners taking each side to be listed in appropriate footnotes (together with individual comments), but we would hope this could be avoided.

LNC

Lloyd N. Cutler

November 25, 1969

There remains the vexing question of non-violent civil disobedience. While the members of this Commission unanimously condemn group violence - even when committed in the name of civil disobedience* - we do not wholly agree as to non-violent acts of conscious disobedience to law. We all recognize that any willful violation of law - particularly by a large group or by a prominent public official or private person - strains the entire fabric of legal order, and that strains of sufficient magnitude can encourage group violence.** But whether such strains may be morally justified under particular circumstances is a close and complex question.

For example, we would all draw a distinction between deliberate disobedience of the racial laws of the Third Reich and willful violation of a law enacted by our own elected Congress and upheld by the Supreme Court. All of us would also recognize the right of any citizen to disobey a law he believes invalid for the purpose of making a judicial test of the law's constitutionality, so long as he is willing to abide by the result. But for hundreds or thousands to engage in

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* - As noted at the beginning of this statement, we define group violence to include such acts as the threat or use of force to seize or destroy property in violation of valid laws such as those against the obstruction of streets or buildings.

** - One university president who appeared before us saw a direct connection between the spread of non-violent civil disobedience and the subsequent development of group violence on his campus.

repeated violations of such laws, in the view of some Commission members, goes beyond the making of a good faith judicial test; it approaches instead an effort to paralyze the procedures of law enforcement and thus to seek its goal by force instead of by reasoned advocacy.

Other Commission members would place a higher value on non-violent group disobedience; they point to Mahatma Gandhi and the suffragettes, and would accept non-violent disobedience as a means of persuasion legitimate in a cause of sufficient fundamental importance for groups who cannot prevail by the ballot or by less forceful means. All would agree, however, that such tactics are too dangerous to tolerate as routine methods in pursuit of less fundamental goals. We also agree unanimously in condemning those who seek to escape punishment for their acts of conscious disobedience on the ground that their cause is just or that the legal system is illegitimate.

There is still another type of deliberate civil disobedience - the refusal to obey an admittedly valid law (such as the Selective Service Act) on grounds of moral repugnance, coupled with willing acceptance of the prescribed punishment. Some Commissioners believe that the moral justification for such action can conceivably outweigh the injury done to respect for law; others take the contrary view, pointing out that once each citizen is allowed to obey only

those laws he considers moral, no law can command general respect.*

The following summary of this complex question comes closest to satisfying most Commissioners:

> "Possibly there are a few rare occasions on which the goal would be so important and so plainly right as to outweigh the price which a challenge to the rule of law exacts from the community. I know of none today. The argument is probably strongest where one refuses to do what he believes is a direct moral wrong to others. In all other cases, it would seem to me that the man who is willing to damage the processes of constitutionalism, which guarantee liberty and the chance of repeated change without force, in order to impose his views upon society, must be either peculiarly self-confident or extremely shortsighted.
>
> "Even then the wrong is not the challenge to existing society. Past generations have made a mess of things, ours no less than our fathers'. The hope of mankind is always that a new generation may begin to make the world over quickly. The wrong, in the simplest terms, is the damage to the foundation upon which rests the best, if not the only real, opportunity for the making-over."**

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* - As the Supreme Court has noted: "No man can be judge in his own case, however exalted his station, however righteous his motives . . . . One may sympathize with the petitioners' impatient commitment to their cause. But respect for judicial process is a small price to pay for the civilizing hand of law, which alone can give abiding meaning to constitutional freedom." Walker v. City of Birmingham, 388 U.S. 307, 321 (1967).

** - Professor Archibald Cox in Civil Rights, The Constitution and the Courts, p. 29. (Harvard 1967)

LEON JAWORSKI

Mr. Campbell
(Orig. sent to Dr Eisenhower)
(Copy sent to Cutler)

BANK OF THE SOUTHWEST BLDG.
HOUSTON, TEXAS 77002

November 19, 1969

Dear Dr. Eisenhower:

I am enclosing copy of letter to Lloyd Cutler with additional notation to Jim Campbell, from which you will note that despite my strong efforts to the contrary, I will have to miss the meeting this week.

Based on the comments that were made last week, I would assume that the substance of this draft would be acceptable. Should it not be, as stated to Lloyd, I would want to rewrite it as a separate statement.

Perhaps I should add a few words regarding the references to the Chicago incident, the Walker Report and the Washington march. I assume your statement that there would be no references to the Walker Report will hold. It would be most unfortunate were it to be otherwise.

I still question the wisdom of comparing the Chicago situation to the one in Washington. Our statements completely overlook the tremendous provocations and assaults the police suffered. What our report does, is underscore some of the "over re-acting" and the brutalities of some of the police without mentioning the exemplary conduct of hundreds and hundreds of others. The stubborn truth is that we do not have a completely reliable report on Chicago before us because of the emotional involvement of the chief investigator, who, to be sure, acted in good faith, but threaded his own feelings into the report.

Regretting that I will not see you this week and with warm regards, I am

Sincerely yours,

Leon

Dr. Milton S. Eisenhower
726 Jackson Place, N.W.
Washington, D. C. 20506

LEON JAWORSKI

November 19, 1969

BANK OF THE SOUTHWEST BLDG.
HOUSTON, TEXAS 77002

Dear Lloyd:

On yesterday, I sent you copy of letter to Dr. Eisenhower and a draft of the insert on civil disobedience we discussed at our last meeting.

Perhaps I did not make it clear that the insert that I propose is to be in lieu of everything beginning with the end of the sentence on line two of page 17 and to the end of that subject.

I had made rearrangements in an effort to be with you on Friday, but at the moment it seems that I cannot accomplish it. In addition to other complications, I have contracted a cold that would make it inadvisable to fly that far.

I have not applied the "slicking" process to this draft and doubtless there may be words or phrases that some shifting around may help. For example, the last sentence on page three needs such treatment, and I am enclosing a substitute page for the earlier draft I sent you.

If for any reason, the substance of this draft is not acceptable to the Commission, I will want to exercise the privilege of writing separately on the subject of civil disobedience. Please be good enough to advise me of the action the Commission took so that I may be governed accordingly.

Regretting that I will not see you this week and with every good wish and kindest regards, I am

Sincerely yours,

Lloyd N. Cutler, Esquire
Wilmer, Cutler & Pickering
900 - 17th Street, N.W.
Washington, D. C. 20006

bcc: Mr. James Campbell
Dear Jim:
Much to my regret, it looks like I will have to leave to the Commission and the staff the consideration

of my draft on civil disobedience without having the opportunity of joining in the discussion for the reasons assigned in my letter to Lloyd. I sent copies of my first draft to all of the members of the Commission. I notice in the draft that a comma here and there would be of some help. I particularly felt that the last sentence on page 3 should be restated, and I am handing you a new page 3.

Would you please have enough copies reproduced so that the Commission members will have this draft before them. Some may have not received the copy I sent, and, besides, there is a change in the last line on page 3.

To make clear just where my excerpt belongs, I propose it follow the sentence on top of page 17 reading "Disruption has become a style, with many eager followers". My insert is to be used in lieu of everything else that appears on pages 17, 18 and 19. The three paragraphs on page 18 are taken from the Task Force Report which we have already embodied the adoption in my insert.

Thanking you and with best wishes, I am

Sincerely yours,