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SOCIAL CRISIS AND THE LAWYER AND LAW
STUDENT: AN ESSENTIAL MEETING*

THE HONORABLE SAMUEL J. ROBERTS†

A FEW WEEKS AGO Ralph Nader spoke at the Law Review banquet of my alma mater, the University of Pennsylvania. His is a name almost sure to spark controversy. Some hail him as the great champion of the little man in his seemingly futile struggle against impersonal big business. Others condemn Nader as a sideshow barker, desirous only of getting attention by proclaiming imminent doomsday for those who drive Corvairs. But, whatever one's personal opinion may be of Ralph Nader's tactics or predictions of disaster, there can be few who would question his sincerity when he speaks of the lawyer's role in America's society — and it was on just this topic that he spoke at Penn.

Like so many truly dedicated lawyers, Ralph Nader cringes at the mere thought of so much legal talent going to waste in this country. How, he asks, can the legal profession be content to crank out writs of replevin, or articles of incorporation for wealthy business clients when so many poor people get no justice at all? How can the law student care more about the "going rate" of Wall Street firms than the turbulence besetting his own campus? How can the legal profession close its eyes to urban ghettos, Viet Nam, actual starvation in large sections of the country — how can reading advance sheets take precedence?

Of course, I do not, even for a moment, believe that all lawyers should immediately give up private practice in favor of social crusading alone. To this extent, I disagreed with Nader when he urged the entire membership of the University of Pennsylvania Law Review to avoid joining any law firm at all. However, I do believe Ralph Nader touched a vital nerve when he chastised the legal profession for its *relative* indifference toward the burning social and political crises in our society. And what makes this deficiency in our profession even more distressing is the fact that lawyers, by virtue of our training, are peculiarly equipped to help soothe these crises.

Throughout our history, America has been a country built upon law. We have, perhaps more than any nation that ever existed, culti-

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vated a respect for both written and judge-made law as the real preserver of stability and justice. How ironic it becomes then that lawyers, the very men responsible for creating, maintaining, and defending our legal system should stand by, in vested complacency, while the very timbers of law are rattled and sometimes even chopped down.

And then there is the lawyer's public relations problem. What does the public think of us when we refuse to apply our skills to the real sore spots of America? I would be naive indeed were I to boast that law students enter the most prestigious profession in this country. To be sure, the lawyer in America today does *not* command the respect he should, and it would be like burying our heads in the sand to say that much of the problem is not our own collective fault. It is only human nature to distrust and dislike any group of persons who know as much about how to hurt people as lawyers do. Indeed, if you just stop and think for a moment about the training law students are now receiving, and about the power this training affords over the affairs of men, much of what was written about the attorney as early as Shakespeare's time will begin to make sense.

In Henry VI, for instance, Dick the Butcher is given the speech: "The first thing we do, let's kill all the lawyers." What lay behind the brutal simplicity of this Tudor sentiment is perhaps explained by the title of two pamphlets published in London in the 17th century. One is listed as "The Downfall of Unjust Lawyers; Doomsday Drawing Near with Thunder and Lightning for Lawyers." Another is entitled "A Rod for Lawyers Who Are Hereby Declared Robbers and Deceivers of the Nation — An Essay Wherein is described the Lawyers, Smugglers and Officer Frauds." This English distrust and antipathy towards lawyers spread to the American colonies in the next two centuries and rather than weakening in force, it seemed to grow. One of the many letters to the Boston Independent Chronicle in 1786 calling for a reduction in the power of lawyers stated that "this order of men should become annihilated . . . and the order be abolished as not only a useless, but a dangerous body to the public." Hector St. John Crevecoeur, a foreign observer of American life, wrote in 1787: "Lawyers are plants that will grow in any soil that is cultivated by the hands of others, and when once around them The most ignorant, the most bungling member of that profession will, if placed in the most obscure part of the country, provide litigiousness and amass more wealth than the most opulent farmer with all his toil." A prominent American historian writing of early 19th century New England noted that "the mere sight of a lawyer was enough to call forth an oath or a muttered curse from the louts who hung about the

tavern." The eminent jurist and Justice of the Supreme Court of the United States, Joseph Story, observed in 1829 that "the profession has sometimes been approached with a sordid narrowness, with a low chicane, with a cunning avarice, and with a deficiency in liberal and enlightened policy."

Moreover, remarks such as these are, unfortunately, no less foreign to lawyers' ears today. How many television shows have you seen in which the lawyer is portrayed as some sort of greasy conniver; how many jokes are there along the same lines? The lawyer, I have heard it said, is the guy who brings two people together, has them strip down for a fight, and then runs away with their clothes. Jokes such as these are, I fear, the natural by-product of public distrust; and so long as the public, even if mistaken, in fact believes that lawyers do use their power to hurt rather than to help, the image of attorneys will remain as tarnished as an old penny, and worth about as much.

One way in which the legal profession can begin to polish this image, while at the same time making use of its real talent, would be to speak out publicly on our critical situations, and perhaps propose some concrete solutions. One might ask why the legal profession can expect to produce more significant suggestions and less "sound and fury signifying nothing" than other groups who have already tried in vain to provide a cure. In part, the answer lies in the training lawyers receive — training aimed, in large part, at sharpening the ability to spot issues, while remaining unswayed by emotion. It cannot be gainsaid that solutions born out of emotion and frenzy seldom solve problems, especially problems so serious that they affect an entire country. And one reason why these solutions so often prove worthless is that they are not aimed at the true issues, but rather at superficial symptoms alone. More mace, for example, will not stop riots; restricted constitutional rights will not erase crime. Yet solutions such as these are precisely what one must expect when social crises are attacked by the *gut* rather than by the *mind*.

The lawyer, however, is peculiarly equipped to identify the root causes of problems. Throughout law school, the techniques of analysis that are taught form the foundations for the exercise of lawyerlike skills: they teach us to reason clearly, to evaluate standards, to see the issues, to anticipate the difficulties that others may encounter in planning their affairs, and to devise patterns of conduct to avoid these difficulties. That is an essential part of being a lawyer. Unfortunately, however, not enough lawyers have focused these skills on the college riot problem, the Viet Nam war, the urban ghetto, the problems of poverty in general, the crisis of black Americans, or the root

causes of crime. I cannot, of course, guarantee that the lawyer can succeed in these areas where, to date, all others have failed. However, I can guarantee that our continued unwillingness as a profession to *really* enter the fray will eventually result in a mark against us much blacker than any painted by Shakespeare.

Of course, it is easy for me to suggest that lawyers can isolate the crucial issues confronting America simply because we are lawyers. It is a lot harder to prove this assertion by really trying to spot one of these elusive issues. However, if for no other reason than to give this project a start, and to prove my own sincerity in advocating it, let me offer some thoughts.

Closest to my own life, due simply to being a judge, is the vexing problem of crime. Crime, and the people who perpetrate it used to be almost romantic, at least to the extent that people were fascinated by criminal behavior. The chilling whistle of the guillotine blade, for example, drew thousands of Frenchmen, who blithely picnicked on the village green as the heads of criminals were neatly severed, basketed, and carried away. And even earlier in history, public crucifixions of convicted felons were immensely popular. Later in the development of civilized man, right here in this country, the criminal became a sort of folk hero. During the twenties, such brigands as Al Capone, were highly regarded by many, capturing the fancy of America by living the glamorous life while openly flaunting the law. Perhaps Al Capone was playing out the secret drama of many law-abiding people; perhaps he became popular because he defied some laws that nobody liked to begin with. But, one thing is certain: crime and criminals could only be fun so long as they did not reach home. No storekeeper whose shop was destroyed by the mob for failure to pay protection ever thought Capone a hero; of that you can be sure.

Similarly, crime today is no longer funny or fun — it is simply too close to home, particularly in the cities. The findings of former President Johnson's crime commission read like a journey through a chamber of horrors. Fifty per cent of all crimes against the person, for example, are committed in 26 cities with populations over 500,000, although they have only 18 percent of the population. As a result, it is no wonder that when the commission took a survey of persons living in high crime areas in two large cities it found that 43 percent of the respondents stayed off the streets at night out of fear, 35 percent did not speak to strangers for the same reason, and 20 percent said that fear of crime was forcing them to move to another neighborhood. Perhaps even more appalling is the fact that one youngster out of six will find himself in juvenile court for a non-traffic offense before he

reaches the age of 18, and that one person out of every three charged with crime is under 21 years of age.

In the face of statistics such as these, it is vitally important that our efforts be turned toward isolating the causes of antisocial behavior. Over the past year or so, I have had several opportunities to speak to groups of laymen concerning the problems of crime and criminal law. I have usually focused my remarks against the popular misconceptions surrounding crime, such as the widely held but erroneous belief that the decisions of the Supreme Court of the United States are responsible for burgeoning lawlessness in America, and that the way to halt crime is to trample on the Bill of Rights. However, I feel that most lawyers and law students have long ago dismissed the silly notion that *Miranda* is carefully read by every man before he sets out to commit a criminal act.

Instead, we must probe behind such nonsense and look for the real cause of crime. Obviously, this cause cannot be separated from poverty. We might begin our quest for the cause of crime by asking a simple question: What does "Law" mean to the ghetto resident, be he black or white? First of all, we can say fairly certainly that law to him is not a lawyer; for he cannot afford a lawyer, and even if he could, he lacks the basic education to know when he needs one. Moreover, our ghetto dweller cannot associate law with protection, for he gets little, if any. In Washington, D.C., for example, 84 percent of assault victims and 70 percent of murder victims are residents of black ghettos. And, while distressing, this fact is only logical. Poor people commit most crimes, poor people usually live in ghettos if they are city dwellers, and, lacking mobility, they will commit their crimes close to home.

To the ghetto resident, therefore, law is strictly a negative concept: it tells him "no" at every turn. It is complicated, seemingly unjust, used unfortunately by some local businessmen as a shield to cover swindling and cheating, used by some police as an excuse to exercise their own prejudices; law punishes, it keeps people from doing what they want to do, it gives them criminal records, it takes away their freedom. With such a view of law, how are we to expect these people to react to crime? Crime, basically, is nothing more than the result of doing things which the *law* says may not be done. In many cases, the criminal act itself is something which many people would otherwise *want* to do, or else it would never be done at all. So what happens when you take an act that someone wants to do, tell him he cannot do it or he breaks the law, then set up the concept of "law" we have just described and a range of punishments seemingly no

worse than the life already being lead? The answer should be clear. The ghetto resident commits crime because he has no reason not to, and, to use the old cliché, he has "everything to gain and nothing to lose."

But, you may say, aren't these people taught in school that everyone has an equal voice in choosing the men who make our laws? To this, I would say, so what? No matter who passes our laws, they are positive only to the extent they protect. For people who have nothing to protect, the law will never appear a positive force no matter how many congressmen and legislators these people elect. I am sure every person has, at one time or another, lent one of his possessions to a friend only to have it returned slightly worn or dirty. You ask yourself: "What's the matter with that guy, doesn't he take care of things?" But the answer is really that no one cares for some thing like its owner. If it isn't yours, it seldom really matters that much. Now project this concept to thousands of people living in ramshackle homes they do not own, patronizing businesses they do not own, going to schools that teach them nothing relevant to their own lives, needing no insurance because they've nothing to insure. People *living* in a society, but not *participating* in it are dangerous. They are borrowers, not owners, and will, undoubtedly, return the society "worn and dirty." Without a "piece of the action," the ghetto resident just doesn't give a damn.

This, then, is what I regard as the most important cause of crime: the lack of participation in society. Man is basically a selfish creature, like it or not. We pass laws to protect what is ours, not what is our neighbors; and we obey them in order that others might do likewise. I learned recently just how much can change, as soon as the ghetto resident begins to participate. A former law clerk of mine told me of his law school classmate, now practicing with a large Philadelphia firm, who went into the jungle of North Philadelphia and incorporated a neighborhood gang. By showing these young men how the law could be used positively, he enabled the new corporation, Soul, Inc., to earn money through various projects, including the operation of a rock and roll band. Now, this former collection of delinquents have something that needs protection, assets and stock in their own closed corporation. They are participating in society, not merely living in it.

Closely tied to the whole problem of participation is the extremely high unemployment rate existing in urban ghettos; for a job, like a chattel, is a possession that gives its owner a real feeling of participating in society. Of course, joblessness in the ghetto feeds upon itself in the classic fashion. The man without work has little if

anything to offer his children. As a result, these children have no incentive to learn in school; to them life is not *worth* preparing for. These children, like their fathers grow up unable to work; they become bored, and turn to antisocial behavior not only to give them the tangible rewards of life, but also to give them something to do.

I will not attempt at this time to suggest a way to break this vicious cycle, and insure that all members of our community feel the thrill of participation. I think it sufficient if only I succeed in impressing that there is the need for lawyers to at least *instruct* society, as best as we are able, concerning the real causes for crime, riots, unemployment, and poverty. We must use our skill to penetrate these issues as well as those arising in the courtroom. For surely, there can be no cure for anything, until one has identified the disease.

Yet, even after society sees the issues, our task will still be far from over. For at this point, it will become necessary for us to bring to the table another skill learned in law school: the ability to convince people to compromise. The need for lawyers to learn how to settle cases is indeed as important as the need to learn how to win them — and in the courtroom that is America itself, only the *amicable* settlement will ever truly conclude the conflict. But, settling cases is not easy, as any judge will be ever so quick to admit. For, in a very real sense, everytime a judge writes an opinion in one case, he is attempting to settle the future ones. Unfortunately, the line he draws today may be completely ill-fitted to tomorrow, as Professor Louis Henkin so ably pointed out in his 1967 Supreme Court Forward in the *Harvard Law Review*.

This is why we must be ever so careful when drawing lines involving the great social issues confronting us. It may, for example, be easy to draw the line when confronted with the violent student takeover of a university building such as took place recently at Harvard. However, when that line counsels the immediate use of police force, it would be disastrous to the first amendment itself were such a line drawn in the same place every time a group of students wished to demonstrate peacefully.

The whole problem of line drawing and reconciliation of opposing forces could well form the basis of an entire book, let alone another short Article such as this; and so I shall not attempt to pursue it further, except to offer one final suggestion that will, hopefully, have some immediate relevance to all law students living on a university campus. If there be any area of upheaval whose root causes are the *most* difficult to isolate, it must be the area of college campus revolts, strikes and takeovers. I realize that not all college students partici-

pate in these activities, but the mere fact that they are occurring with such startling frequency and regularity all across the country, leads one to search for a reason.

Unlike the rebel from the ghetto, no one has a greater stake in society than the college student, and so it would seem that he also enjoys the greatest amount of participation — at least in the material sense. But, one cannot dismiss this crucial notion of participation quite so easily. There are more levels of participation than the mere possession of material goods. There is, for example, the participation in one's own immediate future; and here, the college student may feel cheated in the same way as the ghetto dweller. We must never forget that to every college student, this is truly, as one Columbia professor recently called it, the "Viet Nam generation." Underlying much of the campus unrest stands this grizzly war, and a government frequently calling on college men to make a sacrifice, maybe even the supreme sacrifice, for a cause which many students despise. To these students, as well as to many in law school, this appears to be some crazy Alice-in-Wonderland world in which young men fight the older generation's war, yet have no way of stopping it. More and more, those campus disturbances unrelated to racial issues, are directed against the war, the draft, the teaching of ROTC; in short, they are the undergraduates' way of saying to our government: stop killing us.

Unfortunately, all too often the older generation fails to heed the outcries of the young simply because they are the young, because they want all the problems solved now, without compromise, and without negotiation. But, law students can perhaps act as the mediator in this dispute. To this extent, I regard law students as a very special group on the university campus, a group which, over the next few years, could well become one of the more significant forces in shaping a meaningful dialogue between undergraduate students and university administrations.

Quite often it seems that the student unrest sweeping this country, even the most physically tumultuous, is motivated by a sincere desire on the part of its protagonists to communicate meaningfully with administrators heretofore unwilling to listen and, even now, in some instances, apparently unable to understand. In short, our universities are currently suffering not so much from a credibility gap as from a communications gap. This is where the law student can supply what may be the missing tube in this communications machine.

Like other students, law students pay tuition, buy books, do their studying, and engage in social activities on the same campus as the undergraduate. On the other hand, they enter a profession considered

by many to represent the very epitome of that societal element commonly referred to as "the establishment." Thus, law students stand in two worlds: one foot on campus, the other in the community — old enough and mature enough to command the attention and respect of a trustee, young enough and *hip* enough to do *your thing* with an undergraduate.

How law students perform in the arena of social unrest today cannot help but shape the manner in which the entire legal profession of tomorrow will perform. They approach the bar at a time when America sorely needs the "reason free from passion" that Aristotle once called the law. The special skills that lawyers possess — the ability to isolate issues and to bring warring factions together — can, if properly used, do much to save this country from becoming just another closed chapter in some future history book. It is up to both lawyers and law students alike to decide whether the law becomes a profession of deadly commonplace or true greatness. And it may well be that the very future of this nation also rests on that decision.