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ADDRESS DELIVERED BY HONORABLE EARL WARREN, CHIEF JUSTICE OF THE UNITED STATES SUPREME COURT, RETIRED, AT THE COMMENCEMENT EXERCISES OF THE LAW SCHOOL, UNIVERSITY OF SANTA CLARA, SANTA CLARA, CALIF.—MAY 11, 1974

I am happy to share with you this important hour in your lives. It is your hour of achievement, and I cannot resist the temptation to make a brief comparison between law schools of this and former generations.

The law school of today is greatly different than in my day as a student. At that time, the law was simple in comparison. Then property, contractual relations, torts, crimes, pleading, evidence and simple constitutional law were the essence of law school training. There was no tax law in the modern sense; no income tax; no sales or use tax; no social security taxes; and no special corporate taxes. There were no anti-monopoly laws. The Sherman Antitrust Act had been recently enacted but not tested. There was no Securities and Exchange Commission and no Blue Sky Laws. Collective bargaining had not become a national policy; there was no Labor Relations Board, and no regulation of public utilities except that contemplated for the Interstate Commerce Commission, which had been established but not yet implemented. With this lone exception, there were none of the independent Commissions such as Federal Power, Federal Communications, and a dozen which were then not conceived of.

The interpretation of the commerce clause was in its infancy, and the constitutional problems spawned by the Industrial Revolution had not yet surfaced. Neither had the basic rights of all Americans been explored under the thirteenth, fourteenth, and fifteenth amendments, adopted after the abolition of slavery, with their guarantees of due process and equal protection of the laws.

All of these governmental activities have come into the law schools since those days, and you have been required to learn not only the principles that have brought them into being, but also the manner in which they have or should have been administered to serve the basic needs of American life. To use a sports colloquialism, it is a "brand new ball game."

I know it has seemed a long and often confusing task for you to absorb these principles and to fit their implementations into the complex and often conflicting interests in society. I am sure it

has often appeared to you as trying to put together a gigantic and intricate jigsaw puzzle. But you have satisfied the faculty of this fine law school that you have absorbed these essentials for the profession which today you are entering.

All your lives you will need the disciplines you have acquired here, because in this age there is no place for reliance on the status quo. Unthought of problems arise daily. To the thoughtful lawyer, these changes call for constant reappraisal and readjustment into the mosaic of American life. They can be both a challenge and an inspiration to lawyers to help keep alive all the freedoms that were envisioned by the Founding Fathers when they proclaimed to the world that they were establishing a government by the people, who were to be governed in accordance with the principle that all men are created equal with certain inalienable rights, among which are "life, liberty and the pursuit of happiness."

I will not attempt to advise you on how you should meet the challenges of your day or achieve the satisfactions that I believe are inherent in this profession. It has been said, and I believe wisely, that birthright cannot be relied upon for freedom; that it must be re-earned and reinforced by every generation in the ever-changing world if it is to remain permanently the greatest achievement of our civilization.

It is in this context that every lawyer, because of the nature of the profession, must meet the challenges of his day and determine for himself the approach he will make to achieve the satisfactions he considers most desirable in life. No one can supply to him the means of accomplishing either. Each must be left to his or her basic objectives and instincts.

This much I can say without reservation. I do believe in the new generation of lawyers and law students. I believe they have already manifested an interest in making the law better serve society; that they have been responsible for improving the protection of rights of the poor, the underprivileged and the oppressed which have too often been neglected in the mad scramble for material success. I commend you and them on this wholesome approach and offer the fervent hope that it will continue unabated throughout your careers.

While I have the opportunity, I would like to say a few words about the profession itself, because in a very short time you will be in the thick of it. To use a cliché now in common use, I bring you both good news and bad news, and I will give you the good news first.

It is a great and good profession, and it is as old as civilization itself. In the upward climb of civilization, it has played an important role. It has been said by the ancients that law is the

mother of order and without order there is anarchy. In anarchy, only the strong prevail, and the weak are oppressed. The Code of Hammurabi, the earliest known to our civilization, proclaimed that it was designed to protect the weak against the strong. This standard has been the avowed objective of law justice, and it has developed largely through the efforts of lawyers to improve its vision and its administration.

However, the profession's standing in society, as with other professions, has risen or fallen in different ages according to its adherence to its avowed principles, but the onward course in general has been upward. It rose to high esteem when so many young American lawyers fought for our freedom, and a short time later wrote its principles into the Constitution of the United States of America for the protection of their own and future generations.

Now the picture has changed. Many thoughtful people believe that in America our profession has plummeted to the nadir of its existence. The public is shocked by the accusations and admissions of many lawyers in the White House itself of fraud, corruption, burglary, obstruction of justice, and related crimes. Of twenty-one so charged with such crimes, sixteen are lawyers, and still others are under criminal investigation.

The Vice President of the United States, after being accused of bribery on the confirming evidence of his close political friends and associates, pleaded guilty to defrauding the government by falsifying his income tax returns, and resigned his high office in disgrace. Only last week, he was permanently disbarred from the practice of law in his state as being unworthy of remaining a member of the profession.

Former cabinet officers and high presidential advisors have been charged with criminal offenses pertaining to serious violations of our system of justice and to the performance of basic functions of government. Even the inner sanctum of the White House has been tarnished, and the end of the debacle is not yet in sight.

I am not here today to discuss the merits of this massive explosion, compendiously referred to as Watergate. That is the perogative of the criminal courts and of Congress in the discharge of its responsibility in connection with the impeachment provision of the Constitution.

However, I do want to talk to you about some of the side effects of that explosion, not only because I believe they bear upon the actual practice of the law and the lifelong commitment of young people to the profession whose proud emblem is the cause of justice, but because when the law and its administration are thus demeaned, a resulting cynicism on the part of the public invariably ensues. Today that certainly is true. Not only is a large

segment of our citizenry skeptical about the conduct of those accused of these public crimes, but there is generalization to the effect that corruption is a common practice in public office. And what is even more serious is a feeling of cynicism about our underlying institutions, upon which we must rely and in which we must participate if we are to have a Government of, by, and for the People.

The attitude toward lawyers has been feelingly expressed by Mr. Chesterfield Smith of Florida, President of the American Bar Association, and by Mr. Robert W. Meserve of Massachusetts, his immediate predecessor.

Mr. Smith, in many places throughout the Nation, has recently publicly deplored the tawdry details of Watergate, and has urged the discipline by the profession of those guilty of misconduct. From the press we learn that such proceedings have been initiated in some states. This has all been in the interest of restoring the image of our profession to the place of honor it must occupy to serve its true purpose in our society.

And this was no aberration on Mr. Smith's part, because his predecessor, in turning the high office over to him, had this to say:

> The Watergate scandal, its ramifications still unfolding, is certain to rank as a dark episode in our political history. It has posed serious challenges to the legal profession because lawyers in high places are among those linked with it and because the faith of the American people in the justice system and in the governmental structure itself are at stake.

Mr. Meserve went on to say:

> Many Americans and most lawyers have been brought by the Watergate affair to remember once again the importance of fundamental constitutional principles and of morality in public life—of the meaning of the protections assured to each citizen by our Bill of Rights.

In summary, he concludes:

> . . . the number of lawyers, many formerly of distinction in our profession, accused of implication in the greatest political scandal in American history, continues to grow—some having confessed their complicity in conduct in violation of law and common decency, let alone ethics.

After stating his abiding faith in the great majority of lawyers, he ended by saying:

> Yet I suspect that my knowledge that this is true is not accepted today by many of our fellow citizens and that the lawyer in America is more generally disliked and distrusted than ever before in the history of our profession in the United

States, to the sorrow of hundreds of thousands of moral, ethical, and law-abiding judges and lawyers of this land.

This is strong language, but it cannot be faulted because the people of our nation are shocked by the disclosures, and many are becoming so cynical that they are even doubting the soundness of our constitutional system. They overlook the fact that these transgressions do not stem from following the Constitution but rather from circumventing it. In frustration then, too many are willing to accept half-baked proposals to change provisions that over a period of almost two hundred years have served us well through enormous expansion and almost unbelievable change. They ignore the truism that we do not tear down good buildings merely because they have been occupied by bad tenants.

It has been suggested, for instance, that the Department of Justice be removed from the executive branch of the government and set up in an independent agency subject to the supervision of, and in some respects under the control of, the Congress. A somewhat similar proposal has been made concerning the Federal Bureau of Investigation. Only recently, I have been importuned to participate in a movement to abolish the Vice Presidency and leave the succession to the Presidency to the Speaker of the House, the President Pro Tem of the Senate, or some member of the Cabinet.

I shall not discuss the wisdom of these proposals other than to say that the problems such changes might bring into being cannot, in time of distrust and confusion, be foreseen, much less protested against.

But the proposal that I do wish to discuss with you as lawyers and potential lawyers is one that would substantially change, in a demeaning manner, the jurisdiction of the Supreme Court of the United States.

The Supreme Court of the United States has not been immune from the destructive cynicism of our age. No one has yet suggested that it be abolished outright. But in far more subtle and sophisticated ways, often masquerading under the guise of procedural reform, there are those in the land who would have the jurisdiction and effectiveness of the Supreme Court substantially weakened.

After the mid-winter meeting of the House of Delegates of the American Bar Association, a plan to do exactly this was overwhelmingly endorsed after a most superficial debate, which omitted any delineation or discussion of the details of the plan. All that we know is that the House of Delegates approved the bare contours of a plan to strip the Supreme Court of some of its vital

powers to decide certain types of cases and to transfer those powers to a new court, a Mini Supreme Court.

Vagueness and impreciseness appear to be the hallmarks of the proposal. Even as late as April 1, when one spokesman presented the proposal to the Commission on Revision of the Federal Court Appellate System, the plan was shifting, hauling and tacking in some of its critical details.

But, while some of the details may be unclear, the message conveyed has both loudness and clarity. The message is that the Supreme Court should no longer be allowed to exercise all of its authority to adjudicate cases that fall within its jurisdiction. The very essence of both proposals is that a new ad hoc tribunal should be established by Congress, a tribunal composed of lower court judges temporarily assigned on a rotating basis. And to that new tribunal are to be delegated some of the Supreme Court's functions of preserving the Constitution and of assuring the primacy and uniformity of federal law. I can say to you with assurance that such a delegation of functions would seriously weaken the Supreme Court in the performance of its historical mission in our constitutional way of life.

In addition to this, it proposes that the Supreme Court may of its own volition divest itself of jurisdiction in any class of cases it desires by delegating it to the Mini-Court. This is an unheard of suggestion. It is not the province of any court to change its jurisdiction at will. It is the province of the lawmaking body. It has always been understood that the courts may establish rules to regulate their procedures but never to define their jurisdiction. There are other factors in the proposal which are equally controversial, but time will not permit a full discussion on this occasion. I would not mention it at all were it not for the fact that it has been a closed door operation. The views of the law schools, the learned societies and the local bar associations have not been solicited; yet the foundation has been laid for a quick approval of its House of Delegates arrived at after a mere recital of the proposal and cursory debate without the thorough study that should precede any proposal of constitutional proportions.

Any such approval at the Convention this August would give it an unwarranted appearance of consensus in spite of the fact that not one in a hundred American lawyers has even heard of it.

Normally, a proposal of such a drastic change would not be proposed to the nation until all interested parties have been afforded the opportunity for serious study and vigorous debate. But in these days of cynicism, revisionists feel justified in hurrying to acceptance their ideas for restructuring the government to their liking. My response to it is simply that it is something every law

school in the nation should recognize and discuss in its classrooms, in its law review, and in its extracurricular activities before any consensus is sought.

The proposal, if activated, will not be an evanescent one, to disappear if discovered later to be detrimental to the cause of justice. It is something every student in every law school would be obliged to live with throughout his professional career, and I trust he will give it the scrutiny it deserves. If, for any reason, the determination to denigrate the jurisdiction of the Supreme Court in favor of a court of limited tenure and changeable jurisdiction is permitted to be rushed to an apparent consensus without critical study at an annual convention of the American Bar Association and without the grand debate constitutional changes call for, it would be a sad day for the cause of justice. I commend this proposed revision of our basic institutions to your most serious study and reflection.

I wish for all of you who are part of this splendid law school continued success and lasting satisfaction in your adherence to the spirit as well as the letter of the Constitution which has served us so well for almost two centuries. That great document is our heritage, and, in spite of all our current problems, it still is the sheet anchor of our faith in the future.

Finally, I would like to join in welcoming you to the growing body of alumni of this fine university which was the first institution of higher learning chartered by our State Legislature in 1851, even before there was a public school system functioning throughout the State.

I feel justified in doing this because I was accorded an honorary degree at the hands of my long-time friend and then President, Father Ginaro, in 1951, on the occasion of the Centennial of the University. I have always cherished this honor, and although I did not earn mine as you have yours, I shall be happy to share with you the distinction of being a degree-holder from the University of Santa Clara.