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Article 4

Address of Stanley H. Fuld

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CHIEF JUDGE OF THE STATE
OF NEW YORK
ST. JOHN'S UNIVERSITY
SCHOOL OF LAW
MARCH 21, 1970

I very much appreciate the high honor you have done me. Indeed, it is a source of particular pleasure that this great urban University has chosen to grant me its Doctor of Laws degree in this historically significant centennial year. You and your Board of Trustees, and Father Cahill, have my deep thanks.

You undoubtedly recall that Emperor Charles V granted the Island of Malta to the Knights of St. John in the 16th century and that they then adopted the title of the Knights of Malta. With this historical bit in mind, I would tell you a story, probably apocryphal, about the early days of St. John's University. An applicant for admission, when asked why he was so eager to attend St. John's, replied that he had read a great deal about the University and had always possessed a strong desire to visit Malta. Today, of course, it is highly unlikely that anyone would be unaware of St. John's location, for the University has a reputation not only in this State but throughout the country for scholastic achievement—and, if I may say so, on the athletic field as well.

I would like to join in saluting the retiring dean of the Law School, Dr. Harold McNiece. As teacher, as administrator, as dean, he has served the University faithfully and well. Succeeding another truly great dean, Father Joseph Tinnelly, Dean McNiece has wisely guided the Law School in this period of its greatest growth, a period which will culminate next year in the construction of a new law school on the University campus at Hillcrest. May I congratulate you, Dr. McNiece, on the superb job you have done in the years gone by and wish you high happiness and satisfaction in the years that lie ahead.

I shall speak to you briefly of a matter about which many have written and more have talked—the right to dissent. Although I realize that little can be added to what has already been said, the subject is particularly timely today when dissent and protest, assuming a new guise, have invaded the courtroom.

The decade just concluded has witnessed a procession of events, separate but related, dramatically posing the question whether our society, which has traditionally relied on legislative and judicial processes as the media for change, can accommodate to the concept of civil disobedience as a means to a desired end. Thus, there have been civil rights marches, anti-war protests, draft card burnings, university sit-ins—some of which are legal, indeed, constitutionally protected, activities, while others are deliberate violations of law designed to dramatize opposition to authority or even to compel a change in policy with the threat of disruption. Taken together, these highly publicized forms of protest have produced an atmosphere in which issues which were once debated calmly have taken on explosive dimensions. It is true, of course, that there have been other manifestations of unrest in our history but I venture to say that neither in scope nor in intensity did those occurrences prepare us for the confrontations and social cataclysms of the present day.

Underlying such phenomena, both past and present, has been the element of protest: protest against racial discrimination and social and economic maladjustment, protest against governmental policy, protest against educational programs and university authority and protest against our entire political process. From Henry Thoreau, who refused to pay a poll tax because it would support a state government committed to enforcement of the Fugitive Slave Law,[1] to Martin Luther King, who saw injustice anywhere as "a threat to justice everywhere,"[2] to the present day, public protest has served as a major vehicle for the expression of dissent.

In point of fact, the right to publicly proclaim one's dissent is part of our heritage. It is an integral aspect of the freedom of thought and expression which is basic to our democratic system of government, and it must be preserved, protected and cherished. But a protest which goes beyond the expression of dissent or disagreement —whose object is coercion rather than persuasion—cannot be justified. Just as the violent suppression of legitimate dissent is wrong and intolerable, it is equally intolerable for the expression of dissent to take the form of violence or incitement to violence, of interference with the rights of others. In short, there is no room for dissent which violates the rule of law. Such dissent not only transcends the bounds of constitutionally protected individual liberty but, since its aim is to destroy the rights of others, it represents a repudiation of the very principle of individual liberty on which it is purportedly premised. In the words of Judge Learned Hand, liberty is not license; "it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A society in which men recognize no check upon their freedom soon becomes a society

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[1] H. THOREAU, ON CIVIL DISOBEDIENCE 229 (New American Library ed. 1960).

[2] NEW LEADER, June 24, 1968, at 3.

where freedom is the possession of only a savage few . . . ."[3]

Because of this, those who are interested in the preservation of our liberties and of our democratic system must, of necessity, be concerned about the disruptive and obstructive tactics which a few unruly defendants have employed in our courtrooms in several cases in recent months. Although isolated instances of such behavior may not really pose a threat—as some have asserted—to the administration of justice today, continued resort to those tactics on any substantial scale could seriously hamper the operation of our courts and thereby frustrate the vital purpose they serve. In very fact, our laws and the judicial system stand as the bulwarks of our liberties. It has been aptly said that a capable and fair judicial system is, indeed, "[t]he only real alternative which a democracy has to violent dissent and armed revolution."[4]

If anything is clear, it is that we cannot countenance the substitution of deliberately fomented disorder and calculated disruption in our courtrooms for order and dignity and for respect for the law and for the courts which administer it. The attainment of even-handed justice and fairness demands that the judicial process be conducted in a calm and dispassionate atmosphere. As the late President Kennedy declared in September of 1962—though in a somewhat different context:

> [O]ur nation is founded on the principle that observance of the law is the eternal safeguard of liberty and defiance of the law is the surest road to tyranny. . . . [I]n a government of laws and not of men, no man . . . and no mob, however unruly or boisterous, is entitled to defy a court of law. If this country should ever reach the point where any man or group of men . . . could long deny the commands of our court and our Constitution, then no law would stand free from doubt, no judge would be sure of his writ and no citizen would be safe from his neighbors.

Any grievance, no matter how meritorious, which dissenters and protesters on trial may have, cannot possibly justify their turning the courtroom proceedings "into a chaos of deliberate insults and purposeful disruption."[5] Nor can there be any warrant for their attempted use of the courtroom as a forum for propaganda or for the expression of views, political or otherwise, which have no relevance whatsoever to the matters in issue before the court. Defendants who very properly insist upon their right to a fair trial do themselves and the cause they espouse, as well as the administration of justice, a disservice by resorting to disorderly and contemptuous behavior deliberately intended to render the judicial process ineffectual.

There are numerous important constitutional safeguards which our courts scrupulously enforce for the protection of a defendant's rights. They are designed to assure a fair trial for every defendant, regardless of who he is or what views he holds. These safeguards are rarely disregarded at the trial level but, if they are, there are appellate courts to which recourse may be had. In brief, our judicial system is one which rests on reason and on the

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[3] L. HAND, THE SPIRIT OF LIBERTY 190 (1960).

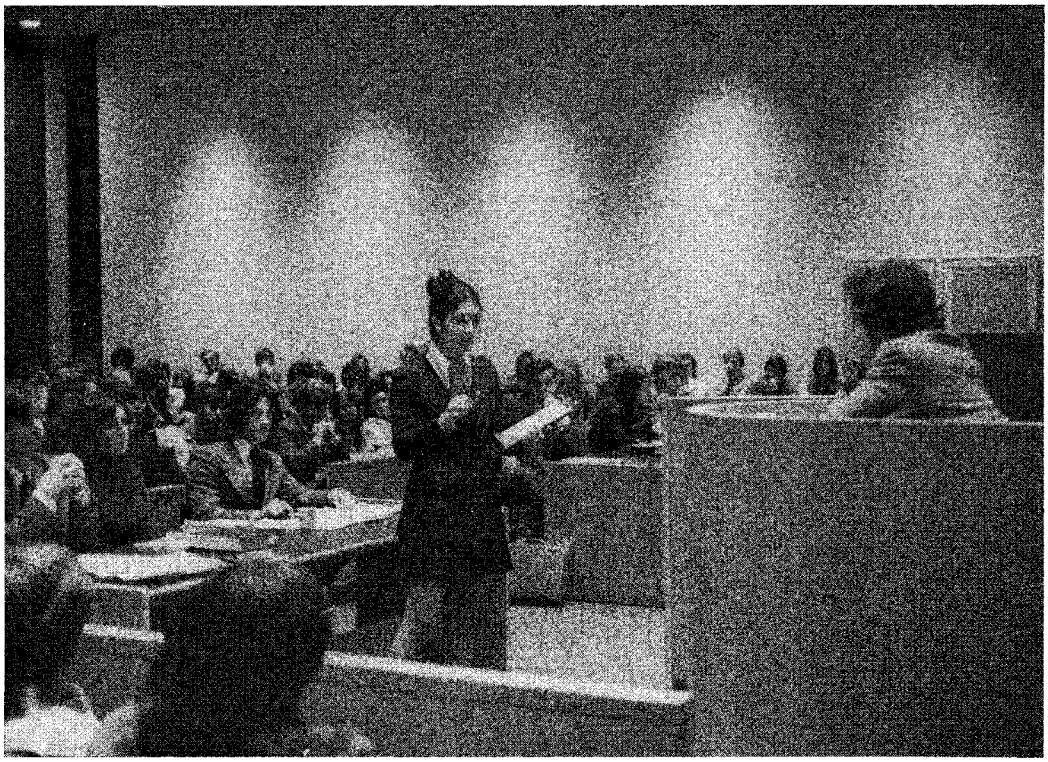
[4] National College of State Trial Judges, Pamphlet 7 (1970).

[5] N.Y. Times, Feb. 17, 1970, at 42, col. 2.

concept of fairness for all, and it does not lie within the competence of any person, dissenter or non-dissenter, layman or lawyer, to destroy that tried and tested system, whatever may be his political motivation or how deep his antipathy to the existing social order.

I am hopeful—despite predictions to the contrary—that appropriate restraining influence will be exercised by counsel and that any lawyer, worth his salt, who is faithful to his oath and the canons of professional responsibility will be able to persuade his client to desist from unruly and objectionable conduct and rely, instead, on reasoned appeal to the trial judge and jury and, in the event of a conviction, to the appellate courts. Surely, a reasonably intelligent defendant, no matter how disenchanted with our way of life or with our political system, must, if properly advised, realize that it is to his own best interests that the trial be left in the hands of counsel so that his defense may be most clearly and strongly presented.

Let us suppose, though, that some incidents of disorderly and obstructionist tactics continue. What is to be done? Although there are no ready answers, many and varied suggestions have been advanced as to how to deal with the problem. All of them deserve to be explored but, in appraising their worth and endeavoring to find an appropriate solution, we must be



The Criminal Law Institute Conducts Its Annual Trial Employing Judge Fuld's Suggested Procedures.

mindful that some raise constitutional questions. We must remember, too, that under our system of justice a fair trial cannot be waived and that we must protect the defendant against injustice despite his own efforts to render justice difficult to achieve. We must be careful, therefore, not to adopt measures which would themselves offend against constitutional guarantees and threaten the integrity and dignity of the judicial process as well. In other words, excess must be answered not by excess but by reason and a due regard for the constitutional compact which binds us all. Moreover, not only must we do our utmost to assure that our judicial and political processes are responsive to the needs of our times but we must seek out the causes for the disaffection upon which those who challenge our system of government and justice batten. We have, to be sure, made some progress in the past years in this direction but much more remains to be done to convince all of our citizens that they have a stake in this society.

But, nonetheless, one thing is clear. Defendants cannot be allowed to turn court proceedings into a shambles. Order and decorum there must be if there is to be a meaningful trial. The issue is joined between the rule of law and anarchy. Needless to say, as one thoughtful legal philosopher has put it, we cannot allow violence or anarchy to "undermine the structure of ordered liberty that men of law have built and maintained for the many centuries. . . . [P]rivate individuals and private groups [may not] choose the laws they will obey as they choose the shirts they buy, liking this one and rejecting the next. For then, as the contagion spreads, there is no law. And where there is no law, there is no liberty. And where there is no liberty, the people perish."[6]

Again, my thanks for the honor you have done me.

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[6] H. JONES, THE EFFICACY OF LAW 102 (1969).