



# Department of Justice

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"WHAT KIND OF WORLD DO YOU WANT?"

ADDRESS

BY

ATTORNEY GENERAL JOHN N. MITCHELL

BEFORE THE

ANNUAL LAW DAY DINNER

OF THE

DETROIT BAR ASSOCIATION

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## INTRODUCTION

It is a great pleasure to come to the City of Detroit to speak to your bar association on Law Day.

As you may know, while I was born in Detroit, I have spent most of my life in New York and now in Washington -- one the center of financial power and the other the center of political power. But their very peculiarities tend to insulate those who live there from the real problems of America. That is why I enjoy coming to a great industrial center like Detroit on this occasion.

This evening, I would like to talk to you about a serious threat to our system of law, a threat which is as disturbing as the violence in our cities. It is the violence and dissatisfaction on our college campuses.

Campus disorders are basically a local problem to be solved at the local level and not by the federal government. But as Attorney General -- as the senior law enforcement officer in the nation -- I believe that I have the responsibility to comment on national problems which affect the administration of justice even though my legal jurisdiction may be limited.

I also come to you tonight as a fellow citizen, as a parent with two children recently graduated from college and as a grandfather concerned about the future.

An eminent Nobel laureate said last month in Boston: "What we are up against is a generation that is by no means sure it has a future." I disagree with that assessment.

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I suggest that this generation has the most promising future world of any generation of Americans.

But I must pose to them the query of Mr. Justice Holmes:

"Behind every scheme to make the world over lies the question, what kind of world do you want?"

What kind of world do our students want? Do our university officials want? Do our teachers want? Do our citizens want? And I must remind you that when we talk about our students we are not talking about an alien people -- we are talking about our own sons and daughters and about the type of nation we are making for them to inherit.

#### 1. THE FACTS

Let me quote briefly to you a capsulized dispatch issued by the Associated Press at 10:15 a.m., EST, on April 24:

Washington--Student militants seize buildings at American University and George Washington University.

Ithaca--Cornell University faculty members agree to demands of students who seized college buildings armed with guns.

Kent, Ohio--Kent college students create physical disturbances.

New Orleans--Southern University students lower the American flag.

Cambridge--Harvard professor resigns in the wake of police-student clash.

Princeton--Sixty students block doorways to a research facility.

New York--One hundred-fifty students and faculty stage a sit-in at Fordham University.

College Park, Maryland--University of Maryland protestors attempt to block entry to a science center.

New York--Two Brooklyn high schools forced to close after three days of student unrest.

That is one day of what kind of world some of our students have. In the current academic year, there have been demonstrations on over 200 college campuses throughout the nation. This has resulted in more than 2300 arrests and property damage in excess of an estimated \$2.2 million.

Since January 1, 1969, the protest movement has escalated its tactics. For example, in the State of California:

At San Francisco State a bomb permanently blinded one student and a second bomb was discovered before it exploded.

At Pomona College in Claremont, a secretary was blinded in one eye and lost two fingers when a bomb exploded as she was removing it from a college mailbox.

At the University of California in Santa Barbara, a custodian at the Faculty Club died from burns when he picked up a firebomb.

At Berkeley, in the last eight months, there have been four arsons and two bombings, and \$1.1 million in property damage.

This Administration has tried to be patient in the hope that students, faculty, and local officials, working together, would put an end to this chaos.

But the time has come for an end to patience. The time has come for us to demand, in the strongest possible terms, that university officials, local law enforcement agencies and local courts apply the law.

I call for an end to minority tyranny on the nation's campuses and for the immediate reestablishment of civil peace and the protection of individual rights.

If arrests must be made, then arrests there should be. If violators must be prosecuted, then prosecutions there should be.

It is no admission of defeat, as some may claim, to use reasonable physical force to eliminate physical force. The price of civil tranquillity cannot be paid by submission to violence and terror.

## II. THE IDEA OF THE UNIVERSITY

The American university educational system is one of our proudest achievements.

Perhaps, it is that our current generation does not appreciate the toil that has gone to build it. Starting with one small donated library in 1636, our university system now numbers more than 2,000 public and private institutions with 6.9 million students. The concept that we have in this nation that all who are qualified deserve an education, has been one of our unique contributions.

James Russell Lowell noted:

"It was in making education not only common to all, but in some sense compulsory on all, that the destiny of the free republics of America was practically settled."

Another cherished concept of our university is -- as the Commission headed by former Solicitor General Archibald Cox reported --

"A university is essentially a free community of scholars dedicated to the pursuit of truth and knowledge solely through reason and civility . . . resort to violence or physical harassment, or obstruction is never an acceptable tactic for influencing decisions in a university."

### III. THE STUDENT MOVEMENT

To date, we have had disturbances on more than 200 campuses -- about nine per cent of the colleges in the country. In only a small number of such disturbances was there any severe physical violence and bloodshed reported. The total arrest rate, of 2300, is less than four-tenths of one per cent of all of our students.

While accurate statistics are not available, it is believed that less than two per cent of our students have engaged actively in any disruptions causing physical or property damage.

It might be convenient to look at these statistics and suggest that the situation has been exaggerated. I think not.

Society has a way of selecting symbols and it is no accident that some of the most violent demonstrations have occurred at some of our most highly regarded universities -- California, Wisconsin, Harvard, Cornell, Duke, Columbia -- the universities to which we point with pride as among the leaders of our higher educational system.

Furthermore, it is undeniable that, while violence-prone activists represent a small percentage of our students, some of their actions have struck a responsive chord to a whole generation: so responsive, in fact, that the activists receive at least tacit support or neutrality from many other students.

As Professor Freund said prophetically, a year ago, our students accuse us of hypocrisy: that our laws, while pretending to be equal, give preference to the rich; that our politics, while pretending to be honest, are tools for the influential; that our scientists, while pretending to be humanitarian, build machines of war; that our economic prosperity, while pretending to affluence, leaves some citizens hungry; that our religion, while pretending to be pious, is conveniently indifferent.

I would be less than candid with you if I did not admit that their accusations are sometimes true. I cannot deny that the world of my generation may appear hypocritical to the generation of our sons. Neither do I deny that my father's generation appeared hypocritical to me as his father's did to him.

What our sons must remember is that we have today in this nation more equality in the law, more honesty in politics, more ethics in science, more people employed and less people hungry, and more religious dedication to the problems of society than at any other period in our history and than in any other nation in the world. Our progress may be too slow for our sons. But it is good faith progress; and cautious advancement is no justification for destruction.

A decade ago we saw the "silent generation" going quietly from the university to earning a living. Today, we have the "involved generation" who are interested in the problems of our society. They are active in civil rights, in poverty, in hunger, in education for the poor, in job retraining, and in partisan politics. I welcome this generation's demand that the university not be an extraterritorial community removed from society, but that it and its members deeply involve themselves with the problems of the day.

But if they are to assume a role as adult activists in a community, they must also assume the obligations that go with adult citizenship. And one of the primary obligations upon which we exist is a simple maxim, carved above an entrance of the Justice Department in Washington, which says:

"Law alone can give us freedom. Where law ends, tyranny begins."

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Campus militants, directing their efforts at destruction and intimidation, are nothing but tyrants. But there are others who share the blame by failing to act -- university administrators must take firm and immediate action to protect the rights of faculty members to teach and of other students to learn. Faculty members should stop negotiating under the blackmail threat of violence. Apathetic students should stand up for the rights of those who wish to pursue civility and scholarship in the academic community. To the extent that they remain neutral or refuse to act, they are all accessories to the tyranny we are now witnessing.

#### IV. THE CONSTITUTIONAL RIGHT TO DISSENT

The genesis of our current student problems is thought to lie in our encouragement of lawful dissent.

The right to express disagreement with the acts of constituted authority is one of our fundamental freedoms. The First Amendment expressly protects "the freedom of speech" and "of the press" and "the right of the people peaceably to assemble, and petition the Government for a redress of grievances."

As one Supreme Court Justice has described it:

"The right to speak freely and to promote the debate of ideas is . . . one of the chief distinctions that sets us apart from totalitarian regimes."

Recognizing this, the Supreme Court has construed the First Amendment to protect the right of a citizen to speak, to

write and to disseminate his ideas by peaceful methods.

Citizens have the right to use the streets and other public grounds, to conduct reasonable demonstrations, to distribute handbills and to quietly picket.

Furthermore, schools should be encouraged to abide by First Amendment principles.

As Mr. Justice Brennan has said:

"The vigilant protection of constitutional freedom is no where more vital than in the community of American schools. The class room is particularly the 'market place of ideas'."

While this description was applied to the public, tax-supported school, it would seem to me that First Amendment ideas should apply equally to all universities, both public and private.

#### V. THE LIMITS OF DISSENT

But there are definite limits beyond which these First Amendment guarantees may not be carried.

The Supreme Court has flatly rejected the argument "that people who want to propagandize protests or views have a constitutional right to do so whenever and however they please."

As Mr. Justice Goldberg has said:

"We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under law. . . . There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations."

The Supreme Court has explained that demonstrators do not have a constitutional right to cordon off a street, or to block the entrance to a building, or to refuse to allow any one to pass who will not listen to their exhortations.

The question remains, of course, whether the rights of students to protest on a university campus are to be greater or the same as the rights which the ordinary citizen enjoys under the First Amendment.

Only two months ago the Supreme Court ruled that the right of students to engage in peaceful protests does not include the right to disrupt the educational process.

If we are to be consistent, I believe that students on campus should enjoy at least the minimum protections for freedom of speech specified by the Constitution. In certain circumstances it may be appropriate for university authorities to offer additional rights. Exaggeration and bizarre behavior, romanticism and intellectual rebellion are traditional among our youth. The scope of these additional rights, if any, should be decided by each individual university authority.

But let me make one thing clear: students do not enjoy any special prerogative to interfere with the rights of other students or, as the Supreme Court has said: ". . .conduct by the student in class or out of it . . . is . . . not immunized by the constitutional guarantee of freedom of speech."

The right to be a student carries other fundamental rights than the right to dissent. Among these valuable rights which must also be protected, are the right to use research facilities, free from occupation by demonstrators; the right to use libraries free from seizure by dissidents; the right to consult with administrators free from having one's personal file and records destroyed; the right to study in an atmosphere of "reason and civility."

V. THE MORAL RIGHT TO DISSENT

In any honest discussion on student protests, one must meet the claim that civil disobedience is an accepted tradition in American society.

This is especially true among our student population who claim that their seizures of university buildings and imprisonment of university officials are legitimate acts of civil disobedience similar to their participation in the civil rights protests.

I disagree. First: traditionally, civil disobedience has involved an issue of universal or fundamental morality -- such as the equality of the races. No such issue has been involved in the current student protests.

Second: organized disobedience in the civil rights movement has rarely involved violence or bloodshed. It has concentrated, rather, on non-violence and on symbolic action which

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offered no substantial deprivation of rights to anyone else. One can hardly equate a sit-in at a bus terminal with throwing a student out of a second story window.

Third: in this country, the historical key to civil disobedience has been its amenability to arrest and prosecution. Indeed, it has always been considered, as Thoreau told Emerson, that the moral righteousness of breaking a law was in the punishment that the law meted out.

Today's militants also reject that concept. They physically resist arrest and they are unwilling to submit the merits of their cause to any tribunal other than their own self-determination.

#### VI. WHAT SHOULD BE DONE

Having defined the problem, I feel obligated to offer a few suggestions on what can and should be done to resolve it.

My jurisdiction, as you well know, is limited to the application of federal law. Our concept has always been that, unless we in the federal government have a clear mandate, we permit the states and the municipalities to deal with law enforcement problems. The clearest mandate we have, so far, is the anti-riot provisions of the 1968 Civil Rights Act. It prohibits persons from crossing state lines with intent to incite riots.

We have substantial information confirming the widely accepted belief that several major university disturbances have

been incited by members of a small core of professional militants who make it their tragic occupation to convert peaceable student dissatisfaction into violence and confrontation.

These circumstances can only lead to the conclusion that this hard core is bent on the destruction of our universities and not on their improvement.

You can be assured that these violence-prone militants will be prosecuted to the full extent of our federal laws.

We are also collecting a great deal of information about student disorders and those who cause them.

We are offering this information to state and local law enforcement officials operating in jurisdictions where campus disorders may occur.

No society, including an academic society, can survive without basic agreement by a great majority of its members as to the fundamental precepts upon which it operates.

The first precept for any academic community must be to outlaw terror.

The second premise is that students, faculty and administration officials should all participate, in some measure, in the decision-making process. What this means, at a minimum, is that university administrators must offer a serious forum for responsible student criticism -- and more than that, it must be clear to the students that their grievances will be honestly considered and will not be lightly dismissed under the procedural

ruse of an artificial dialogue.

Third: universities must prepare for prospective violence. It is no longer acceptable for a university administration to claim, after the events of this year, that they were taken unawares -- that they acted in panic and that their mistakes can be blamed on the alacrity with which the demonstration developed.

Here, too, the entire university community should be consulted since it is the censure or approbation of a majority of this community which will determine the course of student violence.

If, as has been done at some universities, the majority overwhelmingly rejects minority violence, the militants are left isolated except for brute physical power. Since the entire concept of confrontation is to attract the sympathy of the majority -- and sometimes the sympathies may be forthcoming because of inappropriate reactions -- this major avenue of support for violent demonstrators should be substantially diminished.

In any event, the university administrator should, in anticipation of the outbreak of a disturbance, consult with local law enforcement officials on the methods of handling various disturbances. Preparation and coordination by these parties may well eliminate the disturbance and will assure the timely application of any required counter-force.

Fourth: if all else fails and a disturbance does occur, university officials should consider applying immediately to a court for an injunction. This tactic has proved fairly successful in the past. It takes the university out of the law enforcement business, where it does not belong, and replaces it with the court which is better suited for this purpose.

Let me be specific: University officials are not law enforcement experts or judges. When a violent outbreak occurs, they should not take it upon themselves to decide how long the violence should endure and what rights should be trampled upon until local government is called in. For minor demonstrations, which involve no serious disruptions, the university should have the viability to decide for itself what the best solution may be.

But when people may be injured, when personal property may be destroyed, and when chaos begins, the university official only aids lawlessness by procrastination and negotiation. The university is not an extraterritorial community and its officials have the obligation to protect the rights of the peaceful students on its campus by use of the established local law enforcement agencies and the courts.

I should like to conclude this address by asking our sons and daughters to consider the words of Rousseau:

"If force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with immunity,



disobedience is legitimate; and the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails?"

Ladies and Gentlemen: "Behind every scheme to make the world over, lies the question: what kind of world do you want?"