

COMMENCEMENT ADDRESS
of
SENATOR HUBERT H. HUMPHREY
GEORGETOWN UNIVERSITY LAW CENTER

Washington, D. C.

June 3, 1973

President Henle, Father Ryan and my good friend, Dean Fisher. This is a thrilling occasion for me, and I might add, a frightening occasion, too. I have made more speeches than anyone ought to be permitted under either law or precedent. Yet every time that I am privileged to deliver a commencement address, particularly to graduates of a law school, I feel uneasy, nervous, inadequate and worried.

Davis Weir and I would agree that these honorary degrees come much easier than the earned ones. And they look as good when you get them all framed and hung in the office. So I'm grateful for this degree. I didn't really have to study for it. Yet I am now a son of Georgetown. Of course, I had the privilege some years ago to be christened, so to speak, an honorary student at Georgetown.

How does one address a graduating class of a Law Center in these troubled times? It's not easy -- and surely not easy for one who is in public life.

I wish that I had the humor of Bob Hope, who came to this University some years ago as the commencement speaker. He looked out over that great audience and said, "To those of you who are about to graduate and go out into the world, my advice is, 'Don't go.'" Now, I can't tell you that, because you're going to go. And some of you can hardly wait.

Or I recall that old cynic, Aldous Huxley, who observed, "I've peered into the future, and it won't work."

So all of that advice I'll have to toss aside, and today I'll be more serious with you. I'll talk about the present and the future and also about our heritage.

I'm pleased that I can be present today, when the endowment to this great university was announced. Francis and Helen Brown were close friends of the Humphrey family. We knew them well. As children, their daughter, Margaret, who's with us, and their son, Francis, Jr., would come to our home and play with our children. So this is a special occasion.

Margaret has her two daughters with her today, and I thought you'd all like to know what they're going to do. They inform me that they brought their coloring books. While I'm speaking, they're going to color. I've always believed in freedom of choice. For the next few minutes, feel perfectly free to do your own thing.

This is the 101st annual commencement for Georgetown University Law Center. This great university is filled with history and traditions. Every graduate is, in a sense, an inheritor.

The Healy Building, before which I now stand, was named after a wonderful and unique man, Father Patrick Healy, who began serving at Georgetown as prefect of studies back in 1868.

Father Henle has just told me how the blue and gray colors of the flag here at Georgetown were chosen. They were chosen, he said, as a symbol of the reunification of a nation torn by fratricidal war. Two thirds of the graduates of this university at the time of the War Between the States went to the South and a third to the North. After that bloody conflict, this university served as a source of healing, symbolically as well as in practical terms.

It was during the service of Father Healy that this great college, founded by an Act of Congress, became a university. In Father Healy's day, the graduates numbered in the low dozens. Yet he built this magnificent cornerstone of the hilltop campus that you see right here. And now today the undergraduate population of Georgetown is over 5,000. Almost that number attend the great professional and graduate schools.

Father Healy's vision and faith in this institution were never better illustrated than by this 1973 graduating class. You've come from every race, every religion, every ethnic group and economic class. You have come from every state of this Union and from several foreign nations. And you come from 270 undergraduate colleges and 68 law schools, proving that Georgetown Law Center represents a spirit of universality. It is indeed the coming together of many diverse and talented people.

Your most distinguishing and common characteristic is that you were likely in the top 25 percent of your undergraduate student body and ranked among the top 15 percent of all students taking the Law Schools Admissions Test. And, according to my good friend, Dean Fisher, you have distinguished yourselves in your years at Georgetown.

Now, having said all of these pleasant things, I want to level with you and say that it's somewhat proper to ask, "What will be your most distinguishing and common characteristic 25 years from now?"

It was just 25 years ago that I came to this city of Washington. But it seems like only yesterday. So, when I say to you "25 years from now," it is but a short time. Some of you will be successful private law practitioners. Some of you, hopefully, will be in government service. Some of you will be wooed into business and other professions. And, eventually, inevitably, some of the heartiest and bravest -- or perhaps the most adventuresome -- will have dared to enter the arena of politics.

Now, any graduate who leaves this campus today, regarding his or her diploma merely as a license for monetary reward, will clearly have misunderstood the nature of the intertwined problems of law and justice that, today, truly challenge our system of constitutional government. It is to this phrase -- "law and justice" -- that I direct my attention.

Your graduation from law school is occurring in a year in which the entire Anglo-American tradition of government of laws and not of men is being seriously questioned. Now only have laws and traditions affecting our most basic freedoms been wontonly violated, but it has been alleged that the highest ranking officers in our government were active participants in this conspiracy.

Yet, that same tradition of Anglo-Saxon law reminds us that the accusation does not prove the guilt. It is within that spirit that I believe all of us today must view these incredible happenings. Nevertheless, it is a situation without precedent in the history of the Republic.

We can't help but wonder how it could happen. How could these incredible developments take place in our time? Persons who have spoken out most frequently, and with the loudest voices, about the need of law and order in American life have been charged with conscious and flagrant abuses of law.

They are charged -- not with violation of another person's safety on the streets -- but with violation of the constitutional and legal processes that were carefully designed to protect all of us. Political spokesmen, who stress the urgency of creating a new sense of self-reliance, of individual responsibility and of public and private morality, have demonstrated precious little responsibility and surely all too little morality. They have ignored the rights and procedures that guarantee the individual's right to pursue a better and more happy life.

These events have created a sense of sadness, disgust, anger and disenchantment throughout the nation. It is also a time of despair and dismay for members of both political parties and for all persons in public life. A dark shadow has fallen over the entire political process. No one seems to be immune from it.

Surely anyone who has ever been elected to public office understands that one commodity above all others, namely the trust and the confidence of the people, is fundamental in maintaining a free and open political system. In fact, it is this trust and confidence that is the binding cement that holds us together as a people and makes secure the social contract of the governed and the government. The absence of this trust and confidence leads to what we see now -- a paralysis of government, where all citizens, whatever their pursuit or political persuasion, can and, indeed, are becoming innocent victims.

It would, at times, almost appear that we have returned to Rousseau's state of nature -- a war of all against all -- where the acquisition of power is the decisive factor in regulating human behavior and where the precious safeguards against executive tyranny are little more than historic remnants.

Just at the time when the passions over Vietnam were beginning to subside and it appeared that we might at long last begin to focus our attention on unmet domestic needs and grave foreign problems, this new tragedy confronts us. Our gnawing economic and social problems cannot be washed away by mere executive proclamation. They need solution. But, once again, they are sidetracked. It is under these unhappy circumstances that you begin your active practice of law.

It is not surprising that many of you share the general public's cynicism about the law and its relationship to the maintenance of law and justice in our society. Indeed, you have reason for wondering aloud about a legal and political system under which such aberrations could be committed by the very persons who swore to defend and uphold the Constitution.

There is no easy way to dispel this growing cynicism. Certainly elections change public officials. But the building of institutions, or their rebuilding, takes time.

The erosion of public confidence follows in the wake of specific acts of official arrogance and misconduct. And only by specific acts of elected officials can all of us begin the long process of restoring the American people's trust in their government and political system.

But I submit to this distinguished group of graduates, learned as you are, that this is not just a question now of prosecution or of punishing those persons who may have violated the law. Just as importantly, it is a question of taking the necessary affirmative steps that can signal once again a new concern by government for the lives of the people who are allegedly the source of its power.

Let me say to this graduating class that there is great work to be done. Do not allow the 1970's to become a replay of the 1950's, when by our indifference and our apathy we planted the seeds for the incredible difficulties of the 1960's.

Yet, today, I see the possibilities of the same situation. Once again we are caught up in the emotions and passions of our time and at the same time we sense an official social indifference. We cannot permit official indifference in the 1970's to be the beginning of grave or difficult troubles in the decade to come.

At a time like this I try to find some sources of comfort and strength. I find that the simple direct language of our founding fathers offers the most reliable guide in recapturing one's bearings, in deciding what ought to be done.

There are some enduring words and some basic truths that have been distilled from the experience of history. Consider, if you will, the words of the Preamble of our own Constitution, written in the present tense, not as an article of history, but as a proclamation of contemporary policy: "We the People of the United States, do ordain and establish this Constitution to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity," (today, not did) "do ordain and establish this Constitution for the United States of America."

Now, this single extraordinary sentence is remarkable, both for what it says and what it doesn't say. We find words such as these: the people, the union, justice, tranquility, welfare and liberty. We look in vain for such contemporary sentiments, uttered so often by some, as efficiency, order, executive privilege, secrecy or surveillance. These are not to be found.

In fact, I am reminded of what former Chief Justice Warren said of our Constitutional system: that we sacrificed efficiency for the purpose of restraining the possibility of tyranny. It is a government of limited powers -- one in which the major task of every public officeholder, no matter what his rank, is that of self-discipline and self-restraint. Restraint in the use of power, rather than to be intoxicated with its possibilities.

The Preamble of the Constitution speaks to us of humane goals that are the ultimate purpose of government. It speaks to us of the general welfare, of people, liberty and of union. This is where our founding fathers began their extraordinary design for our democratic experiment. This is where we must turn for guidance. There is no mention of the steps that government

might take to protect itself against the people or to preserve its own prerogatives. On the contrary, the major thrust of this Constitution of ours is one of establishing government to serve the people, to serve the needs of people and to protect the people from the abuse of power.

The whole structure of law is surrounded by what we call "due process." It has as its purpose not speed, not shortcuts, but rather the detailed, explicit protection of the individual from the miscarriage of justice and the abuse of power by government.

The men who wrote that Constitution were practical men, not dreamers. They understood that weak and ineffective government could be as destructive to human freedom as tyrannical government. So they designed a government with the capacity for action and positive leadership. But, understanding the dangers of unrestrained governmental power, they constructed a unique system of separate powers, where governmental authority is limited by checks and balances and where its source of authority lies not in the Executive Branch or in the state, but rather in the people.

I was pleased to note that the charter for Georgetown University was written and passed by the Congress under the Administration of President James Madison. We often quote Madison because of his remarkable writing in the Federalist Papers.

May I suggest today to my friends in the legal profession, these words from Madison: "It may be a reflection on human nature," he said, "that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections of human nature. If men were angels, no government would be necessary."

What we've witnessed in essence during recent months are actions taken by some who apparently consider themselves to be among Madison's "angels." They are persons who believed they were possessed with special wisdom, who knew what was best for the people and what was good for the country. They felt they were thoroughly justified, politically and morally, in short-circuiting, short-cutting, or even violating and ignoring the established processes of Constitutional government.

Remember what John Adams said, "Power always thinks it has a great soul." In other words, when you're vested with power, self-righteousness is an easy companion. It is not surprising, therefore, that the excesses of Watergate are associated with public officials who sought to deny Congress the exercise of certain of its legislative powers granted by the Constitution -- the power of the control of the public purse, the power to declare war and the power to question members of the Executive branch.

These actions that we read about every day -- from impoundment to executive privilege -- were derived from a perspective that looked upon the elected representatives of the people as an obstruction to the special wisdom possessed by some who were self-annointed rather than co-equal participants in the process of Democratic government, where neither the legislature nor the executive is blessed with the ultimate truth.

Therefore, two lessons are paramount as we consider the events of Watergate and the related assault on the Constitutional safeguards and the prerogatives of Congress.

First, we must not confuse strong, effective representative government concerned with securing greater justice for the people with oppressive government dedicated to acquiring and preserving power for its own sake. Those who came to office on a platform of law and order and immediately called for a host of dubious practices to further this objective also demonstrated

little concern for a host of social and economic injustices that still prevail in this land and which cry out for effective, forceful government action. The relationship of law and justice implied in the Preamble of our Constitution -- that the ultimate purpose of law is the achievement of justice -- has been shortchanged and often ignored.

Second, we must recognize that any government which refuses to trust the people, as demonstrated, for example, by widespread tampering with the 1972 electoral process, and subsequent efforts to hide these activities, will soon find that the people will refuse to trust the government. Once this occurs we run the risk of paralysis of government.

In the mind of the perpetrator, however, it is but a short stop from the blanket invocation of executive privilege in open defiance of the rights of the legislature to the secret electronic surveillance or wiretapping of personal telephone conversations in violation of the rights of the individual. If you can violate the rights of the elected representatives of the people, then you have an easy justification for violating the privacy of the citizen. Both actions are justified by the perpetrator in the name of a higher cause called "national security." Both actions undermine the foundation of popular trust and confidence that is the real source of strength and security for any democratically elected government.

Now, if we take these two lessons to heart, then the outrages of the recent past may have their positive side. We are now at a time for cleaning, for rehabilitation, for rededication to democratic principles and processes. None of us is immune.

It has always been my view that lawyers are a privileged group in the sense of a broad and rich education. And you are privileged in that you have received the greatest subsidy that anyone will ever get -- the inheritance of centuries of learning. Millions of people have never had it.

I hope that I never hear a lawyer speak in derogatory terms of the assistance that the poor, the afflicted and the disabled receive from the government or a community. If you're a doctor or a lawyer, or a graduate of a college or university, you have received more assistance or subsidy than the poor will ever get from a government and community. Let's not forget it.

Therefore, we together -- you as lawyers and I as a lawmaker -- have special responsibilities. You, as a result of your professional training and study, have an extra insight into the delicate balance that must exist between the rights of the people and the obligations of government. If justice and the blessings of liberty are to survive, we must think and act in terms of the rights of people, rather than the power of the government.

It's my hope that recent events will convince you of your responsibility to see that, in the final analysis, this delicate balance will not be tipped against the individual citizen or against Constitutional processes upon which we all ultimately depend.

Out of the incredible performance of violence to Constitution, law and tradition, the basic strengths of our social order seem to be coming through. Our intricate and complex system, buttressed by the Bill of Rights, is once again proving itself to be the protector of the public interest and the people.

A vigorous free press, centered right here in the nation's capital, protected by the First Amendment, has been able to expose wrongdoing. By his courageous actions a federal district judge and a graduate of this great law school has earned the undying respect and admiration of a grateful nation. A duly-constituted select committee of the U.S. Senate, whose chief counsel is a professor here at this great law center, is carefully and responsibly conducting an investigation which has, as its sole purpose, to find the facts and seek the truth.

We're beginning to witness a new determination in the Congress to assert its rightful prerogatives and, if we are diligent, we may secure a comprehensive package of election and campaign reforms that will give a new grant of power to the American people by insulating the electoral process from any combination of special deals and special interests.

There is a saying that I like to recall whenever I need the strength to carry on my duties. It's a thought that sums up what I've been attempting to say: "Man's capacity for justice makes democracy possible. But man's inclination to injustice makes democracy necessary." That tells us pretty much what it's all about.

So now it's your task to find your way, individually and collectively, and to make your contribution to the common good. But remember, as you leave here, that the work of self-government never ceases and that democracy is not self-executing. It requires continuous self-examination and this self-examination and self-discipline are the price indeed of political freedom and the hope of justice.

You, as lawyers, with your privileges, will carry a special burden in this effort. It's not somebody else's business. Morality is not merely a political issue. It is public and private. Each of us has his own responsibility.

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OF
SENATOR HUBERT H. HUMPHREY

GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON, D.C.
JUNE 3, 1973

Father President Henle, Father ~~Regan~~ ⁰ ~~Regan~~,
Dean Fisher, President Pinto

~~REVEREND FATHER PINTO~~, REVEREND FATHERS, DISTINGUISHED

FACULTY AND GUESTS, AND GRADUATES OF THE GEORGETOWN UNIVERSITY

LAW CENTER:

Thanks for Honorary Doctor of Laws degree
Jim Honorary Student! enjoy those degrees

IT IS A GREAT PRIVILEGE FOR ME TO PARTICIPATE IN THE 101ST
ANNUAL COMMENCEMENT OF THE GEORGETOWN UNIVERSITY LAW CENTER.

I SAY THIS WITH PARTICULAR APPRECIATION FOR THE HISTORY
AND TRADITIONS OF THIS GREAT UNIVERSITY, AND WITH FULL
RECOGNITION OF THE QUALITY OF THE LAW GRADUATES WHO TODAY
HAVE RECEIVED THEIR DIPLOMAS.

I AM TOLD THAT THE HEALY BUILDING BEFORE WHICH I STAND
WAS NAMED AFTER Father PATRICK HEALY, ~~SI~~ WHO BEGAN SERVING AT
GEORGETOWN AS "PREFECT OF STUDIES" IN 1868. IT WAS DURING HIS
YEARS AT GEORGETOWN THAT THE COLLEGE, FOUNDED BY AN ACT OF

CONGRESS IN 1789, REALLY BEGAN TAKING SHAPE AS A UNIVERSITY.

↳ IN FATHER HEALY'S DAY, GRADUATES WERE NUMBERED IN THE LOW
DOZENS; YET, HE BUILT THIS MAGNIFICENT CORNERSTONE OF THE
HILLTOP CAMPUS ↳ TODAY, THE UNDERGRADUATE POPULATION IS OVER
5,000, ~~AND~~ ^{and} ALMOST AS MANY ATTEND THE PROFESSIONAL AND
GRADUATE SCHOOLS.

↳ FATHER HEALY'S VISION AND HIS FAITH IN THIS INSTITUTION
WERE NEVER BETTER ILLUSTRATED THAN BY ^{his} ~~THE~~ 1973 GRADUATING CLASS,
OF THE GEORGETOWN LAW CENTER ^{you} ~~TOG~~ ~~AND~~ ~~WOMEN~~ HAVE COME FROM
EVERY RACE, RELIGION, ETHNIC GROUP AND ECONOMIC CLASS; FROM
EVERY STATE OF THE UNION AND FROM SEVERAL FOREIGN NATIONS; FROM
270 UNDERGRADUATE COLLEGES AND 68 LAW SCHOOLS.

Your most distinguishing and common characteristic is that

you likely were in the top 25 percent of your undergraduate

student body, and ranked among the top 15 percent of all students

taking the Law School Admission Test, ^{according to Dean Fisher} and you have distinguished

yourself in your years at Georgetown. — ^{now having said}

^{all these pleasant things - its proper to}
ask, what will be your most distinguishing and common

characteristic 25 years from now? ~~well~~ - Well -

^{I suppose} ^{you} some will be successful private law practitioners; some

will be in government service; some will have been wooded into

business or other professions and eventually, inevitably,

some of the hadiest and bravest . . . or perhaps the most

adventurist . . . will have entered politics.

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~~MOST OF YOU, ONE WAY OR ANOTHER, WILL HAVE SURMOUNTED THE
IMAGE OR IDENTITY CRISIS THAT TODAY AFFLICTS BOTH POLITICIANS
AND LAWYERS.~~

~~YOU WILL SURVIVE THIS IDENTITY CRISIS, I PREDICT, BY
RECOGNIZING THE ADDITIONAL RESPONSIBILITIES THAT TODAY REST
ON THE SHOULDERS OF THE LEGAL PROFESSION. THE DAY HAS PASSED~~

~~WHEN LAW GRADUATES WITH YOUR TRAINING AND EDUCATION ARE
PERMITTED TO LEAVE SCHOOL, PASS THE BAR, AND SET OUT SIMPLY
TO GET RICH IN ^{your} THEIR CHOSEN SPECIALTY OF REAL ESTATE, PROBATE,
TORTS, TAXATION, OR ADMINISTRATIVE LAW PRACTICE.~~

Kelp
 ANY GRADUATE WHO TODAY LEAVES THIS CAMPUS REGARDING HIS
 OR HER DIPLOMA MERELY AS A LICENSE FOR MONETARY REWARD WILL
 CLEARLY HAVE MISUNDERSTOOD THE NATURE OF THE INTERTWINED
 PROBLEMS OF LAW AND JUSTICE THAT TODAY ~~EXIST IN OUR~~ *challenge our*
CONSTITUTIONAL FORM OF GOVERNMENT.

YOUR GRADUATION FROM LAW SCHOOL TAKES PLACE IN A YEAR
 WHEN THE ENTIRE ANGLO-AMERICAN TRADITION OF "GOVERNMENT OF
 LAWS AND NOT OF MEN HAS BEEN BROUGHT INTO QUESTION. *NOT ONLY*
 HAVE LAWS AND TRADITIONS AFFECTING OUR MOST BASIC FREEDOMS
BEEN VIOLATED, BUT IT HAS BEEN ALLEGED THAT HIGH RANKING
OFFICERS IN OUR GOVERNMENT WERE ACTIVE PARTICIPANTS IN THE
CONSPIRACY.

↳ IT IS A SITUATION WITHOUT PRECEDENT IN THE HISTORY OF THE
REPUBLIC.

↳ PERSONS WHO HAVE SPOKEN OUT MOST FREQUENTLY, AND WITH THE
LOUDEST VOICES, ABOUT THE NEED ~~of~~ FOR LAW AND ORDER IN
AMERICAN LIFE HAVE BEEN CHARGED WITH CONSCIOUS AND FLAGRANT
ABUSES OF THE LAW -- NOT IN VIOLATION OF ANOTHER PERSON'S
SAFETY ON THE STREETS BUT IN VIOLATION OF THE CONSTITUTIONAL
AND LEGAL PROCESSES THAT PROTECT US ALL.

↳ POLITICAL SPOKESMEN WHO STRESSED THE URGENCY OF BUILDING
A NEW SENSE OF INDIVIDUAL RESPONSIBILITY AND MORALITY ~~IN~~
~~AMERICA~~ HAVE DEMONSTRATED PRECIOUS LITTLE RESPONSIBILITY AND
MORALITY.

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L THEY HAVE IGNORED THE RIGHTS AND PROCEDURES THAT
 HELP MAKE POSSIBLE AN INDIVIDUAL'S ^{Search} ~~RIGHT~~ FOR A BETTER AND
 MORE HAPPY LIFE.

*There is a sense of sadness and disgust -
of disenchantment and anger -*

L IT IS A TIME OF DESPAIR AND DISMAY FOR MEMBERS OF
 POLITICAL PARTIES AND PERSONS IN PUBLIC LIFE. <sup>a dark shadow has fallen over the
entire political process</sup> ANYONE WHO

HAS STOOD FOR ELECTED PUBLIC OFFICE UNDERSTANDS THAT ONE
 COMMODITY ABOVE ALL OTHERS -- THE TRUST AND CONFIDENCE OF
 THE People -- IS FUNDAMENTAL IN MAINTAINING A FREE AND OPEN
 POLITICAL SYSTEM. ~~THE~~

L THE ABSENCE OF THIS TRUST AND CONFIDENCE LEADS
 TO A PARALYSIS OF GOVERNMENT WHERE ALL CITIZENS, WHATEVER
 THEIR POLITICAL PERSUASION, BECOME INNOCENT VICTIMS.

~~Handwritten scribble~~

EVERY INDEX OF PUBLIC OPINION RECORDS THE GRIEVOUS DAMAGE THAT
HAS BEEN INFLICTED BY THE DISCLOSURES OF THE PAST YEAR.
AND WE MUST FRANKLY RECOGNIZE THAT MORE SHOCKING REVELATIONS
MAY YET LIE AHEAD.

IT WOULD, AT TIMES, ALMOST APPEAR THAT WE HAVE RETURNED
TO ROUSSEAU'S STATE OF NATURE - A WAR OF ALL AGAINST ALL - WHERE
THE ACQUISITION OF POWER IS THE DECISIVE FACTOR IN REGULATING
HUMAN BEHAVIOR AND WHERE THE PRECIOUS SAFEGUARDS AGAINST
EXECUTIVE TYRANNY, ~~ABOUT WHICH WE LEARNED AS CITIZEN~~ ARE
LITTLE MORE THAN HISTORICAL REMNANTS.

↳ JUST AT THE TIME WHEN THE PASSIONS OVER VIETNAM WERE
SUBSIDING AND IT APPEARED THAT WE COULD FOCUS OUR ATTENTION
ON DOMESTIC AND FOREIGN PROBLEMS, THIS NEW TRAGEDY CONFRONTS
US, THE GNAWING ECONOMIC AND SOCIAL PROBLEMS WHICH SO
URGENTLY NEED SOLUTION ARE ONCE AGAIN SIDETRACKED.

↳ IT IS IN THESE UNHAPPY CIRCUMSTANCES THAT YOU BEGIN THE
ACTIVE PRACTICE OF LAW, AND IT IS NOT SURPRISING THAT MANY
OF YOU SHARE THE GENERAL PUBLIC'S CYNICISM ABOUT THE LAW AND
ITS RELATIONSHIP TO THE MAINTENANCE OF JUSTICE IN THIS SOCIETY.

and indeed,

YOU CAN BE EXCUSED FOR WONDERING ALOUD ABOUT A LEGAL AND
POLITICAL SYSTEM UNDER WHICH SUCH EXCESSES COULD BE COMMITTED
BY THE VERY PERSONS SWORN TO UPHOLD THE CONSTITUTION. ~~THE~~
~~HIGHER LAW THAT OUR FOUNDERS BELIEVED WOULD MAKE SUCH~~
EXCESSES IMPOSSIBLE.

~~And~~

THERE IS NO EASY WAY TO DISPEL THIS GROWING CYNICISM!

L

THE EROSION OF PUBLIC CONFIDENCE ^{has come} ~~is~~ ^{the} IN WAKE OF SPECIFIC
ACTS OF OFFICIAL ARROGANCE AND MISCONDUCT AND ONLY SPECIFIC
ACTS BY ELECTED OFFICIALS CAN BEGIN THE LONG PROCESS OF
RESTORING THE AMERICAN PEOPLE'S TRUST IN THEIR GOVERNMENT AND
POLITICAL SYSTEM.

*oh yes, ~~we~~ we can & must prosecute the
guilty - we can by election change*

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↳ BUT IT IS NOT JUST A QUESTION OF PUNISHING THESE PERSONS WHO VIOLATED THE LAW; JUST AS IMPORTANTLY, IT IS A QUESTION OF TAKING THOSE AFFIRMATIVE STEPS THAT CAN SIGNAL A NEW CONCERN BY THE GOVERNMENT FOR THE LIVES OF THE PEOPLE WHO ALLEGEDLY ARE THE SOURCE OF ITS POWER.

↳ AT A TIME LIKE THIS, WHEN THE ISSUE IS NO LESS THAN THE RESTORATION OF CONSTITUTIONAL GOVERNMENT, IT IS OFTEN INSTRUCTIVE TO RETURN TO SOME ORIGINAL SOURCES.

↳ THE SIMPLE, DIRECT LANGUAGE OF OUR FOUNDERS OFFERS THE MOST RELIABLE GUIDE IN RECAPTURING ONE'S BEARINGS AND IN DECIDING WHAT HAS TO BE DONE.

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CONSIDER, IF YOU WILL, THE WORDS OF THE PREAMBLE TO THE
CONSTITUTION: "WE THE PEOPLE OF THE UNITED STATES, IN ORDER
 TO FORM A MORE PERFECT UNION, ESTABLISH JUSTICE, INSURE
DOMESTIC TRANQUILITY, PROVIDE FOR THE COMMON DEFENSE, PROMOTE
THE GENERAL WELFARE, AND SECURE THE BLESSINGS OF LIBERTY
TO OURSELVES AND OUR POSTERITY, DO ORDAIN AND ESTABLISH THIS
 CONSTITUTION FOR THE UNITED STATES OF AMERICA."

THIS SINGLE, EXTRAORDINARY SENTENCE IS REMARKABLE BOTH FOR
WHAT IT SAYS AND WHAT IT OMITTS.

WE FIND WORDS SUCH AS PEOPLE, UNION, AND JUSTICE, AND
TRANQUILITY, AND WELFARE AND LIBERTY. WE LOOK IN VAIN FOR
 SUCH CONTEMPORARY SENTIMENTS AS EFFICIENCY, OR ORDER, OR
EXECUTIVE PRIVILEGE, SECRECY, OR SURVEILLANCE.

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↳ THE PREAMBLE SPEAKS TO US OF THE HUMANE GOALS THAT ARE THE
ULTIMATE PURPOSE OF GOVERNMENT.

↳ THIS IS WHERE OUR FOUNDERS BEGAN THEIR EXTRAORDINARY
 DESIGN FOR OUR DEMOCRATIC EXPERIMENT AND THIS IS WHERE
 WE MUST RETURN ^{for guidance} IN THESE DIFFICULT TIMES. THERE IS NO MENTION

WHATEVER OF THE STEPS GOVERNMENT MIGHT HAVE TO TAKE TO
PROTECT ITSELF AGAINST THE PEOPLE OR TO PRESERVE ITS OWN
PREROGATIVES. *On the contrary, —*

↳ THE THRUST ^{of our constitution} VERY SIMPLY, IS ONE OF ESTABLISHING GOVERNMENT
TO SERVE THE NEEDS OF THE PEOPLE ~~AND TO~~ AND TO
PROTECT THE PEOPLE FROM THE ABUSE OF POWER BY GOVERNMENT.

*Yes, The whole structure of law
 built around 'due process'
 has as its purpose the protection of the
 individual from the abuse of power by govt.*

But,

the men who wrote our Constitution

~~THE FOUNDERS, OF COURSE, WERE PRACTICAL MEN AND THEY~~

UNDERSTOOD THAT WEAK AND INEFFECTUAL GOVERNMENT COULD BE

AS DESTRUCTIVE OF HUMAN FREEDOM AS TYRANNICAL GOVERNMENT

So THEY DESIGNED A GOVERNMENT WITH THE CAPACITY TO ACT, *But,*

THEY ALSO UNDERSTOOD THE DANGERS OF UNRESTRAINED GOVERNMENTAL

POWER, SO THEY CONSTRUCTED A FRAMEWORK OF SEPARATED POWERS

WHERE GOVERNMENTAL AUTHORITY IS LIMITED BY CHECKS AND BALANCES.

"IT MAY BE A REFLECTION ON HUMAN NATURE THAT SUCH DEVICES SHOULD BE NECESSARY TO CONTROL THE ABUSES OF GOVERNMENT,"

WROTE JAMES MADISON IN THE FEDERALIST. "BUT WHAT IS GOVERNMENT

ITSELF," HE CONTINUED, "BUT THE GREATEST OF ALL REFLECTIONS

ON HUMAN NATURE? IF MEN WERE ANGELS, NO GOVERNMENT WOULD BE

NECESSARY,"

WHAT WE HAVE WITNESSED, IN ESSENCE, OVER THE PAST SEVERAL YEARS ARE ACTIONS TAKEN BY MEN WHO ^{apparently} CONSIDERED THEMSELVES TO BE AMONG MADISON'S "ANGELS" -- THAT IS, PERSONS WHO BELIEVED

THEY WERE POSSESSED WITH A SPECIAL WISDOM OF WHAT WAS GOOD FOR

THIS COUNTRY -- AND WHO, THEREFORE, ^{felt} ~~WERE~~ JUSTIFIED IN ^{Violating} ~~CONSTITUTION~~

^{or ignoring} THE ESTABLISHED PROCESSES OF CONSTITUTIONAL GOVERNMENT.

^{Power always thinks it has a great soul - John Adams} IT IS NOT SURPRISING THAT THE EXCESSES OF WATERGATE ARE

ASSOCIATED WITH PUBLIC OFFICIALS WHO ^{ought} ~~ALSO MOUNTED AN~~

~~UNPRECEDENTED CAMPAIGN~~ TO DENY CONGRESS THE EXERCISE OF

CERTAIN OF ITS LEGISLATIVE POWERS GRANTED BY THE CONSTITUTION:

THE POWER TO ^{over the Public purse.} ~~CONTROL FEDERAL SPENDING~~; THE POWER TO DECLARE

WAR, AND THE POWER TO QUESTION MEMBERS OF THE EXECUTIVE

BRANCH. ~~FOR EXAMPLE.~~

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~~ONCE AGAIN~~, THESE ACTIONS FLOWED FROM A PERSPECTIVE THAT
 saw the elected Representatives of the people
~~as an obstacle and hindrance~~ AS AN OBSTACLE AND HINDRANCE TO THE

SPECIAL WISDOM POSSESSED BY THE EXECUTIVE BRANCH, RATHER THAN

AS A CO-EQUAL PARTICIPANT IN THE PROCESS OF DEMOCRATIC

GOVERNMENT WHERE NEITHER LEGISLATURE NOR EXECUTIVE IS BLESSED

WITH ULTIMATE TRUTH.

TWO LESSONS, IT SEEMS TO ME, ARE PARAMOUNT AS WE CONSIDER

THE EVENTS OF WATERGATE AND THE RELATED ASSAULT ON THE

CONSTITUTIONAL PREROGATIVES OF CONGRESS, and
~~safeguarding the people,~~
prerogatives of the Congress.

FIRST, WE MUST NOT CONFUSE STRONG REPRESENTATIVE GOVERNMENT

CONCERNED WITH SECURING GREATER JUSTICE FOR THE PEOPLE WITH

OPPRESSIVE GOVERNMENT DEDICATED TO PRESERVING POWER FOR ITS

OWN SAKE, RATHER THAN THE PEOPLE'S SAKE.

THOSE WHO CAME TO OFFICE ON A PLATFORM OF LAW AND ORDER,
 AND IMMEDIATELY CALLED FOR A HOST OF DUBIOUS PRACTICES TO
 FURTHER THIS OBJECTIVE, ALSO DEMONSTRATED THEIR UNCONCERN FOR
 A HOST OF SOCIAL AND ECONOMIC INJUSTICES THAT CRIED OUT FOR
 FORCEFUL GOVERNMENTAL ACTION. THE RELATIONSHIP OF LAW AND JUSTICE
 IMPLIED IN THE PREAMBLE -- THAT THE ULTIMATE PURPOSE OF LAW
 IS THE ACHIEVEMENT OF JUSTICE -- WAS ~~DELIBERATELY IGNORED~~ *short changed or ignored.*

L SECOND, WE MUST RECOGNIZE THAT ANY GOVERNMENT WHICH REFUSES
 TO TRUST THE PEOPLE -- AS DEMONSTRATED, FOR EXAMPLE, BY THE
WIDESPREAD TAMPERING WITH THE 1972 ELECTORAL PROCESS OR THE
SUBSEQUENT EFFORTS TO HIDE THESE ACTIVITIES -- WILL SOON
 FIND THAT THE PEOPLE WILL REFUSE TO TRUST THE GOVERNMENT.

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~~THE GOVERNMENT'S WILLINGNESS TO TRUST THE PEOPLE CAN
 BE TESTED IN MANY WAYS: THE DEGREE OF RESPECT
 IT EVIDENCES FOR SUCH CONCEPTS AS THE SEPARATION OF POWERS AS
 LAID DOWN IN THE CONSTITUTION; THE ASSERTION OF UNRESTRAINED
 EXECUTIVE POWER OVER THE CONGRESS IS AN OPEN INVITATION TO THE
 KIND OF EXECUTIVE TYRANNY THAT OUR FOUNDERS HOPED TO AVOID.~~

IN THE MIND OF THE PERPETRATOR, IT IS BUT A SHORT STEP FROM
 THE BLANKET INVOCATION OF EXECUTIVE PRIVILEGE IN OPEN
 DEFIANCE OF THE LEGISLATURE'S RIGHTS, TO THE SECRET
 ELECTRONIC SURVEILLANCE OF PERSONAL TELEPHONE CONVERSATIONS
 IN VIOLATION OF AN INDIVIDUAL'S RIGHTS. BOTH ACTIONS ARE
 JUSTIFIED BY THE PERPETRATOR IN THE NAME OF A HIGHER CAUSE - *National*
 SECURITY.

AND BOTH ACTIONS UNDERMINE THE FOUNDATION OF
POPULAR TRUST AND CONFIDENCE THAT IS THE REAL SOURCE OF
STRENGTH FOR ANY DEMOCRATICALLY-ELECTED GOVERNMENT

IF WE TAKE THESE TWO LESSONS TO HEART, THEN THE
OUTRAGES OF THE RECENT PAST MAY HAVE THEIR POSITIVE SIDE.

~~BUT I AM NOT ONE WHO ASSUMES THAT THE EXPOSURE OF
WRONEDOING AUTOMATICALLY CARRIES WITH IT THE GUARANTEE OF
AVOIDING SIMILAR EXCESSES IN THE FUTURE. SUCH RESULTS ARE
POSSIBLE ONLY AFTER DEDICATED AND PATIENT WORK -- IN THE CONGRESS,
IN THE COURTS, AND BY THE PEOPLE THEMSELVES.~~

~~THE LEGAL PROFESSION MUST BEAR CONSIDERABLE RESPONSIBILITY~~

~~IN THIS REGARD.~~ IT HAS ALWAYS BEEN MY VIEW THAT LAWYERS MUST

BE INNOVATORS AND NOT JUST PRACTITIONERS OF THE LAW

YOUR LEGAL TRAINING HAS GIVEN YOU AN EXTRA INSIGHT INTO THE DELICATE BALANCE

THAT ALWAYS EXISTS BETWEEN THE RIGHTS OF THE PEOPLE AND THE

OBLIGATIONS OF GOVERNMENT IT IS MY HOPE THAT RECENT EVENTS

WILL CONVINCe YOU OF YOUR RESPONSIBILITY TO SEE THAT, IN THE

FINAL ANALYSIS, THIS BALANCE ^{will} ~~MUST~~ NOT BE TIPPED AGAINST THE

INDIVIDUAL CITIZEN OR AGAINST THE CONSTITUTIONAL PROCESSES ON

WHICH WE ULTIMATELY MUST DEPEND ~~for our freedom~~
~~justice.~~

out of all this incredible performance of violence to constitutional law and ~~tradition, there still~~

~~THIS IS NOT A TIME FOR THE CYNICAL REJECTION OF THESE RESPONSIBILITIES OUT OF DISGUST OF THE UNPARDONABLE EXCESSES OF A FEW ARROGANT MEN. IT IS, RATHER, A TIME FOR THE MOST VIGOROUS ASSERTION OF THE CONSTITUTIONAL PRINCIPLES ~~LAID DOWN~~~~

~~legal processes - BY OUR FOUNDERS ALMOST 200 YEARS AGO~~

~~the basic strengths of our social order~~
Standfast.

OUR INTRICATE AND COMPLEX SYSTEM OF CONSTITUTIONAL GOVERNMENT BUTTRESSED BY THE BILL OF RIGHTS IS ONCE AGAIN PROVING ITSELF TO BE THE PROTECTOR OF THE PUBLIC INTEREST AND THE PEOPLE. A VIGOROUS FREE PRESS PROTECTED BY THE FIRST AMENDMENT HAS BEEN ABLE TO EXPOSE WRONGDOING.

and a graduate of the great law school

A FEDERAL DISTRICT JUDGE BY HIS COURAGEOUS ACTIONS HAS

Administration

EARNED THE RESPECT OF A NATION.

A DULY CONSTITUTED SELECT COMMITTEE OF THE SENATE IS

CAREFULLY AND RESPONSIBLY CONDUCTING AN INVESTIGATION THAT HAS

AS ITS SOLE PURPOSE TO FIND THE FACTS AND TO SEEK THE TRUTH.

~~THE SYSTEM HAS WITHIN IT THE MEANS FOR ITS OWN REMEDY~~

WE ARE BEGINNING TO WITNESS A NEW DETERMINATION IN THE

CONGRESS TO ASSERT ITS RIGHTFUL POWERS, ~~THE OPERATION~~

~~OF THE CONSTITUTIONAL SYSTEM~~ AND, IF WE ARE DILIGENT,

WE MAY SECURE A COMPREHENSIVE PACKAGE OF ELECTION AND CAMPAIGN

REFORMS THAT WILL GIVE A NEW GRANT OF POWER TO THE AMERICAN

PEOPLE BY INSULATING THE ELECTORAL PROCESS FROM ANY COMBINATION

OF SPECIAL DEALS AND SPECIAL INTERESTS.

yes, the system has

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within it the means for its own
remedy - if we have the will - the
determination to act. ~~But I have~~
~~remained -~~

WE ARE IN A PERIOD OF GREAT CRISIS AND, SIMULTANEOUSLY,
A TIME OF GREAT OPPORTUNITY. I HAVE NEVER BEEN ONE TO LOOK

ON THE DARK SIDE OF HUMAN EXPERIENCE OR TO ASSUME THE

INEVITABLE TRIUMPH OF THE FORCES OF EVIL. BUT I HAVE ALSO

RECOGNIZED THAT GOOD MEN CANNOT AFFORD TO SIT ON THE SIDELINES

AND ASSUME THAT SOMEONE ELSE WILL LEAD THE BATTLE. ^{There} ~~MORRIS~~ 7

are great things to do - battles to be won -
~~IS MORE THAN A POLITICAL ISSUE. IT IS A PUBLIC AND PRIVATE~~
injustices to be overcome - Racism, Poverty
~~ISSUE DEMANDING THE ATTENTION OF US ALL.~~

I KNOW THE FATHERS WILL UNDERSTAND MY USE OF WHAT PERHAPS

WAS REINHOLD NIEBUHR'S MOST PENETRATING OBSERVATION ON THE

DYNAMICS OF DEMOCRACY; A THOUGHT THAT SUMS UP WHAT I HAVE

BEEN ATTEMPTING TO SAY THIS AFTERNOON:

"MAN'S CAPACITY FOR JUSTICE MAKES DEMOCRACY POSSIBLE;

BUT MAN'S INCLINATION TO INJUSTICE MAKES DEMOCRACY

NECESSARY . . ."

*So there it is - we know
and*

that the WORK OF SELF-GOVERNMENT NEVER CEASES, DEMOCRACY IS NOT

SELF-EXECUTING, *Continuous* ~~AND UNENDING~~ SELF-EXAMINATION IS THE PRICE OF

POLITICAL FREEDOM, YOU AS LAWYERS WILL CARRY A SPECIAL

BURDEN IN THIS EFFORT.

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