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Wear the Honor of The Coif

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DR. J. CLAY SMITH, JR.
COMMISSIONER, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
before
THE GEORGE WASHINGTON UNIVERSITY
CHAPTER OF THE ORDER OF THE COIF
NATIONAL LAW CENTER

Washington, D. C.

May 27, 1980

The Order of the Coif, a national legal honor society, aims "to foster a spirit of careful study and to mark in a fitting manner those who have attained a high grade of scholarship."

WEAR THE HONOR OF THE COIF

Dean Jerome A. Barron, Mr. President of the Coif, Professor James Chandler, Sergeant Teresa M. Schwartz, officers-elect, distinguished law faculty, and initiates to the Coif. I am singularly pleased and deeply honored to have been considered and elected by the law faculty as an Honorary Initiate into the Order of the Coif, in recognition of my achievements in the legal profession. I am deeply moved that you have invited me to offer the luncheon remarks on this auspicious occasion.

I am happy to acknowledge my former law teachers attending this luncheon: David E. Seidelson, Dr. Leroy S. Merrifield, Maximilian Pock, John Cibinic, Jr., Gilbert J. Ginsburg, and I am pleased to acknowledge a friend and a mother to many a student, Ms. Evelyn Porter.

Between June 1968 and May 1977, I managed to obtain two graduate degrees from this law school: an LL.M. (labor law) in 1970; and an S.J.D. in 1977. I received the J.D. degree from Howard Law School in 1967. Professor Glen Weston was the chairperson of my S.J.D. Committee. The two other members of my committee included, Earl W. Kintner and Professor Robert Park. I dedicate the following remarks to these three scholars.

It is not arguable that various schools of jurisprudence play a significant role in a lawyer's briefs and arguments and in authoritative decisions rendered by judges. Indeed, the decisional process within every system requiring decision-making calls upon the science of jurisprudence as a vehicle to problem solving.

Two courses in my law school career provided much insight into the remarks that follow -- Legal Methods -- the first class that I sat in at the Howard Law School (Professor Herbert O. Reid, Sr.) in the fall of 1964, and Jurisprudence, the last course that I took in partial satisfaction of the S.J.D. at George Washington National Law Center (Professor Lou H. Mayo).

In my pursuit of knowledge and truth as a lawyer, I have sought to diversify the thought processes identified in the jurisprudential matrix because it is clear to me that the courts, scholars of the law, government policy makers and law graduates are often deprived of an integrated matrix with which decisions are made affecting the lives of the underclass

The headlines in recent days should concern the lawyers and the jurisprudents of America. These headlines should rattle the jurisprudential matrix itself. These headlines and the commentary that follows, suggests that during the months ahead the great cities and the small cities of our nation may erupt like the volcano of Mount St. Helens, in Washington State. The recent eruption of Mount St. Helens was caused by the laws of nature; the violent eruption which recently occurred in the city of Miami during which 20 human beings were killed was caused by human nature. This event happened because the people perceived that the system of justice was disparate and segregated. While these eruptions were caused by different metaphysical accidents, there are parallels in their formulation.

A volcano doesn't just happen - there are warnings which precede it. Prior to igniting its lava and ash into the heavens, the volcanic site rumbles; and, in spurts, it spits out smoke. There is usually ample warning of dangerous conditions. The extent to which a volcano will cause damage cannot be estimated because no one can see, touch or feel the ingredients which lay below the earth. Humankind cannot touch, feel or talk to the underground, except by finely tuned instruments designed to listen to the intensity of the voices which, because of natural conditions, cannot stop themselves from moving to the weakest points in the cone to free themselves.

Under similar conditions, the underclass of society are human beings who labor to keep their nation strong, who desire to educate their children, who work in the kitchens, on the dirty roads and in the dangerous jobs in the nation; and who have been displaced from the workforce by machines; denied employment opportunities because of the color of their skin, their gender, or their place of origin. Humankind can touch, feel and talk to the underclass. No finely tuned instruments are required for such communication. Some people say that justice can be read about in newspapers or by government press releases of the progress made by the underclass in the republic. However, many of these human beings are neither familiar with, or have no time or no money to read or to purchase newspapers for themselves or for their families. The underclass must balance their payments regardless of national economic or international economic conditions. Some live on welfare and depend on the state to care for them. They allow themselves to be pushed around, abused and discriminated against because to speak out against injustice is to speak out against their own survival.

Many of the underclass are the progeny of a generation of the underclass who have observed the growth and development of the strongest nation in the world, but who feel helpless, forlorn and in despair because as citizens of this nation they cannot place wholesome food on the table for their

families. Many citizens of our land are trapped - yes, trapped in perpetuity - in insular ghettos amidst tall buildings which escalate in value each day while their homes decay from lack of care by absentee landlords who wait for the land on which their tenements are situated to be purchased by speculators; but, who, in the interim, allow their tenements to become uninhabitable for human conditions.

The underclass listen to environmentalists protest and demonstrate to terminate the construction of a nuclear plant because the fall-out may kill a rare species of fish; and, yet, hear no one raise a voice in protest when a hospital emergency room refuses admittance of a human being because he or she cannot pay a few dollars for medical service.

Many of the people in our society have grown too comfortable and too lofty in their ideas, their associations, in their quest for success; and have become blind to their surroundings. They do not hear the gases stirring up the lava of the underclass. Too many people are too preferential in their associations and too deaf to the sirens of those in distress.

Blindness to poverty; deafness to the sirens of despair; haughtiness to sincere; inquiries about justice; discriminatory conduct by employers to main the status quo; retaliation against the poor who exercise their freedom to speak, their freedom to worship their God present

speaking, their freedom to worship their God present risks to the American people much more threatening than inflation and the ability of governments to balance the budget and presents risks much more threatening than the devastation of Mount St. Helens.

In this connection, the role of the lawyers and the obligations of the legal profession are much more onerous than rules which flow from the case. That the law is not a fixed science is not arguable. The law is mutable. But whatever, the underclass may view the law as the only refuge between survival and annihilation. The lawyers of this nation; the law schools of this nation; the judges of this nation; the police of this nation; the juries of this nation; may hold the key to the survival of this nation. And, if they do not hold the key to the survival of this nation, they should act and believe and think that they do. Justice misperceived could easily, but regrettably result in societal volcanic eruption.

The death of Arthur McDuffie, 33, a black insurance salesman, out for a spin on a borrowed motorcycle, was the victim of a vicious police beating from which he never regained consciousness. The policemen responsible for the death of this man were acquitted by an all-white jury in a state undergoing severe social change, high unemployment and in a community with few black leaders.

Millions of dollars of property damage and the loss of human life are the monuments of McDuffie's life. What a price to pay for injustice! What a price to pay for a monument!

I put this question to you: What is a worse disaster in our society - for the people to lose a forest destroyed by the ash of a volcano, or to lose faith in basic principles that justice is for all, that justice is even, that justice may be obtained without regard to race, that justice is not solely for those who can afford to pay for it?

I put another question to you: When the response to perceived injustice is the proximate cause for the torture and the death of innocent people at the hands of those who are the victims of such injustice -- who is to blame for the dead and who is to blame for the doer of the lethal blows?

In the McDuffie affair, misperceptions of justice by the black community was caused by the system justice itself. Some may blame the civil disturbance on high unemployment, bad housing and poor education in overcrowded classrooms, but I point an accusing finger at how this community perceived the application of justice as the root cause of the violence that erupted in Miami.

Hence, as lawyers in a free and democratic society, we must - at whatever costs - strive to maintain a system of just free from sufficient misperception which could result in the

destruction of our native land. This is my statement to you initiates of the Coif. Wear the symbol of your honor of academic achievement with pride, but wear it as armour against those who would attack you for exposing injustice. Wear the honor of the Coif into the insular ghettos of this nation and bring hope to, "We the people . . ." and not solely on your resumes for job opportunities and as a credential of the old boy or old girl network. Wear the honor of the Coif as a symbol of compassion for humankind, as a representative of truth and as an advocate for a better life for the restless souls and wounded hearts of America. And, wear the honor of the Coif in your quest to restore hope in this nation, love in this world and charity wherever needed.

In closing, I am honored to be among you as a member of the Coif. I shall exemplify this honor in the same manner that I have requested of you.

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