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#68	SOCIAL CONCERNS OF PUBLIC UTILITIES - YESTERDAY, TODAY AND TOMORROW - SOUTHEASTERN ELECTRIC EXCHANGE - 40th ANNUAL CONFERENCE - Boca Raton, Florida March 27, 1973
#69	AMERICAN JUDICATURE SOCIETY - CITIZENS CONFERENCE - Birmingham, Alabama April 5, 1973
#70	PROFESSIONAL UTILIZATION - THE NEED FOR LAWYERS IN THE FUTURE - ALUMNI DAY - NORTHWESTERN SCHOOL OF LAW OF LEWIS AND CLARK COLLEGE Portland, Oregon April 21, 1973
#71	EAST-WEST TRADE AS A HARBINGER OF WORLD PEACE - LAW DAY CONFERENCE ON EAST-WEST TRADE - UNIVERSITY OF GEORGIA LAW SCHOOL - Athens, Georgia April 27, 1973
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#74	SOCIETAL CRISIS -- THE CASE FOR SOCIAL COMMITMENT - COMMENCEMENT EXERCISES - NORWICH UNIVERSITY - Northfield, Vermont May 19, 1973
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#76	LAW SCHOOL ADMISSIONS COUNCIL Port St. Lucie, Florida June 5, 1973
#77	THE SUPPORTIVE ROLE OF THE PRACTICING ATTORNEY OF THE JUDICIARY - GEORGIA JUDICIAL CONVOCATION - Savannah, Georgia June 6, 1973
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#82	LAKELAND AND BARTOW, FLORIDA CHAMBER OF COMMERCE - CHESTERFIELD SMITH DAY Lakeland, Florida July 30, 1973
#83	JOINT MEETING OF BAR ASSOC., LAW INSTITUTE AND AMERICAN ASSOCIATION OF LAW SCHOOLS
#84	THE LEGAL PROFESSION AND THE COMMUNITY - CALIFORNIA STATE BAR ASSOCIATION - CONFERENCE OF DELEGATES - Disneyland, California September 11, 1973

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 67

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH

AMERICAN BAR ASSOCIATION

BEFORE: 1973 MEDICOLEGAL SYMPOSIUM

DATE OF DELIVERY:

TITLE:

TIME:

THE CREATION OF THE NATIONAL CONFERENCE OF REPRESENTATIVES OF THE AMA AND THE ABA JUST ONE SHORT YEAR AGO CAN TURN OUT TO BE A DATE OF HISTORICAL SIGNIFICANCE TO THE MEDICAL AND LEGAL PROFESSIONS OF AMERICA. FOR THE FIRST TIME, A PERMANENT, ONGOING RELATIONSHIP BETWEEN OUR TWO GREAT PROFESSIONAL ASSOCIATIONS WAS CREATED. THE PROGRAM OF THIS MEETING, RANGING AS IT DOES OVER A WIDE SPECTRUM OF MEDICAL AND LEGAL SUBJECTS, IS A POIGNANT INDICATION OF THE EARLY PROGRESS OF THIS CONFERENCE. I SUGGESTED THAT IT AUGURS WELL FOR THE FUTURE.

DANIEL WEBSTER, IN DISCUSSING THE LEGAL PROFESSION, SAID "THE LAW - IT HAS HONORED US - MAY WE HONOR IT." WE HERE TODAY CAN READILY ACKNOWLEDGE THAT OUR TWO DISCIPLINES - LAW AND MEDICINE - HAVE INDEED HONORED THOSE OF US WHO WORK IN THEM. THEODORE ROOSEVELT SAID "EVERY MAN OWES SOME OF HIS TIME TO THE UPBUILDING OF HIS PROFESSION." THIS CONFERENCE OFFERS OPPORTUNITIES FOR EACH OF US TO BESTOW HONOR UPON OUR CHOSEN PROFESSIONS.- MORE THAN THAT, THIS CONFERENCE PERMITS OUR TWO GREAT PROFESSIONAL ORGANIZATIONS -- THE AMERICAN MEDICAL ASSOCIATION AND THE AMERICAN BAR ASSOCIATION -- TO ASSIST IN THE COLLECTIVE DISCHARGE OF THE PUBLIC INTEREST RESPONSIBILITIES WHICH EACH OF OUR INDIVIDUAL MEMBERS ASSUMED WHEN THEY PERSONALLY ACCEPTED

THE MANTLE OF OUR RESPECTIVE PROFESSIONS. OUR ASSOCIATIONS ARE NOT MERELY COMFORTABLE GROUPS OF DOCTORS OR LAWYERS - THEY ARE VEHICLES USED BY DOCTORS AS AN ENTITY AND LAWYERS AS AN ENTITY TO SERVE THE PUBLIC -- A PUBLIC COMPOSED OF OUR PATIENTS AND CLIENTS. THIS CONFERENCE OF THE AMA AND ABA IS, AS I VIEW IT, AN ENDEAVOR, IN CONCERT, TO SERVE THAT PUBLIC INTEREST BY SEARCHING FOR ANSWERS TO PRESSING SOCIETAL PROBLEMS IN WHICH OUR TWO PROFESSIONS SHARE A COMMONALITY OF INTEREST AND INVOLVEMENT.

WHILE THIS CONFERENCE HAS ALREADY OPENED MANY NEW AVENUES FOR COMMUNICATION BETWEEN OUR PROFESSIONS, I SUBMIT THAT COMMUNICATION, HOWEVER IMPORTANT IT SURELY IS, SHOULD NOT BE AN END IN ITSELF, BUT RATHER BE ONLY A BEGINNING. COMMUNICATION

MUST BE COMPLEMENTED WITH DECISIVE AND AFFIRMATIVE ACTION IF THIS CONFERENCE IS TO DEAL WITH THE VERY REAL PROBLEMS OF TODAY, AND THOSE OF THE FUTURE WHICH FACE, OR WILL FACE, OUR CITIZENS.

OBVIOUSLY, THE DELIVERY OF HEALTH SERVICES IS THE PRIME RESPONSIBILITY OF THE MEDICAL PROFESSION. THE ROLE OF THE LEGAL PROFESSION IN THAT AREA SHOULD, AT THE MOST, BE SUPPORTIVE - IN PROVIDING TECHNICAL LEGAL ADVICE - TO ASSIST THE MEDICAL PROFESSION EFFECTIVELY IN DISCHARGING ITS PRIME RESPONSIBILITY.

THE ENORMOUS SOCIAL AND POLITICAL CONCERN FOR HEALTH SERVICES - AND WITH HEALTH-RELATED MATTERS - THE GROWTH AND COMPLEXITIES OF OUR MODERN WORLD - THE

CHANGES IN PUBLIC ATTITUDES AND TECHNOLOGICAL DEVELOPMENT - POSE QUESTIONS WHICH, IT SEEMS TO ME, SHOULD BE ADDRESSED BY THIS CONFERENCE IN THAT LIGHT.

JOINT ACTIVITY IN MANY AREAS COULD WELL RESULT IN SUBSTANTIAL CONTRIBUTIONS TO THE SOLUTION OF MANY OF THE ILLS WHICH NOW FACE OUR SOCIETY. FOR EXAMPLE, WE JOINTLY COULD DEVISE WAYS AND MEANS FOR MORE EFFECTIVE MEDICAL CARE FOR PRISON INMATES - WE COULD SEEK TO DETERMINE WHAT RIGHTS PRISONERS ACTUALLY HAVE TO MEDICAL CARE. WE JOINTLY CAN REEVALUATE HOSPITAL AND EMERGENCY ROOM STANDARDS OF LIABILITY AND PERHAPS WE COULD OFFER BENEFICIAL LEGISLATION IN THAT AREA. CERTAINLY, THERE IS MUCH WHICH THIS CONFERENCE COULD DO IN THE FIELD OF MALPRACTICE STANDARDS.

IT SEEMS TO ME TO BE EVEN PROBABLE THAT A JOINT EFFORT IN THAT AREA MIGHT MITIGATE THE CHILLING EFFECT THAT SOME UNWARRANTED OR MISDIRECTED MALPRACTICE ACTIONS HAVE HAD ON THE AVAILABILITY OF MEDICAL SERVICES IN EMERGENCY SITUATIONS. IN LIGHT OF THE INCREASED AWARENESS OF PROBLEMS OF MENTAL HEALTH AND REHABILITATION, THIS CONFERENCE COULD PLAY A MEANINGFUL ROLE IN DEVELOPING MINIMUM STANDARDS FOR MENTAL HEALTH LAWS AND CODES. CERTAINLY IT IS OBVIOUS THAT THERE IS UNLIMITED ROOM FOR INTER-DISCIPLINARY ACTIVITY IN THE AREA OF ORGAN TRANSPLANTS.

JOINT ATTENTION MIGHT WELL BE GIVEN TO THE MEDICAL-LEGAL ASPECTS OF PREVENTION AND CONTROL OF VENEREAL DISEASE - AND DRUG ABUSE.

WE JOINTLY SHOULD HAVE SOMETHING TO OFFER - IF ANYBODY CAN - IN LEGALLY DEFINING DEATH ITSELF. IT SEEMS TO ME THAT MEDICAL DOCTORS AND LAWYERS ARE THE PROPER ONES TO ENGAGE IN EXTENSIVE DIALOGUE ON THE TROUBLING QUESTION OF THE USE OF LIFE SUPPORT SYSTEMS AFTER ALL HOPE OF A PATIENT'S RECOVERY HAS EXPIRED. BENEFICIAL SOLUTIONS - OR PARTIAL SOLUTIONS - TO EXISTING PROBLEMS COULD BE SUGGESTED BY OUR EFFORTS IN SUBJECT AREAS SUCH AS EUTHENASIA, ARTIFICIAL INSEMINATION, GENETIC MANIPULATION, CHILD ABUSE, POPULATION CONTROL - AND MANY OTHERS. THE SPECTRUM IS BROAD AND INEXHAUSTIBLE. IN AN AGE IN WHICH LIFE ITSELF MAY BE ARTIFICIALLY CREATED-OR AVOIDED - AND IN WHICH DEATH IS EQUALLY

SUBJECT TO MEDICAL MANAGEMENT, THE MUTUAL RESPONSIBILITIES OF THE MEDICAL AND LEGAL PROFESSIONS IN SHAPING SOCIETIES' RULES ARE AWE-INSPIRING.

TRADITIONALLY, LAWYERS AND DOCTORS, HAVE BEEN THE COMMUNITY'S PROBLEM SOLVERS. ON THE COLLECTIVE LEVEL, THAT RESPONSIBILITY RESTS WITH THEIR NATIONAL PROFESSIONAL ASSOCIATIONS, THAT IS THE AMERICAN MEDICAL ASSOCIATION AND THE AMERICAN BAR ASSOCIATION. INDIVIDUALS, NO MATTER HOW WILLING, SIMPLY CANNOT COMMAND THE PUBLIC RESPECT AND PRESTIGE WHICH IS NEEDED IF OUR PROFESSIONAL VOICE IS TO BE HEARD - AND HEEDED.

HISTORY HAS SHOWN THAT SOCIETY WILL FIND SOLUTIONS AND ANSWERS TO ITS PROBLEMS, WITH OR WITHOUT THE LEADERSHIP OF THOSE BEST

QUALIFIED TO WORK IN SOLVING PARTICULAR PROBLEMS. I SUBMIT THAT IT IS THE OBLIGATION OF THIS CONFERENCE TO PROVIDE INTERDISCIPLINARY LEADERSHIP IN ALL AREAS OF JOINT MEDICAL AND LEGAL CONCERN - TO HELP SOCIETY - AND ITS INSTITUTIONS - CLEARLY TO DEFINE IN THOSE AREAS THE GUIDELINES WHICH WE CALL "THE LAW."

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 68

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: SOUTHEASTERN ELECTRIC EXCHANGE
40TH ANNUAL CONFERENCE
BOCA RATON, FLORIDA

DATE OF DELIVERY: TUESDAY, MARCH 27, 1973

TITLE: SOCIAL CONCERNS OF PUBLIC UTILITIES -
YESTERDAY, TODAY AND TOMORROW

TIME: TWENTY MINUTES

PUBLIC UTILITIES - AS WELL AS CORPORATIONS AND BUSINESSES IN GENERAL - ARE BEING SUBJECTED TO INCREASING ATTACK ON THE GROUNDS THAT THEY ARE NOT RESPONSIVE TO THE PUBLIC GOOD AND ARE INIMICAL TO THE TRUE NEEDS OF SOCIETY. SUCH CHALLENGES ARE BY NO MEANS NEW. ANTI-CAPITALISM IS A PHILOSOPHY DEVELOPED CONCURRENTLY WITH CAPITALISM ITSELF. OBJECTIONS TO THE CONCEPT OF PROFIT AS A LEGITIMATE MOTIVE FOR ACTION LONG PREDATE EITHER. IT SEEMS CLEAR THAT THE DAY WHEN THE CORPORATE EXECUTIVE COULD IGNORE WHAT VOCAL AND ARTICULATE PEOPLE SAY IS

WRONG WITH WHAT HE OR HIS COMPANY DOES - IF SUCH A DAY EVER EXISTED - HAS LONG PASSED.

TODAY THE LEXICON OF CORPORATE ABUSE INCLUDES SUCH TRIGGER WORDS AS CONSUMER PROTECTION - ECOLOGY. EVEN IF THE LOUDEST COMPLAINTS SEEM IRRATIONAL - OR THE MOST STRIDENT DEMANDS IMPOSSIBLE - I SUGGEST THAT IT WOULD BE A SERIOUS MISTAKE FOR A PUBLIC UTILITY EXECUTIVE TO DISMISS ALL OF THOSE WHO SEEK REFORM - OR TO ASSUME THAT THE OUTCRY FOR HONEST DEALING AND A WHOLESOME ENVIRONMENT IS OTHER THAN A LEGITIMATE AND VERY REAL REQUIREMENT.

UTILITY COMPANIES ARE - AND ALWAYS HAVE BEEN - THE TARGETS OF REFORMERS. YOU OF COURSE KNOW THIS BETTER THAN ANYONE - BUT AS A LAWYER - I KNOW THAT THEY ARE GOOD TARGETS; THEY ARE HIGHLY VISIBLE; THEY DEAL IN COMMODITIES AND SERVICES WHICH ARE INTIMATELY AND IRREVOCABLY INVOLVED IN OUR TOTAL ECONOMY; THEY DAILY TOUCH THE PERSONAL LIFE OF EVERY INDIVIDUAL; THEY ARE REGULATED IN A MANNER WHICH QUITE EASILY PERMITS THE FORUM FOR DISPUTE TO INCLUDE BOTH ADMINISTRATIVE AND LEGISLATIVE ARENAS; AND THEY ARE VULNERABLE BECAUSE THEIR ENORMOUS CAPITAL REQUIREMENTS MAKE THEM RELATIVELY INFLEXIBLE.

IN A GENERALIZED SENSE - IT SEEMS TO ME THAT WHAT IS BEING REQUIRED OF PUBLIC UTILITIES TODAY BY A RESPONSIBLE MAJORITY OF BOTH OUR CITIZENS AND OUR LEGISLATORS IS THAT THEY ASSUME A BROADER RESPONSIBILITY FOR ALL THE CONSEQUENCES OF THEIR ACTIVITY. TO PRODUCE A PRODUCT OR SERVICE EFFICIENTLY AND MAKE IT WIDELY AVAILABLE AT THE LOWEST COST - IS NO LONGER SUFFICIENT JUSTIFICATION TO THAT MAJORITY FOR THE TOTAL ACTIVITIES OF A PUBLIC UTILITY ENTERPRISE.

"EXTERNALITIES" - THOSE EXTERNAL COSTS AND BENEFITS NOT REFLECTED IN THE MARKET SYSTEM - MUST NOW BE JUST AS FULLY CONSIDERED BY THE PUBLIC UTILITY EXECUTIVE AS THEY HAVE LONG BEEN CONSIDERED BY THE ECONOMIST AND THE POLITICAL THEORIST. A POWER PLANT PROCESS WHICH REMOVES COOL WATER FROM A RIVER - HEATS IT - AND RETURNS THERMALLY POLLUTED WATER TO THAT STREAM IS AN EXAMPLE. THERE IS A COST - A VERY REAL COST TO SUCH A PROCESS. THE OPERATION OF SUCH A POWER PLANT DOES CONSUME VALUABLE RESOURCES - COOL WATER AND CLEAN AIR. THE DIFFICULTY HAS BEEN THAT NEITHER THE WATER NOR THE AIR CONSUMPTION HAS TRADITIONALLY BEEN REFLECTED IN THE ACCOUNTING SYSTEM UTILIZED TO DETERMINE THE ULTIMATE FAIR PRICE OF THE FINISHED UTILITY SERVICE. BECAUSE NO

ONE PAYS IN A SPECIFIC SENSE FOR THE COOL WATER AND CLEAN AIR CONSUMED - SOCIETY AS A WHOLE MUST BEAR THE COST. BUT OF COURSE - ALL OF THAT HAS BEEN UNDER SUBSTANTIAL CHANGE FOR SEVERAL YEARS - AND I FOR ONE THINK IT IS PROPER. REGULATION IN THE ENVIRONMENTAL FIELD IS INCREASINGLY COMPELLING THE INTERNALIZATION OF WHAT WERE PREVIOUSLY EXTERNALITIES; BUT A MAJOR MOVEMENT WHICH HAS NOT YET DEVELOPED INTO A PERCEPTIBLE NATIONWIDE PATTERN IS THE INCREASING DEMAND THAT PUBLIC UTILITIES MUST BE RESPONSIBLE FOR THE EXTERNALITIES OF THE SYSTEM AS A WHOLE - THAT IS - THAT THE PUBLIC UTILITY MUST BE ACCOUNTABLE FOR ALL OF THE CONSEQUENCES OF BOTH THE PRODUCTION AND THE USE OF ELECTRIC POWER IN GENERAL - INCLUDING THE QUANTITY OF POWER WHICH MAY BE USED BY CONSUMERS FOR SPECIFIC PURPOSES. IN ANY EVENT - WE CAN ALL READILY ACKNOWLEDGE THAT PUBLIC UTILITIES ARE BEING REQUIRED TO BE INCREASINGLY INVOLVED IN THE WELFARE OF THE PUBLIC AT LARGE - AT LEAST AS MUCH AS THAT OF THEIR STOCKHOLDERS - THEIR EMPLOYEES - AND THEIR CUSTOMERS - AND THAT THAT TREND IS ON A GEOMETRICALLY INCREASING CURVE.

SINCE ALMOST EVERYONE UNDER OUR SYSTEM IS A CUSTOMER IN SOME DEGREE OF PUBLIC UTILITY COMPANIES - THE ISSUES WITH WHICH SUCH COMPANIES ARE REQUIRED TO

DEAL ARE BASIC TO ALL ASPECTS OF OUR ECONOMY AND OUR SOCIETY. IT IS NOW COMMON TO SPEAK OF THE "SOCIAL RESPONSIBILITIES" OF CORPORATIONS. THAT CORPORATIONS HAVE SUCH RESPONSIBILITIES IS NOT WIDELY QUESTIONED. MANY COMPANIES SPEND ENORMOUS SUMS OF MONEY TRYING TO FULFILL THESE RESPONSIBILITIES OR - AT LEAST - TRYING TO CONVINCE THE PUBLIC THAT THEY ARE DOING SO.

AS AN EXTREME EXAMPLE OF SO-CALLED SOCIAL RESPONSIBILITY - ELECTRIC PUBLIC UTILITIES HAVE BEEN CRITICIZED BY SOME TUNNEL-VISIONED ENVIRONMENTALISTS FOR DOING THE VERY THING FOR WHICH THOSE PUBLIC UTILITIES WERE CREATED - THAT IS - GENERATING ELECTRICITY. THOSE CRITICS QUITE OFTEN ASSERT - IN THE MOST DOGMATIC OF WAYS - THAT THE PUBLIC INTEREST WOULD BE BEST SERVED BY NOT EXPANDING - OR PERHAPS EVEN CONTRACTING - THE EXISTING ELECTRIC POWER GENERATING FACILITIES. THEY CALL FOR A RETURN TO AN EARLIER AND SIMPLER WAY OF LIFE. THEY SUGGEST THAT THE SOCIAL RESPONSIBILITY OF THE PUBLIC UTILITY MAY PPEVENT IT FROM CONSIDERING POTENTIAL DEMAND AS A MAJOR CRITERIA IN PLOTTING ITS FUTURE.

ON THE OTHER HAND - EVEN THOSE WHO INSIST MOST STRENUOUSLY ON THE SOCIAL RESPONSIBILITIES OF

CORPORATIONS - OBSERVE RIGOROUS LIMITS. GENERALLY - THEY ARE UNWILLING TO GRANT TO A PUBLIC UTILITY THE UNBRIDLED POWER TO CONTROL ITS OWN ACTIVITIES. IT IS THOUGHT BY THEM TO BE WHOLLY IMPROPER - AND IN SOME CONTEXTS ILLEGAL - THAT PUBLIC UTILITY CORPORATIONS SHOULD SEEK TO INFLUENCE POLITICAL AND SOCIAL DECISIONS. SOCIAL RESPONSIBILITY IS SEEN - THEREFORE - BY THEM TO BE RESPONSIVENESS TO THEIR OWN PRECONCEIVED POSITIONS. THE RESPONSIBLE PUBLIC UTILITY IS ONE TO THEM WHICH IS RESPONSIVE TO A BROAD RANGE OF DEMANDS - BUT DEMANDS WHICH THEY HAVE - BY PREDETERMINED - UNEVEN - AND LARGELY UNDEFINED STANDARDS - CONCLUDED TO BE AREAS OF HIGH SOCIETAL CONCERN.

SEVERAL APPROACHES TO INCREASING CORPORATE RESPONSIVENESS HAVE BEEN URGED. IT HAS BEEN ARGUED THAT BOARDS OF DIRECTORS OUGHT TO BE RESTRUCTURED TO INCLUDE "PUBLIC" MEMBERS. APPARENTLY - A "PUBLIC" MEMBER IS AN INDIVIDUAL WHOSE CONSTITUENCIES IS OTHER THAN THE CORPORATE STOCKHOLDERS - BUT THAT IS NOT QUITE CLEAR. IF SO - THE CONSUMER MEMBERS OF THE BOARD OF DIRECTORS MIGHT BE PRINCIPALLY CONCERNED WITH THE INTERESTS OF THE CORPORATION'S CUSTOMERS - WHILE PRESUMABLY THE ENVIRONMENTAL MEMBERS WOULD BE ACCOUNTABLE

TO SOCIETY AT LARGE. TO ME PERSONALLY - IT IS QUITE CLEAR THAT SUCH A PADICAL RESTRUCTURING OF A PUBLIC UTILITY CORPOPATION IS NEITHER PRACTICAL NOP DESIRABLE. IT SHOULD BE NOTED - HOWEVER - THAT MANY CORPORATIONS - INCLUDING PUBLIC UTILITIES - HAVE UNDERTAKEN TO BROADEN THE BASE FROM WHICH DIRECTORS ARE CHOSEN BY SELECTING MEMBERS OF RACIAL MINORITIES - YOUNGER PERSONS AND WOMEN. WHILE SUCH DEVELOPMENTS MAY RESULT IN BOARDS WITH A WIDER EXPERIENCE AND A GREATER VARIETY OF APPROACHES TO POLICY DECISIONS - THE BASIC OBLIGATIONS OF ALL DIRECTORS TO THE COMPANY AS AN ENTITY HAVE NOT CHANGED - AND THAT IS AS IT SHOULD BE.

RESPONSIVENESS HAS BEEN REQUIRED IN THE FORM OF GREATER DEMANDS FOR FULL AND EXACTING INFORMATION ABOUT CORPORATE PLANS AND OPERATIONS. THAT IS OF COURSE AN AREA WHICH MAY BE PECULIARLY SENSITIVE FOR PUBLIC UTILITY COMPANIES. AS HERETOFORE SUGGESTED - THE MASSIVE CAPITAL INVESTMENT ESSENTIAL IN FIXED OPERATING PLANTS MAKE MOST PUBLIC UTILITIES SIGNIFICANTLY DEPENDENT ON LONG-RANGE PLANNING AND COMMITMENT TO SPECIFIC COURSES OF ACTION.

THE COMBINATION OF THE NEED TO MAKE FIRM LONG-RANGE DECISIONS AND THE MASSIVE CONSEQUENCES OF

THOSE DECISIONS HAVE PRODUCED THE FRAMEWORK IN WHICH THE DIFFICULT AND CONTROVERSIAL PROBLEMS FACING PUBLIC UTILITY COMPANIES TODAY MUST BE RESOLVED.

NO RECENT ENVIRONMENTAL ISSUE HAS RECEIVED MORE PUBLIC ATTENTION OR BEEN THE SUBJECT OF MORE LITIGATION THAN THE LOCATION OR "SITING" OF POWER GENERATING FACILITIES. A BRIEF EXAMINATION OF THAT PROBLEM MAY ILLUSTRATE SEVERAL OF THE ISSUES WHICH MUST BE CONSIDERED AS PART OF A PUBLIC UTILITY'S SOCIAL RESPONSIVENESS.

THE INITIAL PROBLEM IS IN DESCRIBING THAT TO WHICH - OR TO WHOM - THE PUBLIC UTILITY MUST RESPOND. YESTERDAY - IT WAS SUPPOSED THAT THE ULTIMATE RESPONSE WAS TO THE OWNERS. TODAY - SATISFACTION OF CUSTOMERS IS SOUGHT AS A DEVICE TO INSURE PROFIT FOR STOCKHOLDERS AND THE COMPANY MUST ALSO RESPOND TO ITS OWN EMPLOYEES IN WAYS WHICH OFTEN GO BEYOND A NARROWLY DEFINED EMPLOYMENT RELATIONSHIP. TOMORROW -- THE YET UNRESOLVED - BUT IMMEDIATE PROBLEM - WILL BE TO IDENTIFY THE PUBLIC - THAT GREAT MASS SEGMENT PULLED FROM OUR POPULATION AS A WHOLE - TO WHOSE DEMANDS A PUBLIC UTILITY MUST RESPOND. THE DIFFICULTY OF COURSE IS THE INDISPUTABLE FACT THAT THERE IS NO SINGLE PUBLIC - NOR EVEN ANY LARGE SEGMENT THEREOF - WITH CONSISTENT DEMANDS.

THOSE ENVIRONMENTALISTS WHO NOW CALL FOR A RETURN TO A SIMPLER WAY OF LIFE POSE DIFFICULT POLITICAL AND SOCIAL CONSEQUENCES WITHOUT SUGGESTING THE ANSWER OR WHO IS TO ANSWER THEM. OFTEN IT APPEARS THAT WHITE - MIDDLE-CLASS SUBURBANITES ARE ARGUING THAT GHETTO RESIDENTS REALLY DO NOT NEED AIR CONDITIONERS - BUT THEY DEMAND THAT THE PUBLIC UTILITY TAKE THAT POSITION RATHER THAN THEY. IF THE TOTAL AMOUNT OF AVAILABLE ELECTRIC POWER IS TO BE RESTRUCTURED BY LIMITING ANY EXPANSION OF EXISTING GENERATING PLANTS - THE PROBLEM OF PUBLIC UTILITIES IN DISTRIBUTING WHAT IS AVAILABLE WILL BECOME ACUTE - BUT THOSE WHO ADVOCATE THAT COURSE SUGGEST NO WAYS TO FAIRLY AND EQUITABLY SOLVE IT. IT SEEMS TO ME THAT THE SAME PRINCIPLE IS INVOLVED IN THE LESS EXTREME CASE BY THOSE WHO MAY ELECT INCREASED UTILITY BILLS AS A METHOD OF FINANCING POLLUTION ABATEMENT. THIS MAY REPRESENT THE ACTUAL PRIORITIES OF THOSE WHO CAN AFFORD TO MAKE THE CHOICE - BUT IS THE SAME TRUE OF THOSE WHO CANNOT?

WHAT ARE THE RIGHTS OF THOSE WHO OPPOSE THE DEVELOPMENT OF A POWER PLANT SITE FOR ELECTRIC GENERATION IN A REMOTE UNDEVELOPED AREA ON THE GROUNDS THAT IT WILL DESTROY PHYSICAL AND CULTURAL AMENITY IN THAT AREA

RELATIVE TO THE RIGHTS OF THE RESIDENTS OF A DISTANT METROPOLIS WHO WOULD BENEFIT FROM THE GREATER AVAILABILITY OF LOW COST POWER - OR CLEANER AIR. SHOULD THE FACT THAT THE ADDITIONAL ELECTRIC POWER COULD BE USED FOR MASS URBAN TRANSPORTATION - OR IN OTHER WAYS WHICH MAY HAVE POSITIVE ENVIRONMENTAL CONSEQUENCES IN THE DEVELOPED AREA - BE BALANCED AGAINST THE ENVIRONMENTAL IMPACT IN THE UNDEVELOPED AREA? IF SO - HOW IS THE DETERMINATION TO BE MADE?

THE CLASSIC DILEMMA CAN BE ILLUSTRATED BY THE RECENT PROPOSAL BY A PUBLIC UTILITY TO CONSTRUCT A MASSIVE FACILITY INTO WHICH IT PUMPED AND STORED WATER. THE IDEA THEN WAS THAT EXCESS ELECTRIC POWER DURING NON-PEAK LOAD PERIODS WOULD BE USED BY THE PUBLIC UTILITY TO PUMP WATER INTO THE MAN-MADE STORAGE AREA. DURING PEAK LOAD PERIODS THE WATER WOULD BE USED AS A SOURCE OF HYDROELECTRIC POWER. THE RESULT IN THE OPINION OF THE PUBLIC UTILITY WOULD HAVE BEEN AN EXPANSION OF TOTAL POWER AVAILABLE WHICH IN TURN WOULD PERMIT SEVERAL OLDER POWER PLANT FACILITIES TO BE ABANDONED. THOSE OLDER FACILITIES - LOCATED WITHIN A VERY LARGE MUNICIPALITY WERE - AND IN FACT ARE - AMONG THE MAJOR CONTRIBUTORS TO THE METPOPOLITAN AIR POLLUTION

PROBLEMS. HOWEVER - IN THE VIEW OF SOME OPPOSING ENVIRONMENTALISTS - THE PRINCIPAL RESULT OF THE PROJECT WOULD HAVE BEEN THE MASSIVE DESTRUCTION OF NATURAL AND AESTHETIC VALUES AT THE PROPOSED SITE OF THE PUMPING FACILITY. WHO SHOULD MEDIATE BETWEEN THAT PART OF OUR SOCIETY SEEKING TO REDUCE AIR POLLUTION IN AN URBAN CENTER AND THAT PART URGING THE PRESERVATION OF NATURE AND BEAUTY IN UNDEVELOPED AREAS?

THE PUBLIC UTILITY COMPANY FACES THESE PROBLEMS IN THE CONTEXT OF OVERLAPPING JURISDICTURES OF FEDERAL - STATE AND LOCAL REGULATORY AGENCIES. IT HAS BEEN ESTIMATED THAT THE NEW CONSTRUCTION OF A MAJOR FOSSIL FUEL GENERATING PLANT MIGHT REQUIRE AS MANY AS THIRTY-TWO (32) SEPARATE DISCRETIONARY PERMITS FROM GOVERNMENTAL AGENCIES. THE SITUATION MAY BE EVEN MORE EXTREME IN THE CASE OF A NUCLEAR FACILITY.

IT SEEMS TO ME THAT THIS IS AN AREA IN WHICH THE LEGAL PROFESSION AS AN ENTITY MAY BE ABLE TO OFFER CONCRETE ASSISTANCE. ONE LARGE LOCAL BAR ASSOCIATION IN NEW YORK HAS ALREADY COMPLETED A STUDY OF THE LEGAL ASPECTS OF POWER PLANT SITING - MAKING A NUMBER OF RECOMMENDATIONS AS TO THE STRUCTURE OF GOVERNMENTAL REGULATION IN THIS AREA. THE AMERICAN BAR ASSOCIATION

IS NOW CARRYING OUT A STUDY OF INDUSTRIAL PLANT LOCATION IN GENERAL. IT HAS BEEN SUGGESTED THAT MUCH OF WHAT HAS BEEN LEARNED ABOUT POWER PLANT SITING WILL HAVE APPLICATION TO THE WIDER RANGE OF PROBLEMS INVOLVING ALL NEW INDUSTRIAL CONSTRUCTION WHICH MAY HAVE A REGIONAL ENVIRONMENTAL IMPACT. WHEN THE AMERICAN BAR ASSOCIATION COMPLETES ITS STUDY - I HOPE THAT YOU AND OTHER INDUSTRIALISTS WILL CAREFULLY CONSIDER ITS RECOMMENDATION SO THAT WE MIGHT THEREAFTER JOINTLY ATTEMPT TO IMPLEMENT THOSE CHANGES IN LAWS AND REGULATIONS WHICH OUR ORGANIZATIONS - AND OTHER INTERESTED GROUPS - HAVE CONCLUDED TO BE RIGHT AND PROPER.

THE ISSUES SURROUNDING THE GENERATION OF ELECTRICITY AND ITS USE - AS WELL AS ISSUES INVOLVED IN THE USE OF OTHER ENERGY SOURCES - INVOLVE BASIC POLICIES WHICH SHOULD ONLY BE DETERMINED BY SOCIETY AT LARGE.

MANY PUBLIC UTILITY EXECUTIVES - REASONABLY CONCERNED WITH WHAT INCREASINGLY APPEARS TO BE AN ENERGY CRISIS IN THIS COUNTRY - HAVE BEEN SHOCKED BY WHAT HAS APPEARED TO THEM TO BE THE IMPROPER USE BY ENVIRONMENTALISTS OF COURTS OF LAW. OBVIOUSLY A SYSTEM WHICH REQUIRES MULTIPLE BUT SEPARATE GOVERNMENTAL PERMITS - SOME AT THE LOCAL LEVEL - SOME AT THE STATE - AND SOME AT

THE FEDERAL - ENCOURAGES LITIGATION FILED ONLY TO IMPEDE OR DELAY THE CONSTRUCTION OF NEW GENERATING CAPACITY - AND IN MANY CASES - THAT HAS APPEARED TO BE THE PRIME OR EVEN THE SOLE PURPOSE OF THE COURT ACTION. ON THE OTHER HAND - THE ENVIRONMENTALISTS ARGUE THAT PRESENTLY THERE IS NO FORUM IN WHICH THE FUNDAMENTAL ISSUES OF HOW MUCH POWER SHOULD BE GENERATED AND TO WHAT PURPOSES IT SHOULD BE PUT - CAN BE PRESENTED AND DETERMINED. BECAUSE THERE CAN BE NO JOINING OF ISSUE ON THOSE FUNDAMENTAL MATTERS - THE ENVIRONMENTALISTS "DO WHAT THEY CAN DO" OTHERWISE - AND THEY APPARENTLY QUITE RIGHTEOUSLY FEEL THAT IT IS RIGHT AND PROPER THAT THEY USE THE COURTS FOR DELAY - EVEN THOUGH THE COURT IN THE END WILL NOT DECIDE THEIR ISSUE - OR EVEN CONSIDER IT.

IN MY OPINION - NEITHER THE COURTS - NOR THE ENVIRONMENTALISTS - NOR PUBLIC UTILITY EXECUTIVES - SHOULD HAVE EITHER THE RESPONSIBILITY OR THE PRIVILEGE OF DECIDING THESE FUNDAMENTAL ISSUES. THAT IS NOT TO SAY THAT THESE ISSUES OUGHT NOT TO BE FACED. QUITE THE CONTRARY - I SUBMIT THAT IT IS A MATTER OF URGENT NECESSITY THAT THE DECISION-MAKING PROCESS BE RESTRUCTURED SO THAT THOSE ISSUES CAN BE RESOLVED BY COMPETENT AND FULLY INFORMED PUBLIC AUTHORITY - AND THAT PUBLIC UTILITY EXECUTIVES SHOULD

DEVOTE THEIR GREAT EXPERTISE AND SUBSTANTIAL INFLUENCE TO ACHIEVE THAT RESULT.

PUBLIC UTILITY COMPANIES SHOULD AID SOCIETY IN DETERMINING THOSE ISSUES BY CONTINUING TO BE OPEN IN THEIR DEALINGS WITH LEGISLATURES - WITH REGULATORY BODIES - AND WITH THE PUBLIC. I SUGGEST THAT PUBLIC UTILITY EXECUTIVES HAVE THE RIGHT - THE DUTY - AND THE OBLIGATION TO PROVIDE ACCURATE INFORMATION ABOUT POLICY ALTERNATIVES - BUT THAT IN DOING SO THEY OUGHT NOT TO RESORT TO SCARE TACTICS TO COERCE SELECTION AMONG THOSE ALTERNATIVES. AN EXTREMELY HIGH STANDARD OF CORPORATE AND PERSONAL ETHICAL STANDARDS WILL NOT ONLY MAKE IT POSSIBLE FOR INFORMED DECISIONS TO BE MADE - BUT IT WILL IN TIME RESTORE MUCH OF THE PUBLIC CONFIDENCE IN PUBLIC UTILITIES WHICH HAS IN RECENT YEARS BEEN DISSIPATED BY THE RECURRING ATTACKS MOTIVATED BY EVER-INCREASING RATES AND BY EVER-INCREASING GENERATING CAPACITY - REGARDLESS OF WHETHER ANY OF THOSE ATTACKS WERE MERITORIOUS.

YOU - AS CHIEF EXECUTIVES OF PUBLIC UTILITIES - ARE OBVIOUSLY ON THE FIRING LINE. BUT YOU HAVE BEEN THERE BEFORE - AND IF YOU HAD NOT MEASURED UP THEN - YOU WOULD NOT BE HERE TODAY. AS A LAWYER WITH BOTH PUBLIC

UTILITY TIES AND PUBLIC AND PROFESSIONAL RESPONSIBILITIES - IT SEEMS TO ME THAT YOUR PRIMARY INTEPEST MUST NOW SHIFT FROM THE EFFICIENT GENERATION OF ELECTRICITY TO THAT OF ACHIEVING FAIR REGULATION OF YOUR OWN COMPANY. FAIR REGULATIONS CAN ONLY COME ABOUT THPOUGH INFORMED - DEDICATED MEN WHO ARE ELECTED - APPOINTED OR OTHERWISE ENTRUSTED WITH THAT PUBLIC PESPONSIBILITY - AND IT IS UP TO EACH OF US AS CITIZENS - AS PUBLIC UTILITY EXECUTIVES - AND AS LAWYERS - TO SEE THAT THE PUBLIC UTILITIES ARE REGULATED ONLY BY MEN OF HIGH CHARACTER AND REASONED ABILITIES.

I HAVE BEEN ADVISED THAT MANY OF THE PUBLIC UTILITY EXECUTIVES HERE TODAY ARE LAWYERS - THOSE WHO ARE THUS ARE MY CONSTITUENTS - AND I AM THEIR SPOKESMAN. AS LAWYERS - EACH OF THEM IS - OR SHOULD BE - CONCERNED ABOUT ALL THAT I DO AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION. THE SAME IS TRUE OF YOU IN YOUR RESPONSIBILITES TO YOUR STOCKHOLDERS - YOUR EMPLOYEES - YOUR CUSTOMERS - AND ABOVE ALL - THE GENERAL PUBLIC TO WHOM WE OWE THE HIGHEST RESPONSIBILITY OF ALL. I AM - AS A MEMBER OF THE GENERAL PUBLIC - A CONSTITUENT OF YOURS - AND I AM INTERESTED IN WHAT YOU SAY AND DO. IT IS NOT ENOUGH IN THE DISCHARGE OF YOUR PUBLIC DUTY TO RUN YOUR COMPANY WELL - IT IS NOT EVEN ENOUGH FOR YOU TO BE DEEPLY INVOLVED IN CIVIC AFFAIRS OR STATE

AND LOCAL POLITICS - YOU NOW MUST BE INVOLVED IN RUNNING THE NATION. YOU MUST - AS A RESPONSIBLE PUBLIC UTILITY EXECUTIVE - HELP IN EVERY POSSIBLE WAY TO SHAPE OUR SOCIETY FOR THE ULTIMATE GOOD OF ALL.

"SOCIAL CONCERNS OF PUBLIC UTILITIES -
YESTERDAY, TODAY AND TOMORROW"

REMARKS OF: CHESTERFIELD SMITH
President-Elect, American Bar Association

BEFORE: SOUTHEASTERN ELECTRIC EXCHANGE
40TH ANNUAL CONFERENCE
BOCA RATON, FLORIDA

TUESDAY, MARCH 27, 1973

Public utilities - as well as corporations and businesses in general - are being subjected to increasing attack on the grounds that they are not responsive to the public good and are inimical to the true needs of society. Such challenges are by no means new. Anti-capitalism is a philosophy developed concurrently with capitalism itself. Objections to the concept of profit as a legitimate motive for action long predate either. It seems clear that the day when the corporate executive could ignore what vocal and articulate people say is wrong with what he or his company does - if such a day ever existed - has long passed.

Today the lexicon of corporate abuse includes such trigger words as consumer protection and ecology. Even if the loudest complaints seem irrational - or the most strident demands impossible - I suggest that it would be a serious mistake for a public utility executive to dismiss all of those who seek reform - or to assume that the outcry for honest dealing and a wholesome environment is other than a legitimate and very real requirement.

Utility companies are - and always have been - the targets of reformers. You of course know this better than anyone - but as a lawyer - I know that they are good targets; they are highly visible; they deal in commodities and services which are intimately and irrevocably involved in our total economy; they daily touch the personal life of every individual; they are regulated in a manner which quite easily permits the forum for dispute to include both administrative and legislative arenas; and they are vulnerable because their enormous capital requirements make them relatively inflexible.

In a generalized sense - it seems to me that what is being required of public utilities today by a responsible majority of both our citizens and our legislators is that they assume a broader responsibility for all the consequences of their activity. To produce a product or service efficiently and make it widely available at the lowest cost - is no longer sufficient justification to that majority for the total activities of a public utility enterprise.

"Externalities" - those external costs and benefits not reflected in the market system - must now be just as fully considered by the public utility executive as they have long been considered by the economist and the political theorist. A power plant process which removes cool water from a river - heats it - and returns thermally polluted water to that stream is an example. There is a cost - a very real cost to such a process. The operation of such a power plant does consume valuable resources - cool water and clean air. The difficulty has been that neither the water nor the air consumption has traditionally been reflected in the accounting system utilized to determine the ultimate fair price of the finished utility service. Because no one pays in a specific sense for the cool water and clean air consumed - society as a whole must bear the cost. But of course, all of that has been under substantial change for several years, and I for one think it is proper. Regulation in the environmental field is increasingly compelling the internalization of what were previously externalities; but a major movement which has not yet developed into a perceptible nationwide pattern is the increasing demand that public utilities must be responsible for the externalities of the system as a whole - that is -

that the public utility must be accountable for all of the consequences of both the production and the use of electric power in general - including the quantity of power which may be used by consumers for specific purposes. In any event, we can all readily acknowledge that public utilities are being required to be increasingly involved in the welfare of the public at large - at least as much as that of their stockholders - their employees - and their customers - and that that trend is on a geometrically increasing curve.

Since almost everyone under our system is a customer in some degree of public utility companies - the issues with which such companies are required to deal are basic to all aspects of our economy and our society. It is now common to speak of the "social responsibilities" of corporations. That corporations have such responsibilities is not widely questioned. Many companies spend enormous sums of money trying to fulfill these responsibilities or - at least - trying to convince the public that they are doing so.

As an extreme example of so-called social responsibility - electric public utilities have been criticized by some tunnel-visioned environmentalists for doing the very thing for which those public utilities were created - that is, generating electricity. Those critics quite often assert - in the most dogmatic of ways - that the public interest would be best served by not expanding - or perhaps even contracting - the existing electric power generating facilities. They call for a return to an earlier and simpler way of life. They suggest that the social responsibility of the public utility may prevent it from considering potential demand as a major criteria in plotting its future.

On the other hand, even those who insist most strenously on the social responsibilities of corporations observe rigorous limits. Generally, they are unwilling to grant to a public utility the unbridled power to control its own activities. It is thought by them to be wholly improper - and in some contexts illegal - that public utility corporations should seek to influence political and social decisions. Social responsibility is seen, therefore, by them to be responsiveness to their own preconceived positions. The responsible public utility is one to them which is responsive to a broad range of demands, but demands which they have - by predetermined - uneven - and largely undefined standards - concluded to be areas of high societal concern.

Several approaches to increasing corporate responsiveness have been urged. It has been argued that boards of directors ought to be restructured to include "public" members. Apparently, a "public" member is an individual whose constituencies is other than the corporate stockholders, but that is not quite clear. If so, the consumer members of the board of directors might be principally concerned with the interests of the corporation's customers - while presumably the environmental members would be accountable to society at large. To me personally, it is quite clear that such a radical restructuring of a public utility corporation is neither practical nor desirable. It should be noted, however, that many corporations - including public utilities - have undertaken to broaden the base from which directors are chosen by selecting members of racial minorities - younger persons and women. While such developments may result in boards with a wider experience and a greater variety of approaches to policy decisions - the basic obligations of all directors to the company as an entity have not changed - and that is as it should be.

Responsiveness has been required in the form of greater demands for full and exacting information about corporate plans and operations. That is of course an area which may be peculiarly sensitive for public utility companies. As heretofore suggested, the massive capital investment essential in fixed operating plants make most public utilities significantly dependent on long-range planning and commitment to specific courses of action.

The combination of the need to make firm long-range decisions and the massive consequences of those decisions have produced the framework in which the difficult and controversial problems facing public utility companies today must be resolved.

No recent environmental issue has received more public attendion or been the subject of more litigation that the location or "siting" of power generating facilities. A brief examination of that problem may illustrate several of the issues which must be considered as part of a public utility's social responsiveness.

The initial problem is in describing that to w-ich, or to whom, the public utility most respond. Yesterday, it was supposed that the ultimate response was to the owners. Today, satisfaction of customers is sought as a device to insure profit for stockholders and the company must also respond to its own employees in ways which often go beyond a narrowly defined employment relationship. Tomorrow, the yet unresolved, but immediate problem, will be to identify the public - that great mass segment pulled from our population as a whole - to whose demands a public utility must respond. The difficulty of course is the indisputable fact that there is no single public, nor even any large segment thereof, with consistent demands.

Those environmentalists who now call for a return to a simpler way of life pose difficult political and social consequences without suggesting the answer or who is to answer them. Often it appears that white - middle-class suburbanites are arguing that ghetto residents really do not need air conditioners - but they demand that the public utility take that position rather than they. If the total amount of available electric power is to be restructured by limiting any expansion of existing generating plants - the problem of public utilities in distributing what is available will become acute - but those who advocate that course suggest no ways to fairly and equitably solve it. It seems to me that the same principle is involved in the less extreme case by those who may elect increased utility bills as a method of financing pollution abatement. This may represent the actual priorities of those who can afford to make the choice - but is the same true of those who cannot?

What are the rights of those who oppose the development of a power plant site for electric generation in a remote undeveloped area on the grounds that it will destroy physical and cultural amenity in that area relative to the rights of the residents of a distant metropolis who would benefit from the greater availability of low cost power - or cleaner air. Should the fact that the additional electric power could be used for mass urban transportation - or in other ways which may have positive environmental consequences in the developed area - be balanced against the environmental impact in the undeveloped area? If so, how is the determination to be made.

The classic delemma can be illustrated by the recent proposal by a public utility to construct a massive facility into which it pumped and stored water. The idea then was that excess electric power during non-peak load periods would be used by the public utility to pump water into the man-made storage area. During peak load periods the water would be used as a source of hydro-electric power. The result in the opinion of the public utility would have been an expansion of total power available which in turn would permit several older power plant facilities to be abandoned. Those older facilities - located within a very large municipality were - and in fact are - among the major contributors to the metropolitan air pollution problems. However, in the view of some opposing environmentalists, the principal result of the project would have been the massive destruction of natural and aesthetic values at the proposed site of the pumping facility. Who should mediate between that part of our society seeking to reduce air pollution in an urban center and that part urging the preservation of nature and beauty in undeveloped areas?

The public utility company faces these problems in the context of overlapping jurisdictures of federal - state and local regulatory agencies. It has been estimated that the new construction of a major fossil fuel generating plant might require as many as thirty-two (32) separate discretionary permits from governmental agencies. The situation may be even more extreme in the case of a nuclear facility.

It seems to me that this is an area in which the legal profession as an entity may be able to offer concrete assistance. One large local bar association in New York has already completed a study of the legal aspects of power plant siting - making a number of recommendations as to the structure of governmental regulation in this area. The American Bar Association is now carrying out a study of industrial plant location in general. It has been suggested that much of what has been learned about power plant siting will have application to the wider range of problems involving all new industrial construction which may have a regional environmental impact. When the American Bar Association completes its study- I hope that you and other industrialists will carefully consider its recommendation so that we might thereafter jointly attempt to implement those changes in laws and regulations which our organizations - and other interested groups - have concluded to be right and proper.

The issues surrounding the generation of electricity and its use - as well as issues involved in the use of other energy sources - involve basic policies which should only be determined by society at large.

Many public utility executives - reasonably concerned with what increasingly appears to be an energy crisis in this country - have been shocked by what has appeared to them to be the improper use by environmentalists of courts of law. Obviously a system which requires multiple but separate governmental permits - some at the local level - some at the state - and some at the federal - encourages litigation filed only to impede or delay the construction of new generating capacity - and in many cases - that has appeared to be prime or even the sole purpose of the court action. On the other hand, the environmentalists argue that presently there is no forum in which the fundamental issues of how

much power should be generated and to what purposes it should be put - can be presented and determined. Because there can be no joining of issue on those fundamental matters - the environmentalists "do what they can do" otherwise - and they apparently quite righteously feel that it is right and proper that they use the courts for delay - even though the court, in the end, will not decide their issue - or even consider it.

In my opinion - neither the courts, nor the environmentalists - nor public utility executives - should have either the responsibility or the privilege of deciding these fundamental issues. That is not to say that these issues ought not to be faced. Quite the contrary - I submit that it is a matter of urgent necessity that the decision-making process be restructured so that those issues can be resolved by competent and fully informed public authority - and that public utility executives should devote their great expertise and substantial influence to achieve that result.

Public utility companies should aid society in determining those issues by continuing to be open in their dealings with legislatures - with regulatory bodies - and with the public. I suggest that public utility executives have the right - the duty - and the obligation to provide accurate information about policy alternatives, but that in doing so they ought not to resort to scare tactics to coerce selection among those alternatives. An extremely high standard of corporate and personal ethical standards will not only make it possible for informed decisions to be made - but it will in time restore much of the public confidence in public utilities which has in recent yrears been dissipated by the recurring attacks motivated by ever-increasing rates and by ever-increasing generating capacity - and it has been dissipated - regardless of whether any of those attacks were meritorious.

You - as chief executives of public utilities - are obviously on the firing line. But you have been there before - and if you had not measured up then - you would not be here today. As a lawyer with both public utility ties and public and professional responsibilities - it seems to me that your primary interest must now shift from the efficient generation of electricity to that of achieving fair regulation of your own company. Fair regulations can only come about through informed - dedicated men who are elected - appointed or otherwise entrusted with that public responsibility - and it is up to each of us as citizens, as public utility executives and as lawyers to see that the public utilities are regulated only by men of high character and reasoned abilities.

I have been advised that many of the public utility executives here today are lawyers - those who are thus are my constituents - and I am their spokesman. As lawyers, each of them is, or should be, concerned about all that I do as president of the American Bar Association. The same is true of you in your responsibilities to your stockholders - your employees - your customers - and above all - the general public to whom we owe the highest responsibility of all. I am, as a member of the general public, a constituent of yours, and I am interested in what you say and do. It is not enough in the discharge of your public duty to run your company well - it is not even enough for you to be deeply involved in civic affairs or state and local politics - you now must be involved in running the nation. You must - as a responsible public utility executive - help in every possible way to shape our society for the ultimate good of all.

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SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 69

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: AMERICAN JUDICATURE SOCIETY
CITIZENS CONFERENCE

DATE OF DELIVERY THURSDAY, APRIL 5, 1973

TITLE:

TIME:

A PRIME RESPONSIBILITY OF ANY CIVILIZED SOCIETY IS THE PROMPT, EVEN-HANDED AND EFFECTIVE ADMINISTRATION OF JUSTICE. EQUITABLE RESOLUTION OF DISPUTES BETWEEN CITIZENS AND BETWEEN CITIZENS AND THEIR GOVERNMENT STRIKES TO THE VERY HEART OF THE PROMISE OF OUR DEMOCRATIC WAY OF LIFE. CERTAINLY OUR JUDICIAL INSTITUTIONS - AND AT CENTER STAGE AMONG THESE INSTITUTIONS, OUR COURTS - TOUCH MEN AT THE MOST IMPORTANT MOMENTS IN THEIR LIVES - IN TIMES OF SEVERE PERSONAL CRISIS.

IF OUR NATION IS TO ENDURE WITHOUT CHAOS OR GOVERNMENTAL OPPRESSION, OUR CITIZENS MUST TRUST OUR SYSTEM OF JUSTICE - AND WITHIN THAT SYSTEM - THE COURTS - TRUST IT TO ENFORCE THE LAW AND TO RESOLVE DISPUTES IN A FAIR AND EXPEDITIOUS WAY.

YET IN MANY PARTICULARS OUR JUSTICE SYSTEM OF TODAY JUST DOES NOT FULLY MEASURE UP TO SUCH A STANDARD OF TRUST, OR SO IT SEEMS TO ME. LARGE NUMBERS OF OUR PEOPLE DO LOOK AT SOME ELEMENTS OF OUR JUSTICE SYSTEM WITH MISTRUST AND SCORN. IN MANY AREAS OF OUR COUNTRY, SUBSTANTIAL SEGMENTS OF OUR OVERALL JUSTICE SYSTEM HAVE LOST BOTH THE CO-OPERATION AND THE CONFIDENCE OF LARGE

MASSES OF OUR POPULATION. I DO NOT MERELY REFER TO THE MINORITIES AND THE POOR. PEOPLE FROM ALL STATIONS AND ALL WALKS OF LIFE OPENLY AND VIGOROUSLY EXPRESS THEIR DISSATISFACTION. IT SEEMS TO ME THAT THAT ATTITUDE - AT LEAST ON THE PART OF SOME - IS NOT WITHOUT FOUNDATION. IN MANY LOCALITIES AND STATES, WE SIMPLY HAVE NOT MAINTAINED MODERN, RESPONSIVE, EQUITABLE JUSTICE SYSTEMS. THE INDICES OF FAILURE ARE ALL TOO APPARENT - THE RISING INCIDENCE OF CRIME - OVERCROWDED JAILS AND PRISONS - FLOODED COURT DOCKETS - THE HIGH RATE OF RECIDIVISM AMONG THOSE ALLEGEDLY "CORRECTED" - ALL INDICATE THAT SOME-

THING IS TERRIBLY WRONG. I SUBMIT THAT THE FAULT LIES PRIMARILY IN THE CURRENT STRUCTURE OF THE SYSTEM OF JUSTICE ITSELF. THAT IS NOT TO SAY THAT THE PEOPLE WHO ADMINISTER JUSTICE INSTITUTIONS - THE JUDGES, POLICE, PROSECUTORS, DEFENDERS, PRISON PERSONNEL, PAROLE AND PROBATION OFFICERS, HAVE NOT THROUGH PERSONAL DERELICTIONS, DISHONESTY, OR MISFEASANCE CONTRIBUTED IN MANY INSTANCES TO THAT CONDITION, BUT ON THE WHOLE, IT IS CLEAR TO ME THAT THE OVERWHELMING MAJORITY OF THOSE IN PUBLIC SERVICE IN THE JUSTICE SYSTEM HAVE WORKED BEYOND ALL REASONABLE EXPECTATIONS TO MAKE IT WORK. I REITERATE THEN THAT IN MY JUDGMENT THE MAJOR PART OF THE PROBLEM WITH OUR JUSTICE SYSTEMS IS NOT IN

THOSE WHO ADMINISTER IT, BUT IN THE STRUCTURE OF THE SYSTEM ITSELF.

AT THE HEART OF OUR JUSTICE SYSTEM ARE THE COURTS. MOST OF OUR CITIZENS LOOK EXCLUSIVELY TO THE COURTS WHEN THEY THINK OF JUSTICE. THAT MAY WELL BE THE WRONG DIRECTION TO LOOK, BUT WHEN THEY DO LOOK AT THE COURT, THEY ARE CONFRONTED WITH CROWDED COURTS - OVERWORKED AND UNDERPAID JUDGES - INORDINATE COURT DELAY - LONG WAITS IN JAIL - UNIMPRESSIVE AND DISCRIMINATING PRACTICES IN INFERIOR COURTS - PLEA BARGAINING. THEY SEE A BENCH WHERE THE BEST MEN AVAILABLE ARE NOT ALWAYS JUDGES. THEY SEE A SYSTEM WHERE SLOW

MOTION JUSTICE HAS BECOME THE RULE AND NOT THE EXCEPTION. OUR COURTS SIMPLY ARE NOT PROPERLY ORGANIZED AND MANAGED TO MEET THE MODERN NEEDS OF A COMPLEX SOCIETY.

I SUBMIT THAT A GOOD COURT SYSTEM CAN BE MEASURED BY A SIMPLE AND FUNDAMENTAL TEST - WHETHER IT DISPENSES JUSTICE OF A HIGH QUALITY THAT IS PROMPT AND INEXPENSIVE. IT IS PROPER THAT WE, ON A CONTINUING BASIS, EXAMINE OUR COURT SYSTEMS AGAINST THAT TEST SO THAT WE CAN SEE WHAT IS LACKING AND MAKE IMPROVEMENTS.

FIRST, THE QUALITY OF JUSTICE IN MOST STATES BEARS A DIRECT RELATIONSHIP

TO THE PERSONS WHO SERVE AS JUDGES. HIGH QUALITY JUSTICE CAN BE DISPENSED ONLY IF THE MOST COMPETENT AND PROFICIENT LAWYERS AVAILABLE ARE ON THE BENCH.

IT HAS BEEN SAID "A GOOD MAN IS HARD TO FIND." FOR MY PURPOSES - I WOULD RESTATE THIS MAXIM AND SAY THAT "A GOOD JUDGE IS HARE TO FIND - AND EVEN HARDER TO KEEP." A JUDGE LACKING IN TALENT OR CHARACTER CAN MAKE A SHAMBLES OF THE MOST FINELY CONTRIVED JUDICIAL PROCESS. MEN OF WISDOM AND CONSUMMATE SKILL MUST BE SELECTED AND RETAINED AS JUDGES TO MAKE ANY JUSTICE SYSTEM FUNCTION PROPERLY.

THERE IS, OF COURSE, NO SINGLE SYSTEM FOR SELECTING JUDGES THAT WILL GUARANTEE TO US WISE AND GOOD MEN. WE DO, HOWEVER, ALL KNOW WHAT WE WANT IN A JUDGE; WE KNOW - ABOVE ALL - THAT WE WANT MEN WHO HAVE DISTINGUISHED THEMSELVES BOTH IN THE FIELD OF LAW AND IN THE WIDER PUBLIC CONSTITUENCY - FOR THAT ESSENTIAL COMBINATION OF WISDOM, JUDGMENT AND FAIRNESS THAT MUST GOVERN A VIABLE LEGAL SYSTEM. OUR JUDGES, OF COURSE, SHOULD IDEALLY BE OUR BEST LEGAL MINDS. WHILE MANY OF OUR JUDGES CERTAINLY DO MEASURE UP TO SUCH A STANDARD, THE SAD FACT IS THAT THERE ARE ALSO MANY WHO DO NOT. THE DIFFICULTY IS NOT CAUSED BY A LACK

OF QUALIFIED LAWYERS.

THERE IS AN ABUNDANCE OF OUTSTANDING LEGAL TALENT IN ALL OF OUR STATES. CERTAINLY TO MY KNOWLEDGE THERE IS IN ~~ALABAMA~~. UNFORTUNATELY NOT ENOUGH OF THAT TALENT REACHES THE BENCH.

I SUBMIT THAT THE MANNER OF SELECTION, THE ATTRACTIVENESS OF JUDICIAL POSITIONS, AND THE MEANS OF RETENTION ARE CRUCIAL IN PROCURING THOSE MEN THAT WILL MAKE FOR A SUPERIOR JUDICIARY IN ANY STATE.

MANY IMPROVEMENTS IN OUR PRESENT PROCEDURES COULD BE MADE. IT APPEARS TO ME THAT EFFORTS SHOULD BE MADE IN ALL STATES TO REMOVE THE SELECTION BY EXECUTIVE APPOINTMENT OF JUDGES FROM THE POLITICAL SPOILS SYSTEM. I AM NOT

SAYING THAT A MAN ACTIVE IN POLITICS CANNOT BE A GOOD JUDGE - OR THAT A MAN APPOINTED BECAUSE OF HIS PAST SERVICES TO A GOVERNOR OR OTHER EXECUTIVE MAY NOT SERVE ADMIRABLY. SOME OF OUR BEST JUDGES FREQUENTLY HAVE LONG RECORDS OF VIGOROUS AND EFFECTIVE SERVICE IN PUBLIC LIFE. I DO BELIEVE HOWEVER, THAT THE JUDICIAL QUALITIES OF SCHOLARSHIP - BALANCE AND RESTRAINT - ARE NOT NECESSARILY THOSE THAT CONTRIBUTE TO SUCCESSFUL POLITICAL ACTIVITY. I SUGGEST THAT THE ADVANCES MADE IN MANY STATES BY THE USE OF JUDICIAL NOMINATING COMMISSIONS COMPOSED OF THE MOST ABLE JUDGES, LAWYERS AND LAY CITIZENS OFFER AN EFFECTIVE MEANS OF SELEC-

TING THE FINEST MEN FOR VACANCIES ON THE BENCH.

TURNING TO THE QUESTION OF POLITICAL ELECTIONS AS A METHOD OF SELECTING THE JUDICIARY. IN MY OWN PERSONAL JUDGMENT, THE POLITICAL PROCESS OF A CONTESTED RACE BETWEEN TWO OR MORE LAWYERS WHO SEEK ELEVATION TO THE BENCH IS THE WORST POSSIBLE WAY OF RETAINING AND SELECTING A HIGHLY COMPETENT JUDICIARY. THE WORK OF A JUDGE IS BASICALLY REFLECTIVE AND THE CASES BEFORE HIM ARE RARELY FLAMBOYANT. THE QUALITIES OF MODESTY - SCHOLARSHIP - RESTRAINT - AND REFLECTION ARE NOT ALWAYS COUPLED WITH THE SKILLS OF A POLISHED CAMPAIGNER. A JUDGE OF THE

HIGHEST CALIBER MAY LACK CROWD APPEAL. IF THE JUDGE DOES POSSESS THOSE TRAITS WHICH MAKE HIM OR HER A FINE JUDGE BUT A POOR CAMPAIGNER AND, ADDITIONALLY, IF HE OR SHE IS OF MODEST MEANS - POLITICAL OPPOSITION MAY FORCE THE FUNDING OF A FAR FLUNG CAMPAIGN FOR WHICH HE OR SHE MAY BE ILL-EQUIPPED TEMPERMENTALLY AND FINANCIALLY. A GOOD CAMPAIGNER CAN OF COURSE MAKE A GOOD JUDGE - AS HAS BEEN REPEATEDLY DEMONSTRATED - BUT IT IS IRREFUTABLE THAT A JUDGE CANNOT RENDER EFFECTIVE JUDICIAL SERVICE AT THE SAME TIME THAT HE IS RUNNING AN EFFECTIVE CAMPAIGN FOR RE-ELECTION. CANDIDATES AND INCUM-

BENT JUDGES ALIKE ARE IN A POOR POSITION TO ACCEPT POLITICAL CONTRIBUTIONS - USUALLY FROM LAWYERS WHO WILL APPEAR BEFORE HIM. THE JUDGE MAY SUBCONSCIOUSLY BE PREDISPOSED TOWARD A MAN WHO HAS DEDICATED TIME AND EFFORT OR MONEY TO HIS ELECTION. PERHAPS A MORE FREQUENT PROBLEM IS THAT OF THE JUDGE WHO LEANS OVER SO FAR TO COMPENSATE FOR ANY POSSIBLE FAVORITISM TO A BENEFACTOR THAT HE OR SHE IN FACT DISCRIMINATES AGAINST A FORMER SUPPORTER. POLITICAL ELECTIONS TAKE A GREAT DEAL OF VALUABLE TIME FROM A JUDGE'S WORK AND THE ATTENDANT JOB INSECURITY FURTHER MITIGATES AGAINST THE CONTESTED POLITICAL PROCESS. CERTAINLY, THE

CITIZENS, WHOM THE JUDGE SERVES, SHOULD HAVE A VOICE IN WHETHER HE CONTINUES TO DISCHARGE THE JUDICIAL FUNCTION, BUT IT SEEMS TO ME THAT THE MERIT SELECTION AND RETENTION PROCESS NOW USED IN VARIOUS STATES IS THE ONLY ONE WHICH ALLEVIATES THE MANY PROBLEMS ATTENDANT TO JUDICIAL CAMPAIGNING. A JUDICIAL VACANCY SHOULD BE FILLED BY APPOINTMENT FROM A MERIT PANEL AND THE JUDGE APPOINTED SHOULD BE PERMITTED TO SERVE ONLY LONG ENOUGH TO ESTABLISH A JUDICIAL RECORD. THAT JUDGE THEN SHOULD SUBMIT HIMSELF TO THE PEOPLE ON HIS JUDICIAL RECORD, AND IF THE PEOPLE WANT HIM TO SERVE AGAIN, THEY SHOULD VOTE TO RETAIN

HIM IN OFFICE. IF THE PEOPLE CONCLUDE THAT THE JUDGE'S RECORD IS DEFICIENT AND THAT THEY DO NOT WANT HIM RETAINED IN OFFICE, THEY SO VOTE AND THE OFFICE BECOMES VACANT, WITH THE VACANCY TO BE FILLED AGAIN BY APPOINTMENT FROM A PANEL OF LAWYERS SELECTED SOLELY ON MERIT.

THAT SYSTEM IS ATTRACTIVE TO HIGHLY QUALIFIED LAWYERS WHO WOULD NOT OTHERWISE ACCEPT JUDICIAL APPOINTMENT, BUT IT RETAINS, AS IT PROPERLY SHOULD, THE RIGHT OF THE ELECTORS TO DISCHARGE A JUDGE WHO DOES NOT HAVE PUBLIC ACCEPTANCE AND APPROVAL.

WHILE SUCH A SYSTEM WILL HELP TO OBTAIN THE FINEST POSSIBLE JUDICIARY,

IT ALONE IS NOT ENOUGH. WE MUST ALSO INSURE TO OUT SITTING JUDGES ADEQUATE COMPENSATION, JOB SECURITY, AND RETIREMENT BENEFITS IF WE ARE TO ATTRACT AND KEEP THE BEST PEOPLE - THE BEST LAWYERS AS JUDGES. OUR MOST SUCCESSFUL, AND OFTEN OUR BEST LAWYERS, WILL USUALLY TAKE A SUBSTANTIAL CUT IN INCOME IF THEY BECOME JUDGES. A PERSON WE HAVE PERSUADED TO DON JUDICIAL ROBES SHOULD BE RELATIVELY SECURE IN OFFICE DURING GOOD BEHAVIOR. THE ATTORNEY WHO BECOMES A JUDGE HAS RISKED HIS ECONOMIC SECURITY BY ACCEPTING A POSITION ON THE BENCH; HIS CLIENTS HAVE BEEN ABSORBED BY OTHER LAWYERS. IF THE JUDGE IS

THEREAFTER TURNED OUT OF OFFICE, HE MUST ONCE AGAIN SUFFER THE PANGS OF DEVELOPING A PRACTICE. I REITERATE - JUDGES, IF WE ARE TO ENTICE AND HOLD THE BEST, MUST RECEIVE COMPENSATION AND BENEFITS THAT COMPARE FAVORABLY WITH WHAT A JUDGE COULD EXPECT IN PRIVATE PRACTICE.

QUALITY JUSTICE ALSO DEPENDS ON A SYSTEM THAT CAN ASSURE PROMPT AND EFFICIENT SERVICE FOR THE LITIGENTS. EFFORTS MUST BE MADE IN AREAS OF COURT ORGANIZATION AND ADMINISTRATION TO IMPROVE OUR PRESENT SYSTEM. MORE EFFECTIVE AND WIDESPREAD USE OF COURT ADMINISTRATORS WILL IN MY OPINION HELP SOLVE MANY OF THESE PROBLEMS. CHIEF JUSTICE WARREN

BURGER IN DISCUSSING THE NEED FOR COURT REFORM HAS ASKED "WHY DOES AMERICAN JUSTICE TAKE SO LONG?" HE HAS ANSWERED HIS OWN QUESTION BY SAYING THAT AT LEAST A PART OF THE PROBLEM IS A LACK OF UP-TO-DATE PROCEDURES AND STANDARDS FOR ADMINISTRATION AND MANAGEMENT AND ESPECIALLY THE LACK OF TRAINED COURT ADMINISTRATORS. HE SAID, ...WE HAVE 58 ASTRONAUTS CAPABLE OF FLYING TO THE MOON, BUT NOT THAT MANY AUTHENTIC COURT ADMINISTRATORS AVAILABLE TO SERVE IN THE STATE AND FEDERAL SYSTEMS." GREAT EFFORT SHOULD BE MADE TO USE TRAINED COURT ADMINISTRATORS AND MORE MODERN METHODS OF COURT ADMINISTRATION. A LONG STRIDE IN THAT DIRECTION CAN BE

MADE BY THE SIMPLIFICATION OF OUR COURT SYSTEMS BY COURT UNIFICATION PROPOSALS NOW BEING USED OR CONSIDERED IN MANY STATES. THE PUBLIC IS OFTEN CONFUSED AND DISORIENTED BY THE MYRIAD AND VARIED COURTS OF DIFFERING JURISDICTIONS AND DIFFERING NAMES. A UNIFORM SINGLE TRIAL COURT SYSTEM HELPS ATTRACT OUR BEST LAWYERS TO THE TRIAL BENCH. THE FACT THAT A COURT IS NAMED OR STYLED AS A LOWER OR INFERIOR COURT WITH LIMITED JURISDICTION, IN AND OF ITSELF, PREVENTS MANY OF OUR BEST PEOPLE FROM WANTING TO SERVE AS JUDGES OF THESE COURTS. FURTHER, COURT ADMINISTRATION AND FINANCING IS MADE MORE DIFFICULT WHEN THERE ARE TOO

MANY LEVELS OF TRIAL AND APPELLATE COURTS - FINANCED AND MANAGED BY VARIOUS MUNICIPALITIES, COUNTIES, AND OTHER GOVERNMENTAL ENTITIES. IT APPEARS TO ME THAT THE LOWER COURTS, WHICH HAVE THE MOST FREQUENT CONTACT WITH OUR CITIZENS, SHOULD MERIT OUR GREATEST CONCERN. THOSE COURTS DESERVE THE VERY BEST THAT WE CAN DO TO INSURE DIGNITY, FAIRNESS AND EFFICIENTY. A UNIFIED AND SIMPLIFIED TRIAL COURT SYSTEM THAT WOULD INCREASE THE DIGNITY AND QUALITY OF THE LOWER TRIAL COURTS, COULD AUGUR WELL FOR A HIGHER STANDARD OF JUSTICE, AND I ENDORSE IT WITHOUT RESERVATION.

OF COURSE, MANY OTHER MATTERS MERIT YOUR ATTENTION AND CONCERN. MOST COURT SYSTEMS NEED MORE EFFECTIVE RULE-MAKING PROCEDURES. THE RELATIONSHIPS BETWEEN THE COURTS AND THE VARIOUS COURT SUPPORT AGENCIES - SUCH AS PROBATION AND PAROLE OFFICES, WELFARE DEPARTMENTS, CORRECTIONS COMMISSIONS, MENTAL HEALTH FACILITIES, AND VARIOUS VOLUNTEER COMMUNITY SERVICE ORGANIZATIONS - MUST BE MORE FIRMLY ESTABLISHED. ACCESS TO THE COURTS MUST BE MADE MORE AVAILABLE TO THE LITIGANT WITH MODEST RESOURCES BY MAKING THE COST OF LITIGATION LESS BURDENSOME. WE CANNOT AND MUST NOT RESERVE OUR FORUMS OF JUSTICE FOR ONLY

THE VERY RICH AND THE VERY POOR.) THE LIST OF POSSIBLE AREAS FOR YOUR CONCERN MAY BE INEXHAUSTIBLE FOR IT SEEMS TO ME THAT THE CONTINUED EXAMINATION AND SUBSEQUENT IMPROVEMENT OF OUR COURT SYSTEMS IS AN ABSOLUTE NECESSITY.

MEASURED AGAINST OUR FUNDAMENTAL TEST THAT OUR COURT SYSTEM MUST BE PROMPT, FAIR, AND INEXPENSIVE, MANY OF THE COURT SYSTEMS IN OUR STATES, BOTH CRIMINAL AND CIVIL, SIMPLY DO NOT MEASURE UP. THE TRUTH IS THAT TODAY OUR JUDICIAL SYSTEM IS BEING TESTED AS NEVER BEFORE. INDEED THE SYSTEM IS IN CRISIS. THE VOLUME AND CHARACTER OF THE CASES IN OUR COURTS ARE WITHOUT PRECEDENT IN HISTORY. THE

ISSUES INVOLVED RANGE FROM COMPLEX QUESTIONS OF CONSTITUTIONAL LAW TO NEW STANDARDS OF CRIMINAL JUSTICE. AND ACROSS THE NATION NOT ONLY THE LEGAL PROFESSION BUT THE ENTIRE CITIZENRY IS ENGAGED IN HEATED DEBATES ABOUT COURT DECISIONS AND COURT PRACTICES.

LET ME SUGGEST TO YOU THAT AT SUCH A TIME AS THIS, ONLY THE MOST CONCERTED EFFORTS BY CITIZENS SUCH AS YOURSELVES TO REFORM OUR JUSTICE SYSTEMS CAN SUCCEED IN RESTORING THE FAITH OF OUR PEOPLE. YOUR TASK IS NOT EASY, BUT COURT REFORM HAS ALWAYS BEEN A DIFFICULT TASK. THE FRUITS, HOWEVER, OF "JUSTICE FOR ALL"

IS, I SUBMIT, WORTH THE TOIL AND EFFORT. IT IS A LONG ROAD TO TRAVEL AND THE FIRST PART IS UPHILL, BUT IF YOU GO, LIKE ALL ROADS AND ALL HILLS, THERE IS A POINT WHERE THE GOING GETS EASIER AND THE DESTINATION IS REACHED. IT WILL BE MOST REWARDING TO THOSE WHO MAKE THE TRIP - I HOPE THAT YOU DO.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 70

VOLUME V

#70

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: ALUMNI DAY
NORTHWESTERN SCHOOL OF LAW
OF LEWIS AND CLARK COLLEGE
LEWIS AND CLARK COLLEGE
PORTLAND, OREGON

DATE OF DELIVERY: SATURDAY, APRIL 21, 1973
3:30 P.M.

TITLE: PROFESSIONAL UTILIZATION - THE NEED
FOR LAWYERS IN THE FUTURE

TIME: FIFTEEN MINUTES

IT IS PROJECTED THAT BY 1985 OUR LEGAL PROFESSION WILL DOUBLE IN SIZE. CERTAINLY STATISTICS SEEM TO BEAR OUT THIS PROJECTION. IN 1950 THERE WERE APPROXIMATELY 286,000 LAWYERS IN OUR COUNTRY. BY 1970, THAT NUMBER HAD GROWN BY ALMOST 25% TO 355,000. THE DECADE AND A HALF BETWEEN 1970 AND 1985 WILL, HOWEVER, SEE THE GREATEST GROWTH IN OUR PROFESSION. AN INDICATION OF THIS ANTICIPATED GROWTH CAN BE SEEN IN THE ENROLLMENT AND APPLICATION FIGURES FOR OUR LAW SCHOOLS. LAW SCHOOL ENROLLMENTS INCREASED FROM 53,000 STUDENTS IN 1950 TO 97,000 STUDENTS IN 1971, WITH THE GREATEST PORTION OF THAT

INCREASE OCCURRING BETWEEN 1968 AND 1971. TODAY ONE OUT OF EVERY TWELVE MALE COLLEGE GRADUATES OF 22 YEARS OF AGE IS IN LAW SCHOOL. THE NUMBER OF APPLICANTS TAKING THE LAW SCHOOL ADMISSIONS TEST HAS INCREASED FROM 50,000 IN 1968 TO OVER 130,000 THIS PAST YEAR. BY 1975, IT IS ESTIMATED OVER 30,000 LAW GRADUATES PER YEAR WILL BE ENTERING SOCIETY. IN SHORT, OUR PROFESSION IS EXPERIENCING A PERIOD OF UNPRECEDENTED GROWTH AND THERE IS NO REASON TO BELIEVE THAT THIS GROWTH WILL ABATE IN THE NEAR FUTURE.

INHERENT AND ATTENDANT TO THIS GROWTH WILL BE A CHANGE IN THE COMPLEXION OF THE PROFESSION ITSELF. MORE AND MORE OF OUR PROFESSION WILL BE COMPOSED OF THOSE WHOM WE HAVE TRADITIONALLY TERMED "YOUNG LAWYERS". MINORITIES AND WOMEN WILL MAKE UP A GREATER PROPORTION OF THE BAR. THE MEMBERSHIP OF THE AMERICAN BAR ASSOCIATION IS A STRIKING EXAMPLE OF THINGS TO COME. TODAY OVER ONE-THIRD OF THE MORE THAN 160,000 LAWYERS OF OUR ASSOCIATION ARE UNDER THE AGE OF THIRTY-FIVE, AND THE NUMBER

OF MINORITY AND WOMEN MEMBERS HAS MORE THAN DOUBLED IN THE PAST YEAR.

SERIOUS QUESTIONS MAY BE ASKED AS TO HOW THIS GROWTH AND CHANGE WILL EFFECT OUR PROFESSION. IN LIGHT OF THE FINDING THAT OUR COUNTRY MAY BE ENTERING A PERIOD OF ZERO POPULATION GROWTH, ONE MAY ASK, "WHAT ARE WE GOING TO DO WITH SO MANY LAWYERS? IS THERE ROOM IN THE PROFESSION FOR SO MANY NEW FACES?"

THE ANSWER, I SUBMIT, TO THESE QUESTIONS IS TIED INEXTRICABLY TO

THE UNFOLDING NATURE OF OUR PROFESSION AND SOCIETY. RECENT YEARS HAVE SEEN VAST CHANGES TAKE PLACE IN THE LEGAL BUSINESS. LAW FIRMS ARE INCREASINGLY USING MODERN MANAGEMENT AND TECHNOLOGICAL TOOLS. COMPUTERIZED LEGAL RESEARCH IS ALMOST A REALITY. SERIOUS EXPERIMENTS IN AREAS SUCH AS PREPAID AND GROUP LEGAL SERVICES, CERTIFICATION OF SPECIALISTS, AND CLINICAL EDUCATION ARE WITH US. WE HAVE SEEN THE ESTABLISHMENT OF LEGAL AID CLINICS-

THE EXPANSION OF LAWYER REFERRAL PROGRAMS-THE RISE OF THE PUBLIC INTEREST LAW FIRM-THE ABANDONMENT OF FEE SCHEDULES-THE ORGANIZATION OF STORE FRONT LEGAL CLINICS-AND THE MATURITY OF NEW SUBSTANTIVE LEGAL AREAS. SUCH AS ENVIRONMENTAL LAW. CERTAINLY OUR PROFESSION HAS, AND IS, CHANGING.

IT SEEMS TO ME THAT THESE CHANGES IN OUR PROFESSION ARE NECESSARY REACTIONS TO THE INCREASING COMPLEXITY OF OUR MODERN SOCIETY. ADVANCES IN TECHNOLOGY-THE CRUSHING AVAILABILITY

OF INFORMATION-THE UNABATED GROWTH OF URBANIZATION-AND THE ATTENDANT REORDERING OF LIFESTYLES HAVE ALL MADE LIFE IN THIS AGE INCREDIBLY COMPLEX. THE SOCIETAL SHIFT FROM A PRODUCTION TO A SERVICE ORIENTATION HAS INCREASED THE INTERPERSONAL AND LEGAL DIFFICULTIES BETWEEN CITIZENS. IT SEEMS TO ME THAT SOCIETAL CHANGE IS ACCELERATING IN GEOMETRIC PROPORTIONS. MORE PRESSURE AND ANXIETY THAN EVER BEFORE ARE BEING PLACED ON MODERN MAN IN ORDER TO COPE WITH HIS ENVIRONMENT. TRADITIONAL INSTITUTIONS AND IDEAS SUCH AS MARRIAGE,

THE FAMILY, AND LIFETIME JOB SECURITY ARE BEING REPLACED WITH EMOTIONALLY TRYING CONCEPTS OF SOCIAL AND JOB MOBILITY. PSYCHOLOGICAL ALIENATION AND DISORIENTATION ARE POSSIBLE RESULTS. WITH COMPLEXITY AND PRESSURE COMES PROBLEMS, AND PROBLEMS ARE THE MAJOR CONCERN OF LAWYERS. LAWYERS, BECAUSE OF THEIR TRAINING AND EXPERTISE, ARE UNIQUELY QUALIFIED TO GRAPPLE WITH NEW SITUATIONS. LAWYERS HAVE ALWAYS BEEN THE COMMUNITY'S PROBLEM SOLVERS. IT APPEARS TO ME THAT SOCIETY, IN ADDRESSING ITSELF TO THE EVER-EXPANDING

COMPLEXITIES OF MODERN LIFE, WILL HAVE AN INCREASING NEED FOR LEGALLY TRAINED PERSONS. THE NEED FOR LAWYERS, RATHER THAN DECREASING BEFORE THE SURGE OF NEW LAW GRADUATES, WILL INSTEAD DECREASE OVER THE NEXT DECADE

OLD PRACTICES AND TRADITIONAL METHODS OF LAWYER UTILIZATION WILL, HOWEVER, NEITHER MEET SOCIETAL NEEDS NOR THE AMBITIONS OF THE NEW LAWYERS. IN A REPORT AT THE AMERICAN BAR ASSOCIATION ANNUAL MEETING IN AUGUST OF LAST YEAR, THE TASK FORCE ON PROFESSIONAL UTILIZATION, A GROUP OF

OUTSTANDING LAWYERS AND EDUCATORS SPECIALLY COMMISSIONED BY THE ABA TO STUDY FUTURE NEEDS OF THE LEGAL PROFESSION, SAID THAT, "WHILE THERE WILL BE A NEED IN THE FUTURE FOR MORE LAWYERS, ...THERE MAY NOT BE SUFFICIENT POSITIONS IN THE NEAR TERM IN SOME OF THE TRADITIONAL FIELDS OF LEGAL PRACTICE OR IN SOME GEOGRAPHIC AREAS FOR ALL THOSE WHO MAY SEEK SUCH POSITIONS." THE NEED FOR LEGAL SERVICES IS CHANGING. LAWYERS WILL BE NEEDED IN NEW POSITIONS AND IN NEW GEOGRAPHICAL AREAS. THEIR WORK

WILL ENCOMPASS NEW TYPES OF PRACTICE SOMEWHAT DIFFERENT FROM THE TRADITIONAL ROLES.

DEMAND FOR THE SERVICES OF THE NEW LAWYERS WILL COME FROM MANY AREAS. THE LAST DECADE HAS SEEN OUR LAW FIRMS GROW AND PROSPER. PARALLEL TO THIS GROWTH HAS BEEN A NEED FOR NEW MEMBERS. THIS WILL CONTINUE. THIS DECADE HAS ALSO SEEN THE PROVISION OF LEGAL SERVICES FOR THE POOR AND DISADVANTAGED. I PREDICT THAT THESE SERVICES WILL BE EXPANDED IN THE FUTURE AND THAT THE NEED FOR LAWYERS IN THIS AREA WILL ESCALATE. GOVERNMENTAL POSITIONS WILL,

AS IN THE PAST, CONTINUE TO PUT A HIGH PREMIUM ON LEGALLY TRAINED TALENT. THE RIGHT TO COUNSEL DECISIONS IN THE CRIMINAL FIELD, PARTICULARLY IN RELATION TO THE LOWER COURTS, WILL PRECIPITATE A NEED FOR MORE LAWYERS. I FORESEE THE INCREASED NEED FOR LAWYERS IN THE JUVENILE COURTS, IN CASES INVOLVING THE MENTALLY ILL, AND IN LITIGATION INVOLVING THE RIGHTS OF CHILDREN. I FORESEE THE INCREASED USE OF LAWYERS IN DEALING WITH BOTH STATE AND FEDERAL REGULATORY AGENCIES. PUBLIC CONCERN WITH SUCH TOPICS AS THE ENVIRONMENT, CONSUMER PROTECTION,

TAXES, ELECTION LAWS, WAGE AND PRICE CONTROLS, OCCUPATIONAL SAFETY, AND TENANT RIGHTS ARE SPAWNING NEW AREAS FOR LAWYERLY EXPERTISE AND A RESULTING NEED FOR NEW TALENT.

PERHAPS THE MOST LEGALLY NEGLECTED GROUP, AND PROBABLY THE MOST FERTILE FIELD FOR FUTURE LAWYER PLACEMENT, IS IN PROVIDING LEGAL SERVICES FOR THE CITIZEN OF AVERAGE MEANS. WHILE THE VERY RICH CAN AFFORD THE HIGHEST PRICED AND BEST LEGAL TALENT AND WHILE, THROUGH LEGAL AID PROGRAMS, THE VERY POOR CAN RECEIVE LEGAL ASSISTANCE - THE MIDDLE-CLASS AMERICAN OF AVERAGE MEANS HAS,

HERETOFORE, BEEN LARGELY UNSERVICED BY THE LEGAL COMMUNITY. THE VAST MAJORITY OF AMERICANS NEVER CONSULT AN ATTORNEY. LITIGATION HAS SIMPLY BEEN TOO EXPENSIVE FOR THE AVERAGE AMERICAN. THIS IS NOT TO SAY THAT OUR AVERAGE INCOMED CITIZENS DO NOT HAVE DIFFICULTIES WHICH CALL FOR LEGAL COUNSEL OR THAT THEY MAY NOT BENEFIT FROM LEGAL ADVICE. MOST AMERICANS HAVE SIMPLY VIEWED LEGAL COUNSEL AS AN ECONOMIC IMPOSSIBILITY. WHILE THIS ATTITUDE HAS RESULTED IN PART FROM MISINFORMATION, THE SAD FACT IS THAT LEGAL SERVICES <u>HAVE</u> BEEN FINANCIALLY

OUT OF REACH FOR THE AVERAGE AMERICAN. IT SEEMS THAT THIS SITUATION MUST AND WILL CHANGE IN THE COMING YEARS. THE ESTABLISHMENT OF PREPAID LEGAL SERVICE PLANS ACROSS THE COUNTRY IS DIRECTED TO MEETING THIS NEED OF THE AVERAGE CITIZEN. I FORESEE THE POSSIBILITY THAT A TYPE OF LEGAL INSURANCE, AVAILABLE TO ALL OUR CITIZENS, PATTERNED SOMEWHAT LIKE BLUE CROSS - BLUE SHIELD MEDICAL INSURANCE, MAY SOON BECOME A REALITY. THE LARGE NUMBER OF NEW CLIENTS MADE AVAILABLE BY SUCH A PROGRAM WILL REQUIRE LARGE NUMBERS OF NEW ATTORNEYS.

I ALSO FEEL THAT INCREASED SPECIALIZATION IN THE LEGAL PROFESSION WILL TEND TO INCREASE THE DEMAND FOR MORE LAWYERS. THE DAY OF THE "GENERALIST IN THE LAW" MAY RAPIDLY BECOME A THING OF THE PAST. LAWYERS WILL HAVE TO BE SPECIFICALLY TRAINED, AND EVEN CERTIFIED, IN SPECIAL AREAS OF THE LAW. SPECIALIZATION WILL INCREASE THE ABILITY OF A SINGLE ATTORNEY TO HANDLE MORE CLIENTS AND CASES. BY INTENSE FAMILIARITY AND EXCLUSIVE PRACTICE IN A LIMITED LEGAL AREA, AN ATTORNEY CAN MINIMIZE RESEARCH REQUIREMENTS, STREAMLINE AND SPECIALIZE OFFICE TECHNIQUES, AND OTHERWISE LOWER THE TIME DEMANDS OF INDIVIDUAL CASES.

IT SEEMS TO ME THAT THE INCREASED ABILITY TO HANDLE MORE CASES PER DAY MAY CAUSE A LOWERING IN THE PRICE OF THE LEGAL SERVICE. SPECIALISTS MAY BE ABLE TO CHARGE LESS BECAUSE OF INCREASED VOLUME. IF SO THE LOWERING IN THE COST OF THE LEGAL SERVICE WILL IN ITSELF MAKE THE SERVICES OF LAWYERS MORE READILY AVAILABLE TO LARGE NUMBERS OF PREVIOUSLY UNSERVICED CITIZENS. IT SEEMS THAT THIS MAY NECESSARILY REQUIRE ADDITIONAL ATTORNEYS TO MEET THE NEEDS OF THESE NEW CLIENTS.

TODAY WE SEE MORE AND MORE LAWYERS FILLING EXECUTIVE AND CORPORATE BOARD

POSITIONS IN THE BUSINESS WORLD. BECAUSE OF THE INCREASINGLY COMPLEX NATURE OF BUSINESS AND INDUSTRY, AND THE INCREASED INTERRELATION BETWEEN BUSINESS, LAW, AND GOVERNMENT, I FORESEE A CONTINUED AND GROWING DEMAND FOR LEGALLY TRAINED BUSINESSMEN.

IT ALSO SEEMS TO ME THAT THERE IS WIDE OPPORTUNITY FOR NEW LAWYERS IN RURAL AND SEMI-RURAL AREAS. THERE ARE VAST SECTIONS OF OUR COUNTRY EVEN TODAY WHICH ARE UNDERSTAFFED WITH LAWYERS. THESE AREAS OFFER OPPORTUNITIES FOR BOTH ECONOMIC AND PROFESSIONAL SUCCESS FOR THE YOUNG ATTORNEY. OF

COURSE, LAWYER PLACEMENT SERVICES PROVIDED BY LAW SCHOOLS AND BY THE ORGANIZED BAR WILL HAVE TO BE EXPANDED AND SOPHISTICATED TO ACQUAINT THE NEW PROFESSIONALS WITH THESE OPPORTUNITIES. I AM ACQUAINTED WITH LAW SCHOOLS AND BAR ASSOCIATIONS ACROSS THE COUNTRY ALREADY DEALING WITH EXPANDING THESE SERVICES.

THE FUTURE, IT SEEMS TO ME, IS INDEED BRIGHT FOR THE LEGAL PROFESSION. THE ORGANIZED BAR, IN DISCHARGING ITS SERVICE RESPONSIBILITY TO BOTH THE PUBLIC AND THE LEGAL PROFESSION, IS GRAPPLING WITH THESE NEW DEMANDS FOR

PROFESSIONAL UTILIZATION. THE CHALLENGE OF DEVELOPING NEW INSTITUTIONS AND METHODS TO MAKE FULL USE OF THE NEW CROP OF LEGAL TALENT AND TO MEET THE ENORMOUS SOCIAL AND ECONOMIC PROBLEMS OF THE FUTURE IS ONE WHICH, I FEEL, WE MUST, AND WILL, ACCEPT. THE CHALLENGE OF THE LAW WILL BE EVER WITH US. BUT OURS IS A NOBLE PROFESSION WITH A PROUD HISTORY OF DEALING WITH THE PROBLEMS OF MAN. I WELCOME THE NEW PROFESSIONALS INTO OUR LEGAL COMMUNITY AND FEEL THAT THEIR ADDITION CAN ONLY AUGUR WELL FOR OUR PROFESSION AND THE PUBLIC.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 71

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: KEYNOTE ADDRESS
LAW DAY CONFERENCE ON EAST-WEST TRADE
UNIVERSITY OF GEORGIA LAW SCHOOL
ATHENS, GEORGIA

DATE OF DELIVERY: FRIDAY, APRIL 27, 1973
MORNING SESSION MEETING

TITLE: EAST-WEST TRADE AS A HARBINGER OF WORLD PEACE

TIME: FIFTEEN MINUTES

LAW DAY USA, INAUGURATED BY THE AMERICAN BAR ASSOCIATION ON MAY 1, 1958, IS DESIGNED AS A DAY WHEN OUR CITIZENS REAFFIRM THEIR DEDICATION TO THE RULE OF LAW AND TO THE LIBERTIES SAFEGUARDED BY OUR JUSTICE SYSTEM. WE HONOR THE LAW ON THIS DAY BECAUSE WE BELIEVE THAT LAW PRESERVES OUR CIVILIZED SOCIETY, PROTECTS THE DIGNITY OF THE INDIVIDUAL, AND INSURES PERSONAL LIBERTY. LAW DAY USA IS NOT, AS SOME HAVE CLAIMED, SIMPLY A KIND OF ANTIDOTE TO THE MILITARILY INSPIRED MAY DAY OBSERVED IN SO MANY OTHER COUNTRIES. RATHER, IT IS A DAY DESIGNED TO REMIND AMERICANS OF THEIR RESPONSIBILITY IN MAINTAINING AND IMPROVING OUR JUSTICE SYSTEM THROUGH PERSONAL INTEREST AND INDIVIDUAL PARTICIPATION. THIS YEAR'S LAW DAY THEME, "HELP YOUR COURTS -- ASSURE JUSTICE", FOCUSES UPON CITIZEN INVOLVEMENT IN MODERNIZING AND IMPROVING OUR COURTS IN ORDER THAT THE JUSTICE SYSTEM MAY BETTER CONFORM TO THE NEEDS OF THE EXISTING SOCIETY. OUR TRADITIONAL GOAL OF EQUAL JUSTICE UNDER THE LAW FOR ALL OF OUR CITIZENS REGARDLESS OF SOCIAL POSITION, ECONOMIC STATUS, OR IDEOLOGICAL BELIEF - IS EVER BEFORE US, YET IN MANY WAYS IT REMAINS ELUSIVE. LIKE ANY CIVILIZED SOCIETY, WE ACKNOWLEDGE THE ABSOLUTE NECESSITY OF CONTINUALLY REEVALUATING, REANALYZING AND RESTRUCTURING OUR INSTITUTIONS TO DETERMINE HOW SUCH GOVERNMENTAL DEVICES CAN BETTER MEET THE LEGITIMATE AND EVER-EXPANDING NEEDS OF OUR CITIZENS. ACROSS OUR COUNTRY DURING THIS WEEK IN WHICH WE CELEBRATE LAW DAY USA, THE EXAMINATION OR REEXAMINATION OF OUR COURT SYSTEMS IS BEING HIGHLIGHTED BY HUNDREDS OF CITIZEN CONFERENCES, MEETINGS, AND EDUCATIONAL PROGRAMS, CONDUCTED UNDER THE LEADERSHIP OF THE ORGANIZED BAR. I AM VERY PROUD OF THE ROLE OF THE AMERICAN BAR ASSOCIATION IN INSPIRING AND LEADING THIS LAW DAY RECOGNITION.

BUT THIS ABA CONFERENCE TODAY IN ATHENS, GEORGIA, WHILE IT IS A LAW DAY OBSERVANCE, HAS A SLIGHTLY DIFFERENT CHARACTER AND EMPHASIS. ALTHOUGH CENTERED AROUND THE LAW DAY CONCEPT, ITS SCOPE IS BROADER, ENCOMPASSING THE RULE OF LAW AS IT PERTAINS TO THE WORLD COMMUNITY OF NATIONS. I AM ADVISED THAT THIS IS THE THIRD YEAR THAT THE AMERICAN BAR ASSOCIATION'S STANDING COMMITTEE ON EDUCATION ABOUT COMMUNISM HAS SPONSORED - OR CO-SPONSORED - A CONFERENCE SUCH AS THIS AT A UNIVERSITY LAW SCHOOL. I COMMEND THE COMMITTEE AND THE AMERICAN BAR ASSOCIATION'S SECTION ON INTERNATIONAL LAW FOR INSPIRING THIS CONFERENCE ON WHAT IS OBVIOUSLY A MOST TOPICAL AND TIMELY SUBJECT - NAMELY, THE PROSPECTS AND POTENTIAL FOR EXPANDED EAST-WEST TRADE.

IT SEEMS TO ME THAT THE SIGNIFICANCE OF EAST-WEST TRADE LIES NOT ONLY IN THE BASE ECONOMICS OF TRADE BALANCES OR EVEN IN IMPORT-EXPORT QUOTAS, PERHAPS OF MOST IMPORTANCE IS THE REAL PROBABILITY THAT SUCH TRADE WILL ENHANCE MUTUAL UNDERSTANDING AND COOPERATION BETWEEN THE COMMUNIST AND NON-COMMUNIST WORLDS. IT HAS BEEN SAID THAT THE FAMILY WHICH PLAYS TOGETHER STAYS TOGETHER. CERTAINLY IT MUST BE EQUALLY TRUE THAT A GROUP OF NATIONS WITH TRADE ALLIANCES ARE MORE PRONE TO HAVE HARMONIOUS RELATIONS THAN ARE NATIONS WHICH HAVE NO VIABLE COMMERCIAL TIES.

THE PAGES OF HISTORY ARE RIDDLED WITH EVIDENCE OF THE SUFFERING AND ANGUISH WHICH SEEM INEVITABLY TO RESULT TO THE PEOPLES OF THOSE NATIONS WHICH OVER A LONG PERIOD FAIL TO COMMUNICATE AND COOPERATE WITH ONE ANOTHER; YET, IT SEEMS TO ME WE IGNORE THOSE LESSONS OF HISTORY WHEN WE RING OUR NATIONS WITH RESTRICTIONS ON FREE COMMERCIAL INTERCOURSE. THIS CENTURY HAS SEEN TWO MASSIVE, AND

COUNTLESS SMALLER - YET NO LESS TERRIBLE - WARS BETWEEN THE PEOPLES OF OUR WORLD. WHILE MOST OF THOSE NATIONS WHICH ENGAGED IN THOSE WARS HAVE SOMEWHAT SIMILAR INTERNAL SYSTEMS AND METHODS OF RESOLVING DIFFERENCES AND SETTLING DISPUTES, THE SAD FACT IS THAT WARFARE WAS STILL CONSIDERED BY MANY, IF NOT MOST OF THOSE NATIONS, TO BE THE HIGHEST AND BEST TOOL FOR RESOLVING THEIR INTERNATIONAL DISPUTES. WE ALL READILY ACKNOWLEDGE THAT TODAY FEAR AND MISTRUST STILL CHARACTERIZE THE RELATIONS BETWEEN THE POWERFUL GOVERNMENTS OF OUR WORLD. THE SPECTRE OF NUCLEAR WAR HAS TOO LONG HUNG HEAVY OVER US. CYNICS ARE OFTEN FOND OF SAYING THAT INTERNATIONAL CONFLICT AND WARFARE ARE INEVITABLE AND THAT WARS WILL OCCUR WITH CYCLICAL CERTAINTY. I REJECT THAT POSITION - I CONFIDENTLY ASSERT THAT MANKIND IS MADE OF STRONGER STUFF - THAT IN TIME - AND POSSIBLY THAT TIME IS IN THE NEAR FUTURE - MANKIND WILL DISCOVER THE MEANS TO RESOLVE DIFFERENCES BETWEEN NATIONS AND CLARIFY RELATIONSHIPS AMONG THEM WITHOUT RESORTING TO ARMED CONFLICT. A WORLD EQUIPPED WITH THE ABILITY TO PERMIT A HUMAN BEING TO DRIVE A LAND ROVER ACROSS THE SURFACE OF THE MOON SURELY SHOULD BE CAPABLE OF DEVISING INSTITUTIONS AND MEANS FOR PEACEFUL WORLD COEXISTENCE - AND I BELIEVE THAT IT SOON WILL. JUST AS MANY SINGLE NATIONS HAVE - THROUGH VARIOUS FORMS AND MEANS OF LEGAL INSTITUTIONS, LAW, AND GOVERNMENT - DEVISED METHODS TO SOLVE INTERNAL DISPITES - TO RESOLVE ON A CONSENSUS IN DIRECTION FOR ALL OF ITS PEOPLE - TO PUT ASIDE INDIVIDUAL ASPIRATIONS FOR THE COMMON GOOD - SO, TOO - I FEEL - CAN NATIONS SIMILARLY SUCCEED AT THE INTERNATIONAL LEVEL, AND IF THAT TIME IS NOT NOW, IT CANNOT BE TOO VERY FAR AWAY.

RECENT EVENTS SEEM TO POINT IN THAT DIRECTION. WITHIN THIS PAST YEAR, OUR PRESIDENT HAS CONCLUDED CONFERENCES AND AGREEMENTS WITH CHINA AND THE SOVIET UNION WHICH PORTEND A NEW ERA OF COOPERATION AND COMMUNICATION BETWEEN THOSE COUNTRIES. MOST FAVORED NATION TRADE STATUS IS NOW BEING CONSIDERED IN OUR CONGRESS FOR NATIONS WHICH NOT LONG AGO WERE UNDER COMPLETE TRADE EMBARGO; IN MY OPINION, THE INCREASED AND BENEFICIAL CONTACTS - PRIVATE, COMMERCIAL AND GOVERNMENTAL - BETWEEN THE U.S. AND THOSE NATIONS, WHICH WILL OF NECESSITY OCCUR, CAN ONLY BRING BENEFICIAL RESULTS. IT SEEMS ABSOLUTELY CLEAR TO ME AS A PRIVATE-PRACTICING TRIAL LAWYER - WITHOUT INTERNATIONAL CONTACTS, OR SPECIAL INTEREST OF KNOWLEDGE IN EITHER FOREIGN AFFAIRS OR INTERNATIONAL LAW, THAT TRADE, AND THE INTERNATIONAL EXCHANGE OF GOODS, BETWEEN THE COMMUNIST NATIONS AND THE UNITED STATES CAN ONLY FURTHER THE CAUSE OF PEACE IN THE WORLD. THROUGH TRADE COMES UNDERSTANDING - AND THROUGH UNDERSTANDING COMES MUTUAL RESPECT. THE INCREASED INTERRELATION OF THE PEOPLES OF THE NON-COMMUNIST AND COMMUNIST WORLDS THROUGH BUSINESS AND TRADE RELATIONS WILL NECESSARILY REQUIRE THE FORMATION OF STRUCTURES AND MEANS FOR SETTLING BUSINESS DIFFERENCES AND CONFLICTS RESULTING FROM SUCH RELATIONS. UNDOUBTEDLY, THE OUTCOME HAS TO BE A STRONGER RELIANCE UPON INTERNATIONAL LAW STRUCTURES AND AGREEMENTS - UPON INTERNATIONAL COURTS OR ARBITRATORS - UPON RESOLUTIONS OF DIFFERENCES BETWEEN COUNTRIES UNDER THE RULES OF A UNIVERSALLY ACCEPTED COMMERCIAL LAW. IF THE EARLY EXPERIENCE OF COMMERCIAL AND TRADE RELATIONS AMONG OUR OWN SOVEREIGN STATES UNDER THE FEDERAL SYSTEM IS ANY CLEAR GUIDE OR PRECEDENT, INCREASED TRADE AND INTERDEPENDENCE WILL ONLY SPAWN RULES AND LEGAL INSTITUTIONS WHICH MAY EVENTUALLY REPLACE FORCE AS A MEANS OF SETTLING DIFFERENCES.

I AM SURE THAT WE ALL AGREE THAT AMONG THE FOREMOST GOALS OF MANKIND IS A PEACEFUL WORLD ORDER WITH JUSTICE, AND THAT WE ARE FURTHERING THE REALIZATION OF THAT GOAL BY FREQUENT COMMERCIAL CONTACTS BY THE PEOPLES OF THE WORLD. TRADESMEN IN THE SOVIET UNION, CHINA, AND THE UNITED STATES HAVE NO DESIRE TO ENGAGE IN ANY WARS WITH ONE ANOTHER - THEY OBVIOUSLY AND SIMPLY WISH TO TRADE IN PEACE AND HARMONY - TO CONDUCT THEIR BUSINESSES AND DERIVE THE BENEFITS OF THEIR LABOR. THESE MEN AND WOMEN CLEARLY WANT ONLY TO LIVE THEIR LIVES WITHOUT DISCORD AND TRAVAIL. OUR GOAL AS MEN OF THE LAW - WHICH IS ATTAINABLE - MUST BE SOON TO DISCOVER EFFECTIVE MEANS WHEREBY EVERY MAN, WOMAN, AND CHILD CAN LIVE, TRAVEL, AND DO BUSINESS ANYWHERE AND ANYPLACE IN THE WORLD AT ANY AND ALL TIMES IN THE PEACE, DIGNITY, AND FREEDOM. WILL ROGERS, THE COMMON SENSE PHILOSOPHER OF THE 1930'S MADE PERHAPS HIS MOST REMEMBERED STATEMENT WHEN HE SAID "I'VE NEVER MET A MAN I DIDN'T LIKE," THE BEST OF HUMAN TRAITS EMERGE WHEN MEN INTERACT FOR A COMMON PURPOSE. TRULY, THE PEOPLES OF THE WORLD CAN, I FEEL, "LIKE" EACH OTHER IF THEY "MEET" EACH OTHER - WITH A RESULTING BENEFIT OF SUBSTANTIALLY INCREASED COOPERATION IN ALL AREAS. GOVERNMENTS MAY - AND QUITE OFTEN DO - HAVE DIFFERING IDEOLOGIES AND FORMS, BUT THE INDIVIDUALS I HAVE PERSONALLY KNOWN FROM OTHER COUNTRIES SEEM TO ME TO EXHIBIT NO VAST DIFFERENCES FROM MY ACQUAINTANCES HERE. WHEN YOU'RE SPEAKING ON AN INDIVIDUAL LEVEL, PEOPLE ARE PEOPLE THE WORLD OVER - REGARDLESS OF WHAT COUNTRY THEY CALL "HOME."

THE TASK OF WORKING OUT THE PARTICULARS OF TRADE BETWEEN OUR COUNTRIES IS THE BUSINESS OF BUSINESSMEN AND GOVERNMENTS - BUT IT CAN

BE GREATLY REINFORCED AND FOSTERED BY CONFERENCES SUCH AS THIS. FROM THIS MANIFESTATION BY PRIVATE CITIZENS OF A DESIRE TO ENGAGE IN MORE FOREIGN TRADE AND COMMERCIAL TRANSACTIONS, IT IS EASY TO ENVISION A REAL BEGINNING TO A NEW ERA OF PEACE ON OUR GLOBE. I HAIL THE WORLD-WIDE SPREAD OF COURT - ADMINISTERED JUSTICE WHICH I FORESEE AS A LOGICAL SEQUENCE TO A FULL-BLOWN ECONOMIC RELATIONSHIP BETWEEN ALL NATIONS OF THE WORLD AND I SALUTE THOSE WHO ARE HELPING TO BRING IT ABOUT. THE AMERICAN BAR ASSOCIATION - AS THE NATIONAL VOICE OF THE LEGAL PROFESSION IN THE UNITED STATES - HAS LONG ADVOCATED THE ABILITY OF THE LAW TO SUPPLANT BRUTE FORCE AS AN ORGANIZATIONAL TOOL OF MANKIND. WE HAVE LONG RECOGNIZED THAT OUR RESPONSIBILITY, AS MEN WHO HONOR AND CHERISH THE LAW, TRANSCENDS THE BOUNDARIES OF OUR OWN COUNTRY - THAT TRULY IT EMBRACES ALL PEOPLES - ALL NATIONS - ALL MANKIND. THE TIME HAS COME FOR US AS MEN OF THE LAW TO UNITE IN AN EFFORT TO BRING ALL OF THE PEOPLES OF THE WORLD CLOSER TOGETHER AND UNDER THE RULE OF LAW. THAT GOAL IS INDEED WITHIN REACH IF WE CAN MUSTER THE AID OF THE INTERNATIONAL LEGAL AND BUSINESS COMMUNITIES IN THAT EFFORT. I, FOR ONE, AM DELIGHTED WITH THIS CONFERENCE. FROM SUCH BEGINNINGS, THERE IS MUCH HOPE FOR A BRIGHTER FUTURE.

(THANK YOU.)

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 72

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: LAW DAY
WASHTENAU COUNTY BAR ASSOCIATION
ANN ARBOR, MICHIGAN

DATE OF DELIVERY: TUESDAY, MAY 1, 1973

TITLE:

TIME:

AN INVOLVED AND ACTIVE CITIZENRY IS AN ESSENTIAL PREREQUISITE TO ANY HAPPY AND CONTENTED DEMOCRACY. IDEALLY, CITIZEN CONCERN, VOICED THROUGH ELECTED REPRESENTATIVES AT ALL LEVELS, INSURES THAT SOCIETAL INSTITUTIONS AND LAWS ADEQUATELY RESPOND TO PUBLIC NEEDS. A GOVERNMENT DEVOID OF ACTIVE CITIZEN INVOLVEMENT IN ITS MULTIFARIOUS PROCESSES CANNOT LONG ENDURE WITHOUT DISORDER, DISCORD, AND OPPRESSION. FORTUNATELY, A CONCERNED AND ACTIVE CITIZENRY HAS

HISTORICALLY BEEN THE STRONG FIBER IN THE FABRIC OF OUR AMERICAN WAY OF LIFE. WE AMERICANS TRADITIONALLY HAVE BEEN A "CAN DO" PEOPLE -- RESPONDING PROMPTLY, FREELY AND EFFECTIVELY TO GOVERNMENTAL AND POLITICAL PROBLEMS. DESPITE THE CYNICISM AND CRITICISM OF MANY, IT SEEMS CLEAR TO ME THAT OUR NATION STILL STANDS AS THE WORLD'S PROUDEST EXAMPLE OF LIBERTY AND SELF-DETERMINATION.'

LAW DAY 1973 IS TARGETED BY THE AMERICAN BAR ASSOCIATION AT ENLISTING

THAT CITIZEN POWER AND ENERGY IN CURING, OR AT LEAST MITIGATING, A MAJOR GOVERNMENTAL DILEMMA FACING OUR NATION TODAY. THE LAW DAY THEME, "HELP YOUR COURTS -- ASSURE JUSTICE", IS AN EARNEST CALL TO UNINVOLVED AMERICANS TO JOIN WITH CONCERNED LAWYERS, JUDGES, AND CITIZENS IN IMPROVING OUR SYSTEM OF JUSTICE AND, IN PARTICULAR, OUR COURTS.

CERTAINLY, NO ONE ASPECT OF OUR NATIONAL LIFE HAS BEEN A GREATER SOURCE OF BOTH DOMESTIC AND INTERNATIONAL PRIDE

THAN OUR PROFESSED GUARANTEE OF "FREEDOM AND JUSTICE FOR ALL." SADLY, IT SEEMS TO ME, THAT THAT PROUD STANDARD IN MANY WAYS - AND IN MANY RESPECTS - IS BECOMING MORE AND MORE A BOGUS GUARANTEE TO LARGE SEGMENTS OF OUR POPULATION. OUR JUDICIAL INSTITUTIONS, IN MANY PARTICULARS, ARE SIMPLY FAILING TO MEET THE MINIMUM NEEDS OF MODERN SOCIETY. INDICATIONS OF THAT PARTIAL FAILURE ARE READILY APPARENT TO EVEN THE MOST CASUAL OBSERVOR.

OUR PRISONS ARE FILLED TO OVER-

FLOWING LARGELY WITH THE POOR AND DIS-
ADVANTAGED. RECIDIVISM OF THOSE ALLEGEDLY
"CORRECTED" IS PERILOUSLY HIGH. CRIME
IS FLOURISHING IN BOTH OUR CITIES AND
RURAL AREAS. OUR COURTS ARE SWAMPED
WITH A VOLUME OF LITIGATION WHICH IN
MOST CASES IS FAR BEYOND THE ABILITY OF
THE COURTS TO HANDLE EFFECTIVELY. PLEA
BARGAINING, AND ITS RESULTING INEQUITIES—
WHICH AT MOST, SHOULD BE USED AS A TEMPOR-
ARY EXPEDIENT—SEEMS ENTRENCHED IN THE
CRIMINAL PROCESS. JUDICIAL PERSONNEL

ARE OVERWORKED, UNDERSTAFFED, AND UNDER-PAID. LITIGATION IS TOO EXPENSIVE. OUR COURTS ARE LARGELY AVOIDED BY THE AVERAGE CITIZEN. CERTAINLY, SOMETHING IS WRONG.

SUBSTANTIAL NUMBERS OF OUR CITIZENS SIMPLY HAVE LOST FAITH IN OUR JUDICIAL PROCESSES. MANY OF OUR PEOPLE NO LONGER TRUST THE COURTS TO SETTLE DISPUTES BETWEEN THEM AND THEIR NEIGHBORS OR TO SETTLE GRIEVANCES BETWEEN THEM AND THEIR GOVERNMENT. MANY CITIZENS OPENLY MISTRUST

OUR JUDICIAL INSTITUTIONS AND THOSE WHO STAFF THEM. AS I SEE IT, THIS ATTITUDE ON THE PART OF MANY IS NOT WITHOUT AT LEAST SOME FOUNDATION. PERSONALLY, I HATE TO ACKNOWLEDGE THAT POSITION -- BUT THERE IT IS -- AND I SUBMIT IT SHOULD BE AIRED.

A MAJOR PART OF THE BLAME FOR THAT SITUATION, IF THE SITUATION AS I HAVE DESCRIBED IT IS TRUE, SHOULD FALL UPON THOSE OF US WHO MAKE UP THE LEGAL PROFES-SION. CERTAINLY MANY OF US HAVE DRAGGED

OUR FEET IN THE AREA OF JUDICIAL REFORM. OFTEN WE HAVE FAILED TO PROVIDE ANY REAL LEADERSHIP IN CORRECTING SITUATIONS WHICH WE OURSELVES HAVE SEEN AND DEPLORED. WE HAVE NEGLECTED TO HONOR THE PROFESSION WHICH WE CHOSE AS A LIFE WORK BY PERMITTING IT IN MANY WAYS TO BECOME IRRELEVANT TO ITS TASK.

OUR GENERATION HAS SEEN ADVANCES IN SCIENCE, INDUSTRY, AND GOVERNMENT UNPARALLELED IN HISTORY. URBANIZATION, SOCIAL MOBILITY, MULTI-MEDIA COMMUNICA-

TION, AND JET AGE TRANSPORTATION HAVE FORCED SOCIAL MODIFICATION ACROSS THIS NATION WHICH HAVE LEFT MANY OF THE OLD WAYS OF LAWYERS AND JUDGES OUTDATED AND OUTMODED; YET, DESPITE HEROIC EFFORTS BY A FEW LAWYERS AND JUDGES, WE AS A TOTAL LEGAL PROFESSION CONTINUE TO RESIST CHANGE - TO FEAR ANY DEVIATION FROM THE STATUS QUO. WE HAVE MANNED AND PERPETUATED A SYSTEM THAT IS, TO MANY, HIGHLY UNRESPONSIVE, ARCHAIC, OR AT BEST, ANACHRONISTIC. THE WORLD HAS MOVED

AHEAD, WHILE WE IN THE LAW HAVE, IN MANY INSTANCES, ATTEMPTED TO SATISFY NEW AND URGENT NEEDS WITH ANTIQUATED METHODS AND OBSOLETE SYSTEMS.

YET, HOPEFULLY, CHANGE IS COMING - AND PERHAPS AT A RATHER REMARKABLE RATE. RECENT DEVELOPMENTS POINT TO THE EVER-INCREASING CONSCIOUSNESS OF THE ORGANIZED BAR AS TO ITS COLLECTIVE RESPONSIBILITY TO FOSTER JUDICIAL IMPROVEMENTS. IN RECENT YEARS, BOTH THE AMERICAN BAR ASSOCIATION AND THE MORE THAN 1,700

STATE AND LOCAL BAR ASSOCIATIONS ACROSS OUR COUNTRY HAVE, SEVERALLY AND JOINTLY, EXPENDED SUBSTANTIAL TIME AND ENERGY IN EFFORTS DIRECTED TOWARD MODERNIZATION OF OUR JUSTICE SYSTEM. A PROUD ACHIEVEMENT OF THE AMERICAN BAR ASSOCIATION (AFTER TEN YEARS OF HARD WORK) WAS THE RECENT FORMATION AND PUBLICATION OF THE STANDARDS FOR CRIMINAL JUSTICE, AN EXHAUSTIVE 17-VOLUME SET OF STANDARDS AND GUIDELINES FOR THOSE WHO ON A DAILY BASIS WORK IN THE CRIMINAL JUSTICE

SYSTEM. IT IS OUR SINCERE BELIEF THAT THESE STANDARDS, WHEN FULLY IMPLEMENTED IN THE VARIOUS STATES, WILL LEAD TO AN UNPRECEDENTED MODERNIZATION OF CRIMINAL COURT PROCEDURES AND THE ELIMINATION OF MANY INJUSTICES IN OUR COURTS AT ALL LEVELS. IN A SIMILAR EFFORT, THE ABA COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION IS PRESENTLY DEVELOPING NEW AND MODERN STANDARDS FOR ADMINISTRATIVE PROCEDURES IN THE ENTIRE COURT SYSTEM. THE AMERICAN BAR ASSOCIATION, IN CONJUNCTION WITH THE INSTITUTE OF

JUDICIAL ADMINISTRATION, IS HARD AT WORK ON DEVELOPING THE FIRST COMPREHENSIVE STANDARDS OF JUSTICE FOR JUVENILES AND JUVENILE COURTS. THE NATIONAL COLLEGE OF THE STATE JUDICIARY, CREATED AND MANAGED BY THE AMERICAN BAR ASSOCIATION TO TRAIN STATE JUDGES TO BETTER DISCHARGE THEIR DUTIES, AND THE NATIONAL INSTITUTE FOR TRIAL ADVOCACY, DESIGNED TO IMPROVE THE SKILL OF LAWYERS AS ADVOCATES FOR CLIENTS IN THOSE COURTS, ARE TWO MORE OUT OF MANY PROJECTS OF THE AMERICAN

BAR ASSOCIATION TO WHICH WE, IN MY OPINION, CAN POINT WITH PRIDE. AS MOST OF YOU KNOW, THE AMERICAN BAR ASSOCIATION - IN CONJUNCTION WITH STATE AND LOCAL BAR GROUPS - IS DEEPLY COMMITTED TO REFORM IN THE PROCESS OF SELECTION, RETENTION, REMOVAL, AND COMPENSATION OF BOTH THE STATE AND FEDERAL JUDICIARY. WE ARE ALSO JUSTLY PROUD OF OUR MAJOR EFFORTS IN THE AREA OF CORRECTIONS REFORM. THE LIST OF PROJECTS IN WHICH THE AMERICAN BAR ASSOCIATION IS INVOLVED IN WORKING

TO IMPROVE THE JUSTICE SYSTEM IS NEARLY INEXHAUSTIBLE, AND THE SAME CAN BE SAID FOR MOST, BUT NOT ALL, OF OUR STATE AND LOCAL BAR ASSOCIATIONS.

BUT THAT MASSIVE EFFORT WON'T DO THE JOB NO MATTER HOW HARD WE TRY. NO MATTER HOW EXTENSIVE - OR IMPRESSIVE - THE EFFORTS OF THE ORGANIZED BAR ALONE CANNOT BRING ABOUT THE NEEDED REFORMS IN OUR SYSTEM. THE TASK OF JUDICIAL IMPROVEMENT IS TOO IMPORTANT TO BE LEFT SOLELY TO THOSE WHO HAVE A SPECIAL

INTEREST IN THE SYSTEM -- THE LAWYERS AND JUDGES. THUS IT IS - THAT ON THIS LAW DAY 1973 - THE EMPHASIS IS TO ENLIST THE SUPPORT OF ALL CITIZENS IN THIS VITAL EFFORT. WITHOUT QUESTION, CITIZEN SUPPORT IS ABSOLUTELY ESSENTIAL IF OUR JUDICIAL PROCESS IS TO BE BROUGHT IN TUNE WITH THE REALITIES OF OUR MODERN WORLD.

JUDICIAL MODERNIZATION WILL REQUIRE LEGISLATIVE ENACTMENTS, COURT REORGANIZATIONS, AND CONSTITUTIONAL REVISIONS WHICH CAN BE SECURED, IN MOST CASES, ONLY BY

POPULAR REFERENDUM AND, IN ALL CASES, BY POPULAR WILL. JUDICIAL IMPROVEMENTS REQUIRE LARGE SUMS OF MONEY WHICH WILL BE LEGISLATIVELY ALLOCATED ONLY IF THERE IS AN ARTICULATED POPULAR DEMAND. TRADITIONALLY THE REQUIREMENTS OF THE JUDICIAL SYSTEM HAVE OCCUPIED LOW POSITIONS ON THE LISTS OF LEGISLATIVE PRIORITIES. ONLY AN AROUSED AND INTERESTED CITIZENRY CAN CALL FOR A REORDERING OF THESE PRIORITIES.

PROGRAMS FOR REFORM <u>SHOULD</u> BE

LED BY LAWYERS AND BAR ASSOCIATIONS. THIS TASK, I READILY ADMIT, HAS LONG BEEN SHOULDERED BY SOME IN OUR PROFESSION, BUT IT HAS NEVER RECEIVED THE ALL-OUT SUPPORT OF THE HOST OF LAWYERS WHO SEEM CONTENT TO LEAVE THE SYSTEM AS IT IS, WHATEVER THE ADMITTED INADEQUACIES. BUT EVEN IF THE ENTIRE LEGAL COMMUNITY WAS UNITED IN AN EFFORT TO IMPROVE THE JUSTICE SYSTEM, EFFORTS WOULD BE USELESS IF NOT SUPPORTED BY THE PUBLIC AS A WHOLE. THUS, WE - AS LAWYERS - MUST

ENGENDER A REAWAKENING OF THE PUBLIC INTEREST IN IMPROVING THE JUSTICE SYSTEM. IT IS OUR JOB TO SEE THAT CITIZENS MORE ACTIVELY INVOLVE THEMSELVES IN COURT FUNCTIONS. INSTEAD OF AVOIDING JURY DUTY AND OPPORTUNITIES TO TESTIFY AT TRIALS, WE MUST DEMONSTRATE TO CITIZENS THAT THEY SHOULD READILY ACCEPT THESE DUTIES AND USE THEM AS AVENUES TO EVALUATE THE PROCEDURES, TO SUGGEST IMPROVEMENTS, AND TO INFORM THEIR FELLOW CITIZENS OF POSSIBLE

INADEQUACIES. CERTAINLY, EVERY CITIZEN MUST TAKE MORE INTEREST IN JUDICIAL SELECTION PROCEDURES. IT SEEMS TO ME THAT THERE MUST BE MORE ACTIVE PUBLIC INVOLVEMENT IN EDUCATIONAL PROGRAMS TO TEACH THE PRINCIPLES OF LAW AND THE RIGHTS AND RESPONSIBILITIES OF CITIZENSHIP. COURSES ON THESE SUBJECTS MUST BE INCREASINGLY INCLUDED IN THE PUBLIC SCHOOL CURRICULUMS, BOTH AT THE ELEMENTARY AND SECONDARY LEVELS. OUR CITIZENS MUST JOIN WITH LAWYERS IN ENCOURAGING SCHOOL

OFFICIALS TO DO SO. I SUBMIT THAT PUBLIC INTEREST AND EDUCATION WILL EVENTUALLY AROUSE OUR CITIZENS TO APPLY THE NEEDED PRESSURE FOR LEGISLATIVE ENACTMENTS, CONSTITUTIONAL REVISIONS, AND THE ALLOCATION OF FINANCIAL RESOURCES TO RESTRUCTURE OUR JUSTICE SYSTEM.

A PRIME RESPONSIBILITY OF ANY CIVILIZED SOCIETY, AND CERTAINLY OURS, IS THE PROMPT, EFFICIENT AND EQUITABLE ADMINISTRATION OF JUSTICE. DISSATISFACTION AND MISTRUST ON THE PART OF ANY OF OUR

CITIZENS CANNOT BE ALLOWED TO CONTINUE INDEFINITELY OR IT INEVITABLY WILL LEAD TO SELF-DESTRUCTION. JUDICIAL INSTITUTIONS WHICH CAN'T MEASURE UP MUST BE ELIMINATED PROMPTLY. I SUBMIT THAT A COORDINATED EFFORT BETWEEN THE LEGAL COMMUNITY AND THE GENERAL PUBLIC IS THE ONLY WAY TO SECURE FAIR TREATMENT AND EQUAL OPPORTUNITY FOR ALL. THERE IS NO MORE NOBLE A TASK. THE ROAD TO COURT MODERNIZATION UNDOUBTEDLY IS AMONG THE MOST DIFFICULT AND TIME-CONSUMING ACTIVITIES WHICH CAN BE ENGAGED

IN BY ANY LAWYER - OR BY ANY OTHER CONCERNED CITIZEN - BUT THE GOAL OF A RESPONSIVE AND EQUITABLE JUDICIAL SYSTEM IS WELL WORTH THE EFFORT.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 73

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: THE BAR ASSOCIATION OF THE SEVENTH
FEDERAL CIRCUIT
ANNUAL MEETING
HOTEL AMBASSADOR

DATE OF DELIVERY: TUESDAY, MAY 15, 1973
ANNUAL DINNER
6:30 P.M.

TITLE: THE ROLE OF THE AMERICAN BAR ASSOCIATION
IN SUPPORTING THE FEDERAL JUDICIARY

TIME: FIFTEEN MINUTES

IT SEEMS TO ME THAT THE DEMANDS MADE ON OUR JUDICIARY, BOTH AT THE STATE AND FEDERAL LEVELS, ARE GREATED TODAY THAN AT ANY OTHER PERIOD IN OUR NATION'S HISTORY. CONGRESS, STATE LEGISLATURES, AND WE IN THE LEGAL PROFESSION HAVE, IN LARGE MEASURE, LONG NEGLECTED MANY OF THE MAJOR NEEDS OF OUR COURT SYSTEMS. TODAY, JUDGES, IN MANY INSTANCES, PRESIDE OVER COURTS ENCUMBERED IN INADEQUATE FACILITIES AND ANTIQUATED PROCEDURES. THE VOLUME AND COMPLEXITY OF CURRENT LITIGATION WHEN COUPLED WITH THESE OUTDATED PROCEDURES AND FACILITIES HAVE MADE THE TRADITIONAL JUDICIAL FUNCTIONS AWESOMELY BURDENSOME -- EVEN FOR OUR BEST JUDGES. THE JUDICIAL TASK HAS BEEN FURTHER COMPLICATED BY THE RECENT AWAKENING OF CITIZEN INTEREST IN THE FUNCTIONING OF OUR JUSTICE SYSTEMS. OUR CITIZENS, SOPHISTICATED AND EDUCATED AS NEVER BEFORE, ARE, ALL ACROSS OUR LAND, LEGITIMATELY QUESTIONING OUR JUSTICE SYSTEMS AND -- WITH INCREASING INTENSITY -- THE MOST VISIBLE REPRESENTATIVES OF THOSE SYSTEMS -- THE JUDGES AND LAWYERS. UNQUESTIONABLY AIDED IN LARGE PART BY OUR VIGOROUS FREE PRESS, OUR PEOPLE ARE DEMANDING BETTER RESULTS, HIGHER STANDARDS OF INTEGRITY, AND POSITIVE ACCOUNTABILITY FROM THOSE OF US WHO ARE IN THE LEGAL BUSINESS -- WE WHO HAVE BEEN UNIQUELY GIVEN THE STEWARDSHIP OF OUR JUDICIAL SYSTEMS. CERTAINLY THE PROVOCATIVE SOCIAL AND POLITICAL CHANGES WHICH HAVE SWEPT ACROSS THE FACE OF SOCIETY HAVE NOT ESCAPED OUR JUDICIAL INSTITUTIONS. BUT THE SAD FACT IS THAT WE PRACTICING LAWYERS, AS A GROUP ENTITY, HAVE BEEN SLOW TO CHANGE AND WE, IN THE MAIN, HAVE LEFT THE JUDICIARY, IN LARGE PART -- ALONE, TO MANAGE THE JUSTICE SYSTEM. I SUGGEST THAT THE ORGANIZED BAR MUST EFFECTIVELY AND RAPIDLY JOIN HANDS WITH THE JUDICIARY IF OUR COURT SYSTEMS ARE TO KEEP PACE WITH THE CHANGES IN OUR SOCIETY AND WITH THE NEEDS OF OUR CITIZENS. WE -- LAWYERS AND JUDGES -- MUST, I BELIEVE,

STRIVE TO BE JOINT MANAGERS OF CHANGE OR, UNDOUBTEDLY OUR JUSTICE SYSTEM, AND WE AS A PART OF IT, WILL BE VICTIMS OF THAT CHANGE.

AFTER MANY YEARS OF SEEMING DIS-COORDINATION BETWEEN THE ORGANIZED BAR AND THE JUDICIARY, I AM PROUD THAT THE AMERICAN BAR ASSOCIATION CAN POINT TO AN AWAKENING TO ITS RESPONSIBILITY IN SHAPING AND SUPPORTING BOTH THE STATE AND FEDERAL JUDICIAL SYSTEMS. THE AMERICAN BAR ASSOCIATION, AS WELL AS MOST STATE AND LOCAL BAR ASSOCIATIONS, ITS BECOMING MORE INVOLVED THAN EVER BEFORE IN SEEKING WAYS TO IMPROVE THE FUNCTIONING OF OUR DUAL COURT SYSTEMS. MY PARTICULAR CONCERN THIS EVENING, HOWEVER, IS TO DISCUSS THE PRESENT AND FUTURE INVOLVEMENT OF THE AMERICAN BAR ASSOCIATION, AS I SEE IT, IN THE FEDERAL JUDICIAL SYSTEM.

IT IS MY PERSONAL FEELING THAT THE AMERICAN BAR ASSOCIATION MUST TAKE AN EVEN MORE POSITIVE AND AFFIRMATIVE POSTURE BEFORE CONGRESS IN THE FUTURE THAN IT HAS IN THE PAST IN SUPPORT OF THE FEDERAL JUDICIARY. I BELIEVE THAT THE ASSOCIATION SHOULD PROMPTLY INITIATE AN ACTION PROGRAM TO SUBMIT LEGISLATION FOR IMPROVING THE FEDERAL JUDICIAL SYSTEM TO THE CONGRESS AND THAT IT SHOULD LOBBY FOR ITS PASSAGE. THE ASSOCIATION MUST "GO TO BAT" FOR GREATER APPROPRIATIONS FOR EXPANDED SECRETARIAL AND PARAPROFESSIONAL STAFFING, FOR INCREASING THE NUMBER OF LAW CLERKS, FOR ENLARGING THE SCOPE AND EXPERTISE OF COURT SUPPORT PERSONNEL, SUCH AS PROBATION AND PAROLE OFFICERS, AND FOR OTHER MEASURES DESIGNED TO FILL THE LONG NEGLECTED FISCAL NEEDS OF OUR FEDERAL COURTS. ABOVE ALL, OR SO IT SEEMS TO ME, THE PARAMOUNT CONGRESSIONAL ACTIVITY OF THE AMERICAN BAR ASSOCIATION SHOULD BE AN

ALL-OUT EFFORT TO SECURE MORE NEARLY ADEQUATE SALARIES FOR FEDERAL JUDGES. IN MY PERSONAL OPINION, THE SALARY FIGURE FOR A SITTING FEDERAL JUDGE SHOULD BE AT LEAST 50% MORE THAN IT NOW IS, AND EVEN SO, THAT SALARY STILL WOULD NOT MEET WHAT I ASSERT SHOULD BE THE TEST OF ADEQUACY -- THAT IS -- THAT FEDERAL JUDGES BE PAID COMMENSURATE IN AMOUNT WITH THAT NET COMPENSATION THEY WOULD EARN IF THEY WERE ENGAGED IN THE PRIVATE PRACTICE OF LAW. OBVIOUSLY, THE AFFIRMATIVE TYPE OF PROGRAM THAT I SUGGEST WILL NECESSARILY REQUIRE A "BEEFING UP" OF THE ASSOCIATION WASHINGTON OFFICE, OF OUR JUDICIAL ADMINISTRATION DIVISION, AND OF ALL OF OUR COMMITTEES AND COMMISSIONS CURRENTLY AT WORK IN THE FIELD OF JUDICIAL IMPROVEMENT AND ADMINISTRATION.

ADMITTEDLY, THE ASSOCIATION IS ALREADY VERY ACTIVE IN VARIOUS WAYS AFFECTING THE FEDERAL JUDICIARY. THE STANDING COMMITTEE ON THE FEDERAL JUDICIARY HAS INCREASINGLY ASSUMED A MAJOR ROLE IN THE SCREENING PROCESS FOR FEDERAL JUDICIAL SELECTION. ALL APPOINTEES TO THE FEDERAL BENCH IN RECENT YEARS WERE RANKED AS QUALIFIED OR BETTER BY THIS COMMITTEE BEFORE THE PRESIDENT ACTED. YET, WITH FORTY-SEVEN FEDERAL DISTRICT OR CIRCUIT COURT JUDGES REACHING RETIREMENT AGE IN 1973 AND WITH THE ANTICIPATED PASSAGE OF AN OMNIBUS BILL CREATING POSSIBLY ELEVEN NEW CIRCUIT AND FIFTY-ONE NEW DISTRICT JUDGESHIPS, IT IS MANIFEST THAT THE SUBSTANTIAL PRESENT IMPORTANCE OF THIS COMMITTEE WILL INCREASE MEASURABLY DURING THE NEXT FEW YEARS.

THE AMERICAN BAR ASSOCIATION COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, CHAIRED BY FORMER CHICAGOAN, JUDGE CARL MCGOWAN, IS DEVELOPING AND UPDATING THE ABA STANDARDS FOR COURT ADMINISTRATION.

THESE GUIDELINES SHOULD BE MOST HELPFUL TO BOTH THE FEDERAL AND STATE COURTS. THE FIRST DRAFT OF THE COMMISSION'S REPORT WILL BE RELEASED IN THE FALL OF THIS YEAR. WHEN IT IS COMPLETE, IT WILL, I AM SURE, PROVIDE A SIGNIFICANT CONTRIBUTION TO THE CAUSE OF JUDICIAL IMPROVEMENT -- JUST AS THE RECENTLY PUBLISHED ABA STANDARDS FOR THE ADMINISTRATION OF CRIMINAL JUSTICE HAVE PROVIDED SIGNIFICANT GUIDELINES FOR THE COURTS AND LEGISLATIVE BODIES IN THE AREA OF CRIMINAL LAW ADMINISTRATION.

THE WORK OF THE SPECIAL COMMITTEE ON COORDINATION OF JUDICIAL IMPROVEMENTS WILL CONTINUE TO HAVE PARTICULAR IMPACT ON THE FEDERAL JUDICIARY AND UPON THE OPERATION OF THE FEDERAL JUSTICE SYSTEM. THIS COMMITTEE IS PRESENTLY AT WORK IN AN ADVISORY CAPACITY TO THE RECENTLY CREATED CONGRESSIONAL COMMISSION NOW EMBARKED ON A POSSIBLE REALIGNING OF THE GEOGRAPHIC BOUNDARIES AND JURISDICTIONAL BASE OF THE FEDERAL CIRCUITS. THE COMMITTEE ALSO SPONSORED THE RESOLUTION PASSED BY THE ASSOCIATION AT THE RECENT MID-WINTER MEETING CALLING FOR THE ABOLISHMENT OF ALL THREE JUDGE DISTRICT COURTS WITH DIRECT APPEAL TO THE SUPREME COURT -- EXCEPT IN THOSE CASES AUTHORIZED BY THE CIVIL RIGHTS ACTS OF 1954 AND THE VOTING RIGHTS ACT OF 1965. I WAS PERSONALLY PLEASED THAT THE MEMBERS OF THE HOUSE OF DELEGATES OF THE ASSOCIATION WERE SO OVERWHELMINGLY WILLING TO JOIN CHIEF JUSTICE WARREN BURGER IN ADVISING CONGRESS THAT THESE COURTS SERIOUSLY AND UNNECESSARILY INCREASE THE WORKLOADS OF THE FEDERAL JUDICIARY. IF THE EXPANDED ROLE OF THE AMERICAN BAR ASSOCIATION IN WASHINGTON TO WHICH I HAVE REFERRED IS ADVOCATED AND IMPLEMENTED, WE SHALL PURSUE MUCH MORE LEGISLATION OF THAT TYPE WITH THE CONGRESS.

TWO AMONG MANY OTHER PROGRAMS IN WHICH THE AMERICAN BAR ASSOCIATION CAN TAKE PRIDE ARE THE RECENT FORMULATION OF THE CODE OF JUDICIAL CONDUCT AND THE ESTABLISHMENT OF THE NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES. THE CODE OF JUDICIAL CONDUCT, WHICH WAS ONLY RECENTLY MADE APPLICABLE TO FEDERAL JUDGES, IS A MONUMENTAL WORK WHICH, I BELIEVE, SIGNIFICANTLY CONTRIBUTES TO UPGRADING THE ETHICAL GUIDELINES OF THE JUDICIARY. THE SECOND PROGRAM TO WHICH I REFER, THE NATIONAL CONFERENCE OF FEDERAL TRIAL JUDGES, NOW JUST A YEAR OLD, ALREADY HAS OVER HALF OF THE TOTAL NUMBER OF CURRENTLY ACTIVE OR SENIOR U.S. DISTRICT JUDGES AS MEMBERS. THIS CONFERENCE, I FEEL, WILL WITHOUT QUESTION BECOME HEAVILY AND EXTENSIVELY INVOLVED IN THE EDUCATION AND LEADERSHIP OF THE FEDERAL TRIAL JUDGES. I SUBMIT THAT THE EXPANDED EFFORT OF THE AMERICAN BAR ASSOCIATION IN A SUPPORTIVE ROLE OF THE FEDERAL JUDICIARY BEFORE THE CONGRESS AND THE CONTINUED FUNCTIONING OF THE VARIOUS COMMITTEES, CONFERENCES, AND COMMISSIONS NOW ENGAGED IN ACTIVITIES AFFECTING THE FEDERAL JUDICIARY WILL INSURE SIGNIFICANT STRIDES IN IMPROVING THE PRESENT CONDITION OF THE FEDERAL JUDICIAL SYSTEMS. EVEN SO, I RECOGNIZE THAT THERE ARE MULTIPLE OTHER AREAS OF CONCERN TO FEDERAL JUDGES WITHIN WHICH THE ORGANIZED BAR SHOULD BECOME ACTIVE, BUT IS NOT NOW.

TODAY, AS NEVER BEFORE, THE TRIAL JUDGE IS SUBJECT TO SEVERE AND OFTEN UNWARRANTED CRITICISM AND ABUSE CONCERNING HIS ACTIONS AS A JUDICIAL OFFICER. APPELLATE COURT JUDGES ARE FINDING THAT THEIR DECISIONS ARE MEETING WITH WIDESPREAD AND OFTEN UNINFORMED CRITICISM. IT IS A FACT OF OUR MODERN SOCIETY THAT INSTANTANEOUS NEWS REPORTING OF COURT ACTIVITY HAS LED TO MANY ABUSES AND MISUNDERSTANDING ON THE

PART OF THE PUBLIC TOWARD OUR JUDICIAL OFFICERS AND THEIR JUDICIAL ACTIVITIES. THE UNDERLYING CAUSE OF THIS SEEMING LACK OF COMMUNICATION AND MISUNDERSTANDING BETWEEN THE JUDICIARY AND THE PUBLIC, OF COURSE, CANNOT IN WHOLE BE IMPARTED TO THE NEWS MEDIA. WHILE WE ARE BLESSED IN THIS COUNTRY WITH AN ALERT AND VIGOROUS FREE PRESS WHICH, IN ALMOST ALL INSTANCES, HAS ACQUITTED ITSELF AS A DEDICATED AND RESOURCEFUL SERVANT OF THE PUBLIC INTEREST, WE HAVE TO ACKNOWLEDGE THAT THE ORGANIZED BAR MUST SHOULDER A GREAT DEAL OF THE RESPONSIBILITY FOR THE CURRENT SPATE OF UNJUST AND OFTEN UNREFUTED CRITICISM OF OUR JUDGES AND JUDICIAL ACTIVITIES. THE AMERICAN BAR ASSOCIATION CODE OF PROFESSIONAL RESPONSIBILITY UNEQUIVOCABLY PLACES THE BURDEN OF RESPONSIBILITY UPON THE ORGANIZED BAR TO COME TO THE DEFENSE OF THE JUDICIARY IN TIMES OF UNJUST AND UNWARRANTED ATTACK. IN MANY CASES, WE HAVE NOT DONE SO -- AND A COURAGEOUS JUDGE HAS HAD TO STAND ALONE. ETHICAL CONSIDERATION 8-6 IN THE CODE READS IN PART:

"ADJUDICATORY OFFICIALS, NOT BEING WHOLLY FREE TO DEFEND THEMSELVES, ARE ENTITLED TO THE SUPPORT OF THE BAR AGAINST UNJUST CRITICISM."

CERTAINLY IT IS NOT FOR THE JUDGE TO DEBASE HIMSELF AND HIS OFFICE BY ENTERING INTO A SPIRITED PUBLIC DEFENSE OF HIS ACTIONS AND CONDUCT. THAT RESPONSIBILITY LIES WITH THE BAR AND, I SADLY REITERATE, IN MANY IF NOT MOST LOCALITIES, THE BAR HAS NOT ALWAYS LIVED UP TO THAT RESPONSIBILITY. ONE OF MY MAJOR CONCERNS AS PRESIDENT OF THE ASSOCIATION WILL BE THE ESTABLISHMENT OF AN ORGANIZED BAR EFFORT IN THAT AREA. I PROPOSE THE ESTABLISHMENT OF FORMALIZED AVENUES FOR THE IMMEDIATE EDUCATION OF THE PUBLIC CONCERNING JUDICIAL DECISIONS AND JUDICIAL CONDUCT. I PROPOSE THE FORMATION OF AN OFFICIAL ORGAN OF THE AMERICAN BAR ASSOCIATION TO IMMEDIATELY RESPOND TO QUESTIONS CONCERNING

JUDICIAL CONDUCT AT THE NATIONAL LEVEL. SINCE THE ESTABLISHED MACHINERY OF THE ASSOCIATION IS NOT PRESENTLY EQUIPPED TO HANDLE ON AN INSTANTANEOUS BASIS THIS TYPE OF DEFENSE MECHANISM, I INTENT TO PROPOSE TO THE ASSOCIATION BOARD OF GOVERNORS CONSIDERATION OF THE ESTABLISHMENT OF A TYPE OF INDEPENDENT AND SEMI-AUTONOMOUS "TRUTH SQUAD" PATTERNED SOMEWHAT AFTER THE OMBUDSMAN CONCEPT, EMPOWERED TO ACT BEFORE THE GENERAL PUBLIC AS AN IMMEDIATE VOICE OF THE ASSOCIATION TO EXPLAIN COURT DECISIONS AT THE FEDERAL APPELLATE LEVEL AND, IF NECESSARY, TO COME TO THE DEFENSE OF AN EMBATTLED FEDERAL APPELLATE JUDGE. THIS GROUP MAY WELL ALSO BE TASKED WITH GUIDING THE ESTABLISHMENT OF SCHOOLS FOR THE PRESS CORPS AT THE NATIONAL, STATE AND LOCAL LEVEL TO BE HELD ON A PERIODIC BUT RECURRING BASIS IN ORDER TO BETTER INFORM AND EDUCATE THE MASS NEWS MEDIA ON CERTAIN ASPECTS OF THE JUDICIAL PROCESS THAT IN MANY CASES CAUSE MISUNDERSTANDINGS. I WANT TO EMPHASIZE THAT SUCH A GROUP IF FORMED, SHOULD IN ALL LIKELIHOOD DEVELOP INTO A PREVENTATIVE RESOURCE BODY. REPORTERS, AND LAY CITIZENS AS WELL COULD, WHEN CONFUSION AROSE, CONSULT THE BODY FOR EXPLANATION AND IMMEDIATE COMMENT WHICH WOULD, IN MANY CASES, HEAD OFF UNJUST AND UNINFORMED REPORTING. PERSONALLY, I FEEL THAT IT IS THE OBLIGATION AND DUTY OF LAWYERS COLLECTIVELY THROUGH THE AMERICAN BAR ASSOCIATION TO EMBARK ON THIS ENTERPRISE FOR THE FEDERAL APPELLATE COURTS AND TO ENCOURAGE AND ASSIST THE VARIOUS STATE AND LOCAL BAR ASSOCIATIONS TO DEVELOP SIMILAR PROGRAMS FOR THE FEDERAL AND STATE TRIAL COURTS AND STATE APPLELLATE COURTS.

ANOTHER CONCERN WHICH I BELIEVE MERITS THE ATTENTION AND STUDY OF THE ORGANIZED BAR IS IN THE AREAS OF JUDICIAL EVALUATION. VARIOUS

LOCAL AND STATE BAR ASSOCIATIONS HAVE EXPERIMENTED WITH EVALUATING THE PERFORMANCE OF THE JUDICIARY THROUGH SURVEYS AND INVESTIGATIVE PANELS. WHILE I DO NOT WHOLEHEARTEDLY AGREE WITH ANY SYSTEM YET DEVISED OR IMPLEMENTED, I DO FEEL THAT BENEFICIAL RESULTS CAN BE OBTAINED FROM EFFORTS IN THIS DIRECTION. CERTAINLY, THE JUDICIARY SHOULD BE CONCERNED WITH THE OPINION OF THE ORGANIZED BAR AS TO THEIR PERFORMANCE. IT SEEMS TO ME THAT SINCERE AND THOUGHTFUL CRITICISM CAN ONLY BENEFIT THE JUDICIARY AND THE ADMINISTRATION OF JUSTICE AS A WHOLE. I COMMEND THOSE RESPONSIBLE EFFORTS MADE BY VARIOUS GROUPS ALONG THESE LINES.

OF ABIDING CONCERN TO ALL OF US IN THE LEGAL PROFESSION ARE THE RECENT DEVELOPMENTS IN THE SO-CALLED WATERGATE AFFAIR. THE ALLEGED INVOLVEMENT OF HIGH-RANKING LEGAL OFFICERS OF OUR NATIONAL GOVERNMENT CERTAINLY HAS SPAWNED A CRISIS OF PUBLIC CONFIDENCE AND TRUST IN THE LEGAL AREAS OF GOVERNMENT, AS WELL AS IN LAWYERS GENERALLY. THE AMERICAN BAR ASSOCIATION, RECOGNIZING THE NEED FOR A FAIR AND COMPLETE AIRING OF THE WHOLE AFFAIR IN ORDER TO PRESERVE THE INTEGRITY OF OUR JUSTICE SYSTEM, HAS CALLED FOR AN IMPARTIAL AND INDEPENDENT PROSECUTOR OF UNQUESTIONED INTEGRITY, DEVOID OF GOVERNMENTAL TIES, TO BE NAMED TO INVESTIGATE ALL CHARGES. OUR PRESIDENT HAS CONSULTED WITH THE ACTING ATTORNEY GENERAL IN DELIVERATIONS TO SELECT SUCH A PROSECUTOR, AND THE ASSOCIATION IS MOST PLEASED TO KNOW THAT ITS CONCERNS ARE BEING CAREFULLY AND FULLY CONSIDERED.

I HAVE TOUCHED ON MANY SUBJECTS THIS EVENING WHICH ARE OF INTEREST TO ME, PERSONALLY, AND TO THE AMERICAN BAR ASSOCIATION. I VIEW THE

ASSOCIATION AS A BODY ORGANIZED COLLECTIVELY TO DISCHARGE THE PUBLIC INTEREST RESPONSIBILITY OF THE LEGAL PROFESSION. CERTAINLY, YOU SHOULD NOW KNOW THAT IT SEEMS TO ME THAT IN ORDER TO DISCHARGE THAT PUBLIC RESPONSIBILITY, THE AMERICAN BAR ASSOCIATION, AS ONE OF ITS PRIORITY DUTIES, SHOULD ACTIVELY INVOLVE ITSELF IN SUPPORTING THE FEDERAL JUDICIAL SYSTEM IN ANY AND ALL FEASIBLE WAYS. I ASK YOU TO HELP ME WHEN I BECOME PRESIDENT OF THE ABA IN AUGUST IN THIS MATTER BY YOUR CONTINUED SUPPORT AND THOUGHTFUL SUGGESTIONS CONCERNING ALL POSSIBLE AVENUES OF APPROACH OR BENEFICIAL PROGRAMS WHICH COULD POSSIBLY BE UNDERTAKEN BY THE ABA. JUSTICE FOR ALL OUR CITIZENS IS THE ULTIMATE GOAL OF LAWYERS EVERYWHERE. THROUGH THE JOINT EFFORTS OF ALL OF US WORKING TOGETHER THAT GOAL CAN MORE NEARLY BE ATTAINED.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 74

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: COMMENCEMENT EXERCISES
NORWICH UNIVERSITY
NORTHFIELD, VERMONT

DATE OF DELIVERY: SATURDAY, MAY 19, 1973
1:30 P.M.

TITLE: SOCIETAL CRISIS -- THE CASE FOR
SOCIAL COMMITMENT

TIME: FIFTEEN MINUTES

TODAY'S CITIZENS, EDUCATED AND SOPHISTICATED AS NEVER BEFORE, ARE BETTER PREPARED AND POSSESSES INTELLECTUAL TOOLS UNMATCHED BY ANY PRECEDING GENERATION. EVEN SO, THE COMPLEXITIES AND SERIOUS PROBLEMS NOW FACING OUR SOCIETY CONTEMPLATE MUCH LESS THAN AN EASY AND SURE ROAD TO SECURITY AND HAPPINESS FOR THOSE NOW ENTERING THE MAIN STREAM OF LIFE. THE RESPONSIBILITY FOR SOLVING SOCIETAL ILLS DOES NOT PECULIARLY LIE WITH THE YOUNG, BUT RATHER WITH YOUNG AND OLD ALIKE, ALL OF US, AS CITIZENS OF OUR COUNTRY AND AS CITIZENS OF THE WIDER COMMUNITY OF NATIONS.

THIS PAST DECADE, SOCIAL MODIFICATIONS AND TECHNOLOGICAL ADVANCES OF VIRTUALLY REVOLUTIONARY PROPORTIONS HAVE SWEPT ACROSS THE FACE OF SOCIETY. ESTABLISHED PROCEDURES HAVE GIVEN WAY IN THE WAKE OF INSTANTANEOUS COMMUNICATION -- JET AGE TRANSPORTATION -- AND COMPUTERIZATION. TRADITIONAL SOCIAL INSTITUTIONS, MORIES, AND CONCEPTS HAVE FALLEN BEFORE THE ONSLAUGHT OF THE "NEW MORALITY." SOCIAL CONSCIOUSNESS, AND INDIVIDUAL AWARENESS, INCREASING URBANIZATION -- THE POPULATION EXPLOSION -- FAMILY PLANNING -- THE LEGALIZATION OF ABORTION -- THE CIVIL LIBERTIES MOVEMENTS -- THE MANIPULATION OF THE LIFE SPAN ITSELF -- HAVE SIGNIFICANTLY ALTERED SOCIAL PATTERNS. OF COURSE, ALL THE CHANGES THAT HAVE TAKEN PLACE, AND ARE TAKING PLACE IN OUR SOCIETY DO NOT MEET WITH MY PERSONAL APPROVAL -- NOR MAY THEY MEET WITH YOURS. BOTH OF US, HOWEVER, MUST FACE THE STARK REALIZATION THAT THE WORLD IS CHANGING AND AT AN EVER-INCREASING RATE. MANY OF YOU MAY FEEL THAT THOSE CHANGES ARE OCCURRING TOO RAPIDLY; THAT MAY BE SO, BUT IT SEEMS TO ME THAT THE EVER INCREASING COMPLEXITY OF LIFE WILL

INEVITABLY CONTINUE TO COMPOUND CHANGE WITH WHAT MAY BE TERMED "GEOMETRIC INTENSITY."

SADLY, OUR SOCIETY HAS NOT EASILY ABSORBED THOSE CHANGES. WE ARE AT PRESENT IN THE MIDST OF WHAT MAY BE STYLED A "CRISIS ERA." THERE IS AN ENERGY CRISIS -- AN ENVIRONMENTAL CRISIS -- AN URBAN CRISIS -- A DOLLAR CRISIS -- A CRIME CRISIS -- AN ECOLOGICAL CRISIS -- AN UNEMPLOYMENT CRISIS -- A RACIAL CRISIS -- AN INTERNATIONAL TERRORISM CRISIS -- AND, SADLY, AND MOST CURRENT OF ALL, A CRISIS IN PUBLIC TRUST AND CONFIDENCE IN GOVERNMENTAL INSTITUTIONS. TO MANY OF YOU, THE FUTURE MAY LOOK ANYTHING BUT BRIGHT. YOUNG AND OLD, WE ARE EACH MOST APPREHENSIVE ABOUT A SITUATION UNPARALLED IN OUR NATIONAL EXPERIENCE.

VERILY, THERE ARE VERY SERIOUS QUESTIONS WHICH SHOULD BE RAISED - WHICH MUST BE ANSWERED, WE MUST - WE SHOULD - ASCERTAIN WHETHER WE, AS A PEOPLE, ARE LOSING GRIPS WITH THE MANAGEMENT OF OUR SOCIETY. ARE THOSE GEOMETRICALLY INCREASING COMPLEXITIES OF OUR MODERN WORLD REALLY OUTPACING THE CAPACITY OF OUR GOVERNMENTAL INSTITUTIONS TO COPE WITH OUR PROBLEMS?

IT HAS BEEN SAID THAT CIVILIZATION IS A CLOSE RACE BETWEEN EDUCATION AND CATASTROPHE. THE EXISTING PROBLEMS OF OUR MODERN WORLD ARE, IT SEEMS TO ME, MERELY THE RESULTS OF OUR CIVILIZED SOCIETY. THE LIFE OF ANY DYNAMIC SOCIETY, AND SURELY OF OURS, CAN BE VIEWED AS A STUDY IN TENSION. IF WE LET IT, THE PRESENT TENSION IN OUR COUNTRY CAN BE A TYPE OF HYPERTENSION THAT WILL

HARDEN THE ARTERIES OF MEN AND ORGANIZATIONS OR IT CAN BE THE HEALTHY CREATIVE TENSION WHICH SPAWNS STRONGLY REASONED, STRONGLY ARTICULATED NEW PRINCIPLES, POLICIES AND SOLUTIONS TO EXISTING PROBLEMS.

HISTORY REPEATEDLY DEMONSTRATES THAT A VIGOROUS AND STRONG PEOPLE CAN SOLVE THEIR PROBLEMS, EVEN THOSE AS GREAT AS OURS, THROUGH INCREASED RELIANCE ON EDUCATION, ORGANIZED EFFORT, AND A STRONG REPRESENTATIVE GOVERNMENT.

CRISES, IT SEEMS TO ME, CAN BE MET AND SOLVED BY FULL CITIZEN INTEREST AND INVOLVEMENT IN OUR EXISTING DEMOCRATIC FORM OF GOVERNMENT EVEN THOUGH WE MAY FROM TIME TO TIME, FIND IT NECESSARY TO OIL ITS POINTS OF FRICTION. THE SO-CALLED WATERGATE AFFAIR PERMEATES ALL DISCUSSION IN OUR COUNTRY TODAY. THERE IS AN EVER ENLARGING LEGITIMATE DOUBT AND LEGITIMATE CYNICISM IN THE AIR CONCERNING THE VIABILITY OF OUR DEMOCRATIC PROCESSES. AS A SPOKESMAN FOR LAWYERS - FOR THE AMERICAN BAR ASSOCIATION, THE LARGEST PROFESSIONAL ORGANIZATION IN THE WORLD, I TOO, WITH YOU, AM SERIOUSLY DISMAYED BY THIS TERRIBLE AND SORDID AFFAIR CONCERNING, AS IT MIGHT, SOME OF OUR NATION'S HIGHEST PUBLIC OFFICERS. I TOO AM DISMAYED THAT MANY LAWYERS APPEAR TO BE INVOLVED. WATERGATE TRULY HAS PRECIPITATED A DOMESTIC CRISIS OF UNPARALLED PROPORTIONS IN OUR GOVERNMENT. IT HAS STRUCK TO THE VERY HEART OF OUR DEMOCRATIC PROCESS, AND IT HAS CAST SUSPICION AND DISTRUST UPON THE PRESIDENT OF THE UNITED STATES OF AMERICA. SEVERAL WEEKS AGO, THE AMERICAN BAR ASSOCIATION CALLED FOR THE APPOINTMENT OF A COMPLETELY

IMPARTIAL AND INDEPENDENT PROSECUTOR TO INVESTIGATE THIS CASE AND TO UNCOVER ANY AND ALL BETRAYALS OF THE PUBLIC TRUST, IF ANY SO EXIST. IT SEEMED TO US THAT ONLY BY A THOROUGH DEDICATED INVESTIGATION AND PUBLIC AIRING OF THIS AFFAIR WAS IT POSSIBLE TO RESTORE THE RESPECT AND TRUST OF THE PUBLIC IN OUR GOVERNMENTAL INSTITUTIONS. THIS PROCESS IS NOW UNDER WAY AND I HOPE IT WORKS. MOST, BUT CERTAINLY NOT ALL, OF OUR PUBLIC OFFICIALS ARE DEDICATED PUBLIC SERVANTS OF UNIMPEACHABLE INTEGRITY AND HONESTLY. MOST, BUT NOT ALL, LAWYERS LEGITIMATELY LIVE UP TO THEIR RESPONSIBILITY OF TRUST AND HONOR TO THE PUBLIC INTEREST. THOSE NOW UNDER INVESTIGATION FOR GOVERNMENTAL WRONGDOING WHO ARE LAWYERS OR WHO HAVE A LEGAL BACKGROUND MUST BE HELD ACCOUNTABLE FOR THEIR ACTIONS AND APPROPRIATE DISCIPLINARY SANCTIONS IMPOSED AGAINST THE GUILTY. WHILE THIS AFFAIR HAS DAMAGED LAWYERS AND THE LEGAL PROFESSION, SADLY IT HAS HINDERED AND DELAYED MASSIVE EFFORTS WHICH SHOULD BE UNDERWAY TO DEAL WITH THE FAR MORE IMPORTANT PROBLEMS FACING OUR NATION. IT IS, AT BEST, A MOST AWFUL AND DISTRESSING MESS.

RECOGNIZING THAT, WE STILL CANNOT GO AWAY, WE CANNOT BURY IT IN THE DARK EARTH, IT STILL IS TIMELY AND APPROPRIATE AND NECESSARY THAT THOSE OF US WHO MUST PICK UP THE PIECES AND GO ON WITH THE TASK GIVE SERIOUS CONSIDERATION TO THE REFORMS - THE POSSIBLE BENEFITS WHICH THROUGH EFFORT - CAN COME OUT OF THE WATERGATE AFFAIR -- ON A LONG RANGE BASIS. ARE THERE LESSONS WHICH CAN BE LEARNED FROM THIS TERRIBLY SERIES OF INCIDENTS? CERTAINLY, IT HAS CAUSED MANY TO DOUBT THE EFFECTIVENESS OF OUR FORM OF GOVERNMENT -- BECAUSE OF THIS INCIDENT AND OTHER SIMILAR INCIDENTS OVER THE PAST FEW YEARS. HOW, A CONCERNED CITIZEN MAY ASK, WERE WE ABLE TO CARRY

ON SUCH A LONG UNPOPULAR WAR? WHY HAS THE CONGRESS SEEMED SO POWERLESS IN RELATION TO THE EXECUTIVE BRANCH OF OUR NATIONAL GOVERNMENT? IS OUR GOVERNMENT DIRECTLY ACCOUNTABLE AND RESPONSIVE TO THE PEOPLE OF OUR COUNTRY? WHAT IN FACT IS THE RELATIONSHIP OF OUR CITIZENS TO THEIR GOVERNMENT? IS IT POSSIBLE TO TAKE THE ATTORNEY GENERAL OUT OF PARTISAN POLITICS?

THOSE ARE TOUGH -- AND PENETRATING -- QUESTIONS. THEY DESERVE ANSWERS FROM EACH OF US IF ONLY AS A BASIS FOR OUR OWN FUTURE REFLECTIONS, ANSWERED OR UNANSWERED, IT SEEMS TO ME THAT THE SEEMING CYNICISM OF MANY TO THOSE QUESTIONS AND OTHER SIMILAR ONES NEGLECTS THE PROUD HISTORY OF THIS STURDY NATION - AS WELL AS THE CONSIDERABLE PAST SUCCESS OF OUR CONSTITUTIONAL FORM OF GOVERNMENT. GIVEN ALL OUR PROBLEMS, WE STILL ARE THE MOST FREE, AFFLUENT, EDUCATED, HEALTHY AND PROSPEROUS IN THE WORLD.

DE TOCQUEVILLE, IN HIS GREAT TREATISE ON AMERICA, AFTER YEARS OF STUDY, CONCLUDED THAT OURS WAS A COUNTRY STRONG -- NOT BECAUSE OF OUR NATURAL RESOURCES -- BUT BECAUSE OF THE GREAT RESILIENCE AND TENACITY OF OUR PEOPLE. HE FOUND THAT AMERICA IN THE FINAL ANALYSIS WAS "GOOD." CAN THIS BE SAID TODAY? I THINK SO -- BUT IF AMERICA IS NO LONGER "GOOD," THEN I SUBMIT THAT IT IS, AND HAS TO BE, THE FAULT OF EACH OF US, THE CITIZENS OF THIS NATION.

IN THE WATERGATE INCIDENT, THE VIABILITY OF OUR VIGOROUS FREE PRESS AND NEWS MEDIA ACQUITTED THEMSELVES BEFORE THE PUBLIC AS RESOURCEFUL, COURAGEOUS, AND UNBENDING SERVANTS OF THE PUBLIC INTEREST.

THAT WAS GOOD. OUR COURTS, THE MAJESTY OF THE LAW, AS EXEMPLIFIED BY THE DOGGED EFFORTS OF ONE DETERMINED TRIAL JUDGE DEMONSTRATED AGAIN THE VIABILITY OF THE LEGAL SYSTEM AS GUARDIANS OF THE PUBLIC TRUST. CERTAINLY THAT WAS GOOD. SENATOR ERVIN AND HIS COMMITTEE ARE GIVING WIDE PUBLIC EXPOSURE TO THE WHOLE SORDID MESS, THAT IS VERY "GOOD." SO, GOOD AND BAD, AND THERE IS EACH - MANIFESTLY RESTS SQUARELY ON OUR SHOULDERS, WE THE PEOPLE OF THE UNITED STATES OF AMERICA.

WE THE PEOPLE HAVE, IN MANY INSTANCES, LEFT OUR POLITICS TO THE CYNICS, TO THE MANIPULATORS, TO THOSE MEN WHOSE MORAL CODES JUSTIFIED ANY MEANS TO ACHIEVE A POLITICALLY EXPEDIENT END, TO THOSE MEN WHOM WE DID NOT EVEN CHOOSE TO REPRESENT US - NOR DID THEY PRETEND TO DO SO. THE FAULT IS NOT IN THE NATURE OF OUR POLITICAL SYSTEM, FOR IN NO OTHER GOVERNMENTAL SYSTEM HAVE THE RIGHTS OF THE INDIVIDUAL BEEN SO VEHEMENTLY PROTECTED NOR THE POWERS OF GOVERNMENT SO SEVERELY RESTRICTED. I SUBMIT THAT OUR DISTRESS OCCURS AT THIS TIME ONLY BECAUSE, INCREASINGLY, THE CITIZENS, AT THE NATIONAL, STATE AND LOCAL LEVELS, HAVE NOT TAKEN ACTIVE ROLES IN THE POLITICAL PROCESS.

IT IS TIMELY -- AND PERHAPS NECESSARY FOR SURVIVAL -- THAT THERE BE A REAWAKENING OF PUBLIC INTEREST IN GOVERNMENT AT ALL LEVELS, AN ENHANCED AWARENESS THAT CITIZENS BE DIRECTLY INVOLVED -- AND HEAVILY INVOLVED -- IN THE MANAGEMENT OF OUR SOCIETY. STRICT ACCOUNTABILITY BY EACH PUBLIC OFFICIAL, NOT JUST FOR THEIR INDIVIDUAL ACTIONS, BUT FOR THOSE ACTIONS OF EVERYONE CONNECTED WITH

THEM -- AND FOR THE RESULTS OF THOSE ACTIONS, MUST BE THE RULE - AND ETHICS AND HONOR THE WATCHWORDS. WE HAVE TOO LONG LEFT OUR ELECTED OFFICIALS IN THE HANDS OF THE MANIPULATORS. IT IS NOT ENOUGH JUST TO VOTE; WE EACH MUST BECOME SINCERELY AND TOTALLY INVOLVED IN AN ALL-OUT CAMPAIGN DESIGNED TO PREVENT ELECTION ABUSES - WATERGATE ABUSES - IN THE FUTURE. IT MAY WELL BE -- AND SO I HOPE -- THAT A NEW ERA OF INTEGRITY IN GOVERNMENT WILL RESULT FROM THESE SORDID EVENTS. IT MAY BE -- AND SO I FERVENTLY HOPE -- THAT, IN THE FUTURE, WE, THE VOTERS, WILL DE-EMPHASIZE "CHARISMA" AND THAT WE WILL EMPHASIZE INTEGRITY AND HONESTY. I HOPE SO - BUT SADLY - I AM NOT SURE.

TO THOSE ASSEMBLED HERE, I SUBMIT THAT THESE NASTY, MESSY - DISHONORABLE AND UNLAWFUL THINGS CLEARLY DEMONSTRATE THAT WE ALL MUST BE MORE CONCERNED ABOUT THE FUTURE OF OUR COUNTRY THAN WE HAVE, OR THERE WILL BE NO HAPPY FUTURE COMPARABLE TO OUR HAPPY PAST. I DO NOT MEAN THAT YOU - OR I - SHOULD SLIGHT OUR OWN PERSONAL FORTUNES; I DO MEAN THAT WE SHOULD HENCEFORTH - WE MUST - EACH REALIZE THAT OUR PERSONAL FORTUNES ARE INEXTRICABLY TIED TO THE FORTUNES OF OUR COUNTRY.

VIABLE ALTERNATIVES TO EXTENSIVE CITIZEN INVOLVEMENT ARE DIFFICULT TO ENVISION, AND MOST OF THEM CERTAINLY PORTEND DISASTER OR DECLINE FOR OUR COUNTRY. IT IS CLEAR THAT WE CAN NO LONGER NAIVELY LEAVE THE PROCESSES OF GOVERNMENT TO OTHERS. APATHY CAN ONLY LEAD TO POWER BEING INVESTED IN THOSE WHO MAY ABUSE IT. WHILE POWER ALONE DOES NOT CORRUPT, IT IS MANIFEST THAT MEN <u>CAN</u> CORRUPT

POWER. IT IS MANIFEST THAT DEBASEMENT OF POWER IS JUST AS DEBILITATING TO OUR NATION'S VITALITY IF IT IS DONE FOR AN END FAVORED BY THE MAJORITY AS IF IT WERE DONE IN VIOLATION OF THE WISHES OF THAT MAJORITY. VIOLATION OF THE LAW CANNOT BE TOLERATED, AND THOSE MEN WHO VIOLATE IT ARE IMMORAL -- REGARDLESS OF THEIR GOAL. WE MUST AND SHOULD RECOGNIZE THEM AS EVIL -- AND SUBJECT TO IMMEDIATE ERADICATION - FROM GOVERNMENT - AND FROM THE DIRECTION OF OUR SOCIETY.

THERE, DOUBTLESSLY, WILL BE GREAT AND EVEN EXTREME DIFFICULTY IN GENERATING CITIZEN SUPPORT FOR JUSTICE - FOR THE WHOLE HEARTED SUPPORT OF THE LAW - WHEN ALL OF US ARE AWARE THAT THOSE IN HIGH PLACES WHOM WE TRUSTED - AND PERHAPS EVEN RECENTLY ELECTED WERE SO EASILY PERSUADED TO CIRCUMVENT LAW - TO FLAGRANTLY VIOLATE LAW. WE WHO MUST STRIVE IN EVERY WAY TO BE THE CONTINUED GUARDIANS OF OUR GOVERNMENTAL SYSTEM AND THE RIGHTS AND THE FREEDOMS SO LONG PROTECTED BY THAT SYSTEM, MUST NOW SEEK CONTROL OF THE FACELESS MEN WHO WE HAVE PERMITTED TO CONTROL OUR DESTINIES.

WE MUST INSTILL IN THE HIGHEST PLACES - AND THE LOW - ONLY CONCERNED CITIZENS OF DEMONSTRATED INTEGRITY. WE MUST URGE OUR BEST PEOPLE TO CONSIDER CAREERS IN GOVERNMENT AND POLITICS. IF THERE ARE THOSE OF US WHO ARE LEGITIMATELY OUTRAGED BY THE ACTIONS OF THE PAST FEW MONTHS, THEN THERE SHOULD BE THOSE OF US WHO ARE WILLING TO TAKE IT UPON OURSELVES TO BECOME DOERS AS WELL AS CRITICS.

DUE VIGILANCE OVER OUR POLITICAL PROCESS CAN, I BELIEVE, AVERT

MANY, IF NOT MOST, OF THE ILLS OF OUR SOCIETY. WATERGATE WILL CHANGE THE COURSE OF OUR NATION, AND THOSE CHANGES OBVIOUSLY WILL PRODUCE NEW AND OFTEN INTRICATE PROBLEMS - OR CRISES.

IT IS THUS, THAT WE, AS FREE MEN, MUST CONSTANTLY STRIVE TO BE THE MANAGERS OF THAT CHANGE. IF NOT, WE WILL BE ITS VICTIMS. THE EVIL OF WATERGATE - THE DUPLICITY OF MEN OF THE LAW - MUST TEACH US HOW TO OBTAIN A BETTER WORLD.

POLITICAL VIGILANCE OVER OUR POLITICAL SYSTEMS WILL, I BELIEVE, INSURE OUR LIBERTIES AND FREEDOMS. BUT, IN THE FINAL ANALYSIS, LIBERTY LIES IN THE HEARTS OF MEN AND WOMEN. WHEN IT DIES THERE, NO CONSTITUTION, NO LAW, NO COURT CAN DO MUCH TO HELP IT. WHILE IT LIES THERE, IT NEEDS NO CONSTITUTION, NO LAW, NO COURT TO SAVE IT. LET US GET WITH IT.

THANK YOU.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 75

VOLUME V

#75

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: MARYLAND JUDICIAL NOMINATING COMMISSIONERS
INSTITUTE
HUNT VALLEY INN
COCKEYSVILLE, MARYLAND

DATE OF DELIVERY: THURSDAY, MAY 24, 1973
6:30 P.M.

TITLE: JUDICIAL SELECTION: A QUESTION OF EXCELLENCE OR MEDIOCRITY

TIME: FIFTEEN MINUTES

A PRIME RESPONSIBILITY OF ANY CIVILIZED SOCIETY IS THE PROMPT, EVEN-HANDED AND EFFECTIVE ADMINISTRATION OF JUSTICE. EQUITABLE RESOLUTION OF DISPUTES BETWEEN CITIZENS AND BETWEEN CITIZENS AND THEIR GOVERNMENT STRIKES TO THE HEART OF THE PROMISE OF OUR DEMOCRATIC WAY OF LIFE. CERTAINLY, OUR JUDICIAL INSTITUTIONS -- AND AT CENTER STAGE AMONG THESE INSTITUTIONS, OUR COURTS -- TOUCH MEN AT THE MOST IMPORTANT MOMENTS IN THEIR LIVES -- IN TIMES OF SEVERE PERSONAL CRISIS. THE QUALITY OF OUR JUSTICE FIXES THE QUALITY OF OUR SOCIETY. IF OUR NATION IS TO ENDURE WITHOUT GOVERNMENTAL OPPRESSION -- IF IT IS TO ENDURE WITHOUT CHAOS, ITS CITIZENS MUST TRUST THE SYSTEM OF JUSTICE -- AND WITHIN THAT SYSTEM -- THE COURTS -- TRUST THAT SYSTEM TO ENFORCE THE LAW AND TO RESOLVE DISPUTES IN A FAIR AND EXPEDITIOUS WAY.

YET, IN MANY LOCALITIES, OUR JUSTICE SYSTEM OF TODAY DOES NOT FULLY MEASURE UP TO SUCH A STANDARD OF TRUST. AT THE NATIONAL LEVEL, RECENT HIGHLY PUBLICIZED EVENTS, SWIRLING AROUND THE SO-CALLED WATERGATE AFFAIR AND THE ELECTION ABUSES WHICH IT EPITOMIZES, HAVE PRECIPITATED A DOMESTIC CRISIS OF UNPARALLELED PROPORTIONS. THESE SORDID EVENTS HAVE CAUSED OUR CITIZENS TO VIEW MOST GOVERNMENTAL INSTITUTIONS -- INCLUDING THOSE IN OUR JUSTICE SYSTEM -- WITH OPEN DISTRUST AND SCORN. MANY OF OUR CITIZENS HAVE LOST CONFIDENCE IN THE INTEGRITY OF THEIR GOVERNMENTAL OFFICIALS TO THE HIGHEST LEVELS. THIS GENERAL MISTRUST -- COUPLED WITH THE FACT THAT MOST OF THOSE CONNECTED WITH THE WATERGATE AFFAIR WHO ARE BEING ACCUSED OF ACTS OF MALFEASANCE, MISFEASANCE OR NON-FEASANCE ARE EITHER LAWYERS OR MEN WHO HAVE LEGAL

TRAINING AND A LEGAL BACKGROUND -- COMPOUNDS THE ALREADY SERIOUS PROBLEMS FACING OUR JUSTICE SYSTEMS.

THIS SEVERE CRISIS IN THE ADMINISTRATION OF JUSTICE, IT SEEMS TO ME, IS IN THE MAIN OCCURING SIMPLY BECAUSE THE STATES AND THE NATIONAL GOVERNMENT HAVE EACH FAILED TO MAINTAIN MODERN, RESPONSIVE, EQUITABLE JUSTICE SYSTEMS. THE INDICES OF FAILURE ARE ALL TOO APPARENT -- EVEN TO THE MOST CASUAL OBSERVER. THE RISING INCIDENCE OF CRIME -- OVERCROWDED JAILS AND PRISONS -- FLOODED COURT DOCKETS -- THE HIGH RATE OF RECIDIVISM OF THOSE ALLEGEDLY "CORRECTED" -- THE TURN BY CITIZENS TO OTHER AGENCIES OR TRIBUNALS FOR THE CORRECTION OF THEIR CIVIL COMPLAINS -- ALL INDICATE THAT SOMETHING HAS BEEN TERRIBLY WRONG.

I READILY ACKNOWLEDGE THAT MANY OF THE PROBLEMS FACING OUR JUSTICE SYSTEM COULD BE SOLVED BY FISCAL LEGISLATION TO PROVIDE MORE ADEQUATE FACILITIES, INCREASED PARAPROFESSIONAL AND SECRETARIAL PERSONNEL, "BEEFED UP" COURT SUPPORT AGENCIES SUCH AS PAROLE AND PROBATION OFFICES, MODERN TECHNOLOGICAL AND COMPUTER AIDS, EXPERT ADMINISTRATORS AND OTHER MEASURES TO IMPROVE THE JUDICIAL APPARATUS. BUT THAT ALONE IS NOT ENOUGH -- DESPITE THE SOMETIMES IMPRESSIVE FINANCIAL EFFORTS OF SOME OF THE STATES IN RECENT YEARS, OUR PROBLEMS IN THE JUSTICE SYSTEM HAVE NOT BEEN SOLVED -- IN FACT, THEY CONTINUE TO PROLIFERATE AND MAGNIFY. THE HEART OF OUR JUSTICE SYSTEM ARE THE COURTS -- AND THE MOST IMPORTANT SINGLE ELEMENT IN THAT SYSTEM IS THE JUDGE -- THE MAN WHO SITS AS THE FINAL ARBITER IN DISPENSING JUSTICE TO ALL OUR CITIZENS. NO SYSTEM IS SELF-EXECUTING. FOR, EVEN IN A

GOVERNMENT OF LAWS, MEN MUST DECIDE. IT HAS APTLY BEEN SAID THAT THE QUALITY OF OUR JUDGES IS THE QUALITY OF OUR JUSTICE. AN ALTOGETHER SUPERIOR JUDICIARY IS AN ESSENTIAL PREREQUISITE, AND CERTAINLY ONE OF THE BEST MEANS OF OBTAINING RESPECT, FOR LAW AT ALL LEVELS. A POOR JUDGE CAN MAKE A SHAMBLES OF EVEN THE MOST FINELY CONTRIVED JUDICIAL PROCESS. CONVERSELY, A GOOD JUDGE CAN MAKE AN EVEN POOR SYSTEM FUNCTION AT LEAST ADEQUATELY. JUDGES MAKE THE SYSTEM WORK FOR GOOD OR ILL. JUSTICE IN THIS COUNTRY, IT SEEMS TO ME, IS SUFFERING BECAUSE WE ARE NOT UNIFORMLY SUCCESSFUL IN GETTING OUR BEST LEGAL TALENT TO SERVE AS JUDGES. IN THE MAIN, THE PROBLEM IS NOT WITH CORRUPT JUDGES -- OR BAD JUDGES -- BUT, RATHER, WITH MEDIOCRE JUDGES. MANY OF OUR STATE AND FEDERAL JUDGES

ARE ABSOLUTELY FIRST-RATE -- SUPERIOR IN THE LAW BEFORE THEY ASSUMED THE JUDICIAL MANTLE IN ALL WAYS -- BUT, UNFORTUNATELY, OR AT LEAST IN MY OPINION, AN EVEN LARGER NUMBER WERE, BEFORE THEY BECAME JUDGES, AT BEST, AVERAGE IN ABILITY AS LAWYERS AND, AT WORST, UNSUCCESSFUL AS A LEGAL PRACTITIONER. WHEN IT IS RECOGNIZED THAT OUR MOST SUCCESSFUL LAWYERS MAKE TREMENDOUS FINANCIAL SACRIFICE WHEN THEY EXCHANGE THEIR EARNINGS AS A LAWYER FOR A JUDGE'S SALARY, IT IS AT ONCE APPARENT THAT ONLY EXTREME CALLS TO PUBLIC SERVICE WILL ENTICE THE BETTER LAWYERS TO THE BENCH.

SADLY, WE HAVE HAD TOO MANY MEDIOCRE JUDGES WHO HAVE ALLOWED OUR COURTS TO FALL INTO DISREPUTE BECAUSE MEDIOCRE JUDGES JUST HAVE TO PERFORM IN A MEDIOCRE WAY.

MEDIOCRE JUDGES FALL BEHIND IN THEIR CALENDARS, RENDER POOR DECISIONS, FAIL TO WORK EFFECTIVELY WITH SUPPORT PERSONNEL, AND DISCOURAGE CONCERNED CITIZENS FROM SEEKING A RESOLUTION OR VINDICATION OF THEIR RIGHTS.

FACED WITH THE EVER INCREASING VOLUME AND COMPLEXITY OF CURRENT LITIGATION, MEDIOCRE JUDGES CAN ONLY HEIGHTEN THE ALREADY SERIOUS PROBLEM. WE MUST, I BELIEVE, OPT FOR EXCELLENCE INSTEAD OF MEDIOCRITY, BUT TO SECURE UNIFORM EXCELLENCE ON THE BENCH WILL NOT BE EASY. THE DEMANDS PLACED ON OUR JUDICIARY -- GREATER TODAY THAN AT ANY OTHER PERIOD IN OUR NATION'S HISTORY -- REQUIRES THAT WE HAVE NOTHING LESS THAN OUR BEST LAWYERS ON THE BENCH, AND, TO DO SO, WE MUST INDUCE THEM TO THE JOB BY CONSIDERATIONS NOT NECESSARILY FINANCIAL IN NATURE, THAT IS BY SECURITY, CHALLENGE, AND PERSONAL

PRESTIGE AND SATISFACTION IN WORKING CONDITIONS.

THERE IS, OF COURSE, NO SINGLE METHOD FOR SCREENING CANDIDATES FOR THE JUDICIARY WHICH WILL INSURE THAT THE BEST MEN ALWAYS BECOME OUR JUDGES. BUT I DO FEEL THAT PRESENT METHODS FOR SELECTING THE JUDICIARY IN MANY INSTANCES IN THE FEDERAL SYSTEM AND IN MANY OF OUR STATE SYSTEMS HAVE REWARDED THE MEDIOCRE AND DISCOURAGED THE TALENTED. IT IS MY PERSONAL BELIEF THAT THE CONTESTED POLITICAL RACE IS THE WORST -- THE SORRIEST -- POSSIBLE WAY TO SELECT JUDGES. THAT IS SO WHETHER THE CONTEST INVOLVES AN INCUMBENT OR NOT. THE CASES BEFORE JUDGES ARE RARELY FLAMBOYANT AND THE QUALITIES OF SCHOLARSHIP, RESTRAINT, AND REFLECTION, SO VITAL TO A GOOD JUDICIAL OFFICER, ARE NOT ALWAYS COUPLED WITH THE SKILLS OF A POLISHED CAMPAIGNER -- AND ARE, OFTEN, EVEN DETRIMENTAL

TO POLITICAL SUCCESS. I AM NOT SAYING THAT MEN ESPECIALLY ADAPTED TO THE POLITICAL PROCESS MAY NOT ALSO MAKE FINE JUDGES. CERTAINLY, EXPERIENCE HAS SHOWN OTHERWISE. OVERALL, HOWEVER, IT SEEMS TO ME THIS IS OFTEN MORE AN ACCIDENTAL RESULT RATHER THAN A LEGITIMATE BY-PRODUCT OF THE CONTESTED ELECTIVE PROCESS. CERTAINLY, MANY OF OUR FINEST LAWYERS, WHO WOULD MAKE EXCELLENT JUDGES, WOULD NOT, FOR VARIOUS REASONS, ENTER INTO POLITICAL CAMPAIGNS. FURTHER, WHILE IT MAY BE TRUE THAT A GOOD CAMPAIGNER CAN MAKE A GOOD JUDGE, IT IS ALSO IRREFUTABLE THAT A JUDGE CANNOT RENDER EFFECTIVE JUDICIAL SERVICE AT THE SAME TIME HE IS RUNNING A TIME CONSUMING, FAR-FLUNG CAMPAIGN FOR REELECTION.

AN INDICATION OF THE FAILURE OF THE CONTESTED POLITICAL PROCESS IS MIRRORED IN THE PUBLIC REACTION TO

JUDICIAL RACES. CLOSE ANALYSIS SHOWS THAT VOTERS DISPLAY REMARKABLE DISINTEREST IN RACES FOR THE JUDICIARY. VOTERS IN MOST INSTANCES MERELY VOTE FOR THE FIRST NAME ON THE BALLOT OR FOR A PARTY LABEL. I BELIEVE THIS SEEMING DISINTEREST ON THE PART OF THE PUBLIC CAN BE READILY UNDERSTOOD. IF CANDIDATES ADHERE CLOSELY TO THE VARIOUS CANONS AND CODES OF JUDICIAL ETHICS, MANY OF THE TRADITIONAL METHODS -- FOUND IN MOST OTHER POLITICAL CAMPAIGNS -- FOR EXCITING THE PUBLIC ARE NECESSARILY MISSING -- SUCH AS PERSONAL ATTACKS ON OPPONENTS, LARGE SCALE PROMISES TO SELF-INTEREST GROUPS, AND COMMITMENTS FOR PATRONAGE. JUDICIAL RACES ARE RARELY EXCITING AND INVOLVE FEW, IF ANY, CATCHY ISSUES. THEY MOST OFTEN TAKE BACK SEATS TO GUBERNATORIAL, LEGISLATIVE, AND OTHER RACES. CONTESTED ELECTIONS ALSO REQUIRE CANDIDATES

TO SEEK CONTRIBUTIONS TO FINANCE EXPENSIVE CAMPAIGNS. THIS RAISES SERIOUS ETHICAL QUESTIONS CONCERNING THE INDEPENDENCE OF THE JUDICIARY. THE SPECTRE OF POSSIBLE CONFLICT OF INTEREST AND FAVORITISM INEVITABLY JEOPARDIZES THE REPUTATION OF A JUDGE. BEYOND ALL OF THESE CONSIDERATIONS, THE OVERWHELMING INDICTMENT OF THE POPULAR ELECTION SYSTEM IS THAT IT SIMPLY RUNS TOO HIGH A RISK OF PRODUCING JUDGES WHO ARE LESS THAN THE BEST.

IT HAS BEEN SAID THAT "A GOOD MAN IS HARD TO FIND". I SUBMIT THAT "A GOOD JUDGE IS HARD TO FIND AND EVEN HARDER TO KEEP" -- ESPECIALLY THROUGH THE CONTESTED ELECTIVE PROCESS. I BELIEVE THAT ALL GOVERNORS -- AND ALL PRESIDENTS -- SHOULD BE DIRECTED THROUGH THEIR CONSTITUTION TO APPOINT ALL JUDGES FROM A PANEL OF LAWYERS SELECTED BY A NON-PARTISAN, JUDICIAL NOMINATING

COMMISSION COMPOSED OF OUTSTANDING LEGAL EXPERTS AND LAY CITIZENS -- THE INITIAL APPOINTMENT OF ALL JUDGES TO THE BENCH SHOULD BE MADE EXCLUSIVELY IN THAT WAY. THE OPTION OF REMOVING UNDESIRABLE JUDGES SHOULD, OF COURSE, BE RETAINED BY THE CITIZENS. BUT, I BELIEVE, THIS CAN BEST BE ACCOMPLISHED THROUGH NON-CONTESTED ELECTIONS. THE JUDGE SHOULD HAVE AN OPPORTUNITY TO ESTABLISH A JUDICIAL RECORD -- AND THEN THE ELECTORATE SHOULD HAVE AN OPPORTUNITY TO APPROVE OR DISAPPROVE OF THAT RECORD. IF THE PEOPLE APPROVE, THE JUDGE SHOULD SERVE A TERM AND THEN AGAIN SUBMIT HIS RECORD TO THE PEOPLE. IF THE PEOPLE AT ANY ELECTION DISAPPROVE OF THE JUDICIAL RECORD OF THE JUDGE, HE SHOULD GO OUT OF OFFICE, AND THE VACANCY THUS CREATED SHOULD AGAIN BE FILLED THROUGH THE SAME PROCESS. I REITERATE MY BELIEF THAT THE CITIZEN

SHOULD HAVE THE PERIODIC RIGHT TO VOTE FOR EITHER RETENTION OR REMOVAL OF ALL JUDGES. THIS SYSTEM, I FEEL, WOULD ATTRACT OUR BEST LAWYERS TO THE BENCH AND MORE FULLY INSURE THAT OUTSTANDING MEN ARE SELECTED AS JUDGES.

MARYLAND, OF COURSE, HAS MADE GREAT STRIDES IN THIS DIRECTION: GOVERNOR MANDEL'S EXECUTIVE ORDER ESTABLISHING VOLUNTARY JUDICIAL NOMINATING COMMISSIONS, WAS LATER USED BY MY OWN STATE AS A MODEL AND, JUST A YEAR AGO, WE PERMANENTLY STRUCTURED OUR SYSTEM BY PROVIDING FOR JUDICIAL NOMINATING COMMISSIONS IN OUR STATE CONSTITUTION. THE JUDICIAL NOMINATING COMMISSION IS THE VERY HEART OF MERIT SELECTION. I SUGGEST THAT YOUR STATE -- AND MY STATE -- NOW GO THE NEXT STEP IN REMOVING FOREVER THE LAST VESTIGES OF THE CONTESTED ELECTIVE PROCESS, AND THUS TAKE GIANT STRIDES TOWARD

SECURING AN INDEPENDENT AND EXCELLENT JUDICIARY.

CANDIDATES IN A CONTESTED ELECTION FOR A JUDGESHIP ARE IN A POOR POSITION TO ACCEPT POLITICAL CONTRIBUTIONS -- USUALLY FROM LAWYERS WHO WILL APPEAR BEFORE HIM IF HE IS ELECTED. THE JUDGE MAY SUBCONSCIOUSLY BE PREDISPOSED TOWARD A MAN WHO HAS DEDICATED TIME AND EFFORT -- OR MONEY -- TO HIS ELECTION. PERHAPS A MORE FREQUENT PROBLEM IS THAT OF THE JUDGE WHO LEANS OVER SO FAR TO COMPENSATE FOR ANY POSSIBLE FAVORITISM TO A BENEFACTOR THAT HE OR SHE, IN FACT, DISCRIMINATES AGAINST A FORMER SUPPORTER. IF NEITHER OCCURS, ALMOST AS MUCH HARM IS DONE TO THE JUSTICE SYSTEM BY THE WIDESPREAD BELIEF BY LITIGANTS THAT SUCH ATTITUDES MAY HAVE AFFECTED THE OUTCOME OF THEIR OWN CASE.

POLITICAL ELECTIONS OF COURSE TAKE A GREAT DEAL OF VALUABLE TIME FROM A JUDGE'S WORK -- AND, OBVIOUSLY,

THE ATTENDANT JOB INSECURITY MAKES JUDICIAL OFFICE LESS ATTRACTIVE TO A LAWYER WHO MAY SUMMARILY BE THROWN OUT OF A JOB AFTER HE HAS GIVEN UP ALL OF HIS CLIENTS TO BECOME A JUDGE. THE CONTESTED POLITICAL PROCESS IS VERY, VERY BAD FOR JUSTICE -- TRULY IT IS.

YOUR TASK, AS COMMISSIONERS, IS TOUGH AND FROUGHT WITH OPPORTUNITY FOR MISTAKE. THE MAINTENANCE OF INDEPENDENT AND STRONG COURTS, ESSENTIAL TO THE PROTECTION OF THE RIGHTS AND FREEDOMS OF OUR CITIZENS, IN LARGE MEASURE DEPENDS ON YOUR DECISIONS. THE CHARACTER AND QUALITY OF THE JUDICIARY IN YOUR STATE DEPENDS ON THE PERFORMANCE OF YOU AS COMMISSIONERS. YOU HAVE BEEN GIVEN A SACRED TRUST. YOUR RESPONSIBILITIES ARE EVEN GREATER, IT SEEMS TO ME, IN LIGHT OF THE CURRENT SPATE OF PUBLIC CONCERN WITH OUT JUDICIAL SYSTEMS. YOU MUST

ACTIVELY SEEK OUT YOUR FINEST LAWYERS AND ASSURE THAT THEY ASSUME POSITIONS ON THE BENCH. YOU HAVE TO SEE THAT ONLY OUR VERY FINEST LEGAL MINDS AND ONLY OUR MOST HONORABLE LAWYERS ARE CONSIDERED FOR JUDICIAL APPOINTMENT.

THE QUALITIES WHICH MAKE FOR A FINE JUDGE MAY BE DIFFICULT TO DEFINE, BUT WE ALL KNOW WHAT WE WANT IN A JUDGE. WE WANT MEN OF WISDOM AND CONSUMMATE SKILL TO MAKE THE SYSTEM WORK. WE WANT, ABOVE ALL, MEN WHO HAVE DISTINGUISHED THEMSELVES IN THE FIELD OF LAW AND IN THE WIDER PUBLIC CONSTITUENCY FOR THAT ESSENTIAL COMBINATION OF WISDOM, JUDGMENT AND FAIRNESS THAT MUST GOVERN A VIABLE LEGAL SYSTEM. AT FIRST BRUSH IT MAY SEEM THAT THIS WILL BE A VERY DIFFICULT TASK. BUT I SUBMIT THAT THERE IS AN ABUNDANCE OF LEGAL TALENT IN EVERY STATE. FROM MY EXPERIENCE IN MARYLAND, I KNOW

THAT YOU HAVE SCADS OF LAWYERS WHO WOULD MAKE EXCELLENT JUDGES. THERE IS, IN FACT, AN ABUNDANCE OF OUTSTANDING LEGAL TALENT IN MARYLAND -- INCLUDING BOTH THOSE NOW SERVING AS JUDGES AND MULTIPLE OTHERS ENGAGED IN THE MULTIFARIOUS ASPECTS OF THE LEGAL COMMUNITY. YOUR TASK IS TO SEEK THEM OUT AND TO SUBMIT TO YOUR GOVERNOR ONLY THE NAMES OF THOSE BEST QUALIFIED.

OUR CITIZENS ARE DEMANDING BETTER RESULTS FROM OUR COURTS, HIGHER STANDARDS OF INTEGRITY, AND POSITIVE ACCOUNTABILITY FROM THOSE WHO HAVE BEEN UNIQUELY TASKED WITH THE STEWARDSHIP OF THE JUSTICE SYSTEM -- THE JUDGES. OUR CITIZENS DESERVE NO LESS THAN THE BEST ON OUR BENCHES. YOUR DECISIONS AND THE METHODS YOU EMPLOY TO ARRIVE AT THEM WILL EITHER INSURE THAT WE HAVE EXCELLENCE ON THE BENCH OR MEDIOCRITY. JUSTICE,

FOR ALL OUR CITIZENS, IS OUR GOAL AND YOUR SELECTIONS WILL HAVE A GREAT BEARING ON WHETHER THAT GOAL IS REACHED.

LET ME SUGGEST TO YOU THAT AT SUCH A TIME AS WE NOW FACE, ONLY THE CONCERTED EFFORTS OF THOSE WHO LOVE ORDER AND EQUITY CAN SUCCEED IN RESTORING THE FAITH OF OUR CITIZENS. YOUR TASK IS NOT EASY, BUT DIFFICULT TASKS ARE ESSENTIAL HURDLES TO SUBSTANTIAL ADVANCEMENT IN THE CONCEPT "JUSTICE FOR ALL". IT IS TOUGH, BUT IF WE DO IT RIGHT IN THE BEGINNING, THERE WILL BE A POINT WHERE THE GOING GETS EASIER.

IT IS AN EXCITING CHALLENGE TO EACH OF YOU. I HOPE THAT YOU DO IT WELL -- FOR THE BENEFIT OF MARYLAND -- IF YOU DO IT TO YOUR OWN SATISFACTION, YOU WILL ENJOY IT -- IT WILL BE FUN -- IT WILL BE MOST REWARDING TO YOU AND TO ALL OF THOSE ABOUT WHOM YOU CARE. THANK YOU.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 76

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: LAW SCHOOL ADMISSIONS COUNCIL
HILTON RESORT
PORT ST. LUCIE, FLORIDA

DATE OF DELIVERY: TUESDAY, JUNE 5, 1973
6:30 P.M.

TITLE:

TIME: FIFTEEN MINUTES

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: LAW SCHOOL ADMISSIONS COUNCIL
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DATE: TUESDAY, JUNE 5, 1973
6:30 P.M.

TIME: FIFTEEN MINUTES

LAWYERS HAVE LONG CLAIMED THAT OURS IS AN OPEN PROFESSION - WITH NO ARTIFICIAL BARRIERS OR QUOTAS TO ADMISSION. UNLIKE OTHER PROFESSIONS - THIS POSITION ON ADMISSIONS HAS BEEN GENERALLY ACCEPTED - AND THERE HAS BEEN NO CONTINUING CHARGE THAT LAWYERS HAVE - FOR ECONOMIC SELF-INTEREST - MAINTAINED NUMERICAL QUOTAS BY LIMITING THE NUMBER WHO HAVE BEEN ALLOWED ADMISSION TO PROFESSIONAL TRAINING. AS A PROFESSION - WE CONTINUE TO SUBSCRIBE TO THE PHILOSOPHY

UNDERLYING THIS OPEN-DOOR POLICY; THAT IS - THAT ANY QUALIFIED PERSON SHOULD BE ABLE TO SERVE AS COUNSELOR AND ADVOCATE IN ANY STATE - REGARDLESS OF THE EXISTING LAWYER POPULATION. CERTAINLY NO STATE BY QUOTA OR POPULATION RATIO RESTRICTS THE NUMBER OF LAWYERS WITHIN ITS JURISDICTION - AND THEORETICALLY - THE LEGAL PROFESSION CAN GROW - FOR GOOD OR ILL - TO MEET THE INTEREST - DEMANDS - AND NEEDS OF OUR CITIZENS IN ALL STATES.

UNTIL RECENT YEARS - THE MOST FORMIDABLE OBSTACLE IN THE PATH OF THE ASPIRING LAWYER WAS STATE CERTIFICATION TESTS AND PROCEDURES OR AS IT IS FAMILIARLY KNOWN - THE BAR EXAM. OF COURSE - THESE PROCEDURES - USUALLY INVOLVING BOTH PROFICIENCY TESTING AND BACKGROUND INVESTIGATIONS - STILL REMAIN AS SIGNIFICANT BARRIERS TO ENTRY INTO THE PROFESSION. BUT IT IS NO LONGER A TRUISM TO STATE THAT IN MOST CASES ANY QUALIFIED AND FINANCIALLY ABLE PERSON CAN WITH STUDY AND WORK SECURE BAR ADMITTANCE. WHILE THEORETICALLY THE DOOR IS STILL OPEN AT THE BAR ADMISSION LEVEL - IT HAS FOR PRACTICAL

PURPOSES BEEN EFFECTIVELY SLAMMED SHUT TO MANY HERETOFORE QUALIFIED BY THE REALITIES OF ADMISSION TO THE LAW SCHOOLS.

ALMOST ALL STATES NOW REQUIRE SUCCESSFUL COMPLETION OF LAW SCHOOL STUDY - USUALLY FROM A SCHOOL ACCREDITED BY THE AMERICAN BAR ASSOCIATION - BEFORE A PERSON MAY APPLY FOR BAR ADMISSION. SINCE THE POSSIBLE NUMBER OF NEW LAWYERS IS LIMITED EACH YEAR TO THOSE ABLE TO SUCCESSFULLY COMPLETE LAW SCHOOL STUDY - THE LEGAL PROFESSION - BECAUSE OF SPACE LIMITATIONS IN THE LAW SCHOOLS - IS NOW TURNING AWAY THOUSANDS OF PREVIOUSLY QUALIFIED APPLICANTS. IT IS NOT FOR ME TO CATALOG FOR YOU THE STAGGERING GROWTH IN LAW SCHOOL POPULATIONS OF THE PAST FEW YEARS. YOU LIVE WITH IT - AND YOU KNOW THE FIGURES FAR BETTER THAN I. SUFFICE IT TO SAY THAT OUR LAW SCHOOLS HAVE EXPERIENCED A PERIOD OF UNPRECEDENTED GROWTH - EVERY SEAT IS FILLED. THE DEMAND FOR ADMISSION TO LAW SCHOOL HAS SIMPLY OUTSTRIPPED THE ABILITY OF THE LAW SCHOOLS TO ACCOMMODATE.

THE EXTRAORDINARY SURGE OF INTEREST - MIRRORED IN THE UNPRECEDENTED AVALANCHE OF LAW SCHOOL APPLICATIONS - CERTAINLY HAS HAD MULTIPLE CAUSES. SOME OF THESE CAUSES ARE OBVIOUS TO LAWYER AND LAW PROFESSOR ALIKE. LAW HAS BECOME MORE FINANCIALLY ATTRACTIVE - PARTLY RESULTING FROM AN ACTUAL LAWYER SHORTAGE OF THE PAST FEW DECADES. THE LAW HAS BECOME IDEALISTICALLY ATTRACTIVE AS THE CUTTING EDGE OF SOCIAL MOVEMENTS AND SOCIETAL CHANGE - MANY LOOK TO THE LAW AS "WHERE THE ACTION IS" - THE DROP IN THE PH.D. MARKET THAT OCCURRED TOWARD THE END OF THE LAST DECADE ALSO CONTRIBUTED TO THE CURRENT POPULARITY OF THE LAW. BUT THERE ARE OTHER FACTORS OF WHICH WE ARE BOTH UNAWARE WHICH CONTRIBUTE TO THOSE CONDITIONS EVEN IN GREATER DEGREE THAN THOSE I HAVE MENTIONED. HOPEFULLY THE CONFLUENCE OF CIRCUMSTANCES WILL NOT CONTINUE INDEFINITELY - BUT IN THE MEANTIME - THE REALITY IS THAT TODAY LAW SCHOOL ADMISSION OFFICERS - RATHER THAN BAR EXAMINERS - ARE IN LARGE MEASURE PICKING OUR FUTURE LAWYERS. THAT BEING SO - IT SEEMS TO ME TO FOLLOW THAT

THE LEGAL PROFESSION AS AN ENTITY MUST DEVOTE SOME HARD THINKING TO LAW SCHOOL ADMISSIONS POLICIES AND - FURTHER - TO WHAT THE LAW SCHOOLS ARE DOING IN LEGAL EDUCATION TODAY. ADMISSION TO LAW SCHOOL IS TOO IMPORTANT TO BE LEFT TO THE ACADEMIC COMMUNITY ALONE - IT MUST CONCERN ALL OF US WHO ARE IN THE JUSTICE BUSINESS.

TODAY - EVEN OUR NEWER LAW SCHOOLS ARE FACED WITH THE HAPPY - OR UNHAPPY - TASK OF PICKING AND CHOOSING AMONG A LARGE AND OUTSTANDING GROUP OF APPLICANTS. ADMISSIONS DECISIONS HAVE ALWAYS BEEN KNOTTY PROBLEMS FOR OUR LARGER - MORE PRESTIGIOUS LAW SCHOOLS - BUT TODAY - ALL LAW SCHOOLS ARE FACING AN ADMISSIONS CRISIS WHICH IS EQUAL OR IN EXCESS OF THAT FACED BY ANY LAW SCHOOL TEN OR TWENTY YEARS AGO. THE PRESSURES ON LAW SCHOOL ADMISSION BOARDS, OFFICERS, AND COMMITTEES HAS INCREASED GEOMETRICALLY WITH THE INCREASE IN APPLICANTS. THE FACT THAT MOST OF EACH YEAR'S APPLICANTS ARE SOPHISTICATED - EDUCATED - AND POSSESS RAW ABILITY FAR

SURPASSING THAT OF EVEN LAST YEAR'S CLASS IS SOBERING - AND - TO MOST THOUGHTFUL LAWYERS - FRIGHTENING. IT HAS BECOME COMMONPLACE FOR THE LAW SCHOOLS TO POINT TO THE ESCALATING GRADE POINT AND LAW ADMISSION TEST AVERAGES OF EACH NEW CLASS. I AM ADVISED THAT THE MAJORITY OF LAW SCHOOLS HAVE MET AND COPED WITH THE SURGE OF APPLICANTS BY MERELY RAISING THE OBJECTIVE CRITERIA FOR ADMISSION. YET ALL OF US KNOW THAT THIS MAY NOT BE THE BEST OR EVEN A GOOD WAY TO CHOOSE OUR FUTURE LAWYERS.

STRONG ARGUMENTS HAVE BEEN MADE THAT SUCH POLICIES NEGLECT THE NEEDS OF THE PUBLIC AND THE PROFESSION - AND PROPERLY SO. MANY FEAR A SO-CALLED ELITIST SYNDROME WHERE THE LAW WILL BECOME ONLY A HAVEN FOR EGG-HEADS AND INTELLECTUALS. OTHERS POINT TO THE STRIKING INEQUITY TO LARGE SEGMENTS OF OUR SOCIETY OF USING GRADE POINT AVERAGES AND ADMISSION TEST SCORES AS THE SOLE BASIS FOR ADMISSION. MANY VIGOROUSLY ASSERT THAT GRADE POINT AVERAGES SHOULD NO LONGER CARRY THE WEIGHT THEY ONCE DID - BECAUSE MANY IF NOT MOST UNDERGRADUATE

SCHOOLS HAVE SHIFTED FROM TRADITIONAL GRADE SYSTEMS FOR MEASURING ABILITY AND ACHIEVEMENT. SCHOOLS NOW OFFER PASS FAIL COURSES - ALLOW GRADE ERASURES - AND IN MANY INSTANCES CONDONE MASSIVE COURSE WITHDRAWAL. TRANSCRIPTS ARE VIEWED BY MANY APPLICANTS AND ADMISSIONS OFFICERS AS SUBVERSIVE DOCUMENTS. CERTAINLY - THERE IS STRONG REASON TO DOUBT THE RELIABILITY OF THE LAW SCHOOL ADMISSION TEST AS A PREDICTOR OF FUTURE LAW SUCCESS - AND I DO NOT BELIEVE THAT ANY RESPONSIBLE AUTHORITY SUGGESTS TO THE CONTRARY. IT JUST STRIKES AGAINST THE GRAIN OF REASON TO PREDICATE A LIFE'S WORK ON PERFORMANCE ON A ONE DAY EXAM.

WHILE WE ALL ADMIT THAT THE SO-CALLED "PREDICTORS" ARE SOMETIMES DEFICIENT IN FORECASTING ACADEMIC SUCCESS - I BELIEVE THAT WE ALL SUSPECT THAT THEY ARE EVEN LESS RELIABLE IN PREDICTING SUCCESS IN ACTUAL LAW PRACTICE. WE DO KNOW THAT THEY FAIL TO TELL US ABOUT SUCH CRITICAL FACTORS AS MOTIVATION - MATURITY - ENERGY - CLIENT RELATIONS - BUSINESS

SENSE - AND THE LIKE.

BUT THERE ARE OTHER PROBLEMS WE NOW FACE IN ADMISSIONS - EVEN IF WE DID BECOME BETTER AT GAUGING POTENTIAL SUCCESS - AS ELUSIVE AS IT MIGHT BE - THERE IS LEFT THE MORE VEXING QUESTION OF OUR OBLIGATION TO RESPOND TO PERCEIVED SOCIETAL NEEDS FOR LAWYERS - WHO WILL REPRESENT MINORITIES - WHO WILL PRACTICE IN RURAL AREAS - WHO WILL SERVE THE POOR - WHO WILL CHALLENGE THE PROBLEMS OF THOSE WHO NOW NEED LEGAL SERVICES BUT WHO ARE UNABLE TO EMPLOY A LAWYER - WHO WILL THINK LESS ABOUT FINANCIAL REWARD AND MORE ABOUT THE NEEDS OF BOTH SOCIETY AND THE LEGAL PROFESSION.

IT IS FOR THOSE REASONS THAT I HAVE ASSERTED THAT LAW SCHOOL ADMISSIONS MUST BECOME THE BUSINESS OF THE BAR AS WELL AS THAT OF THE LAW SCHOOLS. THE BAR OWES A DUTY TO THE PUBLIC TO PROVIDE THE BEST LEGAL SERVICE POSSIBLE - AND THE DISCHARGE OF THAT OBLIGATION IN LARGE MEASURE DEPENDS UPON THE TYPE AND CALIBRE OF THE LAWYER AND NOW MORE THAN EVER THE CALIBRE OF THE FUTURE LAWYER. BAR ADMISSION

SHOULD HENCEFORTH BE VIEWED AS A CONTINUOUS PROCESS BEGINNING WITH LAW SCHOOL ADMISSION. BECAUSE REALISTICALLY - THIS - NOT BAR EXAMS - IS NOW THE METHOD WE UTILIZE TO SELECT FUTURE MEMBERS OF THE LEGAL COMMUNITY.

ALTHOUGH I LIKE MOST OTHERS PERSONALLY HAVE SERIOUS DOUBTS ABOUT THE REALIABILITY OR FAIRNESS OF BASING LAW SCHOOL ADMITTANCE SOLELY ON OBJECTIVE CRITERIA - I LIKE MOST OTHERS AM AT A LOSS FOR SUPPLYING ADEQUATE ALTERNATIVES. WHILE I DO BELIEVE THAT WE SHOULD CONTINUALLY SEARCH FOR AND STUDY OTHER METHODS - I AM ALSO MOST SKEPTICAL OF THE EGALITARIAN THEORIES PRESENTLY ADVANCED BY MANY. SUBJECTIVE EVALUATION RUNS MANY RISKS - AND MAY - IN THE FINAL ANALYSIS - BE FAR MORE UNFAIR THAN OBJECTIVE CRITERIA. IT SEEMS TO ME THAT SOCIAL MOTIVATION AND INCENTIVE FOR SUCCESS ARE JUST AS OFTEN FOUND IN THE VERY SMART AS IN THE NOT SO SMART. IN FACT - I AM SURE THAT INTELLIGENCE WILL ALWAYS BE THE PRIME VIRTUE OF A LAWYER.

THUS - ON BALANCE - IT SEEMS TO ME THAT ALL LAW SCHOOLS SHOULD STRIVE TO PUT TOGETHER AS INTELLIGENT A GROUP OF STUDENTS AS POSSIBLE. I HAVE FAITH THAT BRAINS MAKE A DIFFERENCE IN SOLVING LEGAL PROBLEMS - LIKE ALL OTHER PROBLEMS. EVEN AMONG THE VINTAGE CROP OF TODAY'S STUDENTS - MARKED GRADATIONS IN ABILITY PROBABLY DO EXIST. LAW MAY NOT REMAIN FOREVER THE MAGNET IT NOW IS FOR SO MANY OF OUR BRIGHTEST PEOPLE. I THINK FOR THE BENEFIT OF THE PUBLIC AND THE PROFESSION - WE OUGHT TO SEIZE THE PRESENT OPPORTUNITY TO ADMIT THE FINEST AMONG OUR LAW SCHOOL APPLICANTS. PERHAPS IN THAT WAY WE WILL HELP TO RESHAPE AND ADVANCE OUR PROFESSION AND SOCIETY - BOTH NOW HAVE MAGNIFICENT SHORTCOMINGS.

SO - I SUGGEST THAT YOU SHOULD NOT READILY GIVE UP THE STRUGGLE TO SORT OUT THE VERY BEST OF THE APPLICANTS FOR ADMISSION. LOWERING STANDARDS - SUCH AS STUDENT TEACHER RATIOS - TO MEET THE APPLICATION ONSLAUGHT - IS SHORTSIGHTED INDEED - THE LEGAL PROFESSION SHOULD AND MUST RESIST A

PROLIFERATION OF NEW LAW SCHOOLS - ALMOST NECESSARILY OF LOWER QUALITY THAN WE NOW HAVE - SIMPLY TO FURNISH SEATS FOR THOSE WHO ARE SEEKING A LEGAL EDUCATION NOT READILY AVAILABLE. QUALITY - NOT QUANTITY - I FEEL SHOULD ALWAYS BE OUR GOAL. I RESIST BLANKET RANDOM SELECTION OR LOTTERY PROCEDURES FOR LAW SCHOOL ADMISSION BECAUSE IT WOULD DENY THE PUBLIC THE BEST POSSIBLE LAWYER IN THE FUTURE. IN SHORT - WE SHOULD OPT FOR EXCELLENCE RATHER THAN A PIECEMEAL - LOW QUALITY REACTION TO EXISTING ENROLLMENT PRESSURES.

YET AT THE SAME TIME - I AM SUFFICIENTLY SKEPTICAL OF THE VALIDITY OF EVALUATIVE FORMULAS NOW EMPLOYED BY MANY SCHOOLS THAT I SUGGEST THAT ALL LAW SCHOOLS SHOULD SERIOUSLY CONSIDER RESERVING - AT LEAST FOR A WHILE - A CERTAIN NUMBER OF SEATS IN EACH BEGINNING CLASS FOR RANDOM - SUBJECTIVE - OR OTHER NON-QUANTITATIVE SELECTION PROCESSES. THERE ARE NEGLECTED GROUPS IN SOCIETY THAT SHOULD - AND MUST - RECEIVE SPECIAL CONSIDERATION IN THE ADMISSIONS PROCESS.

ALMOST EVERYONE WHO HAS CONSIDERED THE MATTER BELIEVES THAT REPRESENTATIVES OF CERTAIN MINORITY GROUPS SHOULD CONTINUE TO BE ACTIVELY RECRUITED IN ORDER TO OFFSET PREVIOUS INEQUALITY AND LACK OF REPRESENTATION OF THOSE MINORITIES IN THE LEGAL COMMUNITY. ALL OF US ARE JUSTLY PROUD OF CLEO - AND I AM SURE THAT THE AMERICAN BAR ASSOCIATION - THE NATIONAL BAR ASSOCIATION - THE LAW SCHOOL ADMISSIONS COUNCIL - AND THE ASSOCIATION OF AMERICAN LAW SCHOOLS WILL CONTINUE TO SUPPORT IT. MANY BLACKS - WHO HERETOFORE WERE EXCLUDED FROM THE LEGAL PROFESSION NOW HAVE BEEN GIVEN AN OPPORTUNITY. FOR THE FIRST TIME - MANY FRUSTRATED BLACKS WHO WANT TO BE LAWYERS SEE LIGHT AT THE END OF THE LONG DARK TUNNEL INTO WHICH THEIR LIVES HAVE BEEN SEGREGATED. EFFORTS SUCH AS CLEO MUST BE CONTINUED AND EVEN EXPANDED. THIS LAST YEAR I AM ADVISED THAT ALL OUR ACCREDITED LAW SCHOOLS FOR THE FIRST TIME ADMITTED WOMEN STUDENTS. THAT TOO IS GOOD - AND IT TOO MUST BE EXPANDED. ALONG WITH RACIAL AND SEXUAL

MIXTURES IN OUR CLASSES - I SUGGEST THAT WE CONTINUE TO SEEK A GEOGRAPHICAL MIX - NOT JUST AMONG THE STATES AS MANY DO - BUT WITHIN THE STATES SO THAT OUTLYING RURAL AREAS OF THE COUNTRY - NOT JUST THE METROPOLITAN CENTERS - ARE BROADLY REPRESENTED. WE SHOULD - IN SHORT - SEEK TO CREATE IN EACH LAW SCHOOL A STUDENT BODY WITH AS BROAD A CULTURAL AND SOCIO-ECONOMIC MIX OF OUR SOCIETY AS A WHOLE AS POSSIBLE WITHOUT SIGNIFICANTLY LOWERING OUR TARGET OF TRAINING THE BEST QUALIFIED LAWYERS POSSIBLE.

I RECOGNIZE THAT THE WHOLE DISCUSSION OF LAW SCHOOL ADMISSIONS MUST NOT BE VIEWED WITH COMPARTMENTALIZED VISION AND THAT I AS A TRIAL LAWYER WHO IS TEMPORARILY A BAR PRESIDENT DO NOT SEE ALL OF THE PROBLEMS OF PRESENT-DAY LAW SCHOOL ADMINISTRATORS. I DO ACKNOWLEDGE THAT ADMISSION POLICIES MUST NECESSARILY CORRELATE WITH LEGAL EDUCATION - AND THAT A CHANGE IN LEGAL EDUCATION WILL EFFECT ADMISSIONS CRITERIA AND PROCEDURES - AND THAT LEGAL EDUCATION IS UNDERGOING BOTH

REANALYSES AND CHANGE.

CERTAINLY - SERIOUS AND REPEATED DOUBTS HAVE BEEN RAISED BY MANY LAWYERS AND LAW PROFESSORS AS TO THE EFFECTIVENESS AND DESIRABILITY OF OUR PRESENT SYSTEM OF LEGAL EDUCATION.

THE FAMILIAR DEBATE OVER WHETHER LAW SCHOOLS SHOULD BE MORE TRADE SCHOOL ORIENTED IS BEING ARGUED WITH EVEN GREATER INTENSITY. CLINICAL PROGRAMS PROPERLY ARE BEING IMPLEMENTED AND CONSIDERED ALL OVER THE COUNTRY - AND I HOPE THAT THE TREND BOTH MAGNIFIES AND BECOMES MORE SOPHISTICATED. MANIFESTATIONS OF CHANGE IN LAW SCHOOL EDUCATION ARE ALL AROUND US - MANY PROPOSALS TO SHORTEN OR LENGTHEN LAW SCHOOL EDUCATION HAVE BEEN ADVANCED. THE WISDOM OF REQUIRING DEGREES FROM FOUR YEAR COLLEGES BEFORE LAW SCHOOL ADMISSION IS LEGITIMATELY BEING QUESTIONED. THERE IS IN MANY QUARTERS AN UNEASY FEELING ABOUT WHETHER THE PRESENT SYSTEM OF LEGAL EDUCATION MEETS THE NEEDS OF OUR SOCIETY.

THE AMERICAN BAR ASSOCIATION - IN ORDER TO TACKLE

THOSE QUESTIONS AND OTHERS CONCERNING THE RELEVANCY OF PRESENT LEGAL EDUCATION TO THE LEGAL PROFESSION RECENTLY ESTABLISHED A SPECIAL COMMITTEE FOR A STUDY OF LEGAL EDUCATION - CHAIRED BY FORMER FLORIDA GOVERNOR LEROY COLLINS. IN CONJUNCTION WITH AN AMERICAN BAR FOUNDATION PROJECT STAFFED BY DEAN ROGER CRAMPTON - A COMPREHENSIVE IN-DEPTH STUDY OF LEGAL EDUCATION IS NOW UNDERWAY WITH A VIEW TO CORRELATING THE PRESENT AND FUTURE NEEDS OF SOCIETY WITH LAW SCHOOL TRAINING. THE COMMITTEE HOPEFULLY WILL ATTEMPT TO ASSAY THE BEST DIRECTIONS FOR LEGAL EDUCATION TO TAKE IN LIGHT OF FUTURE DEMANDS AND LIKELY DEVELOPMENTS IN THE LAW - QUITE OBVIOUSLY - THE COMMITTEE MUST STUDY PERSISTENT QUESTIONS SUCH AS: WHAT EFFECT SHOULD OR WILL NO FAULT AUTOMOBILE INSURANCE - NO FAULT DIVORCE - SPECIALIZATION - PARAPROFESSIONALS - AND PREPAID LEGAL INSURANCE HAVE ON LEGAL EDUCATION? SHOULD ALL LAWYERS BE TRAINED ALIKE? SHOULD A LEGAL PH.D. BE GENERALLY SOUGHT BY PRACTITIONERS? SHOULD THERE BE AN

EVEN MORE EXTENSIVE CLINICAL APPROACH TO LAW SCHOOL EDUCATION? SHOULD LAW EDUCATION BE SHORTENED TO TWO YEARS? OR LENGTHENED TO FOUR? SHOULD THERE BE MORE INTERDISCIPLINARY TRAINING? WHAT DOES A LAW SCHOOL DO TO PEOPLE? DOES IT CHANGE A STUDENT'S THOUGHT PROCESSES? WHAT SHOULD BE THE ROLE OF THE LAW SCHOOL IN THE COMMUNITY? SHOULD WE TRAIN PRACTITIONERS OR LEGAL SCHOLARS? WHAT ABOUT COURSE CONTENT?

THE ANSWERS TO THESE QUESTIONS - OF COURSE - DO ULTIMATELY BEAR DIRECTLY UPON ADMISSIONS POLICIES. ADMISSIONS DO ULTIMATELY DEPEND ON THE TYPE OF EDUCATION OFFERED - AND I KNOW THAT AND I KNOW THAT BOTH EDUCATIONAL POLICIES AND ADMISSIONS POLICIES ARE COMPLEX AND THAT THE FACTORS FACING THOSE WHO MUST DECIDE ARE NEVER UNIFORM. BUT IF IT WAS NOT DIFFICULT - IT WOULD NOT BE THE MAJOR PROBLEM THAT IT IS.

BECAUSE OF MY SPECIAL INTEREST - I HOPE THAT YOU WILL FORGIVE ME FROM POINTING WITH PRIDE TO THE AWAKENING OF INTEREST IN THE AMERICAN BAR ASSOCIATION SECTION ON LEGAL

EDUCATION AND ADMISSIONS TO THE BAR IN TACKLING THAT MAJOR PROBLEM AND OTHERS. CHAIRMAN-ELECT CHARLES B. KELSO HAS OUTLINED TO ME WHAT SEEMS TO BE A PROGRESSIVE AND CHALLENGING PROGRAM FOR THE SECTION FOR THE NEXT YEAR. IF YOU ARE NOT PRESENTLY INVOLVED WITH THE SECTION - I SUGGEST THAT YOU GET INVOLVED. THE RECENT MONUMENTAL ACCOMPLISHMENT OF THE SECTION - OF COURSE - WAS THE ADOPTION AT THE LAST ASSOCIATION MIDYEAR MEETING OF NEW ACCREDITATION STANDARDS FOR LAW SCHOOLS. I AM OPTIMISTIC THAT THE CONTEMPLATED PUBLICATIONS AND OTHER NEW PROGRAMS OF THIS SECTION WILL ENLIST THE SUPPORT OF MANY ADDITIONAL LAWYERS AND LAW PROFESSORS FROM THROUGHOUT THE NATION IN ATTACKING THE PROBLEMS NOW FACING LAW SCHOOLS - PARTICULARLY IN LONG-RANGE FINANCING - BECAUSE INCREASED MEMBERSHIP WILL LEND STRENGTH TO THE SOLUTIONS REACHED. I AS PRESIDENT - SHALL WORK CLOSELY AND COOPERATIVELY WITH CHARLES KELSO IN ALL POSSIBLE WAYS.

WE ALL KNOW THAT THE STATES HAVE TRADITIONALLY

REGULATED THE PRACTICE OF LAW WITHIN THEIR BORDERS TO ASSURE FIRST - THAT THE PRACTITIONER HAS THE REQUISITE SKILLS OF A LAWYER WITH THE KNOWLEDGE OF THE LAWS OF THE PARTICULAR STATE: AND SECONDLY - THAT HE IS SUBJECT TO ETHICAL CONTROLS WITHIN THE STATE.

OVER THE YEARS - THERE HAS BEEN A GRADUAL EROSION OF THAT RULE. RULINGS BY THE SUPREME COURT OF THE UNITED

STATES IN RECENT YEARS SHOULD INCREASE THE PRESSURE ON STRICT STATE REGULATION OF PRACTICE. CHANGE IS WITH US AND CHANGE IS COMING - AND WE WHO ARE INTERESTED IN LEGAL EDUCATION MUST BE READY.

IN OUR LIFETIMES - I PREDICT THAT MIGRATORY PRACTICE THROUGHOUT THE UNITED STATES WILL ACHIEVE A SOUND LEGAL BASE. AS A MATTER OF FACT - WE ALREADY HAVE DE FACTO NATIONAL MIGRATORY PRACTICE. LARGE LAW FIRMS ARE REGULARLY SENDING LAWYERS ALL OVER THE UNITED STATES TO HANDLE DEPOSITIONS - TO NEGOTIATE FOR PURCHASE OF LAND OR COMPANIES - TO NEGOTIATE LABOR CONTRACTS - OR TO HANDLE PRACTICALLY ANYTHING IN THE SPECTRUM OF THE PRACTICE OF LAW. WE ONLY HEAR ABOUT THESE ACTIVITIES IN THE COURTS WHEN - BY SOME ACCIDENT - A FEE FOR THOSE LEGAL SERVICES IS DISPUTED. ALTHOUGH WE STILL ADHERE TO THE RULE THAT A LAWYER IS A LAWYER ONLY IN HIS NATIVE STATE - AND IS A LAYMAN AS SOON AS HE CROSSES THE BORDER OF HIS HOME STATE - THIS RULE IS ALSO FADING AWAY - AND I BELIEVE THAT IT

PROPERLY SHOULD.

IN EVERY AREA OF THE PRACTICE OF LAW THERE IS AN INCREASING POTENTIAL FOR THE BROADENING OF THE RIGHT OF INTER-STATE PRACTICE. THE VARIOUS CASES WHICH HAVE ARISEN TO DATE HAVE BEEN WORKED OUT DELICATELY. BUT AN EXPLOSIVE - UNRESOLVABLE ISSUE PERTAINING TO THE RIGHTS OF THE STATES TO REGULATE THE PRACTICE OF LAW MAY YET ARISE WHICH CAN ONLY BE RESOLVED BY THE SUPREME COURT OF THE UNITED STATES. IN THAT EVENT - THE SUPREME COURT MAY OR MAY NOT CONTINUE TO HOLD THAT THE STATES HAVE A LEGITIMATE INTEREST TO PROTECT IN THE ADMISSION AND DISCIPLINE OF LAWYERS.

MY OWN CONCLUSION IS THAT WE HAVE INTERSTATE PRACTICE OF LAW NOW - AND THAT RECOGNIZED OR UNRECOGNIZED - IT IS GOING TO CONTINUE TO GROW IN OUR COUNTRY. FOR THAT REASON - I THINK LAWYERS EVERYWHERE SHOULD BE INTERESTED IN LAW SCHOOLS EVERYWHERE IN OUR COUNTRY - AND I THINK THAT THE AMERICAN BAR ASSOCIATION AS THE NATIONAL VOICE OF THE LEGAL

PROFESSION HAS A DUTY TO ITS INDIVIDUAL MEMBERS TO SPEAK LOUD AND CLEAR ON THE SUBJECT OF LEGAL EDUCATION AND LAW SCHOOLS. DURING THE NEXT YEAR - THERE WILL BE SUBSTANTIAL DEVELOPMENTS IN ADMISSIONS - IN CURRICULUM - IN ADMINISTRATION - AND IN FINANCING - AND I PLAN FOR THE ABA TO BE HEAVILY INVOLVED IN ALL ASPECTS THEREOF.

SO - WHILE I AM PROUD OF THE EFFORTS MADE AND TO BE MADE BY THE AMERICAN BAR ASSOCIATION IN THE FIELD OF LEGAL EDUCATION - I DO ACKNOWLEDGE THAT MUCH MORE MUST BE DONE IF WE ARE TO MAKE OUR LAW EDUCATIONAL INSTITUTIONS FULLY RESPONSIVE TO THE NEEDS OF OUR PEOPLE. ONLY WITH FINE LAWYERS AS ADVOCATES CAN OUR SYSTEM OF JUSTICE FUNCTION TO THE BENEFIT OF ALL OUR CITIZENS - AND PICKING AND EDUCATING THE FINEST LAW STUDENTS IS THE ONLY FEASIBLE FIRST STEP IN THAT DIRECTION.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 77

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: GEORGIA JUDICIAL CONVOCATION
CENTER BALLROOM
DE SOTO HILTON HOTEL
SAVANNAH, GEORGIA

DATE OF DELIVERY: WEDNESDAY, JUNE 6, 1973
12:00 P.M.
LUNCHEON ADDRESS

TITLE: THE SUPPORTIVE ROLE OF THE PRACTICING ATTORNEY OF THE JUDICIARY

TIME: FIFTEEN MINUTES

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
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SAVANNAH, GEORGIA

DATE: JUNE 6, 1973

TIME: 12:00 P.M. - LUNCHEON ADDRESS

TITLE: THE SUPPORTIVE ROLE OF THE PRACTICING ATTORNEY OF THE JUDICIARY

LENGTH: FIFTEEN MINUTES

IT SEEMS TO ME THAT THE DEMANDS MADE ON OUR JUDICIARY ARE GREATER TODAY THAN AT ANY OTHER PERIOD IN OUR NATION'S HISTORY. STATE LEGISLATURES - AND WE IN THE LEGAL PROFESSION HAVE - IN LARGE MEASURE - LONG NEGLECTED MANY OF THE MAJOR NEEDS OF OUR COURT SYSTEMS AND OF THOSE WHO MAKE THOSE SYSTEMS WORK - THE JUDGES. TODAY - JUDGES IN MANY INSTANCES PRESIDE OVER COURTS ENCUMBERED BY INADEQUATE FACILITIES AND ANTIQUATED

PROCEDURES. THE VOLUME AND COMPLEXITY OF CURRENT LITIGATION WHEN COUPLED WITH THESE OUTDATED PROCEDURES AND FACILITIES HAVE MADE JUDICIAL FUNCTIONS AWESOMELY BURDENSOME - EVEN FOR OUR BEST JUDGES. THE JUDICIAL TASK HAS BEEN FURTHER COMLICATED BY THE RECENT AND RISING EXPECTATIONS OF OUR CITIZENS CONCERNING THE FUNCTIONING OF OUR JUDICIAL SYSTEMS. OUR CITIZENS - SOPHISTICATED AND EDUCATED AS NEVER BEFORE - ARE - ALL ACROSS OUR LAND - LEGITIMATELY QUESTIONING OUR JUSTICE SYSTEMS - AND WITH INCREASING INTENSITY - THE MOST VISIBLE REPRESENTATIVES OF THOSE SYSTEMS - THE PROFESSIONALS - THE JUDGES AND THE PRACTICING LAWYERS. UNQUESTIONABLY AIDED IN LARGE PART BY OUR VIGOROUS PRESS - OUR PEOPLE ARE DEMANDING BETTER RESULTS - HIGHER STANDARDS OF INTEGRITY - AND POSITIVE ACCOUNTABILITY FROM THOSE OF US WHO ARE IN THE LEGAL BUSINESS - WE WHO - OR SO IT SEEMS TO ME - HAVE BEEN UNIQUELY GIVEN THE STEWARDSHIP OF OUR JUSTICE SYSTEMS. CERTAINLY - THE PROVOCATIVE SOCIAL AND POLITICAL CHANGES WHICH HAVE SWEPT ACROSS THE FACE OF SOCIETY HAVE NOT ESCAPED OUR JUDICIAL

INSTITUTIONS. BUT SADLY WE IN THE ORGANIZED BAR AS A GROUP ENTITY HAVE BEEN SLOW TO CHANGE - AND WE HAVE AS AN ORGANIZED BAR LEFT THE JUDICIARY - IN LARGE PART - ALONE - TO MANAGE THE SYSTEM. I SUGGEST THAT THE ORGANIZED BAR COLLECTIVELY AND THE PRACTICING ATTORNEYS WHO MAKE UP ITS BULK INDIVIDUALLY MUST EFFECTIVELY AND RAPIDLY JOIN HANDS WITH THE JUDICIARY TO HELP OUR COURT SYSTEMS KEEP PACE WITH THE CHANGES IN OUR SOCIETY AND WITH THE NEEDS OF OUR CITIZENS. WE MUST - I BELIEVE - STRIVE TO BE JOINT MANAGERS OF CHANGE - OR UNDOUBTEDLY OUR JUSTICE SYSTEM - AND WE AS A PART OF IT - WILL BE VICTIMS OF THAT CHANGE.

AFTER MANY YEARS OF SEEMING DISCOORDINATION BETWEEN THE PRACTICING ATTORNEY AND THE JUDICIARY - I AM PROUD THAT MANY - BUT NOT ALL - OF THE STATE AND LOCAL BAR ASSOCIATIONS ARE AT LEAST SLOWLY AWAKENING TO THEIR RESPONSIBILITY IN SHAPING AND SUPPORTING OUR JUDICIAL SYSTEMS. EVEN THOUGH I BELIEVE THAT A FEW STATE BARS - INCLUDING THE STATE BAR OF GEORGIA [redacted] - HAVE WORKED VERY HARD AT SECURING JUDICIAL IMPROVEMENTS DURING THE LAST FEW YEARS WITH SUBSTATIAL AND EVEN SOMETIMES SPECTACULAR SUCESS, IT IS

CLEAR TO ME THAT ALL STATE BAR ASSOCIATIONS, INCLUDING THE STATE BAR OF GEORGIA

MUST IN THE FUTURE TAKE AN EVEN MORE POSITIVE - AND INTENSIFIED - POSTURE BEFORE LEGISLATIVE BODIES THAN IT HAS IN THE PAST IN SUPPORT OF THE JUDICIARY. THE BAR MUST "GO TO BAT" FOR GREATER APPROPRIATIONS FOR MODERN FACILITIES - FOR THE INCREASED USE OF LAW CLERKS - FOR EXPANDED SECRETARIAL AND CLERICAL SUPPORT - FOR STRENGTHENING COURT SUPPORT AGENCIES AND PERSONNEL - SUCH AS PROBATION AND PAROLE OFFICERS - AND FOR OTHER MEASURES DESIGNED TO FILL THE LONG NEGLECTED FISCAL NEEDS OF OUR STATE COURTS. ABOVE ALL - OR SO IT SEEMS TO ME - THE PARAMOUNT LEGISLATIVE ACTIVITY OF THE ORGANIZED BAR SHOULD BE AN ALL-OUT EFFORT TO SECURE MORE NEARLY ADEQUATE SALARIES FOR JUDGES. IN MY PERSONAL OPINION - THE SALARY FIGURE FOR A SITTING JUDGE SHOULD BE AT LEAST THAT NET COMPENSATION THAT HE COULD EARN IF HE WERE ENGAGED IN THE PRIVATE PRACTICE OF LAW. THE AFFIRMATIVE TYPE OF PROGRAMS THAT I SUGGEST WILL REQUIRE CONCERTED ORGANIZED EFFORTS BY ALL LOCAL AND STATE BAR ASSOCIATIONS. I INTEND TO PROPOSE

THAT THE AMERICAN BAR ASSOCIATION ENGAGE IN SIMILAR PROGRAMS BEFORE THE CONGRESS IN THOSE AREAS NOT WITHIN THE SCOPE OF STATE ACTION.

THE PRACTICING LAWYER SHOULD FURTHER FEEL AN OBLIGATION TO AID HIS JUDGES DIRECTLY. TODAY - AS NEVER BEFORE - THE TRIAL JUDGE IS SUBJECT TO SEVERE AND - OFTEN UNWARRANTED - CRITICISM AND ABUSE CONCERNING HIS ACTIONS AS A JUDICIAL OFFICER. APPELLATE JUDGES ARE FINDING THAT THEIR DECISIONS MEET WITH WIDESPREAD AND OFTEN UNINFORMED CRITICISM. INSTANTANEOUS NEWS REPORTING OF COURT ACTIVITY HAS LED TO MANY ABUSES AND PUBLIC MISUNDERSTANDINGS CONCERNING JUDICIAL OFFICERS AND THEIR JUDICIAL ACTIVITIES. THE BLAME FOR THIS SEEMING LACK OF COMMUNICATION CANNOT WHOLLY BE ATTRIBUTED TO THE NEWS MEDIA. WE <u>ARE</u> BLESSED IN THIS COUNTRY WITH AN ALERT NEWS MEDIA WHICH - IN MOST INSTANCES - HAS ACQUITTED ITSELF AS A DEDICATED AND RESOURCEFUL SERVANT OF THE PUBLIC INTEREST. WE AS LAWYERS MUST ACKNOWLEDGE THAT THE PRACTICING LAWYER

SHOULD SHOULDER THE RESPONSIBILITY - IN LARGE PART - FOR THE UNJUST AND UNREFUTED CRITICISM OF OUR JUDGES AND JUDICIAL ACTIVITIES. IT IS UP TO THE PRACTICING ATTORNEY - MOST OFTEN ACTING THROUGH HIS BAR ASSOCIATION - TO COME TO THE DEFENSE OF THE JUDICIARY IN TIME OF UNREASONED ATTACK. IN MANY CASES - WE HAVE NOT DONE SO - AND A COURAGEOUS JUDGE HAS HAD TO STAND ALONE. CERTAINLY IT IS NOT FOR THE JUDGE TO DEBASE HIMSELF AND HIS OFFICE BY ENTERING INTO A SPIRITED PUBLIC DEFENSE OF HIS ACTIONS AND DECISIONS. THAT RESPONSIBILITY LIES WITH THE BAR - AND - I REITERATE - IN MANY IF NOT MOST LOCALITIES - THE BAR HAS NOT ALWAYS LIVED UP TO THAT RESPONSIBILITY. I SUGGEST AN ORGANIZED EFFORT BY ATTORNEYS IN THIS AREA. I FEEL THAT A TYPE OF "TRUTH SQUAD" - PATTERNED SOMEWHAT AFTER THE DEVICE UTILIZED IN NATIONAL POLITICAL CAMPAIGNS WHERE SPOKESMEN CLOSELY FOLLOW THE OPPOSING CANDIDATE ON THE CAMPAIGN TRAIL FOR THE PURPOSE OF PROMPTLY REBUTTING - THROUGH THE MEDIA - ALLEGED FALSE AND

MISLEADING STATEMENTS MADE BY THE OPPOSITION - SHOULD BE ESTABLISHED AT THE LOCAL - STATE AND NATIONAL LEVELS. THOSE "TRUTH SQUADS" - IF ESTABLISHED - WOULD BE EMPOWERED TO ACT BEFORE THE GENERAL PUBLIC AS AN IMMEDIATE VOICE OF THE ORGANIZED BAR TO EXPLAIN COMPLICATED AND CONTROVERSIAL COURT DECISIONS - AND IF NECESSARY - COME TO THE DEFENSE OF AN EMBATTLED JUDGE. THE ORGANIZED BAR - THROUGH THIS OR OTHER GROUPS - SHOULD ALSO ESTABLISH RECURRING SEMINARS TO BETTER INFORM AND EDUCATE THE NEWS MEDIA ON THOSE ASPECTS OF THE JUDICIAL PROCESS WHICH MOST OFTEN CAUSE MISUNDERSTANDINGS. THE "TRUTH SQUAD" - IF FORMED - PROBABLY WOULD EVENTUALLY DEVELOP INTO A PREVENTATIVE RESOURCE BODY. REPORTERS AND LAY CITIZENS - WHEN CONFUSION AROSE - WOULD CONSULT THE BODY FOR EXPLANATION AND IMMEDIATE COMMENT WHICH MAY HEAD OFF UNJUST AND UNINFORMED REPORTING.

THE FINEST FACILITIES - FAIREST SALARIES - AND BEST LAWYER SUPPORT WILL NOT - HOWEVER - INSURE THE SUCCESS OF OUR

JUDICIAL SYSTEMS. AFTER ALL - JUDGES AND ONLY JUDGES - CAN MAKE THE WHOLE SYSTEM WORK FOR GOOD OR ILL. A POOR JUDGE CAN MAKE A SHAMBLES OF EVEN THE MOST FINELY CONTRIVED JUDICIAL PROCESS. CONVERSELY - A GOOD JUDGE CAN MAKE EVEN A POOR SYSTEM FUNCTION - AT LEAST ADEQUATELY. CONCERNED CITIZENS AND LAWYERS MUST THEREFORE INSURE THAT THE BEST LAWYERS AVAILABLE ARE CHOSEN AS JUDGES - AS ARBITERS IN THE TASK OF DISPENSING JUSTICE TO ALL OUR CITIZENS - AND I CAN SAY WITHOUT FEAR OF ARGUMENT THAT NOT ALL SITTING JUDGES IN THE UNITED STATES WERE THE FINEST PRACTICING LAWYERS.

THERE IS - OF COURSE - NO SINGLE METHOD FOR SELECTING THE JUDICIARY WHICH WILL INSURE THAT THE BEST MEN ARE ALWAYS SELECTED. I BELIEVE - HOWEVER - THAT THE CONTESTED POLITICAL RACE IS THE WORST - THE SORRIEST - POSSIBLE WAY TO SELECT JUDGES. THE QUALITIES OF SCHOLARSHIP - RESTRAINT - AND REFLECTION SO NECESSARY IN A GOOD JUDGE ARE NOT ALWAYS COUPLED WITH THE SKILLS OF A POLISHED CAMPAIGNER - AND ARE - OFTEN - EVEN

DETRIMENTAL TO POLITICAL SUCCESS. I AM NOT SAYING THAT MEN ESPECIALLY ADAPTED TO THE POLITICAL PROCESS CANNOT ALSO MAKE FINE JUDGES. CERTAINLY EXPERIENCE HAS SHOWN OTHERWISE. OVERALL - HOWEVER - IT SEEMS TO ME THAT THIS IS MORE OFTEN AN ACCIDENTAL RATHER THAN A LEGITIMATE BY-PRODUCT OF THE CONTESTED ELECTION. WHILE IT MAY BE SO THAT A GOOD CAMPAIGNER CAN ALSO MAKE A GOOD JUDGE - IT IS IRREFUTABLE THAT A JUDGE CANNOT RENDER EFFECTIVE JUDICIAL SERVICE AT THE SAME TIME HE IS RUNNING A TIME-CONSUMING - FAR-FLUNG CAMPAIGN FOR RE-ELECTION.

AN INDICATION OF THE FAILURE OF THE CONTESTED POLITICAL PROCESS IS MIRRORED IN THE DISINTEREST OF THE PUBLIC TOWARD JUDICIAL RACES. VOTERS TYPICALLY HAVE LITTLE INTEREST IN THE CANDIDATES FOR JUDICIAL OFFICE. ANALYSIS SHOWS THAT VOTERS OFTEN SELECT THE FIRST NAME ON A JUDICIAL BALLOT OR VOTE BY PARTY LABEL. I BELIEVE THAT THIS PUBLIC DISINTEREST CAN BE READILY UNDERSTOOD. IF CANDIDATES ADHERE CLOSELY

TO THE VARIOUS CANONS AND CODES OF JUDICIAL ETHICS - THE TRADITIONAL METHODS FOUND IN MOST OTHER POLITICAL CAMPAIGNS FOR EXCITING PUBLIC SUPPORT ARE NECESSARILY MISSING - SUCH AS - PERSONAL ATTACK ON OPPONENTS - LARGE SCALE PROMISES TO SELF-INTEREST GROUPS - AND COMMITMENTS FOR PATRONAGE. THE RACES ARE THUS RARELY EXCITING AND INVOLVE FEW - IF ANY - CATCHY ISSUES. THEY OFTEN TAKE THE BACK SEAT TO GUBERNATORIAL - LEGISLATIVE - AND OTHER RACES. FRANKLY - I BELIEVE THAT EVEN AN INFORMED LAY VOTER CANNOT POSSIBLY SCORE WELL IN SELECTING THE BEST LAWYER CANDIDATES AS JUDGES.

IT HAS BEEN SAID THAT "A GOOD MAN IS HARD TO FIND." I SUBMIT THAT - "A GOOD JUDGE IS HARD TO FIND AND EVEN HARDER TO KEEP" - ESPECIALLY THROUGH THE CONTESTED ELECTIVE PROCESS. IT IS FOR THAT REASON THAT I HAVE LONG ADVOCATED THAT STATES TURN INSTEAD TO A SYSTEM OF APPOINTIVE MERIT SELECTION - FILLING JUDICIAL VACANCIES SOLELY FROM PANELS SELECTED BY JUDICIAL NOMINATING COMMISSIONS. I APPLAUD THE ACT OF GOVERNOR

CARTER HERE IN GEORGIA IN ESTABLISHING FOR HIS OWN GUIDANCE JUDICIAL NOMINATING COMMISSIONS - COMPOSED OF OUTSTANDING LAWYERS AND LAY CITIZENS. IN SUCH A SYSTEM - THOSE ONCE APPOINTED AND AFTER ESTABLISHING A RECORD - GO BEFORE THE VOTERS IN A NON-CONTESTED ELECTION FOR EITHER RETENTION OR REMOVAL - THE SOLE QUESTION BEING WHETHER THE MERIT SELECTED JUDGE SHOULD BE RETAINED IN OFFICE. I SUBMIT THAT HISTORY HAS DEMONSTRATED THAT THIS SYSTEM ATTRACTS OUR BEST LAWYERS FOR JUDGESHIPS - YET IT ALSO RETAINS THE VOTERS' OPTION TO REMOVE FROM OFFICE THOSE JUDGES CONSIDERED UNDESIRABLE. OVER TWENTY STATES - IN ONE FORM OR ANOTHER - ARE NOW USING SUCH A SYSTEM - AND THE PLAN IS GAINING MOMENTUM IN MANY OTHER STATES. I RECOMMEND THIS METHOD WITHOUT RESERVATION AND BELIEVE THAT - THROUGH ITS USE - THE FINEST JUDICIARY POSSIBLE CAN BE OBTAINED.

THE MERIT SELECTION SYSTEM - WHICH I HAVE OUTLINED - WOULD ALSO REMOVE THE NEED FOR FUND RAISING FOR CONTESTED

JUDICIAL ELECTIONS. BUT MANY OF OUR STATES - INCLUDING MOST OF OUR LARGEST - STILL RETAIN THE CONTESTED ELECTION PROCESS. SO - UNTIL SUCH A REFORM IS ADOPTED THROUGHOUT THE NATION - THE NEXT BEST HOPE FOR REDUCING UNWHOLESOME POLITICAL INFLUENCE IN THE JUDICIAL SELECTION PROCESS IS TO ENCOURAGE JUDICIAL RACES IN WHICH CAMPAIGN FINANCING IS SECURED WITHOUT INDIVIDUAL CONTRIBUTIONS TO SPECIFIC CANDIDATES. I SUBMIT THAT IMMEDIATE CONCERN OF THE ORGANIZED BAR SHOULD BE FOCUSED ON THIS SITUATION WHICH HAS BEEN A CONSTANT SOURCE OF IRRITATION IN CONTESTED RACES FOR A JUDGESHIP - BOTH TO THE JUDICIARY AND THE PUBLIC.

JUDICIAL CAMPAIGNING IN CONTESTED RACES IS - LIKE ALL POLITICAL CAMPAIGNING - EXPENSIVE. IT HAS BEEN SAID THAT ONLY THE VERY RICH CAN RUN FOR OFFICE IN OUR MODERN SOCIETY. WHILE THIS MAY NOT BE TRUE - THE MONEY MUST COME FROM SOMEWHERE - EITHER FROM THE CANDIDATE'S PERSONAL RESOURCES OR FROM CONTRIBUTORS.

THE FEAR THAT A JUDGE MAY BE PARTIAL TO A FORMER SUPPORTER WHO APPEARS BEFORE HIM OFTEN INHIBITS AND INTERFERES WITH JUDICIAL DECISION MAKING. PROBABLY A FAR MORE FREQUENT EXPERIENCE IS THAT OF THE JUDGE WHO TRIES TO BE SO IMPARTIAL IN A CASE INVOLVING A FORMER CONTRIBUTOR THAT HE - IN EFFECT - DISCRIMINATES AGAINST HIS FORMER SUPPORTER. UNLESS A JUDGE IS SO FINANCIALLY INDEPENDENT THAT HE CAN COMPLETELY FUND HIS CAMPAIGN - THE JUDGE MUST SEEK AID. THE ETHICAL DIFFICULTIES ARE ALL TOO APPARENT.

THUS - IT IS CLEAR TO ME THAT UNTIL WE CAN OBTAIN A TOTAL NON-CONTESTED MERIT SELECTION OF JUDGES - WE SHOULD EAGERLY SEEK ALTERNATIVE METHODS OF JUDICIAL CAMPAIGN DONATIONS. RECOGNIZING THE POSSIBLE EVILS ATTENDANT TO JUDICIAL FUND RAISING - SOME STATE AND LOCAL BAR ASSOCIATIONS HAVE ACTIVELY CONSIDERED THE COMPLETE ABOLITION OF CONTRIBUTIONS BY LAWYERS - BY CORPORATIONS OR LABOR ORGANIZATIONS - AND EVEN IN SOME INSTANCES - BY EVERYONE - TO JUDICIAL CANDIDATES. OTHERS -

LIKE THE DADE COUNTY BAR ASSOCIATION IN MIAMI - HAVE ADVANCED MODIFYING IDEAS. THERE A TRUST FUND WAS ESTABLISHED FROM WHICH CANDIDATES FOR JUDICIAL OFFICE MAY DRAW MONEY TO HELP FINANCE THEIR CAMPAIGNS. UNDER THE PLAN - DADE COUNTY LAWYERS PLEDGED TO CONTRIBUTE MONEY - BUT NOT TO ANY INDIVIDUAL JUDICIAL CANDIDATES - BUT TO THE TRUST IN AMOUNTS RANGING FROM $50 TO $150 - DEPENDING UPON THE NUMBER OF YEARS THEY HAVE PRACTICED. THE MONEY IS ALLOCATED TO THE CANDIDATES BASED UPON A FAVORABLE POLL OF THE BAR MEMBERS.

AN INFLUENTIAL FLORIDA STATE SENATOR RECENTLY INTRODUCED A BILL IN THE STATE LEGISLATURE TO PUBLICLY FINANCE JUDICIAL ELECTIONS. ALTHOUGH THE BILL HAS NOT BEEN ENACTED INTO LAW - IT EMBODIES - I BELIEVE - AN APPROACH - PUBLIC FUNDING OF JUDICIAL CAMPAIGNS - WHICH CERTAINLY SHOULD RECEIVE WIDESPREAD CRITICISM AND CONSIDERATION.

OF COURSE - AS LONG AS WE HAVE CONTESTED ELECTIONS WE WILL BE FACED WITH THE SPECTRE OF CAMPAIGN FINANCING.

BUT - THESE PROPOSALS IN FLORIDA EMBODY A LEGITIMATE AND - I FEEL - NECESSARY CONCERN FOR THE INDEPENDENCE OF OUR JUDICIARY. THE REMOVAL OF EVEN THE HINT OF JUDICIAL IMPROPRIETY AND COERCION ENGENDERED BY THE SOLICITATION AND ACCEPTANCE OF POLITICAL CONTRIBUTIONS WOULD - IN MY OPINION - REMOVE AN UNNECESSARY OBSTACLE IN THE PATH OF THE EQUITABLE - FAIR - AND RESPECTED ADMINISTRATION OF JUSTICE.

THE CONCERNS THAT I HAVE ENUMERATED TODAY ARE - I AM SURE - SHARED BY PRACTICING ATTORNEYS AND JUDGES THROUGHTOUT THE COUNTRY. CERTAINLY THE QUESTIONS CONCERNING THE IMPROVEMENT OF OUR JUSTICE SYSTEMS MERIT THE CLOSE ATTENTION OF ALL OF US. OUR SYSTEM OF JUSTICE IS BEING QUESTIONED AS NEVER BEFORE. IT IS UP TO US IN THE LEGAL BUSINESS - WE - THE LAWYERS AND JUDGES - TO CONSTANTLY STRIVE TO IMPROVE THE DISSIMENATION OF JUSTICE TO ALL OF OUR PEOPLE. JUSTICE FOR ALL OUR CITIZENS IS - AFTER ALL - OUR GUIDING LIGHT AND BOUNDEN DUTY AS

LAWYERS - AS JUDGES. IT IS THE REASON FOR PLEASURE WITH OUR JOB. IT IS THE REASON THAT WE CAN SAY THAT THE LAW IS THE MOST SATISFYING LEARNED PURSUIT - AND THE MOST DEMANDING - AND THAT JUDGES AND LAWYERS TRULY ARE THROUGH THEIR LOVE FOR THE LAW THE MOST BLESSED OF CITIZENS.

THANK YOU.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 78

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: SYMPOSIUM ON PRIVATE INVESTMENTS ABROAD
SOUTHWESTERN LEGAL FOUNDATION
DALLAS, TEXAS

DATE OF DELIVERY: THURSDAY, JUNE 14, 1973
BANQUET MEETING
7:00 P.M.

TITLE: LAW - THE PROTECTOR OF INTERNATIONAL INVESTMENT

TIME: FIFTEEN MINUTES

DEVELOPED NATIONS TODAY - BY NECESSITY - HAVE BECOME ECONOMICALLY INTERDEPENDENT. THE PROLIFERATION DURING RECENT YEARS OF MULTI-NATIONAL CORPORATIONS - TRANSNATIONAL INVESTMENTS - AND GLOBAL TRADE AGREEMENTS DRAMATICALLY INDICATES THE INCREASING INTERNATIONAL ORIENTATION OF BUSINESS IN ALL DEVELOPED COUNTRIES. INVESTORS AND BUSINESSMEN THE WORLD OVER ARE TODAY LOOKING BEYOND TRADITIONAL BORDERS FOR NEW MARKETS AND INVESTMENT OPPORTUNITIES. THE ENTIRE WORLD TRULY HAS BECOME THE MARKETPLACE OF ALL NATIONS.

SINCE LAWYERS MUST KEEP PACE WITH THE NEEDS OF THEIR CLIENTS, THESE ECONOMIC DEVELOPMENTS HAVE HAD A DISTINCT IMPACT UPON THE LEGAL PROFESSION. MORE AND MORE THE LEGAL NEEDS OF BUSINESSMEN IN AMERICA ARE TRANSCENDING NATIONAL BOUNDARIES - AND MORE AND MORE THERE HAS THUS BEEN AN ESCALATION OF INDIVIDUAL LAWYER INTEREST AND PARTICIPATION BY AMERICAN LAWYERS IN INTERNATIONAL LAW. IN FACT - THE BUSINESS OF LAWYERS THROUGHOUT OUR NATION - INCLUDING THOSE FAR REMOVED FROM THE LARGE METROPOLITAN AREAS - HAS IN RECENT YEARS TAKEN ON AN INTERNATIONAL FLAVOR.

IN ORDER TO HELP THOSE LAWYERS MEET THE LEGAL CHALLENGES POSED BY THAT WORLDWIDE TRADE - INVESTMENT - AND BUSINESS INVOLVEMENT - GREATER EMPHASIS HAS THUS BEEN FOCUSED ON INTERNATIONAL LAW BY THE ORGANIZED BAR - INCLUDING THE AMERICAN BAR ASSOCIATION - STATE AND LOCAL BAR ASSOCIATIONS - LAW SCHOOLS AND LAW RELATED RESEARCH FOUNDATIONS - AND OTHER LEGAL ORGANIZATIONS.

I AM AWARE - AS YOU ARE - THAT THE SOUTHWESTERN LEGAL FOUNDATION - ONE OF THE WORLD'S MOST PRESTIGIOUS LEGAL INSTITUTIONS - HAS HAD A PROUD AND WONDERFUL HISTORY IN THIS FIELD OF INTERNATIONAL LEGAL EDUCATION FOR THE LAW PRACTITIONER. THROUGH ITS INTERNATIONAL AND COMPARATIVE LAW CENTER - IT HAS CONTRIBUTED GREATLY TO BETTER UNDERSTANDING BETWEEN BUSINESSMEN - LAWYERS AND LAW STUDENTS OF MANY COUNTRIES. THE SUCCESS OF ITS ACADEMIES OF AMERICAN AND INTERNATIONAL LAW INDICATES THE EXCELLENCE OF ITS PROGRAM - PERHAPS IT ALSO DEMONSTRATES THE DIRE NEED FOR SUCH EDUCATIONAL PROGRAMS. THIS SECOND SYMPOSIUM ON PRIVATE INVESTMENTS ABROAD IS A VITAL PROGRAM AND I PREDICT THAT THE FOUNDATION WILL FIND IT DESIRABLE TO CONTINUE IT IN THE FUTURE.

THE BURGEONING LEGAL INTEREST OF THE AVERAGE AMERICAN LAWYER IN INTERNATIONAL LAW CAN BE DEMONSTRATED BY EVEN A CASUAL LOOK AT THE ACTIVITIES OF THE AMERICAN BAR ASSOCIATION - A VOLUNTARY ORGANIZATION COMPOSED OF OVER 166,000 INDIVIDUAL LAWYER MEMBERS. THE ABA - THE LARGEST PROFESSIONAL

ASSOCIATION IN THE WORLD - HAS EXPERIENCED A VERITABLE SURGE OF INTEREST IN RECENT YEARS IN THE FIELD OF INTERNATIONAL LAW. FOR EXAMPLE - IT HAS NUMEROUS STANDING AND SPECIAL COMMITTEES SUBSTANTIALLY INVOLVED IN AREAS OF INTERNATIONAL CONCERN. OUR COMMITTEES ON ADMIRALTY AND MARITIME LAW - ATOMIC ENERGY LAW - ENVIRONMENTAL LAW - CUSTOMS LAW - AND AERONAUTICAL LAW GRAPPLE CONSTANTLY WITH MATTERS OF INTERNATIONAL CONCERN IN THEIR PARTICULAR AREAS. JUST SIX TO EIGHT WEEKS AGO - OUR STANDING COMMITTEE ON EDUCATION ABOUT COMMUNISM CO-SPONSORED A VERY SUCCESSFUL CONFERENCE ON EAST-WEST TRADE AT THE UNIVERSITY OF GEORGIA LAW SCHOOL. PROMINENT LAWYERS - BUSINESSMEN - AND EDUCATORS FROM MANY COUNTRIES GATHERED AT THE CONFERENCE IN ATHENS, GEORGIA TO STUDY THE PROSPECTS AND PROBLEMS OF TRADE BETWEEN THE COMMUNIST AND NON-COMMUNIST COUNTRIES. OUR STANDING COMMITTEE ON WORLD ORDER UNDER LAW CONTINUES TO WORK CLOSELY WITH THE UNITED NATIONS AND WITH THE WORLD PEACE THROUGH LAW

CENTER TO STIMULATE EFFORTS AMONG LAWYERS - AND LAYMEN - TO ADVANCE WORLD PEACE BY EXTENDING THE RULE OF LAW TO ALL PEOPLE.

IN ADDITION TO COMMITTEE ACTIVITY - THE AMERICAN BAR ASSOCIATION ALSO HAS TWENTY-ONE AUTONOMOUS SECTIONS COMPOSED OF LAWYERS WHO SHARE A PARTICULAR INTEREST IN SOME FIELD OF THE LAW. FOR INSTANCE - THERE ARE SECTIONS ON ADMINISTRATIVE LAW - ANTITRUST LAW - CORPORATION, BANKING AND BUSINESS LAW - FAMILY LAW - CRIMINAL LAW - GENERAL PRACTICE - LABOR RELATIONS LAW - INSURANCE, NEGLIGENCE AND COMPENSATION LAW - NATIONAL RESOURCES LAW - PUBLIC CONTRACT LAW AND TAXATION LAW. OF THE TWENTY-ONE SECTIONS OF THE ASSOCIATION - AT LEAST FOURTEEN HAVE ACTIVE COMMITTEES ON THE INTERNATIONAL ASPECTS OF THEIR PARTICULAR FIELD.

ONE OF THE FASTEST GROWING SECTIONS IS THE SECTION ON INTERNATIONAL LAW - WHICH NOW HAS OVER 5,500 MEMBERS. ITS PUBLICATION - <u>THE INTERNATIONAL LAWYER</u> - IS SCHOLARLY

AND WIDELY READ - OR SO I BELIEVE. THE SECTION'S COMMITTEE ON CONTINUING EDUCATION - AMONG OTHER PROGRAMS - HAS SPONSORED RECURRING TWO DAY NATIONAL INSTITUTES ON THE LEGAL ASPECTS OF DOING BUSINESS IN OTHER PARTS OF THE WORLD. PRIMARILY DESIGNED FOR AMERICAN LAWYERS - THESE NATIONAL INSTITUTES HAVE BROUGHT SPEAKERS - USUALLY ATTORNEYS - FROM OTHER COUNTRIES TO DISCUSS THE LEGAL ASPECTS AND NUANCES PECULIAR TO THEIR AREAS OF THE WORLD. THE FIRST SUCH NATIONAL INSTITUTE WAS HELD IN CHICAGO, ILLINOIS IN MARCH OF 1971 AND CONCERNED THE LEGAL ASPECTS OF DOING BUSINESS IN EUROPE WITH EMPHASIS UPON THE COMMON MARKET COUNTRIES. SINCE THEN - THREE OTHER NATIONAL INSTITUTES HAVE BEEN HELD CONCERNING THE SINO-SOVIET - FAR EASTERN - AND LATIN AMERICAN COUNTRIES. NEXT SPRING - A NATIONAL INSTITUTE WILL BE HELD CONCERNING THE LEGAL ASPECTS OF DOING BUSINESS WITH AFRICAN COUNTRIES. THE DISCUSSIONS AND LECTURES GIVEN AT EACH PROGRAM HAVE BEEN REPRODUCED IN SPECIAL ISSUES OF THE

INTERNATIONAL LAWYER. THE SALES OF THOSE ISSUES HAVE BEEN EXCEPTIONALLY GOOD - INDICATING ANEW THE INCREASING INTEREST OF AMERICAN LAWYERS IN TRANS-NATIONAL BUSINESS.

DESPITE THE ACTIVITIES OF LAWYERS AND BAR ASSOCIATIONS WHICH I HAVE OUTLINED - I BELIEVE THEY ARE ONLY HARBINGERS OF EVEN MORE EXCITING THINGS TO COME. IT SEEMS TO ME THAT WE ARE JUST ON THE THRESHHOLD OF A NEW WORLD-WIDE LEGAL COMMUNITY. I FORESEE THAT INTERNATIONAL LEGAL COMMUNITY AS MORE AND MORE TRADE AND INVESTMENT BARRIERS FALL - AS MEN OF ALL NATIONS INEXORABLY BECOME MORE CLOSELY BOUND BY ECONOMIC TIES. LAWYERS WILL AND SHOULD FOLLOW BUSINESSMEN AS THEY MOVE OUTWARD BEYOND NATIONAL BOUNDARIES. THE SUCCESS OF THE EUROPEAN ECONOMIC COMMUNITY - THE RECENT EAST-WEST TRADE AGREEMENTS - THE WORLD-WIDE EXPANSION OF FOREIGN INVESTMENTS - AND THE INTERNATIONAL ECONOMIC DEVELOPMENT OF COUNTRIES SUCH AS JAPAN AND WEST GERMANY - ALL PORTEND IN THAT DIRECTION. CERTAINLY - THE EXPERIENCE OF OUR OWN

COUNTRY SEEMS TO BEAR OUT THIS PREDICTION. IN THE LAST TWENTY YEARS THE BOOK VALUE OF U. S. FOREIGN INVESTMENT HAS GROWN FROM UNDER 15 BILLION TO WELL OVER 70 BILLION DOLLARS. THE ANNUAL SALES REVENUE OF AMERICAN SUBSIDIARIES AND AFFILIATES ABROAD HAS GROWN TO OVER AN ESTIMATED 200 BILLION DOLLARS - SOME FIVE TIMES THE VALUE OF OUR EXPORTS. I FORESEE GEOMETRIC INCREASES IN THIS TYPE OF EXPANSION. WE NOW HAVE SATELLITES AND SKYLABS - FROM WHICH HUNDREDS OF MILES ABOVE THE EARTH WE TRACE SCHOOLS OF FISH - LOCATE OIL - COAL AND GAS DEPOSITS - MEASURE URBAN GROWTH - AND PREDICT PRECISE WEATHER PATTERNS. IT IS OBVIOUS TO ME THAT WE HAVE JUST BARELY OPENED THE DOOR TO INTERNATIONAL ECONOMIC POSSIBILITIES. THE FUTURE IS INDEED BRIGHT FOR THOSE BUSINESSMEN WITH AN EYE TO INTERNATIONAL EXPANSION - AND I AM CONFIDENT THAT THE INTERNATIONAL LAWYER WILL GO RIGHT ALONG THE SAME PATH.

MY OPTIMISM - HOWEVER - DOES NOT DISREGARD THE

VERY REAL PROBLEMS IN THE WORLD TODAY WHICH MITIGATE AGAINST THE WORLD LEGAL ORDER THAT I ENVISION.

CERTAINLY ONE CANNOT PRAGMATICALLY AVOID THE VERY REAL OBSTACLES IN THE PATH TO A WORLD-WIDE ECONOMIC COMMUNITY POSED BY THE EXISTING POLITICAL - SOCIAL - AND CULTURAL DIFFERENCES BETWEEN THE PEOPLES OF OUR WORLD. NATIONAL SELF-INTEREST - NATIONAL HATE - AND NATIONAL PREJUDICE DIVIDE MANY PEOPLES. CHAUVINISM REMAINS THE ORDER OF THE DAY. COMPETITION FOR THE NATURAL RESOURCES WHICH WE SO LONG ASSUMED TO BE AVAILABLE IN BOUNTIFUL SUPPLY - HAS FOSTERED MORE AND MORE DIFFICULTIES BETWEEN NATIONS. THE NOT YET EXPLOITED OCEAN BOTTOMS AND THE RICHES OF THE SEA ARE BEING FOUGHT OVER WITH INCREASING FEROCITY. TERRITORIAL JURISDICTION - RESOURCE JURISDICTION - IS MORE AND MORE AN AREA FOR INTERNATIONAL CONTENTION. MANY PEOPLES OF THE WORLD LIVE IN A CONSTANT STATE OF HUNGER AND FACE STARVATION EVERY DAY. WE - AS A RACE - HAVE BEEN

LIVING FOR A GENERATION OR MORE UNDER THE CONSTANT THREAT OF ANNIHILATION BY WHAT THE CYNICS FIGURE IS AN INEVITABLE NUCLEAR WAR. COUNTRIES CONTINUE, JEALOUSLY TO RING THEMSELVES WITH TRADE BARRIERS - EXPORT-IMPORT QUOTAS-AND TARIFFS. POSSIBILITIES OF PRIVATE INVESTMENTS ABROAD ARE CONTINUALLY CLOUDED BY POLITICAL ISSUES AND ARE OFTEN MIRED IN SOMEWHAT IRRELEVANT DEBATES INVOLVING ECONOMIC SELF DETERMINATION - OR SOVEREIGNTY OVER NATURAL WEALTH AND RESOURCES - OR ON THE RIGHT TO EFFECTIVE AND ADEQUATE COM-PENSATION IN CASE OF NATIONALIZATION - OR ON OTHER ISSUES WHICH MEN OF REASON AND GOOD WILL SHOULD BE ABLE TO RESOLVE. IN FACT - I SUGGEST THAT A STRANGER WHO SAT IN ON ALL OR MOST OF SUCH NEGOTIATIONS WITHOUT UNDERSTANDING HISTORY CERTAINLY WOULD GET A DIM VIEW OF THE PROSPECTS OF WORLD ORDER AND ECONOMIC INTER-DEPENDENCE.

NEVERTHELESS - I SUGGEST THAT THE GROWTH OF MULTI-NATION BUSINESSES AND TRANS-NATIONAL INVESTMENTS HAS PLACED

APPROPRIATE EMPHASIS UPON PROBABLY THE ONLY LASTING HOPE OF MANKIND FOR TRANQUILLITY - THAT IS - THAT MEN BECOME SO ECONOMICALLY RELATED THAT THEY MUST OF NECESSITY AVOID THE WHOLESALE DESTRUCTION OF WAR AND SEEK PEACEFUL LEGAL SOLUTIONS TO THEIR DISPUTES.

PERHAPS ECONOMIC TIES CAN FOSTER AN ERA OF COOPERATION - PERHAPS ECONOMIC TIES NECESSARILY WILL REQUIRE MEN TO GET ALONG WITH EACH OTHER IN ORDER TO DO BUSINESS WITH EACH OTHER. CERTAINLY IT IS CLEAR TO ME THAT TO INSURE THAT SUCH ECONOMIC PRACTICES WILL BE BENEFICIAL TO ALL PARTIES - AN ENHANCED RELIANCE UPON INTERNATIONAL LAW MUST BE FOSTERED. REASON DICTATES THAT THE OBVIOUS NEED FOR METHODS TO RESOLVE BUSINESS DIFFERENCES ARISING OUT OF OUR BURGEONING INTERNATIONAL ECONOMIC EXPANSION PUT AN EMPHASIS AND URGENCY UPON DEVELOPING AN APPROPRIATE INTERNATIONAL LEGAL APPARATUS TO WHICH THE INTERNATIONAL BUSINESSMAN CAN TURN WITH CONFIDENCE FOR RESOLUTION OF DISPUTES WITH EQUITY AND FAIRNESS. WHILE MORE INTERNATIONAL AND TRANSNATIONAL LAW HAS BEEN COMPILED - EXPANDED AND ACCEPTED IN

THE LAST TWENTY-FIVE YEARS THAN IN THE WHOLE OF RECORDED HISTORY - THIS INCREASE MUST AND INEVITABLY WILL CONTINUE IN EVEN LARGER MEASURE WITHIN THE NEXT TWENTY-FIVE YEARS.

PRIVATE INVESTMENTS ABROAD BY ALL NATIONS IS OBVIOUSLY A WORTHY PRACTICE TO BE PROTECTED AND PROMOTED BY ALL NATIONS. EVEN THOUGH IT IS OBVIOUS, WE STILL MUST HOPE THAT SUCH A POLICY WILL BE ADOPTED BY ALL NATIONS - WE MUST SO HOPE BECAUSE LOGIC PROCLAIMS THAT THE ADOPTION OF SUCH A POLICY WILL ENCOURAGE PERMANENT PEACE. AS PEOPLE TRADE AND WORK TOGETHER - THEY WILL LEARN TO UNDERSTAND AND RESPECT EACH OTHER. THE RELIANCE ON LAW BY NATIONS CAN ONLY LEAD TO A WORLD-WIDE COMMITMENT TO AMITY AND CONCORD FOR IT WOULD NOT BE IN THE INTEREST OF NATIONS TO FIGHT WITH THEIR ECONOMIC BROTHERS.

ECONOMIC TIES ARE HEALTHY TIES. NATIONS WHICH TRADE TOGETHER MAY MORE EFFECTIVELY LIVE TOGETHER - WITHOUT HOSTILITIES.

I FORESEE THE GROWTH OF AN INTERNATIONALLY ADMINISTERED JUSTICE WHEREBY MEN WILL SEEK PEACEFUL RESOLUTIONS OF

DISPUTES THROUGH ESTABLISHED INTERNATIONAL TRIBUNALS - RATHER THAN RESORT TO ARMED CONFLICT. I SUBMIT THAT WHEN THE RULE OF LAW IS ACCEPTED AS THE GUARDIAN OF PRIVATE INVESTMENTS ABROAD - IT ALSO AND INEVITABLY WILL COME TO BE ACCEPTED AS THE ALTERNATIVE TO ARMED CONFLICT - AND WORLD PEACE WILL HAVE ARRIVED.

IT IS IN THIS DIRECTION THAT I FORESEE THE AMERICAN BAR ASSOCIATION TAKING A MORE ACTIVE ROLE - THAT IS - IN INVOLVING AMERICAN LAWYERS WITH OTHER ATTORNEYS FROM THROUGHOUT THE WORLD IN SEEKING ALWAYS TO PROMOTE LAW AS A TOOL OF SOLVING INTERNATIONAL PROBLEMS. BECAUSE THAT POSITION IS WIDELY ACCEPTED BY THE LEGAL PROFESSION OF THIS COUNTRY - I EASILY ENVISION AND PREDICT A RAPID EXPANSION OF THE ABA INTERNATIONAL LAW SECTION - A RAPID PROLIFERATION OF COMMITTEES THROUGHOUT THE ASSOCIATION DEALING WITH INTERNATIONAL LEGAL ASPECTS. AND IT WILL COME SOON.

I FORESEE THE AMERICAN BAR ASSOCIATION TAKING A MORE ACTIVE ROLE BEFORE OUR OWN CONGRESS FOR THE PASSAGE OF

LEGISLATION PROMOTING THE RULE OF LAW INTERNATIONALLY. I ALSO FEEL THAT THE ASSOCIATION HAS AN OBLIGATION TO THE PEOPLES OF THE WORLD TO SERVE THE CAUSE OF PEACE BY MORE ACTIVELY WORKING TO PROMOTE WORLD WIDE LEGAL BODIES AND THE PARTICIPATION OF OUR OWN COUNTRY THEREIN.

THE GROWTH OF AN INTERNATIONAL LEGAL ORDER WILL DEMAND THE CONCERTED ATTENTION OF LAWYERS EVERYWHERE. IT IS - I BELIEVE - THE UNIQUE TASK OF THE ATTORNEY TO PROMOTE LAW ON BOTH THE NATIONAL AND THE INTERNATIONAL LEVEL.

THERE IS A LONG ROAD TO TRAVEL TO ACHIEVE AN ACCORD AMONG THE CONFLICTING HUMAN WILLS - INTERESTS - AND FORCES OF THIS WORLD. BUT THE GOAL OF HARMONY AND PEACE THROUGHOUT THE WORLD SHOULD BE WELL WORTH OUR EFFORT. LAWYERS EVERYWHERE MUST BE ACTIVELY CONCERNED IN DEMONSTRATING THAT THE LAW THROUGH TRADE AND BUSINESS CAN BECOME THE TRUE UNIFYING FORCE WE HAVE SO LONG SOUGHT AMONG THE PEOPLE OF THE EARTH. NATIONS WHO TRADE TOGETHER STAY TOGETHER.

THANK YOU.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 79

VOLUME V

Note - Substantially editorial revisions (but not change of major substance) were made before actual delivery.
C.S.

ADDRESSOOF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: NATIONAL ASSOCIATION OF
COLLEGE AND UNIVERSITY
ATTORNEYS
BOSTON, MASSACHUSETTS

DATE: WEDNESDAY, JUNE 27, 1973
10:00 A.M.

TITLE:

TIME: 20 MINUTES

(PRELIMINARY REMARKS WITHOUT TEXT -- FIVE MINUTES)

It seems to me that college and university attorneys represent something of an anachronism. At a time when the legal profession is moving inexorably toward specialization, the general practitioner has been given a new birth in you -- the college counsel. Of course, I fully recognize that the duties and responsibilities of the college or university attorney differ from institution to institution -- and that in many of the larger institutions you, too, specialize. But in the main, you deal with the whole range of legal controversy. What heretofore was a part-time or additional

duty for not always the very best attorney has now become a full-time responsibility requiring special ability and proficiency.

Your problems certainly span the spectrum of the law -- daily you must deal with copyright -- criminal -- tax -- medical malpractice -- labor -- civil rights -- corporate -- and perhaps above all -- Constitutional law. The growing complexity of modern life, the disturbing financial crises in higher education, the burgeoning interest in faculty unionization, and recent court decisions -- particularly in the Constitutional area -- portend that your tasks will be even more demanding in the future.

As compared to the usual attorney-court relationship, it seems to me that yours is a special position. Who are your clients -- the governing board, the president, the faculty, the students, other administration officials, the state or other public bodies? Who are your adversaries -- students, faculty, government, the public -- perhaps even the alumni? Maybe your job description is hard to catalog, but I must say that an uninformed general practitioner would most likely be highly confused if you attempted to define your duties for him in twenty-five words or less. Colleges and universities have been traditionally, and are today, non-legal environments. Even the lowering of the age of

majority and the fruits of the student rights movements of the 60's have not substantially changed the unique atmosphere of the college or university community. The role of the practicing lawyer in such a community -- a community that uniquely is better educated, more socially aware, and somehow out of the mainstream of the "real world" -- is quite challenging and critical when compared to the role of the usual county-seat general practitioner. First, I have several personal but unrelated comments about your job, which are interesting only because you should be placed in a position to disabuse me of them. It strikes me that a legal person, such as you, in a non-legal environment,

has disproportionate power and a potential for abusive action. Second, the university attorney is a highly visible representation of the profession which you and I both chose and cherish. Your audience -- the university community -- most especially the students -- judge the legal profession in large measure by your actions. Third, I fear the establishment through the university attorney of legal maximums but moral minimums in what have traditionally been idealistic environments.

Today more than at any other period in our nation's history, the lawyer must examine his moral -- his professional -- bases. The so-called Watergate affair, and the

sordid events swirling around it, have inundated many lawyers and legally trained persons. It appears that influential representatives of the legal profession may have betrayed the trust and confidence placed in their hands. It seems to me that we must acknowledge that the legal profession, and even lawyer individuals, each have been tainted by this despicable affair. Certainly we have learned from these events that we collectively, as a profession, and each of us, as an individual, must be constantly on guard to preserve professional detachment and independence. Not only must we now fear our clients -- not only must we fiercely guard our independence -- not only must we fight to see that the law

is faithfully observed by all with whom we have contact -- we now see a new truth -- that is, that lawyers who step out of the sphere of advisors and into the arena as actors are no longer lawyers -- they are no longer objective counselors. It appears to me that you, the college lawyer, must be even more cognizant of the dangers of abrogating the role of counselor for that of initiator or unwitting tool of overzealous clients than most of your brothers at the bar. All lawyers must display reverence and respect for the law in a higher degree than our fellow citizens -- that is our obligation derived from the monopoly that society has granted to the legal profession. But because of your unique role in the

college -- a non-legal environment -- your role as college lawyer is more difficult than that of the average lawyer. You must, of course, represent your client -- whoever that client may be -- but the first allegiance of each and every lawyer is and must be to the law and to the spirit of the rule of law. The sad fact is that the actors in the Watergate affair unfortunately served, or attempted to serve, the partisan goals and ends of their superiors but not their own individual professional responsibilities. Somewhere along the line many of our colleagues apparently missed the boat -- they failed to understand that he who lives by the law must above all cherish the law -- and honor it by un-

swerving devotion to it.

There are many programs of the American Bar Association which I would like to discuss with you today, but at best I can only mention a few. I shall also comment on some recent court decisions involving the Association which may be of interest to you.

Some have said that the student movement, revolt, or rebellion characteristic of the sixties is dead. Some cite that the movement died from lack of direction. Others point out that the cessation of the war and the solution of many of the social ills have contributed to the current period of relative calm. Regardless, one fact was demonstrably

rammed home during the period of revolt. Students either lacked understanding of our legal system, did not trust it, or doubted its viability. Somewhere in the educational development of our youth, either in schools, in other institutions, or at home young people had failed to gain an appreciation for law and its necessity as a method to insure the proper functioning of our society.

For too long only those with a legal education possessed a clear understanding of law and our legal system. Crime amongst our youth was proportionately higher than in any other age group. The American Bar Association embarked two years ago on an ambitious program to fill this void in our

youth's education. The Association program for Youth Education for Citizenship is based upon the assumption that those deficiencies in citizenship education can be corrected by an interdisciplinary program in law-related citizenship education for elementary and secondary school students, and state and local bar associations throughout the nation are now extensively engaged with local educational authorities to develop such programs. The goal is to ensure that American young people are offered a vigorous and effective education in law, the legal process, and related matters throughout our elementary and secondary school systems. Such studies, it is hoped, will help students learn to understand

such concepts as citizenship, obligation, public authority, and freedom, justice and responsibility of all. Those students hopefully will develop an appreciation for the legal process; will develop an understanding as to how the legal system works; will develop what values are implied in its faithful operation and how those systems can be improved. The program is, as I said, ambitious, but is meeting with great success all across the country. It seems to me that through a massive program such as we now have under way, the students in your own colleges in the future may well be able to more effectively work with you in an orderly way for the solution of societal and college difficulties.

Another movement in the legal community which may be of prime interest to you is the proliferation throughout the nation of group legal service programs and prepaid legal insurance plans. The American Bar Association traditionally and I believe effectively has taken the lead in assuring the provision of legal services to the poor through legal aid and legal services programs -- in fact, the Association is now very active in supporting legislation in Congress to form a non-profit legal corporation for the delivery of legal services to the poor. But of equal importance to the nation -- and perhaps of greater importance -- to the individually-practicing lawyer -- the Association has been

in recent years very determined to make legal services available also to that eighty per cent of our population that falls in the "middle income" group, and who do not normally utilize a lawyer, even though they have legal needs. It is my own personal judgment that this group has probably more than any other been deprived of adequate legal services because of the real but sometimes imagined disproportionate expense of legal advice. Group legal plans, particularly as used by identifiable groups such as unions, have been devised to at least partially solve the problem by pre-budgeting for legal needs and by actuarially sharing the cost of a legal catastrophy. The American

Bar Association, in conjunction with The Ford Foundation and the Shreveport, Louisiana Bar Association, sponsored an experimental prepaid legal service plan for members of a laborer's local union in Shreveport. Through this plan a sum was deducted from each employee's pay to cover the costs of needed legal services by the members, and when covered legal needs arose for the union member, he could secure legal services paid for by the plan from any member of the local bar. The experiment was designed to test both the need and to arrive at the best methods to deliver this service. The experiment has been highly successful, and I am pleased that many other groups are setting up similar

programs throughout the nation. This Congress almost certainly will enact an amendment to the Taft-Hartley Act authorizing employer contributions to legal services plans as a matter of compulsory bargaining in labor negotiations. Group prepaid legal plans are with us, and their impact will measurably increase during this year.

Prepaid legal insurance also is with us, and I am personally convinced that within the next few years it will have an impact upon the legal profession substantially the same as Blue Cross-Blue Shield had upon the medical profession. Some non-profit companies organized by state and local bars -- and some commercial insurance companies --

are already experimenting with such policies, and the number is rapidly increasing. It seems that for you -- the college and university attorneys -- this may be a field where you could take affirmative action for your faculty or other college groups. With the advent of the 18-year-old majority laws, most college students are now legal adults, and they now must face the legal music for any unlawful actions or for the resolution of their civil disputes. Students, away from their own communities and their own families, are usually without the resources or ties with which adequately to secure and retain legal advice for their many problems with law enforcement agencies, local landlords, and mer-

chants, and a prepaid or group legal plan for students alone may satisfy a need which has long been overlooked, and a need which must be met before you as college or university attorneys can feel that justice is available on the campus. The idea certainly is not unique in light of medical insurance plans blanketly offered at most colleges and universities, and I have been advised that such plans in the legal services area are under way in several college or university student groups already. Perhaps you should look further into the whole area.

A recent program initiated by the Association which will be one of my major concerns during the coming year is an

action program designed to meet the legal needs of the mentally disabled and to improve the institutions where they are confined. It is reliably estimated that over half of those forcibly institutionalized in our country, either criminally or otherwise, are for mental difficulties. Certainly it is a problem of incredible proportions, though quite often spoken of only in hushed terms. An ABA interdisciplinary commission will study present facilities and laws in light of the voluminous research already done in the area, but in the end it will be an action commission to improve conditions as they are at the local, state and federal levels.

A matter of current concern to the Association which may eventually affect you as the legal representatives of universities and colleges involves the whole question of accreditation. The ABA as one of its most significant public service responsibilities has established Standards for Legal Education and inspects and approves law schools. The American Bar Association is recognized as the official accrediting agency for law schools by the Office of Higher Education.

Consistant with the accrediting standards of many other agencies, the Standards for Legal Education do not permit the accreditation of proprietary schools. Several

years ago, the Association filed an amicus brief in the Court of Appeals for the District of Columbia in the Marjorie Webster Case in support of disallowing the accreditation of commercial enterprises. The court upheld this principle. At its Midyear Meeting in February of this year, the ABA adopted a revised set of Standards for Legal Education. Continuing the prior position, the ABA will still not approve a law school unless it is a non-profit educational institution, not run for private profit.

Colorado is one of the many states which by rule requires as a prerequisite to taking the bar exam a person show proof of graduating from an ABA approved law school.

This month U. S. District Court Chief Judge Arraj rendered a decision which I suggest may have far-reaching significance to you in the educational business. Frank Joseph Rossiter, a recent graduate of Western State University Law School of Anaheim, California -- a proprietary law school, not approved by the ABA -- applied for admission to take the Colorado bar exam. Relying on Rule 202 of the Colorado Rules of Civil Procedure, his application was refused simply because he was not graduated from an ABA approved law school. Rossiter sued, alleging, among other things, that since Western State University had never applied to the ABA for accreditation, he was denied

due process by not being able to show that his school met the ABA standards. The judge ruled that a law school graduate must have the opportunity of demonstrating that the law school from which he graduated meets the ABA standards. The case will be appealed. Even if the appeal fails, it is unclear how the intent of the court can be implemented. It is generally agreed that an accreditation inspection and evaluation would be impossible without the cooperation of the school involved. Whether the logic of the court's opinion would compel a school to submit to accreditation procedures remains to be seen, as does any possible application of the holding in other than bar

admission contexts.

The American Bar Association is uncompromising in its position that legal education should be available to all qualified individuals without regard to race or ethnic background. Beyond this, the Association has shared in affirmative action to recruit members of minority groups for law schools and to provide them with educational and financial support. In partnership with the Association of American Law Schools, the Law School Admissions Council, and the National Bar Association, the ABA established and continues to support the Council on Legal Education Opportunity which has responsibility for this program. Of

interest to you may be the recent decision of the Supreme Court of the State of Washington in DeFunis v. Odegaard. That Court, in essence, upheld the propriety of granting preferential admissions treatment to the University of Washington Law School to minority group applicants. The ABA had urged this result in an amicus brief.

Of course, the many subjects I have touched on are not exhaustive but neither are your interests nor those of the Association. Certainly as an interested lawyer I do know that you will be concerned during the coming months with the growing controversy over non-resident tuition and admission practices, but I have neither the

solution nor suggestion to make to you in those areas.

It is also clear that the growing interest in faculty unionization will involve you more and more in collective bargaining and labor-type negotiations, but I cannot help there either. I do suggest that collective bargaining may in the last resort be the very antithesis of professionalism and that those who seek it may ultimately not want it. Marked gradations in ability and expertise are the hallmarks of any viable profession, just like ours of the law. My own experiences lead me to believe that law professors and other faculty members are selling themselves short in moving for scholastic egalitarianism. But regardless of the outcome,

one thing is certain. You -- as college and university attorneys -- like all lawyers, are facing challenges of unparalleled proportions.

It is a time such as this in our nation's history that the best in our profession should dedicate themselves to serving the goals of the legal community -- to serve all our citizens and to do so in the finest tradition of what is the most honored of professions.

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SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 80

VOLUME V

REMARKS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: NATIONAL COLLEGE OF THE STATE JUDICIARY

TITLE: "REMARKS TO JUDGES"

DATE OF DELIVERY: THURSDAY, JULY 19, 1973

LENGTH: TWENTY MINUTES

THE GENERAL PUBLIC HAS NEITHER KNOWLEDGE NOR INTEREST IN COURTS OR JUDGES OR EVEN THE JUSTICE SYSTEM. THE AVERAGE MAN OR WOMAN IS CONCERNED ONLY WHEN HE OR SHE IS AFFECTED PERSONALLY AND DIRECTLY AS A LITIGANT - WITNESS OR JUROR. HIS INTEREST THEN IS SPECIFIC - NEVER GENERAL. HE - IN THE MAIN - IS ALWAYS CONTENT TO LEAVE THE COURTS AS HE FOUND THEM. HOWEVER DISSATISFYING HIS EXPERIENCE - HE NEVER IS MOVED TO CORRECT THE DEFICIENCIES HE ENCOUNTERED. SINCE I HAVE BEEN SERVING AS PRESIDENT-ELECT OF THE AMERICAN BAR ASSOCIATION - I REPEATEDLY HAVE HEARD COMPLAINTS FROM LITIGANTS ABOUT THE

DIFFICULTIES THEY ENCOUNTERED WHEN SEEKING JUDICIAL RELIEF. THEY HAD NOT LOST FAITH IN OUR COURTS - BUT THEY ALMOST UNIFORMLY SEEMED TO BELIEVE THAT IMPROVEMENTS COULD AND SHOULD BE MADE.

SINCE LAW IS MADE FOR THE PEOPLE - NOT PEOPLE FOR THE LAW - IT IS PROPER BRIEFLY TO CONSIDER SOME OF THOSE COMPLAINTS.

THEY SAID - FIRST - THAT LITIGATION IS TOO EXPENSIVE. THAT IS TRUE. WE MUST BE EVER MINDFUL THAT A HIGH COST OF JUSTICE WILL ACTUALLY PREVENT PROPER USE BY OUR CITIZENS OF THE FACILITIES PROVIDED FOR DISPENSING JUSTICE. THIS IS ESPECIALLY TRUE FOR CITIZENS OF AVERAGE MEANS WHO WEIGH THE COST AGAINST THE RESULTS AND THEN DETERMINE THE GAME IS HARDLY WORTH THE CANDLE. WE CANNOT AND MUST NOT RESERVE OUR FORUMS OF JUSTICE FOR ONLY THE VERY RICH OR THE VERY POOR.

A SECOND COMPLAINT IS THAT LITIGATION TAKES TOO LONG. THERE IS - FOR MULTIPLE REASONS WELL KNOWN TO ALL

OF US - NO EASY CURE FOR THIS VEXATIOUS PROBLEM. THE CASE LOAD - I AM SURE - WILL CONTINUE TO EXPAND IN THE FUTURE IN ALMOST GEOMETRICALLY INCREASING PROPORTIONS.

BECAUSE THERE IS LITTLE IF ANY RELIEF NOW IN SIGHT - AND BECAUSE THOSE CITIZEN COMPLAINTS - AND OTHERS - ARE FAIR - PROPER - AND WELL GROUNDED - IT SEEMS IMPERATIVE TO ME THAT JUDGES - LAWYERS AND LAY CITIZENS SEEK WAYS TO IMPROVE OUR EXISTING JUSTICE SYSTEM.

CARVED IN STONE ABOVE THE ENTRANCE TO THE AMERICAN BAR CENTER ARE WORDS WHICH SET FORTH WHAT I BELIEVE TO BE THE ABA'S MOST IMPORTANT OBJECTIVE: "TO PROMOTE THE ADMINISTRATION OF JUSTICE." IF EVER THERE WAS A TIME WHEN THE ASSOCIATION SHOULD REDOUBLE ITS EFFORTS IN THAT PARTICULAR AREA - THE TIME IS NOW. THE DEEP-SEATED ILLS OF OUR SOCIETY - HAVE RESULTED IN PART FROM THE MASS MIGRATION OF WORKERS AND THEIR FAMILIES FROM RURAL AREAS TO THE CITIES - SPAWNING CONGESTION AND ATTENDANT PRESSURES IN URBAN AREAS;

FROM THE BREAKDOWN OF SOCIAL STRUCTURES AND VALUES; FROM THE AWAKENING AWARENESS OF INJUSTICES TO DISADVANTAGED MEMBERS OF OUR SOCIETY - AS WELL AS FROM MULTIPLE OTHER FACTORS WHICH WERE NOT PRESENT ONLY A FEW SHORT YEARS AGO - ALL HAVE CONTRIBUTED TO OVERWHELMING THE COURTS WITH BURDENS UNKNOWN TO THE JUDGES AND LAWYERS WHO PRECEDED US. IT IS AN IRREFUTABLE TRUTH THAT THESE PROBLEMS ARE FAR TOO COMPLEX TO BE SOLVED BY THE ENDEAVORS OF EITHER JUDGES OR LAWYERS WORKING ALONE. THE ISSUES RAISED CALL FOR EXTRA-ORDINARY EFFORTS ON THE PART OF EVERY BRANCH OF THE LEGAL PROFESSION - WORKING TOGETHER - TO SOLVE THE PROBLEMS OF BRINGING OUR LAW AND COURTS IN LINE WITH THE NEEDS OF THE TIMES. EVEN THEN - IT MAY NOT BE ENOUGH. IF WE ARE TO SECURE THE JUSTICE SYSTEM TO WHICH WE ALL ASPIRE - WE MUST IN SOMEWAY SECURE THE INTEREST - THE HELP - AND THE SUPPORT OF ALL OF OUR PEOPLE.

RECOGNIZING THAT JUDGES AND PRACTICING LAWYERS MUST BE UNITED IN THEIR GOAL - AND ACKNOWLEDGING THE FACT

THAT THE AMERICAN BAR ASSOCIATION - AS THE NATIONAL VOICE OF THE LEGAL PROFESSION - HAD BEEN PARTICULARLY LACKING IN REPRESENTATION FROM THE JUDICIARY - ON A CONTINUING BASIS - AT ITS TOP MANAGEMENT LEVELS - THE HOUSE OF DELEGATES CREATED - IN JULY OF 1971 - A SPECIAL COMMITTEE ON EFFECTIVE JUDICIAL REPRESENTATION IN THE ASSOCIATION - UNDER THE CHAIRMANSHIP OF JUSTICE WILLIAM M. McALLISTER OF THE SUPREME COURT OF OREGON. THE COMMITTEE'S PRIMARY MISSION WAS TO EXPLORE MORE EFFECTIVE WAYS TO COMBINE WITHIN A CAREFULLY ASSEMBLED ASSOCIATION TEAM - THE MANY JUDGES - LAWYERS - LAW PROFESSORS AND LAYMEN WHO ARE WORKING TO IMPROVE THE ADMINISTRATION OF JUSTICE. THE COMMITTEE DID ITS JOB WELL - AND I BELIEVE THAT THE CHANGES RECOMMENDED BY THE COMMITTEE - AND THEREAFTER ADOPTED AS AMENDMENTS TO THE ASSOCIATION'S CONSTITUTION AND BY-LAWS SHOULD GREATLY ENHANCE THE ASSOCIATION'S EFFECTIVENESS AS THE LEADING VOICE IN THE NATION FOR JUDICIAL IMPROVEMENTS. THOSE CONSTITUTION AND BY-LAW AMENDMENTS - WHICH HAVE NOW BEEN FULLY

IMPLEMENTED - AUTHORIZED THE CREATION OF A JUDICIAL ADMINISTRATION DIVISION IN PLACE OF THE OLD ABA SECTION OF JUDICIAL ADMINISTRATION; A NEW CATEGORY OF "JUDICIAL ASSOCIATE" FOR NON-LAWYER JUDGES - AND CERTAIN OTHER PERSONS WORKING IN THE FIELD OF JUDICIAL ADMINISTRATION; CONTINUED REPRESENTATION IN THE HOUSE OF DELEGATES FOR THE DIVISION - AND ADDITIONAL REPRESENTATION FOR THE APPELLATE JUDGES' CONFERENCE - THE NATIONAL CONFERENCE OF STATE TRIAL JUDGES AND THE NATIONAL CONFERENCE OF SPECIAL COURT JUDGES; AND A NEW MEMBER-AT-LARGE POSITION ON THE BOARD OF GOVERNORS FOR AN ACTIVE MEMBER OF THE JUDICIARY.

ALTHOUGH NO ACCURATE FIGURES EXIST - IT IS ESTIMATED THAT BETWEEN 15,000 AND 25,000 JUDGES THROUGHOUT THE NATION SIT ON COURTS OF LIMITED OR SPECIAL JURISDICTION. EVEN TODAY - MANY - IF NOT MOST - OF THE JUDGES OF THOSE COURTS ARE NON-LAWYERS - AND THEREFORE - THEY ARE INELIGIBLE FOR ASSOCIATION MEMBERSHIP IN THE SAME MANNER AS ARE THE LAWYER JUDGES. THIS IS SO EVEN THOUGH THEIR JUDICIAL RESPONSIBILITIES

ARE IDENTICAL TO THOSE OF THE LAWYER JUDGES AND THEIR PARTICIPATION IN JUDICIAL IMPROVEMENT EQUALLY VITAL. AS A RESULT OF THE CONSTITUTIONAL CHANGE MENTIONED ABOVE - THESE THOUSANDS OF NON-LAWYER JUDGES MAY NOW PARTICIPATE IN AMERICAN BAR ASSOCIATION ACTIVITIES AS "JUDICIAL ASSOCIATES". I PERSONALLY - FOR MANY REASONS - WELCOME THEIR ASSISTANCE AS ASSOCIATE MEMBERS OF THE AMERICAN BAR ASSOCIATION IN FACING UP TO OUR PRESENT DIFFICULT TASK - NOT THE LEAST OF WHICH IS THE FACT THAT THESE JUDGES ARE THE JUDGES WHO MOST OFTEN COME INTO DAILY CONTACT WITH THE GREATEST NUMBER OF OUR CITIZENS. IMPROVEMENT IN THE QUALITY - JUDICIAL EDUCATION - AND JUDICIAL QUALIFICATIONS OF THOSE NON-LAWYER JUDGES WILL THUS PLAY IN THE FUTURE A KEY ROLE - IT SEEMS TO ME - IN MOLDING THE PUBLIC IMAGE OF OUR JUSTICE SYSTEM AS A WHOLE.

NON-LAWYER COURT ADMINISTRATORS AND FEDERAL CIRCUIT EXECUTIVES ARE ALSO ELIGIBLE TO JOIN THE AMERICAN BAR ASSOCIATION AS JUDICIAL ASSOCIATES. MANY OF THESE

INDIVIDUALS HAVE OBTAINED A HIGH LEVEL OF PROFESSIONAL STANDING AND ARE RECOGNIZED EXPERTS WITHIN THEIR RESPECTIVE FIELDS. THEY HAVE A DEEP INTEREST IN IMPROVING THE ADMINISTRATION OF JUSTICE AND THEY TOO CAN MAKE VALUABLE CONTRIBUTIONS TO THE ASSOCIATION'S EFFORTS IN THIS DIRECTION.

THE HOUSE OF DELEGATES IS - OF COURSE - THE POLICY-MAKING BODY WHICH CONTROLS THE AFFAIRS OF THE ASSOCIATION. PRIOR TO THE PASSAGE OF THE RECENT CONSTITUTIONAL AND BY-LAW AMENDMENTS - THERE WERE ONLY TWO DELEGATES IN THE HOUSE REPRESENTING JUDICIALLY-ORIENTED ORGANIZATIONS: ONE FROM THE ABA SECTION OF JUDICIAL ADMINISTRATION - AND THE OTHER - FROM THE CONFERENCE OF CHIEF JUSTICES. WHILE - AS I STATED - THE SECTION'S DELEGATE IN THE HOUSE WAS MERELY TRANSFERRED TO THE DIVISION - AND THE CONFERENCE OF CHIEF JUSTICES CONTINUES TO HAVE A MEMBER OF THE HOUSE - THREE ADDITIONAL DELEGATES IN

THE HOUSE WERE ACCORDED TO THE THREE OLDEST AND LARGEST ABA JUDICIAL CONFERENCES. CLEARLY THIS CHANGE WILL PROVIDE NEW AND IMPORTANT VOICES FOR EACH MAJOR LEVEL OF THE JUDICIARY IN THE DELIBERATIONS OF THE HOUSE OF DELEGATES. JUDGES THUS WILL BE ABLE TO TAKE A MORE ACTIVE ROLE IN THE DETERMINATION OF ASSOCIATION POLICY. THEIR POSITIONS WITHIN THE ASSOCIATION THUS ENHANCED - IT IS EQUALLY CLEAR THAT THE JUDICIAL CONFERENCES WILL BECOME LARGER AND MORE EFFECTIVE ENTITIES ON THE JUDICIAL ADMINISTRATION TEAM - AND THOSE MORE RESPONSIVE TO THE DESIRES OF THEIR MEMBERS.

AS THE ADMINISTRATIVE AGENCY OF THE HOUSE OF DELEGATES - THE BOARD OF GOVERNORS IS CHARGED - AMONG OTHER DUTIES - WITH TRANSMITTING THE REPORTS OF DIVISIONS - SECTIONS AND COMMITTEES TO THE HOUSE - ALONG WITH ANY COMMENTS OR RECOMMENDATIONS THE BOARD MAY HAVE. THESE COMMENTS AND RECOMMENDATIONS ORDINARILY EXERT SUBSTANTIAL INFLUENCE UPON THE ULTIMATE DECISIONS OF THE HOUSE. I POINT THIS OUT TO SHOW THAT THE PLACING OF AN

ACTIVE MEMBER OF THE JUDICIARY ON THE BOARD OF GOVERNORS GIVES JUDGES A DIRECT AND CONTINUOUS VOICE ON THE BOARD - A SITUATION WHICH IS UN-PARALLELED IN ANY OTHER PART OF THE LEGAL PROFESSION. CERTAINLY I BELIEVE THAT THE ASSOCIATION HAS SIGNIFICANTLY IMPROVED THE RESPONSIVENESS OF ITS DECISION-MAKING APPARATUS IN THE DIFFICULT BUT CRUCIAL AREAS OF JUDICIAL ADMINISTRATION AND COURT IMPROVEMENT.

WHILE IMPORTANT - THAT IS NOT AN END IN ITSELF. I STRONGLY BELIEVE THAT THE PRACTICING BAR AND THE INDIVIDUAL MEMBERS THEREOF MUST EFFECTIVELY AND RAPIDLY JOIN HANDS WITH THE JUDICIARY COLLECTIVELY TO HELP OUR COURT SYSTEMS KEEP PACE WITH THE CHANGES IN OUR SOCIETY AND THE NEEDS OF OUR CITIZENS. LAWYERS AND JUDGES - THE ORGANIZED BAR - MUST HENCEFORTH TAKE AN EVEN MORE POSITIVE AND INTENSIFIED POSTURE IN SUPPORT OF THE JUSTICE SYSTEM BEFORE LEGISLATIVE BODIES THAN HAS BEEN DONE IN THE PAST. THE AMERICAN BAR ASSOCIATION AND THE STATE AND

LOCAL BAR ASSOCIATIONS MUST EACH GO TO BAT FOR GREATER APPROPRIATIONS FOR CONTINUING EDUCATION PROGRAMS FOR JUDGES; FOR MODERN COURT FACILITIES; FOR THE INCREASED USE OF LAW CLERKS; FOR STRENGTHENING COURT SUPPORT AGENCIES SUCH AS PROBATION AND PAROLE OFFICES - AS WELL AS FOR MULTIPLE OTHER WELL-RECOGNIZED MEASURES DESIGNED TO FILL THE LONG-NEGLECTED NEEDS OF OUR COURTS. ABOVE ALL - I EARNESTLY SUBMIT ONE OF THE PARAMOUNT LEGISLATIVE ACTIVITIES OF THE ORGANIZED BAR SHOULD BE AN ALL OUT EFFORT TO SECURE MORE ADEQUATE SALARIES FOR JUDGES. IN MOST AREAS OF OUR NATION - JUDICIAL SALARIES SHOULD BE AT LEAST DOUBLED. IN MY PERSONAL OPINION - THE SALARY FOR A JUDGE SHOULD BE SET AT THAT MINIMUM NET COMPENSATION HE COULD EARN IF HE WERE ENGAGED IN THE PRIVATE PRACTICE OF LAW.

I ACKNOWLEDGE THAT THE AFFIRMATIVE TYPE OF PROGRAMS THAT I SUGGEST - INVOLVING THE ABOVE ACTIVITIES AS EMPLIFIED AND CLARIFIED WILL REQUIRE CONCERTED ORGANIZED EFFORTS BY THE STATE AND LOCAL BAR ASSOCIATIONS - AND I PROPOSE TO CALL

FOR THEIR ALL-OUT SUPPORT. IT WILL BE MY STEADFAST PURPOSE TO SEE THAT THE AMERICAN BAR ASSOCIATION ENGAGE IN SIMILAR PROGRAMS BEFORE THE CONGRESS IN THOSE AREAS NOT WITHIN THE SCOPE OF STATE ACTION.

IT HAS ALWAYS BEEN FASHIONABLE IN THE UNITED STATES TO ATTACK JUDGES AND LAWYERS - BLAMING THEM FOR THE FAILURE OF THE COMMUNITY AS A WHOLE TO COPE ADEQUATELY WITH PROBLEMS OF THE DAY. FOR EXAMPLE - THERE HAVE BEEN SUCH STORM CLOUDS OVER THE UNITED STATES SUPREME COURT SINCE THE BEGINNING OF OUR REPUBLIC. SUCH CRITICISM IS TO BE EXPECTED - AND INDEED SOME OF IT IS HEALTHY. TODAY - MUCH OF THE CRITICAL COMMENT IS SHIFTING TO OUR TRIAL COURTS. MORE PUBLIC AND MEDIA COMPLAINTS ARE BEING DIRECTED AT THE TRIAL JUDGE - WHOSE DECISIONS ARE GIVEN ALONE WITHOUT COLLEAGUES TO SHARE THE RESPONSIBILITY AND SADLY - QUITE OFTEN WITHOUT THE DEFENDERS WITHIN THE BAR TO EXPLAIN THEM TO THOSE WHO DO NOT COMPREHEND. THAT CRITICISM IS QUITE OFTEN FAR MORE INVIDIOUS THAN EVER

BEFORE - SINCE IT NOW MOST OFTEN GOES TO AN INDIVIDUAL JUDGE RATHER THAN AN APPELLATE PANEL - AND TO THE METHODS AND INTEGRITY OF THEIR INDIVIDUAL JUDGING - PARTICULARLY IN CRIMINAL CASES.

IT IS OBVIOUS THAT A SINGLE JUDGE IS ILL-EQUIPPED TO COUNTER THIS TYPE OF NEWS ITEM - TO REPULSE THE ATTACK OF A POWERFUL OFFICIAL OR POLITICIAN- MANY OF WHOM APPEAR TO BE QUITE WILLING TO DISSEMINATE FALSE OR MISLEADING STATEMENTS - AND WE ALL KNOW THAT THOSE STATEMENTS - IF THEY GO UNANSWERED - WILL MOST LIKELY BE ACCEPTED BY THE PUBLIC AS FACTUAL AND CORRECT. THE UNDERLYING CAUSE OF THIS SEEMING LACK OF COMMUNICATION AND MISUNDERSTANDING BETWEEN THE JUDICIARY AND THE PUBLIC CANNOT IN WHOLE BE IMPARTED TO THE NEWS MEDIA.

UNFORTUNATELY - WE WHO ARE LAWYERS AND JUDGES HAVE TO ACKNOWLEDGE THAT THE ORGANIZED BAR - OUR OWN ORGANIZATION - MUST ASSUME A GREAT DEAL OF THE RESPONSIBILITY FOR THE CURRENT SPATE OF UNJUST AND OFTEN UNREFUTED CRITICISM OF OUR JUDICIAL PROCESS.

THE AMERICAN BAR ASSOCIATION CODE OF PROFESSIONAL RESPONSIBILITY

UNEQUIVOCALLY PLACES THE BURDEN OF RESPONSIBILITY UPON THE ORGANIZED BAR TO COME TO THE DEFENSE OF THE JUDICIARY IN TIMES OF UNJUST AND UNWARRANTED ATTACK. IN MANY CASES WE HAVE NOT DONE SO - AND A COURAGEOUS JUDGE HAS HAD TO STAND ALONE. ETHICAL CONSIDERATION 8-6 IN THE CODE READS IN PART AS FOLLOWS:

> "ADJUDICATORY OFFICIALS - NOT BEING WHOLLY FREE TO DEFEND THEMSELVES - ARE ENTITLED TO THE SUPPORT OF THE BAR AGAINST UNJUST CRITICISM."

CERTAINLY IT IS NOT FOR THE JUDGE TO TARNISH HIMSELF AND HIS OFFICE BY ENTERING INTO A SPIRITED PUBLIC DEFENSE OF HIS ACTIONS. THAT RESPONSIBILITY LIES WITH THE BAR; AND IN MANY - IF NOT MOST LOCALITIES - THE BAR HAS NOT ALWAYS LIVED UP TO THAT RESPONSIBILITY. IT IS FOR THAT REASON THAT I LONG AGO CONCLUDED THAT ONE OF MY MAJOR PROJECTS AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION WILL BE THE ESTABLISHMENT OF

AN EFFORT IN THIS AREA. I INTEND TO RECOMMEND THAT THE AMERICAN BAR ASSOCIATION ESTABLISH FORMALIZED MACHINERY FOR THE IMMEDIATE EDUCATION OF THE PRESS AND THE PUBLIC CONCERNING JUDICIAL DECISIONS. I WILL ALSO SUGGEST THE FORMATION OF AN OFFICIAL ENTITY OF THE AMERICAN BAR ASSOCIATION TO SCREEN PUBLIC CRITICISM OF SPECIFIC COURTS OR JUDGES AND OF THE JUDICIAL PROCESS GENERALLY AND TO COUNTER INCORRECT STATEMENTS WITH THE TRUE FACTS - TO CHALLENGE UNWARRANTED CRITICISM WITH CONVINCING COUNTER ARGUMENTS. SINCE THERE IS NO PRESENT MACHINERY IN THE ASSOCIATION WHICH CAN MOVE FAST ENOUGH EFFECTIVELY TO HANDLE THIS TYPE OF SITUATION - I INTEND TO PROPOSE TO THE ASSOCIATION BOARD OF GOVERNORS THE ESTABLISHMENT OF AN AUTONOMOUS AND INDEPENDENT "JUDICIAL TRUTH SQUAD" - EMPOWERED TO ACT PROMPTLY - AT THE NATIONAL - AND PERHAPS AT THE REGIONAL LEVEL - AS AN IMMEDIATE SPOKESMAN FOR THE ASSOCIATION WITHOUT GOING THROUGH THE NORMAL ASSOCIATION CHANNELS - IN REPLYING TO UNWARRANTED AND UNJUSTIFIED CRITICISM OF THE TYPE I HAVE OUTLINED. I ALSO SHALL URGE THE VARIOUS STATE AND LOCAL BAR ASSOCIATIONS

TO DEVELOP SIMILAR PROGRAMS IN THEIR RESPECTIVE JURISDICTIONS.

SIGNIFICANTLY - THE NEWS MEDIA IS ALSO AWAKENING TO ITS RESPONSIBILITY IN THIS AREA. JUST RECENTLY - THE NATIONAL NEWS COUNCIL WAS ESTABLISHED THROUGH EFFORTS OF THE TWENTIETH CENTURY FUND AND OTHER FOUNDATIONS. CHAIRED BY FORMER CHIEF JUSTICE ROGER J. TRAYNOR OF CALIFORNIA - THE COUNCIL WILL ASSUME AN OMBUDSMAN ROLE IN REALTION TO NATIONAL NEWS SUPPLIERS. IT WILL MONITOR THE FAIRNESS AND ACCURACY OF NEWS REPORTING AND INVESTIGATE COMPLAINTS FROM BOTH THE PUBLIC AND THE NEWS MEDIA. THE COUNCIL IS AN INNOVATIVE AND TIMELY IDEA. IT MAY WELL ELIMINATE IN THE FUTURE MANY OF THE PAST BAD PRACTICES OF THE MEDIA IN REPORTING COURT PROCEEDINGS.

THERE IS - OF COURSE - A RECIPROCAL OBLIGATION OF BAR ASSOCIATIONS TO CRITICIZE A COURT OR JUDGE WHERE CRITICISM IS DESERVED - AND ALTHOUGH PROCEDURES WILL DIFFER - TO DO SO

JUST AS ASSIDUOUSLY AND FEARLESSLY AS WHEN THEY ARE SHIELDING A COURT OR JUDGE FROM UNWARRANTED CRITICISM. WE MUST NOT LOSE SIGHT OF THE FACT THAT THE JUDICIAL IMAGE IS CREATED IN THE CONDUCT OF THE COURT'S BUSINESS BY EACH TRIAL JUDGE - DAY IN AND DAY OUT - OFTEN IN MATTERS THAT MAY SEEM TRIVIAL AND ROUTINE. THE TRIAL JUDGE WHO TREATS ALL WHO COME INTO HIS COURTROOM WITH COURTESY - UNDERSTANDING AND STRICT IMPARTIALITY - WHO DEVOTES HIS CONCENTRATED ATTENTION TO THE PROCEEDING BEFORE HIM - AND WHO ACTS WITH DECORUM AND AN EVEN JUDICIAL TEMPERMENT - NOT ONLY ENGENDERS RESPECT FOR HIMSELF BUT ALSO ELEVATES THE IMAGE OF JUSTICE GENERALLY. A TRIAL JUDGE MUST CONTINUALLY REMIND HIMSELF THAT TO THE PERSONS THAT PASS THROUGH HIS COURT AS LITIGANTS - WITNESSES - JURORS OR MERE SPECTATORS - HE -

THE JUDGE - IS THE ONE WHO PRIMARILY DETERMINES THEIR VIEW OF OUR JUSTICE SYSTEM - NOT SO MUCH BY THE SUBSTANCE OF HIS DECISION - AS BY THE MANNER IN WHICH HE CONDUCTS HIS COURTROOM AND PRESENTS HIS CONCLUSIONS.

THE ABA STANDARDS RELATING TO THE FUNCTION OF THE TRIAL JUDGE ARE AN EXCELLENT SET OF GUIDELINES FOR EVERY JUDGE OF A TRIAL COURT - WHETHER OF GENERAL - LIMITED OR SPECIAL JURISDICTION. THESE STANDARDS WERE PREPARED BY AN ABA COMMITTEE CHAIRED BY JUDGE FRANK MURRAY. IF APPLIED WITH THE REQUIRED DISCRETION AND COMMON SENSE - THEY SHOULD GO FAR TOWARD IMPROVING THE PRESTIGE OF THE TRIAL JUDICIARY AND INSURING THE ORDERLY AND DIGNIFIED JUDICIAL PROCEEDING CONTEMPLATED UNDER OUR DEMOCRATIC PROCESS. IT IS OF COURSE VERY PLAIN THAT MEMBERS OF THE TRIAL BAR CAN GIVE INVALUABLE ASSISTANCE TO THE TRIAL JUDGE IN THIS CONNECTION BY ENSURING STRICT PERSONAL ADHERENCE TO THE CODE OF PROFESSIONAL RESPONSIBILITY.

WHILE ALL OF THE ABA CRIMINAL JUSTICE STANDARDS HAVE

NOW FINALLY BEEN PROMULGATED - THE ASSOCIATION WILL CONTINUOUSLY MONITOR THEM FOR NEEDED REVISION OR IMPROVEMENT. THE CRIMINAL LAW SECTION - WITH THE HELP OF THE JUDICIAL ADMINISTRATION DIVISION - HAS AN INTENSIVE IMPLEMENTATION PROGRAM UNDERWAY - AND I URGE THAT EACH OF YOU ASSIST - IN EVERY WAY YOU CAN - IN SECURING THE ADOPTION OF THESE STANDARDS IN YOUR HOME STATES.

THE CODE OF JUDICIAL CONDUCT APPROVED BY THE HOUSE OF DELEGATES DURING THE ANNUAL MEETING LAST YEAR - PROVIDES ETHICAL GUIDELINES WHICH SHOULD GO FAR IN INCREASING PUBLIC CONFIDENCE IN THE JUDICIARY. I CANNOT OVEREMPHASIZE THE IMPORTANCE OF THIS CONFIDENCE - FOR THE JUDICIARY AS AN INSTITUTION SIMPLY CANNOT FUNCTION PROPERLY WITHOUT THE SUPPORT OF THE PEOPLE. THE CODE HAS ALREADY BEEN ADOPTED - WITH SOME REVISIONS - BY THE JUDICIAL CONFERENCE OF THE UNITED STATES - THE DISTRICT OF COLUMBIA - COLORADO - MASSACHUSETTS - NEBRASKA - NEW HAMPSHIRE AND WEST VIRGINIA. IT IS NOW THE NATIONWIDE STANDARD FOR ETHICAL RESPONSIBILITIES OF SITTING JUDGES - AND

IT SEEMS QUITE CLEAR TO ME FROM THE EFFORTS NOW UNDERWAY THAT IT WILL BE ADOPTED BY ALMOST ALL STATES IN THE NATION BEFORE THE END OF 1974.

I AM ADVISED THAT YOUR CURRICULUM HERE AT THE COLLEGE INCLUDES A COURSE ON COURTS AND THE COMMUNITY - THE GOAL OF WHICH IS TO MAKE JUDGES AWARE OF THE OPPORTUNITIES THEY HAVE TO INFLUENCE THE WAY PEOPLE FEEL AND THINK ABOUT OUR JUDICIAL SYSTEM. I UNDERSTAND THAT THE TEXTBOOK WHICH YOU WILL BE USING IN THIS COURSE IS THE WONDERFUL ONE PREPARED BY JUDGE FRETZ. I HAVE A COPY ON MY DESK ALSO AND COMMEND IT TO YOU FOR YOUR CAREFUL READING. ALL OF US WELL KNOW THAT THIS IS A SUBJECT WHICH NEEDS MORE ATTENTION BY EVERY ONE OF US - AND I WAS MOST PLEASED TO LEARN OF THE EMPHASIS GIVEN TO IT BY THIS COLLEGE.

AMONG THE MOST IMPORTANT ON-GOING PROJECTS OF THE AMERICAN BAR ASSOCIATION IS THE WORK OF THE ABA COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION IN UP-DATING THE "VANDERBILT-PARKER" GUIDELINES ON JUDICIAL ADMINISTRATION - AS THEY WERE

APPROVED BY THE HOUSE OF DELEGATES IN 1938. THE COMMISSION HAS RECENTLY ISSUED A TENTATIVE DRAFT OF A REPORT SETTING FORTH STANDARDS AND ACCOMPANYING COMMENTARY - ON TOPICS RELATING TO THE ORGANIZATION OF COURTS. THESE TOPICS INCLUDE: A UNIFIED COURT SYSTEM - SELECTION AND TENURE OF JUDGES - RULEMAKING AND ADMINISTRATIVE AUTHORITY - COURT ADMINISTRATIVE SERVICES - COURT BUDGETING - AND COURT RECORD SYSTEMS. THAT REPORT WHEN IT IS ADOPTED BY THE HOUSE OF DELEGATES WILL BE THE FIRST OF A SERIES ON JUDICIAL ADMINISTRATION AND IT WILL BE FOLLOWED BY OTHER REPORTS AS ADDITIONAL TOPICS ARE COMPLETED AND ADOPTED. THESE STANDARDS ARE OF COURSE BEING DEVELOPED PRIMARILY WITH A VIEW TO THEIR ADOPTION BY STATE COURT SYSTEMS - BUT THE BASIC PRINCIPLES CONTAINED THEREIN WILL BE ALMOST EQUALLY APPLICABLE TO THE FEDERAL SYSTEM AS WELL - AND WE SHALL TRY TO HAVE THEM ADOPTED THERE.

THE ABA COMMISSION WOULD BE PARTICULARLY PLEASED TO RECEIVE YOUR COMMENTS CONCERNING THESE TENTATIVE STANDARDS -

SINCE IT IS THEIR PURPOSE TO CONSIDER ALL COMMENTS BEFORE REVISING THE TENATIVE REPORT FOR FINAL SUBMISSION. I COMMIT TO YOU THAT YOUR SUGGESTIONS AND CRITICISMS WILL BE GIVEN CAREFUL CONSIDERATION - AND AS THE PROFESSIONALS - AS THE ONES MOST COMPETENT AND EXPERIENCED IN THE FIELD - YOU HAVE A DUTY TO COMMENT. ALL COMMENTS SHOULD BE REFERRED TO THE REPORTER - PROFESSOR GEOFFREY HAZARD - YALE LAW SCHOOL - NEW HAVEN - CONNECTICUT. IF YOU DO NOT HAVE COPIES OF THE TENTATIVE STANDARDS RELATING TO COURT ORGANIZATIONS - THEY MAY BE OBTAINED AT NO COST BY WRITING TO THE CIRCULATION DEPARTMENT OF THE AMERICAN BAR ASSOCIATION.

IN ORDER TO BE ABLE TO CARRY ALL THE PROJECTS I HAVE MENTIONED TO A SUCCESSFUL CONCLUSION AND TO UNDERTAKE FURTHER WORK THAT MUST BE DONE - THE AMERICAN BAR ASSOCIATION NEEDS ALL THE HELP IT CAN GET. PARTICULARLY - IT NEEDS MEMBERS OF THE BENCH AND BAR WITH A DEEP SENSE OF INDIVIDUAL RESPONSIBILITY FOR THEIR POSITION AS LEADERS OF PUBLIC OPINION

IN THEIR OWN COMMUNITY WHO ARE WILLING TO STAND UP AND SAY HOW IMPORTANT IT IS FOR THE AMERICAN BAR ASSOCIATION TO MAKE THIS AREA ITS MAJOR COMMITMENT. IT WAS PERSONAL INFLUENCE OF THIS SORT THAT MARKED THE GOLDEN AGE OF OUR BAR FOLLOWING THE AMERICAN REVOLUTION - AND IT IS MY BELIEF THAT WE ARE NOW ENTERING INTO A SIMILAR GOLDEN AGE OF THE LEGAL PROFESSION. LET US BE OFF - LET US BE AT IT.

THANK YOU.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 81

VOLUME V

ADDRESS OF:	CHESTERFIELD SMITH PRESIDENT-ELECT AMERICAN BAR ASSOCIATION
BEFORE:	THE NATIONAL ASSOCIATION OF LEGAL SECRETARIES THE DIPLOMAT HOTEL HOLLYWOOD, FLORIDA
DATE:	JULY 25, 1973 BANQUET ADDRESS
SUBJECT:	PARAPROFESSIONALS IN THE FUTURE OF THE LEGAL PROFESSION
TIME:	8-1/2 MINUTES

In recent years, the legal profession has undergone provocative change and incorporated numerous inovations which have enhanced the delivery of legal services to our client-public. One of the more welcome developments has been the recognition by the practicing bar of the necessity for and importance of the use of legal paraprofessionals or legal assistants. Of course, the vital necessity for non-lawyers in the law office is not new to you. You -- the legal secretaries -- were the first legal assistants or legal paraprofessionals.

But recent movements in the legal profession have certainly expanded the role of non-lawyers in the practice of law. In 1968, the American Bar Association created -- what is now -- the Special Committee on Legal Assistants. In establishing this Committee -- the Association recognized that there were many tasks in serving clients' needs which could be performed by a trained -- non-lawyer assistant -- working under the direction and supervision

of a lawyer. Other professions - notably the medical profession -- have made remarkable use of trained paraprofessionals. Similar use of paraprofessionals seemed propitious for the legal profession. One of the critical problems facing the future of our profession was -- and still is -- the possible inadequacy of the number of lawyers to serve -- in the ways in which they have traditionally served -- the greatly expanded legal requirements of a burgeoning population. Effective use of non-lawyer assistants could save lawyers valuable time -- and thus enable them to enhance the quality of their work product and to serve more clients. By forming this Special Committee on Legal Assistants, the American Bar Association -- for the first time -- on a national basis -- recognized the formation of a new career for aspiring and ambitious persons.

Most of you are familiar with non-lawyer personnel working with practicing attorneys. Many lawyers -- mostly those in the

larger firms -- employ legal assistants or non-lawyer personnel in various indispensable positions -- as legal secretaries -- office managers -- financial and time record keepers -- file clerks -- librarians -- purchasing agents -- messengers -- and many others. These tasks require special training and expertise. State and local bar associations and the American Bar Association -- through its Special Committee on Legal Assistants -- have been active in assisting law firms with information and guidance in training personnel to fill these positions. I envision that the future will see more and more use by lawyers -- even in the smaller firms -- of this kind of non-lawyer personnel.

But the field ofthe legal paraprofessional -- or legal assistant -- is developing far beyond office management and clerical roles. A growing career is the development and training of legal assistants to help the lawyer perform his own legal service -- in preparing his own work product. Legal paraprofessionals

are being trained in various schools and institutions across the country to perform integral parts of legal processes. Currently the Legal Assistant Committee has identified at least thirty-one programs in operation -- in fifteen different states -- for the training of legal paraprofessionals. The number of educational institutions offering paralegal training has grown significantly and is increasing each year. As of this month, almost 2,000 students are currently enrolled in courses. The projection is that very shortly these thirty-one institutional programs will ~~be graduating between eleven and twelve hundred persons per year.~~

did I know that ABA In 1971 the Special Committee on Legal Assistants published a proposed curriculum for training law office personnel. I know that, insofar as I know for the first time anywhere, For the most part -- ~~most~~ institutions have followed this guide, inherited in the development of their courses. Most of these institutions of Paralegal training, and that offer specialty courses in -- litigation -- business organizations -- securities registration, estate planning and administration -- real estate -- domestic

I knew that

relations -- income tax -- and legal research. Other courses often offered are courses on criminal law -- landlord-tenant law -- introduction to law -- law office management -- and consumer law.

~~Graduates of these schools will be employed to perform a variety of services connected with producing the lawyer's work product.~~

I was also aware that

Statistics indicate that somewhere between 80 and 90%-- of paralegal students are women. The majority -- in most cases -- rank in the upper third of the population based upon the usual predictors for college success. A relatively high percentage have Bachelor Degrees from universities -- and it appears that almost seventy percent of the enrollees have had some previous college work. Many students are employed -- often on a full-time basis -- and in most cases -- in law-related positions. For instance -- many legal secretaries are attending night legal paraprofessional courses.

Since the field of the legal paraprofessional is a rather recent phenomenon -- little information is available concerning placement and course evaluation. The Institute for Para-Legal Training in Philadelphia -- however -- reports that over ninety-two percent of their graduates have been placed in law firms.

Certainly it was within my knowledge that

1 A major concern of the American Bar Association is that the development of this career field be given as much assistance and guidance as possible by the legal profession. Also, it is of major importance to the Association that the programs -- as developed in the various institutions are of the quality and content to train well qualified graduates. At the Annual Meeting of the Association -- convening next week in Washington, D. C. -- the Association will consider proposed standards for the accreditation of these legal paraprofessional training courses. The standards -- as proposed -- establish minimum requirements concerning

course content and training techniques -- so as to insure that the quality of education offered by these institutions meets the needs of the public and the profession.

These standards would be employed in a similar manner as the standards now used in accrediting law schools. The ABA Special Committee is also considering the development of standards for the certification of graduates of these courses. As you are aware -- law school graduates must pass a certifying exam -- commonly referred to as the bar exam -- before they can enter into the practice of law. It is envisioned that in the future -- similar examinations will be developed whereby legal paraprofessionals can also be certified.

The training of legal paraprofessionals -- of course -- does not have to be restricted to institutions offering para-professional training. Many law firms and bar associations are developing programs of in-house training -- so that persons

currently employed in law firms and by lawyers can develop the expertise and polish necessary to perform legal paraprofessional functions. The Association is active in developing programs for the use of law firms and state and local bar associations in the development of such training programs. I can speak from personal experience -- in that my law firm has legal paraprofessionals -- trained in our own office -- working in ~~the~~ several areas of the law ~~real estate and probate law~~. We are very happy with the results so far -- and anticipate using other paraprofessionals in the future:

Because the successful involvement of paraprofessionals in a law practice requires as much education for lawyers as for non-lawyers, the ABA Special Committee is also developing educational programs and teaching materials for lawyers in the effective use of legal assistants.

The field of the legal paraprofessional is a developing and challenging one. It offers much to ambitious and interested

persons who seek personal fulfillment by providing legal service to the public. It is -- I believe -- the wave of the future. As law firms grow -- and as the legal needs of the population increase -- it will become increasingly important for the lawyer to receive the invaluable aid of technically trained and efficient personnel.

Yours -- of course -- is an indispensable auxiliary profession to that of the lawyer. It is my hope that the National Association of Legal Secretaries and the American Bar Association always have a close and warm relationship. We -- together -- can work to insure that the quality of our members is of the highest calibre -- and also that the services that we provide to the public remain consistent with the ideal of providing expert legal counsel to all of our citizens.

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But after consideration, I decided not to talk about legal secretaries or legal Para-Professionals or legal assistants.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 82

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT-ELECT
AMERICAN BAR ASSOCIATION

BEFORE: LAKELAND AND BARTOW, FLORIDA
CHAMBERS OF COMMERCE
CHESTERFIELD SMITH DAY
CIVIC CENTER
LAKELAND, FLORIDA

DATE OF DELIVERY: MONDAY, JULY 30, 1973
1:00 P.M.
LUNCHEON

TITLE: REMARKS OF CHESTERFIELD SMITH

TIME: TEN MINUTES

TODAY YOU HAVE AFFORDED ME THE HIGHEST OF COMPLIMENTS. I AM PLEASED AND HUMBLED. OF COURSE, IT IS SIGNIFICANT TO ME AND A POINT OF PRIDE THAT MY PROFESSIONAL ASSOCIATES HAVE CHOSEN ME TO HEAD THEIR NATIONAL ASSOCIATION. BUT A LAWYER'S WORK IS FOR -- AND WITH -- NON-LAWYERS AND MOST OFTEN, AS IN MY CASE, WITH THOSE NON-LAWYER CITIZENS OF HIS COMMUNITY. IT IS, TO ME, MORE SATISFYING THAT YOU, WHO KNOW ME BEST, REGARD ME WITH A MEASURE OF AFFECTION. MY SUCCESSES STEM DIRECLY FROM THE WARM AND REWARDING ASSOCIATIONS THAT I HAVE HAD WITH YOU -- MY FRIENDS AND NEIGHBORS. YOU KNOW MY GOOD POINTS -- AND MY BAD -- YET, EVEN RECOGNIZING MY FAILINGS, YOU HAVE THUS HONORED ME TODAY. THANK YOU FOR THIS.

IN JUST TEN DAYS, I WILL ASSUME RESPONSIBILITIES AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION -- THE LARGEST PROFESSIONAL GROUP OF ITS KIND IN THE WORLD WITH OVER 168,000 MEMBERS. THE ASSOCIATION IS THE RECOGNIZED NATIONAL VOICE OF THE LEGAL PROFESSION. MY PRESIDENCY COMES AT, I BELIEVE, A MOMENT OF SIGNIFICANCE BOTH FOR THE ASSOCIATION AND THE LEGAL PROFESSION.

FOR VARIOUS REASONS, INCLUDING THE SORDID WATERGATE EVENTS, CLOUDS OF CYNICISM AND DISTRUST ARE LINGERING OVER THE LEGAL PROFESSION. MANY OF THOSE WHO ALLEGEDLY, OR ADMITTEDLY, SUBVERTED THE LAW PRIOR TO AND DURING THE LAST PRESIDENTIAL ELECTION WERE LAWYERS OR PERSONS WITH LEGAL TRAINING. CITIZENS JUSTIFIABLY ARE ASKING HOW LAWYERS -- THOSE SPECIALLY ENTRUSTED AS OFFICERS OF THE COURTS AND GUARDIANS OF THE LAW -- COULD SO BLATANTLY UNDERMINE THE

VERY BASIS OF OUR FREE SOCIETY. THAT QUESTION IS ALSO RESOUNDING THROUGHOUT THE LEGAL PROFESSION. IT HAS BEEN A POINT OF DISMAY AND PARTICULAR EMBARASSMENT FOR THE THOUSANDS OF DILIGENT AND DEDICATED LAWYERS THROUGHOUT OUR PROFESSION. PART OF THIS DISDAIN AND REPUGNANCE IS MIRRORED IN THE PERSISTANCE OF LAWYERS SUCH AS JUDGE JOHN SIRICA, SENATOR ERVIN, AND ARCHIBALD COX TO BRING THE DISREPUTABLE PERSONS INTO THE LIGHT OF JUSTICE.

WHILE RECOGNIZING, AND IN SYMPATHY WITH, THESE PERVASIVE ATTITUDES, I DO NOT, HOWEVER, CONDONE THE WHOLESALE SPATE OF PREJUDGMENT DIRECTED TO THE ALLEGED TRANSGRESSORS. CERTAINLY, IF WE DISDAIN THE VIOLATION OF THE LAW WE MUST ALSO NOT DISREGARD THE LAW OURSELVES. THE CORNERSTONE OF OUR SYSTEM OF CRIMINAL LAWS IS THE PRINCIPLE OF INNOCENCE UNTIL PROVEN GUILTY. IT SEEMS THAT MANY WISH TO CONDEMN BEFORE THE FACTS ARE IN. EVEN THE MOST OSTENSIBLY GUILTY PERSON DESERVES DUE PROCESS OF LAW. ONE OF THE MORE REGRETTABLE ASPECTS, ALBEIT UNAVOIDABLE, OF THE WATERGATE EXPOSURES HAS BEEN THAT THE IMBROGLIO OF SORDID TRANSACTIONS HAS IMMERSED MANY UNCULPABLE OR UNWITTING AND DENUDED THEM WITH CONDEMNATION.

THE MIASMA OF THE WATERGATE INVOLVEMENT, HOWEVER, IS, I BELIEVE, A SYMPTOM -- ADMITTEDLY A SENSATIONAL ONE -- OF A PROBLEM WHICH HAS LONG PLAGUED THE LEGAL PROFESSION. UNQUESTIONABLY OURS HAS BEEN A PROFESSION WHICH HAS, MORE THAN ANY OTHER, CONTRIBUTED TO PRESERVING AND ENHANCING OUR FREE SOCIETY. LAWYERS UNIQUELY HAVE SERVED WITH DISTINCTION THE NEEDS OF OUR CITIZENS AND SOCIETY IN COMMUNITIES AND IN GOVERNMENT. AS A PROFESSION, WE HAVE ADHERED TO A STANDARD

OF ETHICAL CONDUCT AS STRINGENT, AND MAYBE EVEN MORE SO, AS ANY OTHER GROUP. WE TERM OURS A PROFESSION, AND I BELIEVE JUSTIFIABLY, BECAUSE OF SELF IMPOSED STANDARDS OF CONDUCT BEYOND THE MINIMAL REQUIREMENTS OF LAW AS REFLECTED IN OUR CODE OF PROFESSIONAL RESPONSIBILITY. I AM UNIQUELY ABLE, SINCE I DEAL DAILY WITH ATTORNEYS ALL ACROSS THE COUNTRY, TO STATE THAT ALMOST ALL LAWYERS DESERVE THE TRUST AND CONFIDENCE PLACED IN THEM BY OUR CITIZENS. THE BURDEN OF THE MONOPOLY GIVEN LAWYERS TO ADVOCATE IN MATTERS CONCERNING THE PERSONAL LIBERTY, PROPERTY, AND VERY LIVES OF OUR CITIZENS IS HONORABLY SHOULDERED BY THE THOUSANDS OF ATTORNEYS WHO MAKE UP OUR PROFESSION. BUT I AM FIRST TO ADMIT, THAT THE HIGH HONOR OF THE LEGAL PROFESSION MAY BE MORE APPARENT TO THE MEMBERS AND LEADERS OF THE BAR THAN THE GENERAL PUBLIC. WE HAVE LONG BEEN PLAGUED BY A PUBLIC RELATIONS PROBLEM RECENTLY COMPOUNDED BY WATERGATE.

A HIGHLY VISIBLE PROFESSION SUCH AS OURS WHICH, ALMOST BY DEFINITION, DEALS WITH THE MOST COMPLEX PERSONAL AND SOCIETAL PROBLEMS IS, OF COURSE, PRONE FOR MISUNDERSTANDING. WE DO NOT PRODUCE OF A TANGIBLE PRODUCT AND THUS MANY CITIZENS LACK A CLEAR UNDERSTANDING OF EXACTLY WHAT LAWYERS DO. SADLY, WHAT LAWYERS DO OFTEN BECOMES CLEAR ONLY IN SENSATIONAL INSTANCES -- USUALLY WHEN THE PUBLIC TRUST HAS BEEN BREACHED.

BUT MUST OF THE CRITICISM OF THE LEGAL PROFESSION IS, I BELIEVE, IN MANY INSTANCES JUSTIFIED. MUCH OF THE FAULT CLEARLY LIES WITH THE BAR FOR IT SEEMS TO ME WE HAVE FAILED TO EFFECTIVELY POLICE OUR

OWN RANKS. WE HAVE BURIED OUR HEADS IN THE SAND - TOO OFTEN DISREGARDING FLAGRANT ABUSES BY SOME IN OUR PROFESSION. LAWYERS ARE, LIKE ALL CITIZENS, SUBJECT TO THE SANCTIONS OF OUR CRIMINAL AND CIVIL LAWS. BUT BY VIRTUE OF THE UNIQUE TRUST IMPOSED IN THEM. LAWYERS ARE ALSO SUBJECT TO ETHICAL STANDARDS ABOVE THE LEGAL MINIMUMS. THE CODE OF PROFESSIONAL RESPONSIBILITY POINTEDLY ADVISES THAT LAWYERS ARE REQUIRED TO AVIOD "EVEN THE APPEARANCE OF IMPROPRIETY." SADLY, WE IN THE PROFESSION HAVE BEEN LAX IN STEADFASTLY REQUIRING ALL LAWYERS TO LIVE UP TO THIS STANDARD OF TRUST.

LAWYER DISCIPLINE IS HANDLED BY THE VARIOUS STATES USUALLY THROUGH STATE BAR ASSOCIATIONS. THIS PLACES THE BURDEN FOR INVESTIGATING, AND DISCIPLINING, LAWYERS SQUARELY ON THE SHOULDERS OF THE LEGAL PROFESSION. THERE IS NO NATIONAL BODY -- NOT EVEN THE AMERICAN BAR ASSOCIATION -- WHICH CAN DISCIPLINE OR DISBAR DISREPUTABLE ATTORNEYS SINCE LAWYERS ARE NOT LICENSED TO PRACTICE NATIONALLY BUT RATHER IN INDIVIDUAL STATES.

UNFORTUNATELY, UNTIL JUST RECENTLY, MOST STATES DID A RATHER POOR JOB IN INVESTIGATING COMPLAINTS AGAINST LAWYERS AND SUBSEQUENTLY DISCIPLINING THOSE GUILTY OF MISDEEDS. AN AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE CHAIRED BY FORMER SUPREME COURT JUSTICE TOM CLARK REPORTED IN 1970 THAT LAWYER DISCIPLINE IN MOST STATES WAS DANGEROUSLY INEFFICIENT AND INEFFECTIVE.

I AM ENCOURAGED, HOWEVER, BY THE RECENT AWAKENING BY THE BAR OF ITS RESPONSIBILITY TO WEED OUT THOSE MARGINAL AND DISREPUTABLE

LAWYERS WHOSE ACTIVITIES TAINT ALL ATTORNEYS. MOST STATES ARE BEEFING UP THEIR INVESTIGATIVE MACHINERY TO ADEQUATELY HANDLE CITIZEN AND LAWYER COMPLAINTS AGAINST ATTORNEYS. MORE AND MORE ATTORNEYS ARE STEPPING FORWARD TO PARTICIPATE IN THIS PROFESSIONAL HOUSECLEANING.

IT WILL BE A MAJOR CONCERN OF MINE DURING MY YEAR AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION TO HELP STATE AND LOCAL BAR ASSOCIATIONS IN THIS EFFORT. WE MUST RID OURSELVES OF THOSE FEW WHO DISGRACE OUR PROFESSION.

TO ASSIST IN THIS EFFORT, THE ASSOCIATION HAS CREATED A CENTER FOR PROFESSIONAL DISCIPLINE HEADQUARTERED IN CHICAGO TO WORK WITH THE STATES IN PROFESSIONAL DISCIPLINE. THE CENTER WILL BE A RESOURCE BODY TO AID THE STATES WITH INFORMATION THROUGH A NATIONAL DISCIPLINE DATE BANK AND A BRIEF BANK FOR THE USE OF STATE DISCIPLINARY BODIES. THE CENTER WILL HOPEFULLY BE USED BY THE STATES IN HELPING TO COORDINATE LAWYER DISCIPLINE THROUGHOUT THE COUNTRY.

NO OTHER MATTER SHOULD BE OF MORE IMPORTANCE TO THE ORGANIZED BAR THAN THAT OF INSURING TO OUR CLIENT PUBLIC THAT ONLY LAWYERS WORTHY OF TRUST ARE ALLOWED IN THE PRACTICE. FURTHER, CITIZENS MUST KNOW THAT THEIR GRIEVANCES AND COMPLAINTS AGAINST LAWYERS WILL BE PROMPTLY AND EFFICIENTLY INVESTIGATED AND RESOLVED. ONLY THROUGH SUCH AN EFFORT CAN MY PROFESSION MAINTAIN -- OR MAYBE REGAIN -- THE HONORABLE STATURE IT HOLDS IN OUR SOCIETY.

AS A CITIZEN, HOWEVER, I BELIEVE IT IS UP TO ALL OF US TO DEMAND

INTEGRITY AND UNSWERVING DEDICATION TO THE LAW BY ALL OUR CITIZENS. FOR TOO LONG -- IT SEEMS TO ME -- IT HAS BECOME FASHIONABLE TO LOOK WITH CYNICISM AT GOVERNMENTAL OFFICIALS, BUSINESSMEN, AND ALL OTHERS IN THE SOCIETY. WE MUST NOT BE SATISFIED WITH THE WATERGATE PERCEPTION OF PUBLIC AND PRIVATE MORALITY. WE MUST BE OUTRAGED AT DISHONESTY AND INDISCRETION WHEREVER IT EXISTS PARTICULARLY IN OUR GOVERNMENTAL INSTITUTIONS. WE MUST LET ALL THOSE WHO WOULD ASSUME THE MANTLE OF PUBLIC TRUST KNOW THAT WE EXPECT ABSOLUTE INTEGRITY AND SERVICE OF THE HIGHEST QUALITY FROM THEM AT ALL TIMES. WE MUST LET ALL THOSE KNOW THAT EVERY TIME THEY FAIL US WE WILL CHALLENGE AND REPLACE THEM.

FINALLY, THE CASTED EYE OF SUSPICION MUST BE REPLACED WITH A STRONG-WILL FOR EXCELLENCE. WE MUST ACTIVELY ENCOURAGE AND REWARD THOSE PERSONS WHO DISPLAY HONESTY IN PUBLIC SERVICE. OUR GOVERNMENT IS A FINELY CONTRIVED GOVERNMENT OF LAWS -- EVEN THE FINEST SYSTEM WILL FAIL IF THE MEN IN CHARGE ARE NOT OF THE HIGHEST QUALITY.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 83

VOLUME V

ADDRESS OF: CHESTERFIELD SMITH

PRESIDENT

AMERICAN BAR ASSOCIATION

BEFORE:

DATE OF DELIVERY:

TITLE:

TIME:

I DO, THIS YEAR, ENJOY SPEAKING FOR SOME 170,000 LAWYERS OR MORE WHO BELONG TO THE AMERICAN BAR ASSOCIATION AND FROM THEM, I BRING GREETINGS AND BEST WISHES.

I AM PLEASED TO BE HERE AT A FUNCTION OF ORGANIZATIONS THAT I LIKE VERY WELL. TWO OF THEM I BELONG TO AND HAVE FOR MANY YEARS, THE AMERICAN LAW INSTITUTE AND THE AMERICAN BAR ASSOCIATION. I WOULD LIKE TO BELONG TO THE AMERICAN ASSOCIATION OF LAW SCHOOLS BUT I AM NOT A LAW SCHOOL.

THIS IS A GREAT TIME IN OUR COUNTRY AND I AM GOING TO TALK EVENTUALLY ABOUT WHAT I AM SUPPOSED TO. I AM GOING TO TALK ABOUT CONTINUING LEGAL EDUCATION AND LEGAL EDUCATION AND THE CHALLENGES FACING THE PROFESSION, BUT BECAUSE I HAVE SPENT THE MAJOR PART OF MY DAY MAKING TAPES AND BECAUSE YOU ARE LAWYERS AND BECAUSE YOU ARE INTERESTED IN IT, I WANT TO TELL YOU WHAT YOU WILL READ TOMORROW IN THE PAPER ABOUT WHAT THE ABA PRESIDENT SAID.

I TOLD A REPRESENTATIVE OF THE NEW YORK TIMES, FOR EXAMPLE, THAT THE ABA HAS ADOPTED STANDARDS FOR CRIMINAL JUSTICE WHICH WILL CALL FOR A PROSECUTOR TO BE FREE FROM CONFLICT OF INTEREST OR THE APPEARANCE OF CONFLICT OF INTEREST: THAT THIS STANDARD WAS BASED UPON THE BELIEF THAT THE ADVERSARY SYSTEM WAS THE SOLE BASIS FOR THE JUSTICE SYSTEM IN AMERICA: THAT, OVER THE YEARS, THAT HAS BEEN TESTED OUT AND PROVEN TO BE WORKABLE ONLY WHEN THE ADVERSARIES WERE EQUAL; WHEN THE ADVERSARIES GOT TO BE

UNEQUAL THEN THE SYSTEM WAS NOT GOOD AND JUSTICE WAS NO GOOD IN AMERICA.

I ALSO INDICATED WE HAD TAKEN THE LEAD IN CALLING FOR AN INDEPENDENT PROSECUTOR, SPECIAL AND FREE FROM ANY CONTROL FROM THOSE BY WHOM HE WAS APPOINTED.

NOW, THIS IS THE END OF THE POSITION OF THE AMERICAN BAR ASSOCIATION BUT AS AN AMERICAN CITIZEN, I CAN TELL YOU THAT WHEN THE INVESTIGATED CAN CONTROL THE INVESTIGATOR, JUSTICE IS NOT DONE IN AMERICA.

NOW, I DIDN'T KNOW VERY MUCH, BUT THAT IS WHAT YOU ANSWER WHEN YOU HAVE 30 TO 40 PEOPLE THAT WANT TO TALK TO YOU AND GET A STATEMENT. THEREFORE, YOU HAVE TO MAKE OUT LIKE YOU KNOW SOMETHING.

NOW, I DO FEEL THAT LAWYERS, OF COURSE, HAVE A SPECIAL OBLIGATION IN THIS TIME. WE HAVE AN OBLIGATION TO TALK TO PEOPLE EVERYWHERE AND BEFORE I GET INTO THE SUBJECT FOR THE EVENING, I WOULD LIKE TO SAY THAT I THINK ALL OF YOU SHOULD MAKE OUR CITIZENS EVERYWHERE UNDERSTAND THAT WE ARE IN A CONSTITUTIONAL CRISIS -- NOT PERHAPS AS GREAT AS SOME WOULD SAY IN ALL RESPECTS, OR PERHAPS GRAVER THAN OTHERS WOULD SAY, BUT INSOFAR AS THE ADMINISTRATION OF JUSTICE IS CONCERNED, WE ARE STANDING RIGHT ON THE BRINK OF ABSOLUTE AND TOTAL DISASTER. IF PEOPLE WHO DO WRONG, DO NOT HAVE TO ANSWER, BUT CAN DIRECT PEOPLE THAT HAVE BEEN INVESTIGATING THEM, NO LONGER WILL WE HAVE THE SAME KIND OF COUNTRY THAT WE HAVE HAD.

I WAS JUST COMPLAINING TO A GREAT FRIEND - YOU ALWAYS LIKE TO CALL ONE OF THE GREATEST LAWYERS OF AMERICA YOUR DEAR FRIEND - NORRIS DARRELL, ABOUT THE FACT THAT I HAD ABOUT ONLY FOUR OR FIVE JOKES OR STORIES AND THAT I HAVE NOW SPOKEN TO SO MANY OF YOU, I ALSO KNEW THAT THE ODDS WERE THAT I COULD NOT POSSIBLY DIG UP ANY STORY I KNEW THAT ANY OF YOU HAD NOT PREVIOUSLY HEARD.

NOW I GUESS THAT MAYBE HALF OF YOU HERE TONIGHT HAVE HEARD ME SPEAK FROM SOMEWHERE AT SOME PLACE DURING THE LAST YEAR AND I USUALLY USE TWO STORIES IN AN EVENING. I HAVE NOT FIGURED OUT THE ODDS, BUT IF YOU HAVE SIX STORIES, IT IS NOT TOO GOOD.

I WILL, HOWEVER, TELL YOU ONE BECAUSE I HAVE TOLD BILL MC BRIDE, WHO WORKS FOR ME, THAT THIS IS THE BEST STORY I KNOW FOR AN AUDIENCE.

I HAVE LIVED IN FLORIDA AND BEEN ACTIVE IN FLORIDA. I HAVE BEEN WORKING REAL HARD AFTER BECOMING INVOLVED IN JUDICIAL REFORM AND CONSTITUTIONAL REVISION BECAUSE I FOUND THAT I COULD GET JUDICIAL REFORM IN FLORIDA WITHOUT WORKING ON OTHER THINGS.

THEREFORE, IN MY PRESENT CAPACITY, I HAVE BEEN WORKING AS THE CHAIRMAN OF A COMMISSION TO DRAFT A NEW CONSTITUTION. INCIDENTALLY, WITH RESPECT TO THE CONSTITUTION THAT WE HAVE IN OUR STATE TODAY, WHEN WE FINALLY GOT IT SUBMITTED TO THE PEOPLE FOR RATIFICATION, OR REJECTION, WE HAD A DING-DONG. AS A RESULT, I WENT AROUND THE STATE TALKING, WENT AROUND THE STATE SELLING, WENT OVER TO CAPE KENNEDY AND, IN SO DOING, ONE NIGHT I FOUND

MYSELF TALKING TO THE LEAGUE OF WOMEN VOTERS, AT THEIR INVITATION. NOW, YOU KNOW, I ALWAYS TRY VERY HARD TO BE ON THE SAME SIDE AS THE LEAGUE OF WOMEN VOTERS. I QUITE OFTEN DO NOT UNDERSTAND THE ISSUES BUT I KNOW THEY DO.

WELL, I WENT OVER THERE AND STARTED TALKING ABOUT THE OLD SOUTH AND HOW IT WAS TIME TO GET RID OF THE MAGNOLIA BLOSSOMS, HONEYDEW AND GET BACK INTO THE MAINSTREAM OF LIFE -- THAT WE SHOULD ASSUME OUR RIGHTFUL PLACE AS ONE OF THE GREAT STATES OF THE NATION, THE EIGHTH LARGEST, ESPECIALLY IN RELATION TO THE MAGNIFICENT FUTURE THAT WE HAD. THEREFORE, I TALKED ABOUT THE ABSOLUTE NECESSITY TO MAKE A STRONG, EFFECTIVE, CHIEF EXECUTIVE, A GOVERNOR WHO COULD TAKE ACTION IN A DYNAMIC AND PROGRESSIVE WAY TO MEET THE NEEDS OF OUR STATE. I ALSO TALKED ABOUT HOW WE HAD TO REFORM THE LEGISLATURE AND KICK OUT THESE SPECIAL INTERESTS THAT HAD FOR SO LONG CONTROLLED THE GOVERNOR AND, LIKEWISE, THAT THERE SHOULD BE AN ADEQUATE GOVERNMENTAL STAFF SO THAT THEY COULD REALLY TURN OUT FIRST RATE PROJECTS AND WE, IN TURN, WOULD THEN BE ABLE TO GET THINGS HANDLED IN FLORIDA THAT NEEDED TO BE HANDLED FOR MANY YEARS BUT WHICH THEY HAD PREVIOUSLY REFUSED TO HANDLE.

I LIKEWISE TALKED ABOUT OUR COURTS AND OUR BACKLOG AND HOW WE WERE UNECONOMIC AND HOW WE HAD THE WORST TYPE OF JUDICIAL SELECTION METHODS AND WE HAD ABSOLUTELY NO MODERN MANAGEMENT TECHNIQUES -- WE DID NOT HAVE A UNIFIED CORD -- WE HAD A FRAGMENTED TYPE OF SITUATION.

WELL, I CONTINUED AND LAID IT ON AND ON AND ON AND,

AS A MATTER OF FACT, I LIKED IT AND I REALLY PUT IT OUT THERE AND I KEPT TALKING ABOUT ALL THOSE THINGS THAT WENT ON AND ON AND ON.

WELL, FINALLY I QUIT AND WHEN I GOT THROUGH, LIKE QUITE OFTEN HAPPENS, SEVERAL PEOPLE CAME UP TO ME AND SAID NICE THINGS, SUCH AS "I ENJOYED IT VERY MUCH, I AM GOING TO VOTE FOR THE NEW CONSTITUTION."

WELL, I WAS REACHING OUT AND SHAKING HANDS WHEN FINALLY A LITTLE OLD WHITE-HEADED LADY ZEROED IN ON ME, WALKED UP AND AS I REACHED UP TO GRAB HER HAND SHE SAID, "MR. SMITH, THAT WAS THE LONGEST AND MOST BORING SPEECH I EVER HEARD."

WELL, FRANKLY, I KNEW SHE HAD A POINT. HOWEVER, I THOUGHT SHE HAD OVERKILLED IT -- THAT SHE DID NOT HAVE TO GO THAT FAR. FURTHER, SHE TOOK ME ABACK AND I REALLY DID NOT KNOW WHAT TO DO. THE IMPACT ON ME WAS VERY SMALL, WAS MINIMUM COMPARED TO THE IMPACT THAT WAS MADE ON MY HOSTESS, THE PRESIDENT OF THE LEAGUE OF WOMEN VOTERS. SHE, AS A MATTER OF FACT, WAS DEVASTATED BECAUSE I HAD COME SO FAR TO WORK WITH HER AND SHE LIKEWISE DID NOT KNOW WHAT TO DO.

SHE PULLED ME ASIDE AND SAID, "CHESTERFIELD, I HEARD, I AM SHOCKED, I AM DISTRESSED, I DON'T KNOW WHAT TO SAY, BUT I HOPE YOU WILL FORGIVE HER. THAT SWEETEST, NICEST OLD LADY IN OUR COMMUNITY, SHE IS THE BEST OF THE OLD SOUTH. SHE HAS PARTICIPATED IN EVERY GOOD THING THAT HAPPENED ON THE CAPE SINCE 1900. SHE HAS WORKED AND WORKED AND WORKED BUT, VERY FRANKLY, SHE IS BECOMING

A LITTLE BIT SENILE -- SHE IS BECOMING A LITTLE BIT OLD -- SHE HASN'T HAD AN ORIGINAL THOUGHT IN YEARS. AS A MATTER OF FACT, ALL SHE DOES ANY MORE IS TO WANDER THROUGH THE CROWD AND REPEAT WHAT EVERYBODY ELSE IS SAYING."

NOW, I DO WANT TO MANIFEST TO YOU MY DEEP AND CONTINUING DESIRE TO WORK AS EFFECTIVELY AND AS LONG AND AS DILIGENTLY AS I CAN TO IMPROVE THE PROFESSION IN ALL WAYS AND THERE IS NO WAY THAT THE PROFESSION NEEDS IMPROVING, IN MY JUDGMENT, MORE THAN TO IMPROVE ITS COMPETENCE.

ACCESS TO QUALITY LEGAL SERVICES IS SEVERELY LIMITED, IF AVAILABLE AT ALL, TO LARGE SEGMENTS OF OUR POPULATION.

IT IS RELIABLY ESTABLISHED OR ESTIMATED, AT LEAST TO MY JUDGMENT, THAT OVER EIGHTY PERCENT OF THE PEOPLE OF THIS COUNTRY IN DAILY NEED OF LEGAL SERVICES NEVER CONSULT AN ATTORNEY. THE WEALTHY, WHETHER INDIVIDUAL OR IN CORPORATE FORM OF SOME SORT, CONTINUE TO HAVE ACCESS TO THE VERY BEST LEGAL TALENT, AS THEY PROPERLY SHOULD.

OEO LEGAL SERVICES AND LEGAL AID TYPE PROGRAMS HAVE MADE LEGAL SERVICES MUCH MORE READILY AVAILABLE TO AT LEAST A SUBSTANTIAL PORTION OF THE VERY POOR AND WHILE I DO NOT SUGGEST THAT THE VERY POOR HAVE THE BEST OF ALL LEGAL SERVICES, THEY HAVE FAR, FAR BETTER THAN THEY EVER DREAMED THEY WOULD HAVE FIFTEEN YEARS AGO AND IT IS GETTING BETTER ON A DAILY BASIS.

THE VAST MAJORITY OF AMERICANS, HOWEVER, THOSE WHO FALL

BETWEEN THESE TWO EXTREMES, ARE NOW EFFECTIVELY SHUT OUT OF THE LEGAL MARKET PLACE.

IT SEEMS TO ME THAT THE PRIMARY, CERTAINLY NOT THE ONLY, CAUSE FOR THE SITUATION IS ONE OF ECONOMICS, PEER ECONOMICS. LAWYERS' SERVICES COST MORE THAN THE CONSUMER IS WILLING TO PAY FOR THOSE SERVICES AND EVEN THOUGH THOSE SERVICES ARE NEEDED, NEEDED SOMETIMES DESPERATELY, THEY ARE NOT UTILIZED.

WE ALL MOST READILY ACKNOWLEDGE THAT QUALITY LEGAL SERVICE IS AN EXPENSIVE PRODUCT AND USUALLY SUCH SERVICES TRULY ARE OUT OF MONETARY REACH OF OUR AVERAGE CITIZEN.

AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION, I FEEL THAT SUCH A SITUATION IS INTOLERABLE. IT IS JUST NOT ACCEPTABLE TO ME.

THE RIGHT OF READY ACCESS TO THE COURTS, THE RIGHT TO HAVE EVEN-HANDED JUSTICE FOR ALL OF OUR CITIZENS, WHICH CAN ONLY BE OBTAINED, IN MY JUDGMENT, THROUGH LAWYERS, IS BASIC TO A SOCIETY RULED BY THE LAW. YET, WITHOUT MORE QUALITY LEGAL ASSISTANCE THAN IS NOW ECOMONICALLY AVAILABLE TO MANY, THAT JUSTICE, THAT ACCESS TO THE COURTS IS AND WILL BE AN ILLUSORY RIGHT.

IN ORDER TO REMAIN PROFESSIONALLY INDEPENDENT, THE LAWYERS WHO COMPRISE THE PRACTICING BAR MUST BE ECONOMICALLY STRONG. OF COURSE, I RECOGNIZE THAT, AND I GO AROUND THE COUNTRY AND TELL PEOPLE, "IF YOU ARE INTERESTED IN LABOR UNIONS, IF YOU

ARE INTERESTED IN A TRADE ASSOCIATION, IF YOU ARE INTERESTED IN ONLY THOSE ASSOCIATIONS WHICH CAN DO SOMETHING FOR YOU AND HELP YOUR POCKETBOOK, THEN JOIN SOME OTHER ORGANIZATION BECAUSE I DON'T WANT TO BE YOUR BUSINESS MANAGER; I DON'T WANT TO BE IN A UNION, I DON'T WANT TO BE IN A TRADE ASSOCIATION."

I WANT THE AMERICAN BAR ASSOCIATION TO BE THE NATIONAL VOICE OF THE LEGAL PROFESSION, DESIGNED BY LAWYERS TO DISCHARGE THE PUBLIC RESPONSIBILITIES THAT THEY ASSUMED WHEN THEY TOOK ON THE TITLE OF LAWYERS.

YET EVEN SO, HOWEVER, I RECOGNIZE THAT IF MEMBERS OF THE ASSOCIATION ARE TO BE ABLE TO CONTRIBUTE THEIR TIME -- IF THEY ARE TO BE ABLE TO DO PROMOTIONAL WORK, IF THEY ARE TO BE EFFECTIVE INSTRUMENTS IN SEEKING IMPROVEMENT IN SOCIETY -- THEY MUST BE ECONOMICALLY STRONG. BELIEVING THIS, I THEN SUGGEST THAT THE CRUX OF THE PROBLEM IS NOT THE PRESENT AMOUNT OF PECUNIARY REWARD WHICH THE LAWYER RECEIVES FOR HIS WORK BUT, RATHER, THE INABILITY OF PRESENT STRUCTURES OF THE LEGAL PROFESSION TO DELIVER INEXPENSIVE LEGAL SERVICES TO THE PUBLIC AND STILL ADEQUATELY REWARD THE LAWYER.

PARTIAL SOLUTIONS, SUCH AS GROUP LEGAL PLANS, PREPAID LEGAL INSURANCE, LAWYER REFERRAL PLANS, LEGAL CLINICS, PUBLIC INTEREST LAW FIRMS, ARE SPRINGING UP ALL OVER THE COUNTRY IN AN ATTEMPT TO AT LEAST PARTIALLY MEET THE NEED.

IT IS MY PERSONAL BELIEF THAT WE ARE ON THE THRESHOLD

OF A VIRTUAL REVOLUTION IN METHODS OF DELIVERING LEGAL SERVICES.

I SUGGEST THAT THE PARAMOUNT TASK OF THE ENTIRE LEGAL COMMUNITY AT THIS PARTICULAR TIME MUST BE TO DEVISE A NEW SYSTEM OR TO MODIFY THE OLD SYSTEM FOR THE DELIVERY BY LAWYERS OF LEGAL SERVICES TO THEIR CLIENTS.

FOR EXAMPLE, WE NEED TO LOOK AT WHY THINGS ARE THE WAY THEY ARE. IT IS NOT ENOUGH TO ACCEPT THEM JUST BECAUSE SOMEBODY ELSE FOUND THEM TO BE GOOD LONG AGO. UNLESS WE DO REANALYZE THESE STRUCTURES -- UNLESS THAT IS DONE NOW AND PROMPTLY -- WE WILL CONTINUE, IN MY OPINION, TO PROVIDE LEGAL SERVICES AT A REASONABLE PRICE TO ALL OF OUR CITIZENS.

IT IS INDISPUTABLE TO ME, AT LEAST, THAT CONTINUING LEGAL EDUCATION OF LAWYERS WHO ARE PRESENTLY PRACTICING REPRESENTS ONE OF THE MOST IMPORTANT TOOLS FOR ACHIEVING THIS GOAL.

OUR SOCIETY IS EXPERIENCING CHANGE AND INCREASING IN COMPLEXITY AT A GEOMETRIC RATE. AS THE PACE OF OUR SOCIETY QUICKENS, SO DOES THAT OF THE LAW.

THE PRACTITIONER MUST INCREASINGLY SPEND MORE TIME JUST KEEPING UP WITH THE NEW DEVELOPMENTS IN THE LAW.

THE RISING EXPECTATIONS, EDUCATION AND SOPHISTICATION OF THE PUBLIC REQUIRES FURTHER THAT LAWYERS BE EVEN BETTER PREPARED TO HANDLE CLIENT PROBLEMS. LAWYERS THUS MUST CONTINUALLY UPGRADE THEIR KNOWLEDGE AND ENHANCE THEIR SKILLS IN ORDER TO PROVID THEIR SERVICES TO AS MANY CLIENTS AS POSSIBLE.

I KNOW OF NO BETTER WAY OF ACCOMPLISHING THIS GOAL THAN BY THE POST-ADMISSION EDUCATIONAL PROGRAM. THROUGHOUT THE PROFESSION THERE IS A CONSENSUS, I BELIEVE NOW RECOGNIZED BY ALL LAWYERS, THAT SUCH IS TRUE -- THAT POST-ADMISSION EDUCATION IS NOW A NECESSITY. LAWYERS HAVE REPEATEDLY DEMONSTRATED THEY WILL SUPPORT CONTINUING LEGAL EDUCATION -- THAT THEY WILL PAY, ACCORDING TO THEIR CIRCUMSTANCES, TO BECOME BETTER AT THEIR CHOSEN PROFESSION.

AS I SEE IT, THE ONLY UNRESOLVED QUESTION IS WHAT ARE THE BEST MEANS AND METHODS TO ACCOMPLISH THIS GOAL AND WHAT EFFORT SHOULD WE DEVOTE TO IT?

IT HAS ALWAYS BEEN MY PERSONAL POSITION THAT RESPONSIBILITIES FOR DEVISING THE VEHICLE FOR POST-ADMISSION LEGAL EDUCATION SHOULD BE AN UNDERTAKING OF THE ORGANIZED BAR. I READILY ACKNOWLEDGE THAT IT WILL BE IMPOSSIBLE FOR THE BAR TO DISCHARGE ITS RESPONSIBILITY IN THE MOST EFFECTIVE AND EFFICIENT WAY WITHOUT CLOSE COOPERATION AND COORDINATION WITH MANY GROUPS, INCLUDING THE LAW SCHOOLS.

BUT DESPITE THE SIGNIFICANT AND WONDERFUL WORK THAT HAS BEEN DONE BY THE JOINT COMMITTEE OF THE AMERICAN LAW INSTITUTE AND THE ABA, AS WELL AS BY MANY OTHER ORGANIZATIONS WHICH, TOO, HAVE BEEN WORKING ON CONTINUING LEGAL EDUCATION, CONTINUING LEGAL EDUCATION PROGRAMS PUT ON THROUGHOUT THE NATION, IN THE MAIN, HAVE BEEN LESS THAN ADEQUATE. MOST PROGRAMS ARE TOO COSTLY BOTH IN TIME AND MONEY AND CARRY LOW RETENTIVE VALUE.

I SUGGEST THAT THERE IS, DESPITE ALMOST HEROIC EFFORTS BY VARIOUS ORGANIZATIONS, A CONSIDERABLE AMOUNT OF DUPLICATION OF EFFORTS.

THE PROGRAMS PRESENTED BY THE STATES, EITHER THROUGH UNIVERSITY AND COLLEGE EXTENSION SERVICES OR THROUGH THE STATE AND LOCAL BAR ASSOCIATIONS, ARE TOO OFTEN UNCOORDINATED AND UNRESPONSIVE TO SIMILAR PROGRAMS.

AS A MATTER OF FACT, IT SEEMS TO ME THAT IF WE CONTINUE TO FRAGMENT OUR EFFORTS, CONTINUING LEGAL EDUCATION WILL NOT BE MADE AVAILABLE TO PRACTICING ATTORNEYS AT THE COST AND QUALITY THAT THEY DESERVE.

IN ESSENCE, I AM SAYING THAT THE NEEDS, THE DESIRABILITY, THE PRACTICALITY FOR CONTINUING PROFESSIONAL EDUCATION HAS NOW BEEN RECOGNIZED BY ALL SEGMENTS OF THE BAR. IT IS HERE, IT IS MATURE AND IT IS A BIG BUSINESS.

THE AMERICAN BAR ASSOCIATION AS THE NATIONAL VOICE OF THE LEGAL PROFESSION MUST ACT AS THE CATALYST AT THE NATIONAL LEVEL FOR QUALITY AND INNOVATIVE CONTINUING LEGAL EDUCATION PROGRAMS.

THE HOUSE OF DELEGATES OF THE ASSOCIATION HAS RECENTLY DIRECTED THAT THE NEXT GREAT EFFORT OF THE ASSOCIATION WILL BE TO COORDINATE, CORRELATE AND INSURE A MASSIVE PROGRAM OF POST-ADMISSION EDUCATION FOR THE ENTIRE PROFESSION.

AS THE NATIONAL VOICE OF THE LEGAL PROFESSION, THE ASSOCIATION MUST, OF COURSE, COORDINATE ANYTHING IT DOES WITH THE ASSOCIATION OF AMERICAN LAW SCHOOLS - AND THE INDIVIDUAL LAW SCHOOLS WHICH ARE ITS MEMBERS -- WITH THE STATE AND LOCAL BAR ASSOCIATIONS WHO, TOGETHER, THROUGH THEIR DELEGATES, CONTROL THE HOUSE OF DELEGATES OF THE AMERICAN BAR ASSOCIATION, OUR POLICY-MAKING BODY. ALL OF THESE EFFORTS MUST BE COORDINATED WITH THOSE OF OTHER ORGANIZATIONS, ESPECIALLY THE AMERICAN LAW INSTITUTE.

LEGAL EDUCATORS, I BELIEVE, CAN, AND MUST, PROVIDE LEADERSHIP FOR THE ASSOCIATION AND ALL OTHER SEGMENTS OF THE ORGANIZED BAR IN SUCH A NATIONAL PROGRAM. THIS WILL, OF COURSE, OF NECESSITY, REQUIRE MANY LEGAL ACADEMICIANS TO BECOME MORE ACTIVE IN THE BAR AT THE NATIONAL, STATE AND LOCAL LEVELS.

I HAVE LONG CONTENDED THAT IN FLORIDA AND ELSEWHERE, ONE OF THE GREAT FAILURES OF THE ORGANIZED BAR HAS BEEN THAT THE LEGAL ACADEMICIANS WERE NOT IN LARGE MEASURE HEAVILY INVOLVED IN THE ON-GOING WORK OF THE BAR AND THUS THE EXPERTISE AND INTELLECTUAL ABILITY OF MANY OF OUR FINEST LEGAL MINDS HAVE BEEN MISSING FROM MUCH IMPORTANT BAR WORK.

NOW, WHEN I PREPARED MY REMARKS FOR TODAY, I DID NOT KNOW THAT PEOPLE LIKE JIM KIRBY, JAMES CASNER, PAUL WILKIN, AND OTHER LEGAL ACADEMICIANS WHO ARE EXCEPTIONS TO THAT RULE, WOULD BE SITTING HERE STARING ME IN THE FACE. HOWEVER, I THINK THEY WILL AGREE THAT THERE IS SOME TRUTH TO THE GENERALITY.

I RECOGNIZE THAT ONE OF THE REASONS FOR THIS STATE OF AFFAIRS HAS BEEN THAT LAW PROFESSORS ARE OFTEN NOT ADMITTED TO PRACTICE LAW IN THE STATES IN WHICH THEIR LAW SCHOOLS ARE LOCATED AND THAT THEY ARE, THEREFORE, NOT PERMITTED TO BELONG TO LOCAL BARS OR STATE BARS. CONSEQUENTLY, THEY DO NOT WORK IN THE ORGANIZED BAR. ALSO, PROFESSORS, BEING A HIGHLY MOBILE GROUP, MAY LIVE WITHIN THE CONFINES OF FOUR OR FIVE STATES WITHIN THEIR PROFESSIONAL CAREER.

PERSONALLY, I SUPPORT AS AN INDIVIDUAL, AND EXPECT TO SEE IN NOT TOO MANY YEARS, A TYPE OF NATIONAL BAR EXAMINATION -- NOT THE MULTI-STATE BAR EXAMINATION, BUT A NATIONAL BAR EXAMINATION - FOR ALL LAWYERS.

IF SUCH A BAR EXAMINATION IS DEVELOPED, AS I BELIEVE THAT IT WILL BE, LAW PROFESSORS AND LAWYERS WHO WANT TO TAKE THIS EXAMINATION, WHICH I WOULD ENVISION TO BE MUCH MORE EXTENSIVE AND INTENSIVE THAN THOSE DESIGNED ONLY BY ONE STATE, COULD THEREAFTER READILY PRACTICE OR BE ADMITTED TO PRACTICE TO THE BAR IN ANY STATE. IF THIS IS DONE, I BELIEVE THAT LAW PROFESSORS WOULD BE MUCH MORE ACTIVE IN THE ORGANIZED BAR.

FOR NOW, I THINK IT IS REASONABLE TO EXPECT EITHER A LAW PROFESSOR OR A PRACTITIONER WITH A NATIONAL PRACTICE TO TAKE A BAR EXAMINATION IN EACH STATE IN WHICH HE EITHER TEACHES OR PRACTICES. BUT, LET ME REITERATE, THE ACADEMIC COMMUNITY SHOULD AND MUST, IF WE ARE AS A PROFESSION TO EXCEL, BE MORE ACTIVE IN THE ENTIRE SPECTRUM OF THE LEGAL PROFESSION.

I FORESEE A REQUIREMENT ON THE IMMEDIATE HORIZON THAT LAWYERS, PERIODICALLY, BE RECERTIFIED AS TO THEIR CONTINUING LEGAL COMPETENCE, BY RE-EXAMINATION OR SOME OTHER METHOD. I AM SURE YOU KNOW THAT SUCH PLANS ARE UNDER WAY IN OVER HALF A DOZEN STATES AND I PREDICT THAT WITHIN FIVE YEARS THE MAJORITY OF THE STATES WILL SAY -- "NO LONGER CAN WE ACCEPT THE FACT THAT YOU ONCE PASSED A BAR EXAMINATION AS BEING DEMONSTRATED EVIDENCE THAT YOU ARE COMPETENT TO PRACTICE LAW."

AS FAR AS I AM CONCERNED, PASSING A BAR EXAMINATION ONE TIME IN YOUR LIFE IS NOT SUFFICIENT EVIDENCE TO ME OF CURRENT COMPETENCE, ESPECIALLY WHEN THE ENTIRE BODY OF THE LAW TURNS COMPLETELY OVER EVERY FEW YEARS.

SPECIALIZATION HAS LONG BEEN AN INTEGRAL PART OF THE PRACTICING BAR BUT IT HAS INCREASED IN DRAMATIC PROPORTIONS IN RECENT YEARS AND THAT INCREASE HAS DEMANDED MORE INTENSE OR SPECIALIZED INSTRUCTION IN THE LAW SCHOOLS, AND IN CONTINUING LEGAL EDUCATION PROGRAMS.

THE OMNIPOTENCE OF THE LAWYER IS A MYTH NOW -- IT IS ALTOGETHER AN IMPOSSIBLE DREAM THAT NOBODY ANY LONGER ASSERTS AS VALID. MANY OF THE STATES ARE NOW IN THE PROCESS OF ESTABLISHING NEW AND DIFFERENT PROCEDURES FOR DETERMINING LEGAL PROFICIENCY AND FOR PERMITTING PEOPLE TO CLAIM SPECIAL EXPERTISE, RESTRICTION OF PRACTICE OR SPECIALIZATION.

DEFACTO SPECIALIZATION HAS SERVED ITS PURPOSE, BUT IT

SEEMS TO ME THAT THE WATCHWORD OF THE IMMEDIATE FUTURE IS REGULATED SPECIALIZATION AND IN LIGHT OF THE NEW DIRECTIONS IN DELIVERY OF LEGAL SERVICES, THE LAW SCHOOL EDUCATION PROCESS ITSELF IS, FOR THE FIRST TIME, ALSO UNDER EXTENSIVE SCRUTINY AND RE-EVALUATION BY THE ORGANIZED BAR.

THE AMERICAN BAR ASSOCIATION HAS APPOINTED A SPECIAL COMMITTEE FOR THE STUDY OF LEGAL EDUCATION. THIS COMMITTEE, WITH THE AID OF EXPERT HELP, WILL STUDY PRESENT METHODS, AND ALTERNATIVE METHODS, OF EDUCATING FUTURE LAWYERS.

THEY WILL, ON BEHALF OF THE ENTIRE PROFESSION, CONSIDER, FOR INSTANCE, OFTEN RAISED QUESTIONS, SUCH AS, WHY SHOULD ALL LAWYERS BE EDUCATED THE SAME WAY WHEN REQUIREMENTS OF THEIR FUTURE PRACTICE ARE SO DEMONSTRABLY DIFFERENT? AND, SHOULD THE DURATION OF BOTH PRE-LAW AND LAW SCHOOL BE SHORTENED OR SHOULD THEY BE LENGTHENED?

I BELIEVE THAT THE LAW SCHOOLS SHOULD CONTINUE TO BE A VITAL HUB OF THE LEGAL PROFESSION.

I BELIEVE THAT THE LAW SCHOOLS ARE GOING TO CHANGE A GREAT DEAL IN THE NEXT FEW YEARS.

I BELIEVE THAT LAW SCHOOLS MUST NOT ONLY TRAIN LAW STUDENTS -- TAKING A RAW, YOUNG COLLEGE GRADUATE AND, IN A FEW YEARS, BY SOME MYSTERIOUS PROCEDURE, MAKE HIM INTO SOMETHING THAT WE CALL A "PROFESSIONAL" -- BUT, ALSO, LAW SCHOOLS MUST CONTRIBUTE IN A SUBSTANTIAL WAY TO CONTINUING PROFESSIONAL EDUCATION;

THEY MUST PARTICIPATE IN THE LAWYER'S EDUCATION, THROUGHOUT THE LAWYER'S ENTIRE PROFESSIONAL CAREER.

BUT, ABOVE ALL, IT SEEMS TO ME THAT LAW SCHOOLS MUST FURTHER BECOME LABORATORIES FOR EXPERIMENTATION WITH METHODS OF PROVIDING BETTER LEGAL SERVICES TO THE PUBLIC.

THE ADVENT OF LAW SCHOOL LEGAL CLINICS WAS A WELCOME DEVELOPMENT FOR MOST OF THE LEGAL PROFESSION, BUT THEIR REAL POTENTIAL HAS NOT YET BEEN REALIZED. EVEN SO, CERTAINLY, IT IS CLEAR TO ME THAT THEIR IMPORTANCE IS ONLY NOW BECOMING APPARENT TO PRACTICING LAWYERS AND TO OTHER MEMBERS OF THE LEGAL COMMUNITY.

IT IS MY OWN CONTENTION THAT, REGARDLESS OF PAST DISCLAIMERS OF RESPONSIBILITY IN THIS AREA THAT HAVE BEEN MADE BY AT LEAST SOME LAW SCHOOLS AND BY AT LEAST SOME LAW PROFESSORS, IT IS, AND HAS BEEN, A RESPONSIBILITY OF THE LAW TEACHER AND LAW SCHOOL, AS WELL AS THE PRACTITIONER, TO DEVELOP AND FOSTER CONTINUING EDUCATION OF THE BAR, ALL UNDER THE LEADERSHIP AND GUIDANCE OF THE ORGANIZED BAR.

THE LAW SCHOOLS WHO DO NOT NOW ACKNOWLEDGE THAT THEY SHARE WITH THE ORGANIZED BAR A DUTY TO THE PROFESSION AND TO THE PUBLIC, THE DUTY OF PROVIDING VIGOROUS LEADERSHIP IN THE TECHNICAL, ETHICAL AND PROFESSIONAL EDUCATION OF THE ENTIRE PRACTICING BAR ON A CONTINUING BASIS, BOTH BEFORE ADMISSION AND FOLLOWING ADMISSION, ARE, IN MY SIMPLE JUDGMENT,OUT OF STEP WITH THE MODERN REQUIREMENTS OF OUR SOCIETY. IT IS ONLY THROUGH A GREATLY ENHANCED EFFORT

THAT THE LEGAL PROFESSION, AS A UNIT, CAN DISCHARGE ITS RESPONSIBILITIES TO PROVIDE QUALITY LEGAL SERVICES TO OUR CITIZENS.

IN BEHALF OF THE ASSOCIATION, I PLEDGE OUR SINCERE AND HEARTFUL COOPERATION WITH ALL LAWYERS AND ALL LEGAL GROUPS IN EFFECTING A BETTER SYSTEM OF CONTINUING LEGAL EDUCATION. WE SHALL HENCEFORTH CARRY OUR PART OF THE BURDEN, BOTH BY CONTINUING OUR LONG AND EFFECTIVE PARTNERSHIP WITH THE AMERICAN LAW INSTITUTE AND BY MOVING ALONE WITH OUR OWN RESOURCES, TO MEASURE UP TO THE LEADERSHIP RESPONSIBILITY WHICH IS SO UNIQUELY THAT OF THE ASSOCIATION AT THE NATIONAL LEVEL.

IT SERVES LITTLE PURPOSE FOR US AT THE AMERICAN BAR ASSOCIATION TO ADMIT THAT WE HAVE FAILED TO DISCHARGE THAT RESPONSIBILITY IN THE PAST, BUT IT IS SO. MUCH MORE IMPORTANT TO YOU, MUCH MORE IMPORTANT TO THE LEGAL PROFESSION AND MUCH MORE IMPORTANT TO SOCIETY, IS THE STEADFAST DETERMINATION OF THE AMERICAN BAR ASSOCIATION TO NOW ACCEPT THE RESPONSIBILITY THAT WE SHOULD HAVE ACCEPTED LONG AGO.

CLE IS NOW THE ASSOCIATION'S HIGHEST PRIORITY PRIMARILY BECAUSE WE HAVE FOR SO LONG NEGLECTED IT AND IT NEEDS MORE ATTENTION. AS PRESIDENT OF THE AMERICAN BAR ASSOCIATION FOR A FEW MORE SHORT MONTHS, I SUBMIT THAT THE ASSOCIATION WILL HENCEFORTH GIVE MUCH MORE OF ITS TIME, ITS EFFORTS AND ITS FINANCIAL RESOURCES TO RECTIFYING, IF POSSIBLE, ITS PAST DEFICIENCIES IN THIS AREA. AND, AS A MEMBER AND VICE-CHAIRMAN OF THE JOINT COMMITTEE OF THE AMERICAN LAW INSTITUTE, AND ON BEHALF OF THE ABA COMMITTEE ON CONTINUING

LEGAL EDUCATION, I THANK YOU FOR ATTENDING THIS MEETING AND FOR MAKING A CONTRIBUTION TO OBTAINING A MORE EFFECTIVE UTILIZATION OF THE NATION'S FACILITIES WHICH ARE OR CAN BE DEVOTED TO THE CONTINUING EDUCATION OF THE BAR.

I VERY MUCH LIKED BEING WITH YOU. I LIKE TO BE WITH LAWYERS EVERYWHERE BECAUSE I LIKE LAWYERS -- LAW PROFESSORS, COUNTY SEAT LAWYERS, WALL STREET LAWYERS, MILITARY LAWYERS, BETTER THAN I LIKE OTHER PEOPLE.

THANK YOU VERY MUCH FOR YOUR ATTENTION.

SPEECHES OF CHESTERFIELD SMITH

SPEECH NUMBER 84

VOLUME V

#84

ADDRESS OF: CHESTERFIELD SMITH
PRESIDENT
AMERICAN BAR ASSOCIATION

BEFORE: CALIFORNIA STATE BAR ASSOCIATION
CONFERENCE OF DELEGATES
ANNUAL LUNCHEON
DISNEYLAND, CALIFORNIA

DATE OF DELIVERY: TUESDAY, SEPTEMBER 11, 1973
12:00 NOON

TITLE: THE LEGAL PROFESSION AND THE COMMUNITY

TIME: TEN MINUTES

THE LEGAL PROFESSION IS CURRENTLY UNDER SEVERE PUBLIC SCRUTINY AND POSSIBLY, AS AT NO OTHER TIME, OCCUPIES IN THE EYES OF OUR CLIENT-PUBLIC A POSITION OF LOW ESTEEM. OUR PROFESSION WHICH DRAWS ITS BREATH OF LIFE FROM PUBLIC TRUST IS AT ONCE DISLIKED AND DISTRUSTED BY LARGE SEGMENTS OF OUR POPULATION. THIS CURRENT PUBLIC DISDAIN HAS BEEN PRECIPITATED IN LARGE MEASURE BY THE INVOLVEMENT OF SEVERAL LAWYERS OR PERSONS WITH LEGAL TRAINING IN THE HIGHLY PUBLICIZED EVENTS GROUPED UNDER THE SOBRIQUET, "WATERGATE". IN A SOCIETY SUCH AS OURS WHICH EMPLOYS OVER 32,000 LAWYERS IN VARYING POSITIONS IN FEDERAL, STATE, AND MUNICIPAL GOVERNMENTS, IT MAY BE EXPECTED THAT A GOVERNMENTAL OR POLITICAL SCANDAL WOULD AT LEAST BRUSH

SOME IN OUR PROFESSION. THE ACTIVE INVOLVEMENT, HOWEVER, -- IN SOME CASES ONLY ALLEGED BUT IN OTHERS ADMITTED AND PROVEN -- OF SO MANY LAW RELATED PERSONS IN ACTS OF PERJURY, OBSTRUCTION OF JUSTICE, AND SUBVERSION OF THE LAW HAS SPAWNED, WHAT MANY TERM, A CRISIS OF PUBLIC CONFIDENCE TOWARD THE LEGAL PROFESSION.

AS OFFICERS OF THE COURTS AND MEN OF THE LAW, LAWYERS AND JUDGES HAVE BEEN PARTICULARLY DISMAYED BY THE SORDID ACTIONS OF MANY LEGALLY TRAINED PERSONS IN THE WATERGATE AFFAIR. THE REPREHENSIBLE AND POSSIBLY CRIMINAL ACTIVITES HAVE TAINTED AND SULLIED OUR HONORABLE PROFESSION. THAT SOME HAVE SEIZED UPON THE ACTIONS OF THOSE IN WATERGATE TO FAULT THE ENTIRE LEGAL PROFESSION IS, HOWEVER, AT BEST, AN ACT OF EMOTIONAL

IRRESPONSIBILITY. IN A PROFESSION OF MORE THAN 300,000 MEMBERS, IT WOULD BE ROMANTIC INDEED, TO EXPECT EVERY MEMBER TO LIVE UP TO THE HIGH STANDARDS AND IDEALS OF OUR CODE OF PROFESSIONAL RESPONSIBILITY. THE LEGAL PROFESSION LIKE ALL OTHER ENDEAVORS HAS ITS FRINGE ELEMENT OF UNETHICAL AND INCOMPETENT MEMBERS. TO CASTIGATE THE ENTIRE PROFESSION BECAUSE OF THE ACTS OF A FEW STRIKES AGAINST THE GRAIN OF REASON. TO DO SO IS TO DISREGARD THE PUBLIC SERVICE AND ETHICAL DEDICATION OF THE THOUSANDS OF MORAL, LAW ABIDING, AND LAW PROMOTING LAWYERS AND JUDGES IN OUR COUNTRY.

BUT RATHER THAN BRUSH ASIDE THE CURRENT CRITICISM OF THE PROFESSION, IT SEEMS THAT WE AS LAWYERS AND JUDGES HAVE

A DUTY TO EXAMINE OUR PROFESSION IN LIGHT OF THE CRITICISMS RAISED. THE MIASMA OF WATERGATE MAY BE ONLY A SYMPTOM -- ALBEIT A SENSATIONAL ONE -- OF PROBLEMS WHICH HAVE LONG PLAGUED THE LEGAL PROFESSION. MIRRORED IN WATERGATE MAY BE A FAILURE OF THE ORGANIZED BAR TO INSTILL A HIGH SENSE OF ETHICAL RESPONSIBILITY IN ALL OUR COLLEAGUES -- TO EFFECTIVELY SUPERVISE OUR RANKS AND TO INFORM THE PUBLIC OF THE ROLE OF THE LEGAL PROFESSION IN SOCIETY. MANY OF THE CRITICISMS OF THE BAR HIGHLIGHTED BY WATERGATE HAVE RESULTED, IN LARGE MEASURE, FROM THE FAILURE OF THE BAR TO PERCEIVE AND MEET THESE AND OTHER LEGITIMATE PROBLEMS.

IT SEEMS TO ME THAT, AS A PROFESSION, WE HAVE BEEN

REMISS AND TARDY IN POLICING OUR OWN RANKS. THE ORGANIZED BAR, IN MANY INSTANCES, HAS BEEN SLOW IN DISCIPLINING AND PURGING FROM OUR PROFESSION THOSE DISREPUTABLE AND DISHONEST MEMBERS WHO BRING DISDAIN UPON ALL IN THE PROFESSION. IN MANY STATES, THE INVESTIGATORY AND DISCIPLINARY MACHINERY OF THE ORGANIZED BAR HAS BEEN TERRIBLY UNDERSTAFFED AND POORLY FUNDED. AS A RESULT, THE PUBLIC HAS BEEN, IN SOME INSTANCES, VICTIMIZED BY DISREPUTABLE LAWYERS AND, AS SUCH, THE ENTIRE PROFESSION HAS SUFFERED.

FURTHER, THE ACTIONS OF LAWYERS, THE COURTS AND THE JUDGES WHO PRESIDE OVER THOSE COURTS ARE OFTEN SUBJECT TO WIDESPREAD PUBLIC MISUNDERSTANDING. THE LAW, DEALING AS IT

DOES WITH THE MOST COMPLEX PROBLEMS, IS TO MANY CITIZENS AN ESOTERIC AND MYSTIFYING BUSINESS. CITIZEN CONFUSION CONCERNING COURT DECISIONS AND JUDICIAL ACTIONS, AS WELL AS THE LAWYER AND JUDICIAL ROLES IN THE CIVIL AND CRIMINAL PROCESSES HAS MADE THE LEGAL PROFESSION ESPECIALLY VULNERABLE TO UNWITTING AND UNINFORMED CRITICISM. THIS LEGAL MYSTIQUE, WHEN COUPLED WITH THE HIGHLY SENSATIONALIZED IMPROPRIETIES OF THOSE DISREPUTABLE MEMBERS OF OUR PROFESSION AND THE SEEMING INACTION OF THE BAR TO DISCIPLINE THEM, HAS CREATED A SERIOUS, IF YOU WILL, PUBLIC RELATIONS PROBLEM FOR THE BAR. THERE SEEMS TO BE A GAP BETWEEN THE WAY THE PUBLIC LOOKS AT OUR PROFESSION AND THE WAY WE IN THE PROFESSION DO. IN SHORT, THE HIGH

HONOR OF THE PROFESSION MAY BE MORE APPARENT TO US THAN TO OUR CLIENT PUBLIC.

I AM PROUD THAT THE ORGANIZED BAR, AT ALL LEVELS, IS MOVING TO MEET THESE PROBLEMS. THE AMERICAN BAR ASSOCIATION AT THE NATIONAL LEVEL AND MANY STATE AND LOCAL BAR ASSOCIATIONS AT THE STATE LEVEL ARE CURRENTLY INVOLVED IN, OR EMBARKING UPON, PROGRAMS TO MEET THE NEED FOR MORE EFFICIENT AND RESPONSIVE LAWYER DISCIPLINE PROCEDURES AND FOR INCREASING PUBLIC UNDERSTANDING AND AWARENESS OF THE ROLE OF LAWYERS AND JUDGES IN THE JUSTICE SYSTEM.

THE AMERICAN BAR ASSOCIATION, AT ITS ANNUAL MEETING IN WASHINGTON EARLIER THIS MONTH, CREATED A NATIONAL CENTER FOR

PROFESSIONAL DISCIPLINE. THE CENTER IS DESIGNED TO ASSIST THE STATES IN PROFESSIONAL DISCIPLINARY PROGRAMS BY ACTING AS A RESOURCE BODY WHEREBY THE STATES CAN OBTAIN DISCIPLINARY INFORMATION AND ASSISTANCE. THE CENTER WILL SPONSOR SCHOOLS FOR STATE BAR DISCIPLINE PERSONNEL; ORGANIZE MEETINGS AND TRAINING COURSES FOR THE EXCHANGE OF INFORMATION ON LAWYER DISCIPLINE; MAINTAIN A LEGAL INDEX AND LEGAL BRIEF BANK; AND SUPERVISE, MAINTAIN AND DISSEMINATE INFORMATION TO THE STATES FROM THE NATIONAL DISCIPLINE DATA BANK, COMPILING FOR THE FIRST TIME, RECORDS OF FINAL ACTIONS TAKEN AGAINST INDIVIDUALS THROUGHOUT OUR NATION BY ALL STATE AND FEDERAL DISCIPLINARY AGENCIES. THE CENTER WILL ASSIST THE EXPANDED EFFORTS THAT

MANY STATES ARE MAKING BY BEEFING AND SOPHISTICATING THEIR STATE DISCIPLINARY AGENCIES. AS PRESIDENT OF THE ASSOCIATION, ONE OF MY MAJOR CONCERNS WILL BE TO GUIDE THIS ASSOCIATION EFFORT WHICH, I AM CONFIDENT, SIGNALS A DEEP COMMITMENT BY THE ORGANIZED BAR TO THE CAUSE OF UNITING OUR RANKS AND PURGING THOSE UNWORTHY FROM OUR RANKS.

MAINTAINING THE INTEGRITY OF THE PROFESSION THROUGH DISCIPLINARY PROGRAMS WILL NOT IN ITSELF RESTORE -- IF IT HAS BEEN LOST -- THE CONFIDENCE OF OUR PEOPLE IN THE LEGAL PROFESSION AND IN OUR JUSTICE SYSTEMS. THE ORGANIZED BAR MUST TAKE DIRECT ACTIONS TO INFORM THE PUBLIC OF THE ROLE AND FUNCTION OF THE PROFESSION IN OUR JUSTICE SYSTEM. AT THE

NATIONAL LEVEL, THE AMERICAN BAR ASSOCIATION HAS INSTITUTED PROGRAMS TO FILL THE VOID IN PUBLIC UNDERSTANDING AND INFORMATION CONCERNING THE LEGAL PROFESSION. THE ASSOCIATION YOUTH EDUCATION FOR CITIZENSHIP PROGRAM IS COOPERATING WITH STATE AND LOCAL BAR ORGANIZATIONS TO INCLUDE AND IMPLEMENT COURSES IN ELEMENTARY AND SECONDARY SCHOOLS DEALING WITH THE ROLE OF LAW IN OUR SOCIETY AND THE SPECIFIC FUNCTIONING OF COURTS, LAWYERS, AND JUDGES IN THE JUSTICE SYSTEM. THE COURTS AND THE COMMUNITY COMMITTEE OF THE ASSOCIATION'S JUDICIAL ADMINISTRATION DIVISION IS DEVELOPING AND PROMOTING PROGRAMS DESIGNED TO IMPROVE THE RELATIONSHIPS BETWEEN COURTS AND THE LOCAL COMMUNITIES. THROUGH EDUCATIONAL PROGRAMS FOR CITIZEN GROUPS,

AS WELL AS LAWYERS AND JUDGES, THE COMMITTEE HOPES TO ENHANCE PUBLIC UNDERSTANDING OF THE ACTUAL BUSINESS OF THE COURTS AND THUS TO AVERT FRICTION IN COMPLEX AND POTENTIALLY EXPLOSIVE CASES. THE COMMITTEE ALSO ENVISIONS CLOSE COOPERATION WITH THE MANY STATE AND LOCAL BAR ASSOCIATIONS CURRENTLY IMPLEMENTING SIMILAR PROGRAMS. THE ASSOCIATION IS ALSO CONSIDERING A MAJOR EFFORT TO ENCOURAGE THE INCLUSION OF COURSES IN JOURNALISM SCHOOLS ON THE SUBJECTS OF FAIR TRIAL/FREE PRESS, CLIENT-LAWYER/LAWYER-JUDGE RELATIONSHIPS AND OTHER BASIC LEGAL CONCEPTS. IN ADDITION, I INTEND TO PROPOSE THAT THE ASSOCIATION DESIGN AND IMPLEMENT MEDIA-EDUCATIONAL SYMPOSIUMS AT THE NATIONAL LEVEL AND ENCOURAGE STATE AND LOCAL BAR ASSOCIATIONS AT THE

STATE LEVEL TO SPONSOR SIMILAR PROGRAMS SO AS TO ASSIST THE MEDIA IN REPORTING JUDICIAL NEWS. I ENVISION THAT THESE SYMPOSIUMS WOULD ALSO BE OF WIDESPREAD INTEREST TO CIVIC ORGANIZATIONS AND TO THE GENERAL PUBLIC.

I ALSO INTEND TO PROPOSE THAT THE ASSOCIATION ESTABLISH WHAT MAY BE TERMED JUDICIAL DEFENSE TEAMS TO FUNCTION AT THE NATIONAL LEVEL AS AN IMMEDIATE RESOURCE BODY FOR THE MEDIA AND GENERAL PUBLIC TO PROVIDE INFORMATION CONCERNING COURT DECISIONS, JUDICIAL ACTIONS, AND OTHER LEGAL MATTERS. IN ADDITION TO SERVING AS AN INFORMATIONAL BODY, I ENVISION THE JUDICIAL DEFENSE TEAM AS A GROUP WHICH COULD REACT IMMEDIATELY TO INACCURATE OR UNFOUNDED CRITICISM OF THE JUDICIARY OR LEGAL

PROFESSION. THE ORGANIZED BAR HAS A DUTY TO PROTECT THE JUDICIARY FROM UNFOUNDED AND UNJUSTIFIED ATTACK. THE CODE OF PROFESSIONAL RESPONSIBILITY STATES THAT "ADJUDICATORY OFFICIALS, NOT BEING WHOLLY FREE TO DEFEND THEMSELVES, ARE ENTITLED TO THE SUPPORT OF THE BAR AGAINST UNJUST CRITICISM." CERTAINLY IT IS NOT FOR THE JUDGE TO TARNISH HIMSELF AND HIS OFFICE BY ENTERING INTO A SPIRITED PUBLIC DEFENSE OF HIS ACTIONS. THAT RESPONSIBILITY LIES WITH THE BAR. OFTEN THE ORGANIZED BAR HAS FAILED TO RESPOND TO THIS ADMONITION AND HAS NOT COME TO THE AID OF AN EMBATTLED JUDGE UNJUSTLY ATTACKED FOR JUDICIARY ACTIVITY. I WILL ALSO ENCOURAGE THE ESTABLISHMENT OF SIMILAR EFFORTS AT THE STATE AND LOCAL LEVELS BY THE VARIOUS STATE AND

LOCAL BARS. THERE IS, OF COURSE, A RECIPROCAL OBLIGATION OF BAR ASSOCIATIONS TO CRITICIZE A COURT OR JUDGE WHERE CRITICISM IS DESIRABLE AND, ALTHOUGH PROCEDURES WILL DIFFER, TO DO SO JUST AS ASSIDUOUSLY AND FEARLESSLY AS WHEN THEY ARE SHIELDING A COURT OR JUDGE FROM UNWARRANTED CRITICISM.

I AM ALSO DETERMINED THAT THE ASSOCIATION SHOULD PROVIDE LEADERSHIP IN OTHER AREAS VITALLY IMPORTANT TO THE LEGAL PROFESSION AND THE PUBLIC. FOR EXAMPLE, IT IS ESTIMATED THAT OVER 70% OF OUR POPULATION IN NEED OF LEGAL COUNSEL DO NOT CONSULT ATTORNEYS. THE ASSOCIATION MUST TAKE A RESPONSIVE AND DYNAMIC ROLE IN INSURING THAT THIS GLARING INEQUITY IS ALLEVIATED. LEGAL SERVICES SHOULD AND MUST BE AVAILABLE TO ALL OUR CITIZENS.

IN THIS REGARD, THE ASSOCIATION HAS BEEN IN THE FOREFRONT IN DEVELOPING GROUP LEGAL PROGRAMS AND PREPAID LEGAL INSURANCE PLANS SO AS TO INCREASE THE AVAILABILITY OF LEGAL SERVICES BY MAKING LAWYERS MORE ECONOMICALLY ACCESSIBLE.

I FURTHER INTEND TO SPUR CONTINUED ASSOCIATION ACTIVITY IN CORRECTIONS REFORM, PUBLIC INTEREST LAW FIRMS, LEGAL EDUCATION, PROFESSIONAL OR CONTINUED LEGAL EDUCATION, THE RIGHTS OF JUVENILES AND THE MENTALLY DISABLED, AND ENHANCEMENT OF THE ADMINISTRATION OF JUSTICE THROUGH PROGRAMS TO MODERNIZE AND IMPROVE PROCEDURES AND FACILITIES IN OUR COURTS.

IT IS MY HOPE THAT THROUGH EFFORTS SUCH AS THESE THE ORGANIZED BAR CAN MORE EFFECTIVELY COMMUNICATE TO THE PUBLIC

THE UNIQUE PLACE OF THE LEGAL PROFESSION IN OUR SOCIETY. THE MANY PROGRAMS I HAVE OUTLINED WILL NOT SUCCEED WITHOUT THE SUPPORT AND COOPERATIVE EFFORT OF THE ORGANIZED BAR AT THE STATE AND LOCAL LEVELS. I VIEW THE AMERICAN BAR ASSOCIATION AS A FEDERATION OF STATE AND LOCAL BAR ASSOCIATIONS ORGANIZED TO COLLECTIVELY DISCHARGE OUR RESPONSIBILITIES TO THE PUBLIC AND TO THE PROFESSION. WITH COOPERATION AT THE LOCAL, STATE AND NATIONAL LEVELS WE, AS A PROFESSION, CAN MEET OUR OBLIGATION TO PROVIDE FOR ALL OUR CITIZENS EVENHANDED AND IMPARTIAL JUSTICE.