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On the Cover

The cover photograph shows Alabama State Bar President Warren Lightfoot and his family on the terrace of The Club overlooking the skyline of Birmingham. From left to right are: son Warren Lightfoot, Jr., a lawyer with Maynard, Cooper & Gale; daughter-in-law Valerie Lightfoot, an investment consultant with Highland Associates; Mr. Lightfoot; wife Robbie Lightfoot; and daughter Ashley Lightfoot, a bank officer with AmSouth Bank. Mr. Lightfoot practices in Birmingham with Lightfoot, Franklin & White, a 31-lawyer defense firm.

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FOUNDATIONS IN PLURALISM:

A Learning Experience for Judges

by Judge Dale Segrest

On November 19, 20, and 21, 1996, a group of Alabama judges will gather at the Kellogg Center on the campus of Tuskegee University for a highly innovative educational program. The following essay, written by Judge Dale Segrest, has been adapted from Judge Segrest's description of the project for a grant application to the State Justice Institute. The grant application has been tentatively approved, and the sponsors expect to move forward with the event. Judge Segrest is a circuit judge in Alabama's 5th judicial circuit, in which Tuskegee University is located. He was instrumental in assembling the materials and faculty for a seminar which occurred in October 1995, which was the predecessor of the "Foundations in Pluralism" project described here. Judge Segrest is a candidate for the Master of Judicial Studies degree at

the University of Nevada. He has completed all course work and is currently working on his thesis. The State Justice Institute has assisted in funding some of his educational endeavors. He has authored a book on jurisprudence entitled *Conscience and Command*, which was published by Scholar's Press of Atlanta, Georgia in 1994, and feels that the theories described in his book were influential in the vision for the "Foundations in Pluralism" project. He currently chairs of the Board of Trustees of Huntingdon College, a church related, liberal arts college located in Montgomery, Alabama. He was recently selected by the General Conference of the United Methodist Church to serve on the Connectional Process Team which will study and implement changes in the structure of the United Methodist Church during the next four years. He has served on the continuing education committee for circuit judges in the State of Alabama almost continuously since becoming a judge in 1983.

The American people are keenly aware of the fact that racial beliefs and racial tensions have an impact on the delivery of justice. But to understand that a problem exists is not to solve it. We have a great deal of difficulty devising strategies to cope with the difficulties that result from racial beliefs and tensions. Unfortunately, we are often very aware of the racial biases of others, but totally unaware of our own biases. We have difficulty openly facing the reality that each of us has an inevitable and indispensable frame of reference—a body of experience or background—on which we rely in the formation of our perceptions and judgments. Our perceptions are shaped by our backgrounds and experiences. Often, the groups to which we belong influence our perceptions. The groups consist of other persons with backgrounds and experiences similar to our own. Biases of which we are totally unaware are shared and supported by the groups of which we are a part.

Early legal realists such as Jerome Frank pointed out that judges are not immune from the influence of their backgrounds.¹ Like others, judges are influenced by background and experience. They are influenced by their groups. Judgment is the product of our personal experience and our education. Our experience and beliefs—often shaped by our groups—reflect in our judgment and decisions.

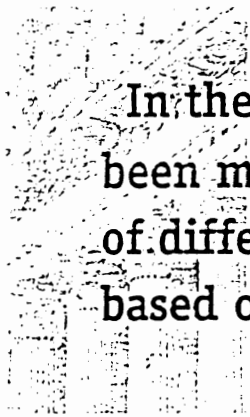
In the legal arena, we have always been more or less aware of the existence of differences of opinion and belief based on racial and ethnic background. These factors leave their imprimatur on the human psyche, just as religion and other powerful cultural forces have an impact on our personal identity. Our awareness of the existence of such differences has been intensified by recent media events such as the O. J. trial and the various cases arising from the Rodney King incident. These high profile media events not only have intensified our awareness of the existence of differing attitudes based on racial identity, they have made us uncomfortably aware of the *illusory reality* of the abstractions that form the foundation of the justice system. Abstractions such as justice, good, truth, evil, and even law itself, are the product of *consensus reality*. They exist because of widespread belief and acceptance. The problem is that we are now becoming aware of the possibility of lack of a consensus. If persons from different backgrounds and groups look at the same set of empirical facts that evidence a conflict, and the same set of possible remedies or conclusions, but disagree as to which conclusion is proper, the consensus about justice disappears.

After the verdict in the O. J. case CNN carried its cameras to the Emory University Law School, where they captured visual images and spoken words that reflected the racially differing reactions to the verdict. The reaction of future lawyers was typical of the reaction that the cameras found and recorded in the general population. In the general population, division along racial lines was not universal, but it was present enough

for media to capture and comment on it. The Rodney King cases displayed some of the same tendencies as the O. J. trial. The fact that the beating administered to King was captured on film and appeared to be brutal left less room for differences of opinion than the result in the O.J. trial. The looting and pillaging that followed the verdicts in the Rodney King cases were certainly not universally approved among blacks. Nevertheless, there were differences along racial lines in the *intensity* of feelings about these events. People divided along racial lines in their interpretation of the events even though they had watched the very same vignettes from media.

The O. J. trial and the Rodney King trials cause thoughtful persons to wonder where we get our abstractions of justice and injustice, of right and wrong, of good and evil. It is clear that these abstractions do not leap full grown from the events themselves. We obviously add some of the content of the abstractions in the process of interpretation.

Where are the notions about law and justice that seem indispensable to a justice system—and to civilization—stored and preserved? The idea underlying the "Foundations in Pluralism" project is that *history and literature* are important storage places for these critical abstractions.² History and literature embody our *collective* experience and are the substra-



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ta for our interpretation of current events. Pluralism³, the existence of groups with differing opinions about justice, challenges the ability of the entire society to arrive at a consensus on core values.

The "Foundations in Pluralism" project recognizes pluralism's challenge to the viability of accepted meanings in the traditional "interpretive community." The phrase "interpretive community" was used by legal philosopher Ronald Dworkin to describe the aggregate community of lawyers, judges and legal scholars who collectively maintain beliefs and skills that enable them to discern the meaning of legal texts.⁴ The challenge presented by pluralism is clear. Each cultural group inculcates its own group values, interpretations of events and descriptive language into its members. The meaning of language is affected. Language itself is impaired in communicating assigned meanings to members of differing groups who do not share the meaning. The interpretive community of law then has difficulty accurately discerning meanings that apply with equal force in all groups. Hence the importance of the

study of authentic sources of the ideas and meanings posited by and within differing racial groups. Those meanings, derived from the stories—the parables and analogies—that give meaning for that group, deeply affect the thought processes of the group.⁵ For instance, if a speaker tells the story of a lynching, the story will have a profoundly different meaning and effect on those who hear, depending on their group perspective. The group perspective is shaped by interpretive event—narratives, received through families and closely knit groups—about past experience with lynchings. Even when actual events have faded into the remote past, the affective results remain, and are transmitted from generation to generation, through the internalization of attitudes of the group. Therefore, the impact of a particular narration of events can have considerably different force depending on the hearer's group identity.

Throughout the United States, the judiciary is confronted with very practical problems that arise from the powerful forces produced by racial attitudes and opinions. Examples are plentiful:

(1) The *Batson*⁶ case often requires judges to decide whether or not attorneys are discriminating against members of an identifiable group when they exercise peremptory strikes. To make such a judgment, the judge must penetrate to the heart of motivational force. Is the explanation that the lawyer offers for the strike really the reason for the strike, or merely a rationalization that masks the real reason? Is the real reason embedded in undisclosed, possibly unconscious, motives internalized from group attitudes and background?

(2) The percentage of blacks convicted of crimes and sentenced to incarceration far exceeds the percentage of blacks in the general population. Blacks often assert that this disproportionality clearly evidences racial bias within the justice system. Whites respond that blacks commit a disproportionate share of crime. Neither group concedes that its explanation is possibly consistent with that offered by the other group. Neither group considers other, more complex explanations. For instance, the lack of acceptance of the historically white justice system in the black community might cause blacks to resort more often to self-help remedies, which in turn create problems with the law. This explanation may not solve the perplexing problem of disproportionate black prison populations, but it demonstrates the kind of thinking that the

"Foundations in Pluralism" project will encourage.

(3) The integrity of the judiciary itself is brought into question by charges of racial bias in the selection of judges.⁷ Such charges can have an undesirable effect on the collegiality of judges and can destroy the interpretive community that is the custodian of law.

This brief description of issues that are very much alive, and fueled by racial motives, is purely illustrative, not exhaustive. The interpretive community clearly needs a stronger grasp of the background from which issues arise. The "Foundations in Pluralism" project approaches the educational task with an appropriate combination of daring and subtlety. It tackles the issues at multiple levels of consciousness, and is calculated to achieve emotional acceptance and harmony at the same time that it imparts valuable specific knowledge.

The Need in Alabama

Montgomery, Alabama is called—perhaps not as often as it once was—the "Cradle of the Confederacy." A star on the steps of the state capital marks the spot where Jefferson Davis took the oath of office. A couple of blocks down the street stands the Dexter Avenue Baptist Church where Dr. Martin Luther King, Jr. and his fellow workers gave real life to the modern Civil Rights movement. A couple of blocks over, the Civil Rights Memorial commemorates the heroes who died in the Civil Rights struggle. The Judicial Complex, which houses Alabama appellate courts and the Administrative Office of Courts, is surrounded by these historic sites. Forty miles to the west is Selma, from whence civil rights marchers proceeded to Montgomery and gave birth to the 1965 Civil Rights Act. Forty miles to the east is Tuskegee, home of Tuskegee University, founded by Booker T. Washington, and one the early meccas for black education.

Surrounded by these historic sites, which are national in significance, the courts of Alabama make decisions that involve emotional, racially charged issues. Trial judges in Alabama deal with *Batson* issues on a daily basis. Alabama recently successfully defended its method of selecting trial judges against a challenge filed by the Southern Christian Leadership Conference—founded by Dr. King himself—under the Voting Rights Act. The method of selecting appellate judges in Alabama is being challenged in federal court for alleged discrimination while this essay is being prepared. The percentage of blacks in Alabama's prisons is far greater than the percentage of blacks in the general population.

Alabama history dramatically displays the critical significance of the dichotomized culture and the impact of that dichotomy on the administration of justice. Alabama has been an archetype in the myriad problems that spring from racial division. If Alabama can draw on its own history, its own institutions, and its own cultural resources to create an educational vehicle specifically geared to assist the judiciary in dealing with racial issues, this will be a significant accomplishment indeed.

The present project proposes to do just that. Not only will such a project be significant in Alabama, but it has potential application for judicial education throughout the United States.

The "Foundations in Pluralism" project will bring together a diverse group of approximately 40 judges from throughout the state of Alabama. It is sponsored by the Alabama Judicial College and the Continuing Education division of Tuskegee University. The sponsors expect to attract female, male, black, white, trial, and appellate judges from the state of Alabama. Enrollment will be limited in order to accomplish the educational objectives of the project. Portions of the event, such as lectures and video presentations, will include the total group of 40. The central focus of the project, however, will be discussion groups of approximately 20 judges each, with discussion led by highly qualified faculty. Limiting the size of the discussion groups will encourage full interactive participation by all participants.

Prior to the event, participants will read the *Autobiography of Malcolm X* and selected essays by Dr. Martin Luther King, Jr.⁴ In addition to the reading material, information about the historical context and background of the writings and authors will be presented by faculty members. Attorney Fred D. Gray, Sr. will share some of his experience in the civil rights movement with the entire group in a one-hour lecture, followed by a question-and-answer session. His presentation will add unquestionable authenticity to the event. He is a preeminent civil rights lawyer, and represented Mrs. Rosa Parks and Dr. King in the Montgomery Bus Boycott. He has recently authored his autobiography, entitled *Bus Ride to Justice*.⁵ He is past president of the National Bar Association.

Law and Literature Movement

While this project is far too issue-specific to fit squarely within the traditional law and literature genre, it draws heavily on the law and literature methodology. Discussion will center on specific texts and historic events. Current events, and the emotions that they naturally engender, will be wholly incidental to the discussion. Although current event issues will inevitably enter the discussions, the focus on specific texts and events will enable the leaders to avoid the kinds of debate that entrench participants in committed positions and break down the collegiality of events. The discussion of history and specific texts is likely to have more affective impact in the psychology from whence judgment emanates than a more heated debate of current issues. The discussions will subtly invite participants to see the relevance of the historical texts to the issues of today, similar to the way law and literature seminars invite participants to see the recurring themes of great literature that reflect the values, belief systems, and psychological forces that undergird the legal system.

The "Foundations in Pluralism" project grows out of a series of law and literature seminars that were sponsored by the Alabama Judicial College and Montevallo University for Alabama judges. The core of that program was the Brandeis

University series. A number of our judges have participated at least four or five of the law and literature seminars. The collegiality, the relaxed atmosphere—away from the harried day to day events of a judge's life—and the stimulating environment of a college campus all contributed to make those events very meaningful learning experiences. They allowed judges to relate to each other on bases other than the purely technical aspects of law and judging. The seminars related the work of judges to the larger context of the culture. The archetypal values on which culture is established are imbedded in the narratives of great literature.

In October 1995, the sponsors of the "Foundations in Pluralism" project, with a generous grant from the State Justice Institute, conducted a highly successful seminar that is the direct predecessor of the current project. Approximately 20 judges gathered on the campus of Tuskegee University to discuss four pieces of literature: *Up from Slavery*, by Booker T. Washington; *The Souls of Black Folk*, by W. E. B. Dubois; *Barn Burners*, by William Faulkner, and *Sonny's Blues*, by James Baldwin. The event was a successful adaptation of the Law and Literature series, and attracted a similar, but more

inclusive, audience.

The sponsors hope that most of the 20 participants in the 1995 event will return for the present project. They will be divided between the two discussion groups, and will help to provide leadership in the discussions, as well as expanding their own base of knowledge and experience. Their enthusiasm for the earlier event will help to promote the present event and make it successful. Gradual expansion of the number of participants in a continuing series is a part of the plan for achieving long-term objectives of the project. The sponsors hope to make this an annual event and to develop a body of appropriate historical and literary texts for a series of seminars. The sponsors feel the time is now right to introduce the "Foundations in Pluralism" project as a free-standing educational project, similar to but distinguishable from the law and literature series. There is an abundance of material to form a core of historical literature that is issue-specific to topics of direct interest in jurisprudence. The project is a pilot project dealing with the difficult issues of racial pluralism. The sponsors are unaware of any similar approach in the United States to this sensitive and compelling area of interest to the judiciary.

The event will increase judges' specific knowledge of black history. The material has been chosen to include information important to the understanding of divergent beliefs about the nature of law in today's world. It will also bring about an

increased awareness and sensitivity among judges of pluralistic differences in belief concerning key abstractions, such as justice, law, equality and fairness. The chosen material will provide specific historical context for pluralistic differences in belief. The event will provide a congenial learning experience for a diverse group of judges. The format and environment have been deliberately chosen to build collegiality rather than accentuating differences among the judges. Nuts and bolts seminars—educational events that simply tell judges "how to do it"—do not produce cultural understanding that is the necessary basis for sound subjective judgment. Sound subjective judgment is necessary in dealing with racial issues. The "Foundations in Pluralism" project will help to meet that need.

As mentioned previously, the program will consist of an in-depth treatment and discussion of the *Autobiography of Malcolm X*, and selected writings from Dr. Martin Luther King, Jr. The following points demonstrate the viability of the materials for jurisprudential discussions:

- (1) Dr. King's letter from the Birmingham jail is an eloquent appeal to natural law. Do law and rights exist independently of humanly created institutions?
- (2) Both Dr. King and Malcolm X spent time in jail. The participants will be invited to compare and contrast the reasons for their incarceration. What can we learn from their experience about incarceration? What view did each take about the reasons for his incarceration? What advantage, if any, did each obtain from incarceration? Would the incarceration of a white person likely produce the same effects? What, if anything, does their experience tell us about the usefulness of incarceration in combating crime?
- (3) Both Malcolm X and Dr. King were religious leaders. What was the effect of their religious views on their views about social policy? How important was religion to the work of these two individuals?
- (4) Dr. King received an earned doctorate degree. He was well educated in the classics and philosophy. Although Malcolm X dropped out of school at the eighth grade, he read extensively while in prison, and his reading included philosophy. What was the impact of education and philosophy on each? Did Dr. King find in philosophy a "received truth?" Did Malcolm X? Can we account for the differences?
- (5) Both Malcolm X and Dr. King were deeply affected by the legal system. Their feelings about the legal system were reflected in their writings. What are the similarities and the differences in their views concerning the legal system?
- (6) Both Dr. King and Malcolm X had views of the future of blacks in America. What were the differences in those views?
- (7) Dr. King's attitude toward whites was conciliatory. Malcolm X's attitude was hostile. Does either attitude represent the views of blacks in general? What can we learn from the attitude of Malcolm X toward whites and the legal establishment that will enable us to adopt sounder policies for the administration of justice? From Dr. King?
- (8) While Dr. King promoted integration, Malcolm X was

highly critical of integration. Do their viewpoints represent an ever-present dichotomy? Is there any way to escape the tendency for one of these viewpoints to draw out the other? To what extent is assimilation desirable? Does assimilation have drawbacks?

The "Foundations in Pluralism" project will provide a practical forum to test the theories described here. This project does not merely talk about race relations. It *does* race relations at ground level. It draws on resources that are readily available in Alabama, but seldom called on.

Tuskegee University and other historically black institutions can be highly instrumental in bringing about an understanding of the viewpoint of blacks. The judiciary should take advantage of this important cultural resource. Authenticity is inherent in the process. Such institutions are the natural repositories of valuable knowledge and insight that are not readily available with the same degree of authority elsewhere. Utilization of these talents and resources represents a closing of ranks in the interpretive community of law—in a very inclusive fashion. It also demonstrates a possible mission of institutions such as Tuskegee University for the 21st century.



Statue of Booker T. Washington on the campus of Tuskegee University

Education for judges in this kind of environment can impact on decision-making. The project humanizes the problem.

The faculty has been chosen with a high regard both for qualification and authenticity. Three of the four are faculty members at Tuskegee University with a wealth of experience both personally and as teachers of the subject matter to be considered. The fourth, Dr. Kathleen Cleaver, grew up in Tuskegee, but had substantial connection with the civil rights movement through involvement in the Black Panthers and other efforts. Currently a faculty member at the Emory University Law School, her academic credentials, both in both

history and law, are impressive. The quality of discussions will be enhanced by the inclusion of judges who participated in the 1995 seminar. Interaction between the judges and faculty is an essential part of the plan.

The seminar will be conducted on the campus of Tuskegee University at the Kellogg Center. The Kellogg Center is a state-of-the-art conference center located in the heart of the Tuskegee campus. The latest electronic equipment includes the ability to connect with satellites, as well as both audio and video recording. Meeting on the campus of the university founded by Booker T. Washington adds to the authenticity of the experience. For a diverse group of judges from Alabama to meet in this setting is significant. ■



Judge Dale Segrest

Judge Dale Segrest has served on the Fifth Judicial Circuit since 1983. He is a graduate of Huntingdon College in Montgomery, Alabama and the University of Alabama School of Law. He currently chairs the board of trustees of Huntingdon and was recently selected by the General Conference of the United Methodist Church to serve on the Connectional Process Team, which will study and implement changes in the structure of the United Methodist Church during the next four years.

Endnotes

1. Frank, Jerome. *Law and the Modern Mind*, Coward, McCann, Inc., New York, 1930.
2. At least as far back as St. Augustine, students of the philosophy of history have realized that history is not what happened in the past. It is a present state of knowledge. It is an abstract account of the past.
3. The word *pluralism* is often used as a synonym for *diversity*. An adequate discussion of pluralism cannot be included in this short essay, but we must try to make our use of the term as clear as possible. We are using the term *pluralism* to signify diversity—differences—among or between groups, as opposed to diversity among individuals. To further illustrate the usage, there can be diversity within a group, but we would not apply the term *pluralism* as a synonym for diversity within a group.
4. Dworkin, Ronald, *Law's Empire*, Harvard University Press: Cambridge, MA, 1986.
5. Emile Durkheim provided a description of the way these group processes work in *The Elementary Forms of the Religious Life* (1912).
6. *Batson v Kentucky*, 106 S. Ct. 1712, 476 U.S. 79, 90 L.Ed.2d 69 (1986)
7. The perception that the judiciary is not representative leads quickly to the perception that it is not fair—because of the transmitted attitudes discussed previously, if not for more concrete reasons. The perception of unfairness leads to distrust, which may lead to self help, and the problems tend to perpetuate themselves.
8. The selections will be from *Testament of Hope*, edited by James M. Washington, which contains a substantial collection of Dr. King's writing. All the writings cannot be discussed, but judges are likely to read more than the selected essays if the book is placed in their hands.
9. Gray, Fred D., Sr., *Bus Ride to Justice*, Montgomery, AL: Blackbelt Publishers, 1995. Significantly, the subtitle is "Changing the System by the System."