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Death Penalty

Rubin "Hurricane" Carter

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DEATH PENALTY SYMPOSIUM KEYNOTE ADDRESS

Rubin "Hurricane" Carter

*Here comes the story of the Hurricane
The man the authorities came to blame
For something that he never done
Put in a prison cell, but one time he coulda been
The champion of the world.¹*

INTRODUCTION

At the height of his boxing career, Rubin "Hurricane" Carter was arrested, charged and convicted for the murder of three white persons in Patterson, N.J. At the first trial, the government sought the death penalty against Mr. Carter. Although he was spared a sentence of death, the jury convicted Carter, and he was incarcerated for life. Carter was freed after nearly twenty years in jail for a crime he did not commit. The Honorable H. Lee Sarokin who granted his writ of habeas corpus called the conviction an appeal to racism rather than reason, and concealment rather than disclosure. Mr. Carter now makes his home in Toronto, Canada. He is on the board of Directors of the Southern Center for Human Rights (Atlanta), the Alliance for Prison Justice (Boston) and the Association in Defense of the Wrongly convicted (Toronto). On December 16, 1994, the World Boxing Counsel awarded Mr. Carter the WBC World Championship Belt.

KEYNOTE ADDRESS²

Good afternoon everybody. Good afternoon. I am truly pleased to be here at the University of Santa Clara. In fact, given my history, its a great pleasure for me to be anywhere. If it hadn't been for a quaint phrase, Habeas Corpus, I'm

1. "Hurricane" by Bob Dylan and Jacques Levy © 1975 Rams Horn Music.

2. The following is a transcript of the keynote address given at Santa Clara University, School of Law as part of the Death Penalty Symposium held on October 15, 1994.

afraid I would have been a "no show" due to a prior commitment. You see, the State of New Jersey had me booked for something else.

In 1966, I was at the peak of my career. A professional prizefighter about to fight for the middleweight crown, and the next thing I knew, I was fighting for my very life on trial in Criminal Court. I was accused of murdering three people in a New Jersey bar. The State sought the death penalty. The odds of my being alive today were not exactly in my favor. There were three murder victims. All of them white. The jury was all white. The police, the judge, the witnesses and the prosecutors were white. I, at the time, was black. But only by luck am I still alive, if you can call the hell of a triple life sentence luck. Because I had money to pay for first rate lawyers, I escaped execution. It was the quality of my legal representation that made the critical difference. It allowed me to remain alive.

When Ellen Kreitzberg asked me to speak to you today about race and the death penalty, I worried about that because it is absolutely impossible to speak about race and the death penalty without speaking about habeas corpus, politics, popular culture and fear. A big topic for so little time. I recently heard someone say, "the law is just politics by other means." Now, this is a rather cynical view of justice. But what is driving the current push to clamp down on habeas corpus, if not politics? And what's driving the politics, if not fear? Now, we will get back to the question of fear in a moment.

But first, let's deal with the myths of popular culture. People say and believe, professionals and lay people alike, that there are certain absolutes that will keep you from being sent to prison.

First, and foremost, don't commit a crime. Now that's absolute and we all believe in that. Second, tell the truth. If you've done nothing wrong then you have nothing to hide. Third, if you are accused of a crime, get a good lawyer. Fourth, have a solid alibi supported by credible witnesses. Five, if you don't fit the description of the perpetrator and are not identified by the surviving victims of the crime, you're walking. Six, pass a lie detector test. Seven, if you don't have the motive or the means or the opportunity to commit the

crime enforcement then you're home free. Right? Right? Wrong.

I didn't have a motive and I didn't have the means. And even though I did not remotely fit the description of the assailants, even though the two surviving victims could not and did not identify me, and even said it was not me, even though I had the local alibi witnesses placing me elsewhere at the time of the crime, even though I passed the lie detector test showing that I had no involvement and even though I had nothing to hide, testified voluntarily before two grand juries and was exonerated, I was still convicted. What the hell happened? Well, as simple as it may be, politics reared it's ugly head.

The prosecution, the State, is out to win. Winning is how careers are advanced. Successful police officers are promoted. Successful prosecuting attorneys become judges. And a successful judge is one who is seldom reversed on appeal. Discovery rules notwithstanding, the State is not going to tell you what they don't want you to know. So you have to find it.

Let me give you an example from my own case. There was no motive offered at my first trial in 1967. But after the recantation of the State's key witnesses at my second trial, ten years later, the prosecution suddenly conjured up a motive, racial hatred. We, my co-defendant and I, committed this crime because we hated white people. We had been in a white neighborhood and picked that bar in particular because the bartender was a known racist who refused to serve black people. The bar was, therefore, a natural target for racial revenge. That's what the prosecution proffered and that's what the jury heard.

Our own investigation, however, uncovered witnesses known to the police, a black couple, who had been served by the bartender that very night, and even had an account there. We discovered that the bar in question was actually in a mixed neighborhood and the bar had a mixed clientele. And the bartender was, in fact, friendly to black people. But there's the pattern. The pattern of distortion and manipulation. The prosecutors start with the facts, that the victims were white and the assailants black. And then they created an elaborate fiction that plays into the jury's worst fears.

In the face of all of this, what do you do? How do you keep us alive? Well you don't do it by being a *defensive* law-

yer. You have to be an *offensive* lawyer even if it offends the powers that be. And if offending the powers that be in any way distresses or disturbs you, then putting it as mildly as I can, maybe, just maybe, you should find a different job.

I'm sure all of you are familiar with the late Edward Bennett Williams. He was a giant in the legal field. I was fortunate to have known Mr. Williams prior to my incarceration in 1966. He had tried to recruit me to play football for the Washington Redskins and I said, "Man, you must be crazy, you can get hurt playing football. I'll stick to a kinder, gentler occupation. I'll stick to boxing." Throughout my 22-year legal nightmare, Mr. Williams, who was not a member of my legal team, *per se*, never hesitated to give me advice whenever I asked. And he gave it *pro bono*. The best time to get him was always 8:30 in the morning. His secretary would put my call through and Mr. Williams would answer any and all of my questions. That kind of access, that kind of cheer and that kind of attention means more to a prisoner than you could possibly imagine. And that in spades is the whole "raison d'être" of a lawyer—to provide legal access and attention to those you represent. And especially to those who find themselves at the bottom of the empowerment pile with nowhere else to turn.

I'm on the Board of Directors for the Southern Center Majority Rights in Atlanta, Georgia. I'm also on the Board of Directors for the Alliance of Prison Justice in Boston. I am the Executive Director of AWC, The International Association in Defense of the Wrongly Convicted based in Great Britain and in America. Now, I say this not to toot my own horn because my horn doesn't toot but simply to make a point.

The Director for the Southern Center of Human Rights, Stephen Bright, and many of you will hear him today, a young, white, southern boy. Brilliant, absolutely brilliant and with a beautiful heart. Stephen Bright is a great lawyer because he doesn't hide his outrage. He allows himself to be outraged and he isn't complacent about it. The first thing Stephen and his colleagues at the Southern Center do with representing a black defendant in the South, is to make a motion to have the Confederate flag removed from the Court. Now, even if this motion is denied, as it more often than not is, they send out a strong message that this is not going to be

business as usual and that anything less than equal justice would not be tolerated and will be vigorously opposed.

You don't have to look far to find plenty to be outraged about. This country, which considers itself the leader of the free world, is the only western industrialized nation that insists upon maintaining the anachronism of the death penalty. And we don't even deny the racism in this selective application. The Supreme Court recognized this in *McClesky v. Kemp*. We even kill children and mentally disabled adults. It's not hard to be outraged when you realize that in no other country would this topic of "Race and the Death Penalty," would even be necessary. This specialty of law doesn't exist elsewhere.

It's not hard to be outraged. When you hear that lawyers in Louisiana and Mississippi represented indigent defendants in capital cases received the ridiculous sum of \$1,000. And that's the maximum. No matter how intensive the investigation, the preparation or the trial. And in Georgia, the fee is even less.

It's not hard to be outraged when you look at the crazy politics of electing judges and district attorneys whose livelihood depend on satisfying a vengeful but poorly informed electorate.

It's not hard to be outraged. So get outraged and wear your outrage proudly. Let it show to your client, to your adversary, to your students, your judge. It will make a hell of a lot of difference in their attitudes. They will respect you for it. There is nothing, absolutely nothing, more self-defeating and more disheartening to a client than a cynical, tight or timid lawyer just going through the motions. You need outrage. It will make you a more effective lawyer and it will give you the strength, the energy and the courage you need to persevere. The right attitude always produces the right kind of action. The first thing you have to do is make a connection with your client.

Let me tell you what the crime feels like being on trial in a capital case, and we see this every day on television with O.J. Simpson. He feels like he is contaminated, as if he has some vile disease that must be eliminated before it infects others. He feels like a non-person, like a fake, an object that everyone is staring at, talking about and arguing over but never addressing him directly. He doesn't understand a

damn thing about what is going on. He doesn't understand what's admissible and what isn't and why it isn't admissible. Why this question is asked and not that. He doesn't understand the language. Everyone speaks "legalese". And he doesn't. He doesn't understand the people. They come from another world. He trusts no one, including you. The only thing he does understand is that his life hangs in the balance and there's nothing he can do about it. He feels helpless. How is he able to do anything or say anything with the threat of death coming ever closer and closer as this terrifying ritual plays itself out. Because that's what going to prison means—death. Prison is the lowest level of human existence that a person can live on without being dead. That's how diabolical prison really is.

So, open up the lines of communication. Don't hold it against your client if he's defensive, skeptical or evasive. More often than not he has been abused by the system and you have to prove to him that you are not there to continue this abuse. The next thing you have to do is to refuse to accept the prosecutor's case on face value. You owe it to your client and to yourself to conduct your own investigation, an investigation independent of the prosecution and independent of the police. And I guarantee in every case, you are going to find something useful. If your investigation convinces you that there's no chance of success at trying, explain that clearly to your client and his family. Do anything you can to avoid going to trial and to save your client's life. There will always be something in your investigation that will make a difference. Whether it goes to guilt, to the charge, or to sentence.

But this evidence must be uncovered before trial. Because, as you well know, appellate roots are being severely restricted. Access to the Writ of Habeas Corpus is being limited by the United States Supreme Court, by Congress and by the President. The Writ of Habeas Corpus, the one federal check on abuses at the State Court level, the one life affirming jewel in the crown of thorns we know as the criminal justice system, is being threatened with extinction. And that's just one more thing to get outraged about. This, the Writ of Habeas Corpus, is not just a piece of paper, not just a quaint Latin phrase. It was the key to my freedom. The key that other innocent people like Roger Coleman in Virginia

and Lionel Herrera in Texas didn't have, and now, they are both dead. The great Writ is indeed something tangible. It is not abstract. It is the concrete right of every man, woman and child in this country. It is our birthright to be free from arbitrary, capricious, unjust unconstitutional judgement, confinement, or execution. And now there are forces at work trying to limit our access to it even further than they already have. Don't we realize that by taking away access to habeas corpus, we are being robbed of something as real as money and far more valuable. Why aren't the burglar alarms sounding? Our freedom account is being looted. Well, they are going to have to come through me to get it.

You, as lawyers, have an awesome responsibility whether your client is innocent or guilty. You can't afford to make a mistake. Your client can't afford for you to make a mistake. The penalty for him or her is too high. Criminal cases and especially capital cases are not for the faint of heart. I mean, I'm not trying to frighten you, but as they say on the street, "this shit is real, honey". There's a rush to death in our society. A chilling climate of anti-crime hysteria and fear, and that's our real adversary here—fear. We can't turn on our TV set or open the newspaper without the specter of violent crime terrifying us to death. Fear is really at the heart of everything. Fear feeds prejudice, inflames passion, clouds judgment. When you fear someone, anything is possible. You can then justify anything psychologically and legally. From slavery to segregation to anti-semitism to the McCarthy witch hunt. You can justify the erosion of constitutional protection and justify the wholesale application of the death penalty against minorities, the poor, the disadvantaged and disenfranchised.

Blinded by our fear of crime, we focus only on the symptoms and ignore the causes, the poverty, illiteracy, unemployment, drugs and racists. And instead of extending opportunity to people we punish them. I can count on my thumb and my index finger the number of people from perfect backgrounds I met during my two decades imprisonment. Zip. Zip. It's the people who are marginalized in our society who most need our help. Overwhelmingly, they are the ones that we so eagerly consign to our nation's prisons and death chamber albeit under the color of law.

So what can we do about it. Well, we can't do anything if we let ourselves become overwhelmed, jaded and cynical. You know, my attorneys, Myron Beldock and Professor Leon Friedman took my case after I had long since ran out of money and labored on my behalf for over ten years without any expectation of ever being financially compensated. They did it, they say, because it was the right thing to do. They did it pro bono. And they are the first to proclaim how much richer they are for having done it. As Mr. Beldock likes to say, "money is not the only currency." He also likes to say, and I guess, this is the lawyer's joke, "that people make counterfeit money but in many more instances money also makes counterfeit people." Now, I know there is little danger of monetary contamination happening when you are dealing with capital cases, as most involve indigent clients. So I commend you for earning some of that other currency, and I applaud you for your effort which all too often goes unrecognized. You have the power to make the difference. You can save lives. Is that important?

The petition of Rubin Carter for Writ of Habeas Corpus hereby is granted. It's been almost nine years now since the Honorable H. Lee Sarokin penned his big, bold beautiful signature. Nine years, I can still scarcely believe it! Without the timeless efforts and dedication of lawyers like yourselves, I wouldn't have this done, and I sure as hell wouldn't be here in California with you today free and alive. Is your work important? I defy anyone to tell me that it isn't.