Address by Manuel F. Cohen, Chairman,
Securities and Exchange Commission, at
the Annual Order of the Coif Initiation
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Thank you for those very kind remards. They make me feel as President Johnson did recently when he rose to speak after a particularly effusive introduction. The President said that he was sorry his parents could not have been there. His father would have enjoyed hearing what was said about his son, and his mother would have believed it.

Of course, I am pleased to be initiated into the Order of the Coif at this relatively late date. It is gratifying for several reasons. First, it is a signal honor to join those who today achieve election to Coif on the basis of their scholarship. Second, I am proud to follow your eminent honorary initiates of prior years. A third reason is more personal. My young son, who will shortly be off to college, may attend law school one day. This evening's honor will provide me with a measure of protection in any future legal arguments we may have.

I take particular pleasure in this honor being bestowed by the George Washington Law School Chapter of the Order of the Coif. I have enjoyed the opportunity, as a faculty member here,

to pass along to some of your colleagues some of the law and the lore of federal securities regulation.

The greatest honor for me, however, is to share a beginning with these able, attractive, young men and women who became members of the Coif today. All of them are obviously anxious to conquer the new worlds in which they will soon be engaged. It has been stimulating to talk with them this evening. I must admit that I am also more than a little envious -- because of the tremendous challenges which lie before them.

This envy leads me to the subject matter of my remarks tonight. Each year more of the challenges and opportunities facing young people are found in the area of public service of one kind or another. Dean Mayo told me that I could speak on a topic of my own choosing in the general area of law or of the relationship of the legal profession to public service. I could be parochial and discuss some esoteric aspect of the federal securities laws. Instead, with your permission, I will unburden myself of some more general conclusions about the law and public service I have reached in

twenty-five years as a government lawyer.

There is, of course, a certain redundancy in speaking of the relationship of the legal profession to public service -- lawyers engage only in the performance of services, and they are all public officials as officers of the court. In our Anglo-American common law tradition, lawyers, whether or not formally acting on behalf of the government, often perform high public service in the fight for free institutions and the defense of the rights of those not able to represent themselves.

In the United States, lawyers have from the beginning provided much of the national leadership: Alexander Hamilton, Henry Clay, Daniel Webster, Abraham Lincoln, to name but a few. We are in some ways a nation of lawyers, for only a law-oriented body politic could allow a Chief Justice, John Marshall, to become

a principal architect of the very governmental structure under which we operate today.

It must be recognized, however, that the leadership provided by the bar in this country has not always been as forward-looking, progressive and responsive to the public needs as were those lawyers who helped make the American Revolution and guide the nation's early course. Compare, for example, the apparent abdication from a leadership role by lawyers of the early part of this century. A former law teacher, Mr. Justice Douglas, in 1934 when he was Chairman of the SEC, described the role of the bar in helping to create the stock market collapse of the Depression era:

> "It is sad but true that the high priests of the legal profession were active agents in making high finance a master rather than a servant of the public interest. They accomplished what their clients wanted accomplished and they did it efficiently, effectively and with dispatch. They were tools or agencies for the manufacture of synthetic securities and for the manipulation and appropriation of other people's money. In doing this they followed the tradition of the guild. In fact they were applying the teachings of their professors. They never took seriously the true nature of their public trust. They failed to act as conditioners of their clients' programs. They neglected their foremost function - to create and maintain financial practices which were respectable, honest and conservative."

We can in some areas of the law count on the adversary system to produce a generally good result, even when a lawyer does no more than narrowly represent his clients' immediate, short-term interests. But Mr. Justice Douglas's point is nevertheless a valid one: there are times, and kinds of work, which require more of the lawyer than mere advocacy of whatever the client's desires may be. I believe that the profession has advanced greatly since the period about which the Justice was speaking. Indeed, by 1934, when he expressed the thought, there had already been perceptible improvement.

Some proof of this can be found in the influx of lawyers into Washington after 1932, eager to help transform President Roosevelt's eloquent phrases into reality. They were possessed of the very social awareness Justice Douglas had found lacking in the pre-Depression era. The lawyers -- shocked, as it were, by economic events -- were ready to assume again a full responsibility in the governmental process, a responsibility which includes a heavy share in policy-making as well as policy implementation.

Further proof of this change can be seen in the success of many of the New Deal innovations, particularly the expanded use of administrative agencies. Many of these agencies are staffed principally by lawyers, and their influence on the economy has been profound. In the case of the SEC, the agency with which I am of course most familiar, I have first-hand evidence that it is possible for the private bar to contribute greatly to the effectiveness of the agency. This process is aided materially by a large alumni group among private practitioners. I may say that, as one of the largest graduate schools in the country, the SEC competes vigorously with the more formal educational institutions. Dealing with these alumni is naturally easier. Their exposure to government has been direct, and they do not start with the belief that all bureaucrats have horns or that all government-sponsored proposals must necessarily be bad.

The broad scope of securities regulation is, in practice, living proof of the ability of private and public interests to combine to achieve a common purpose. The system of cooperative regulation, in which self-regulatory institutions, endowed with statutory responsibilities, participate directly in the regulatory process, is possible only when an enlightened industry accepts the premise that there is a

coincidence between the best interests of business and of the nation.

A great deal of the SEC's success has been due, I believe, to the free interchange of ideas between government and the private world. This communication has been made infinitely easier by the fact that the lawyers, who seem able to speak a common language with each other, have played such an important role in this interchange. I do not wish to leave the impression however that the other professions and leaders of the industries affected have not also been forward looking and most helpful. The same has been true with respect to many of the other administrative agencies, although perhaps to a lesser extent. The tendency of some to believe that these agencies inevitably become the captives of those they are supposed to regulate stems in part from this ease of communication, which permits full understanding of the complexities of the regulatory problems. The criticism of the agencies often overlooks one of the basic reasons for their creation -- the development of a governmental unit, with a degree of independence, in a position to develop a deep and intimate knowledge of the industries and institutions they regulate. It may provide the basis for a sensitivity to, and awareness of, problems not apparent to the lay world, and which therefore may look like captivity. Few people

realize, for example, how delicate and complex is the process of capital formation in a modern industrial economy, and how necessary a strong securities market is to a free enterprise system. Even a temporary interruption would be intolerable. The SEC's accumulated expertness is accordingly directed at gradual, sometimes highly technical modifications and improvements, an evolutionary process rather than a revolutionary change. Rather than stagger from crisis to crisis, we try to achieve a continuous progress, which will not impair our basic purpose -- protection, not disruption, of the markets.

For the present generation of law school graduates, areas of study and interest tend to be not in the traditional law school subjects, but on broader social issues like crime, civil liberties and civil rights, poverty, and an international rule of law. These subjects are not new, but the attitudes toward them are. There is a recognition that new solutions are demanded, that accepted doctrine is frequently unable to deal effectively with them. Imaginative answers are needed if our form of social organization is to grow, to remain healthy, and to compete with the apparent attractiveness of other views and systems.

Legal education and the bar have generally been slow to adapt to the implications of this new rate of change. Precedent is emphasized as a high value in our legal system, because of an understandable desire for stability. Precedent is helpful, of course, but it must become a tool for developing the new solutions demanded by change. Lawyers must stop dealing with statutes as if they were rigid detailed restraints, rather than flexible instructions to be interpreted in a way best designed to achieve their purpose.

Finally, law schools and lawyers must better develop what the psychologists call predictive thinking -- the ability to test alternative courses of action against specific goals. We lawyers must learn to think more broadly in terms of social processes, and to accept that exercise as necessary and appropriate in analyzing and finding solutions for community problems.

Physical and social scientists have developed and accepted these disciplines. If lawyers are to maintain their role in policy-making they must develop the necessary tools and abilities or be supplanted by technicians and professional managers. We must make greater use of advances in other areas of learning, particularly the social sciences. A good lawyer should not only be able to make a policy decision based on experience and logic; he must also be equipped with basic technical information.

I make these comments because of my belief that, as in the past, lawyers have something very positive to add to the resolution of these complex problems. Although, as I say, the lawyer must have the technical background, we must always

remember that these problems are essentially human problems. Lawyers by training know the past solutions to difficult social and economic problems; more important, they have a feeling for the explosive force of social change and how it can be channeled in the best interests of all of society. Most non-lawyer technicians or scientists do not conceive of their role as the accommodation of all legitimate interests. They may not consider the impact which their solutions, seemingly ideal from a technological viewpoint, may have on different groups. The lawyers' traditional functions of mediating group and individual conflicts and representing those who cannot, or do not understand how, to defend themselves, are needed even more in today's society.

The George Washington Law Center, perhaps more than most law schools, has been sensitive to these problems. By its emphasis on public law, it has encouraged constructive thought about effective solutions for these emerging problems. A conscious effort has been made to equip law students with the techniques developed by other disciplines. Perhaps some of you were fortunate enough to take the excellent course on decision-making taught by Dean Mayo and Professor Miller.

I have concentrated, in the main, on how well the government lawyer performs valuable public service. I did not mean to suggest that private practitioners do not play an important role, whether as collaborators or as critics. In our pluralistic society all groups must be adequately represented. To remain free our government and society must have vigorous critics. They can be, and often are, private lawyers, sometimes acting as officers of the court and as citizens and, on other occasions, on behalf of their clients. There are many good paths to political and social truth. We bureaucrats operate always in the name of the public interest, but we frequently need outside help to determine what that interest is.

My fellow initiates are now embarking on one of the most exciting, stimulating and demanding careers open to young men and women. I am confident that they will enhance the image of the legal profession as one dedicated to public service. Theirs is the promise of great contribution to the general welfare.