

WELCOME, TRAVELERS!

-An Editorial -

Posted November 11, 2013

In Defense of Judge Nicole Clinkscales*

**By Arelya J. Mitchell, Publisher/Editor-in-Chief
The Mid-South Tribune and the Black Information Highway
www.blackinformationhighway.com**

We have read The Commercial Dispatch's coverage concerning alleged judicial misconduct by Municipal Court Judge Nicole Clinkscales which has culminated in its editorial calling for her outright dismissal.

The Commercial Dispatch is located in Columbus, Mississippi and was established in 1879, and its coverage has emanated from segregation and Jim Crow as most southern newspapers. Yes, modern coverage has changed but in the case of Judge Nicole Clinkscales and other outspoken African Americans of her ilk, it has not.

We make reference to the November 7, 2013 front page headline titled "Judge's Facebook posts may violate judicial code" which boasts of an in-depth story along with the judge's smiling face front and center. For the record, Clinkscales is an African American and one of the few Black female judges in the state and in the nation, for that matter.

The editorial from a mainstream press is demanding that the city council, which appointed her back in 2010, kick her off the bench on the grounds of judicial misconduct because of what she wrote on her PRIVATE Facebook page—which The Commercial Dispatch—get this—deemed as racism.

We are sure Medgar Evers, Emmett Till, and the three Civil Rights Freedom workers who were murdered in Philadelphia, Mississippi are turning in their graves over The Commercial Dispatch's accusation of a Black female judge for speaking out on matters of race involving the city's educational system.

Having said all of the above, let us do proceed with the dissecting of this November 7, 2013 headline story which serves no purpose other than character assassination of a Black judge who did not keep her proverbial place.

First of all, what Judge Nicole Clinkscales wrote was in the PRIVATE sector of Facebook. Let us reiterate: Her correspondence was in the PRIVATE sector of Facebook. Had she not cared at all about her role in the judicial realm, she would have opened a PUBLIC Facebook account for the entire world to see. She did not do this.

Facebook as an Internet/electronic social media offers PRIVATE accounts based on the fact that these accounts are to be used for PRIVATE correspondence; otherwise Facebook would not have made such a sector available on its platform. YouTube and other Internet/electronic social media make available PRIVATE sectors on their companies' platforms.

This is on the same principle and practice search engines such as Google, Yahoo!, AOL, Bing and the like make available to private citizens and companies (quasi-citizens) email accounts. Email accounts are PRIVATE.

As a media outlet, we get over 250,000 emails, and each and every last one of them belongs to this medium. Having an email account does not give every 'Tom, Dick, and Harriet' the right to go into and steal information in our accounts anymore than it does for anybody to go into anybody else's email account unless there is a court order to do so.

To expound: These email accounts, too, are on the aforementioned search engine platforms but they remain in the PRIVATE sector of said platforms which serve the public-at-large as well.

Let us further expound: A hotel is a public facility; yet, once one purchases a room in that hotel, that room is off limits to the public-at-large and no one can barge into and proceed to take the person's suitcases and rummage through their things. This is not only a violation of PRIVACY but is breaking the law.

If one were to do as was done in the case of The Commercial Dispatch admitting that it used a Facebook 'Friend' of the Judge's to get access to her PRIVATE Facebook account, it can at *best* be called 'hacking' via another person or at *best* an invasion of PRIVACY or at *best* rookie journalism and or at *best* sheer stupidity for this mainstream newspaper to admit in print what it did to gain access. Whoever the 'Friend' is who acted on behalf of The Commercial Dispatch is liable. Why? Because when this Facebook 'Friend' (or should we say 'fiend'?) entered into a PRIVATE Facebook account/sector, he or she in essence entered into a contract (non-verbal) with the Judge and with an understanding that what was being said and/or written there would remain PRIVATE. Of course, one cannot control what a person talks (gossip) about or writes about what he or she saw on this private Facebook account, but that's not the argument.

The Judge had the same expectation of these Facebook friends as she would of friends and/or colleagues who entered her home for private conversations. She would not expect them to rummage through her belongings, steal her television or trinkets. If they did do such, it would be a criminal act and if they sold the items, it could be fencing or any other illegal act of selling stolen items.

Let us go further down into the dirt The Commercial Dispatch did on the pretense of investigative journalism.

The Commercial Dispatch stated, thusly: “While Clinkscales’ pages can only be viewed by her Facebook friends, The Dispatch accessed the page through one of Clinkscales’ 2044 Facebook friends. A University of Mississippi School of Law professor said that judges have no expectation of privacy even on their private Facebook accounts.”

Let’s dissect:

SECOND of all this University of Mississippi law professor has made one of the dumbest assertions which can be made—even in this Internet/electronic age. Why wouldn’t the Judge have expected ‘privacy’ in her PRIVATE Facebook account? True, you might not get privacy, but you damn well EXPECT privacy which was promised to you on the front end from Facebook. From the professor’s viewpoint, one must not expect privacy in his hotel room upon which he entered into a non-verbal contract when he paid for the room which entailed his privacy.

As a veteran journalist who has interviewed U.S. Presidents, presidential candidates, famous and non-famous politicians, judges—and even a U.S. Supreme Court Justice, I do know that when you as a journalist give your word on something as being ‘off the record’, it is to remain off the record. Why wouldn’t those being interviewed not EXPECT it to remain private? I have been called in for off the record briefings, and these briefings were EXPECTED to remain non-public. Yes, as journalists we all get our share of leaks, have named and unnamed sources, as we deal with all the other accoutrements that come with working in the Fourth Estate. Yes, in an Internet/electronic social media world, privacy issues are still being defined, re-defined and refined. Yet, in a rational world, one still EXPECTS privacy when privacy is promised.

Ironically, this brings us to the FIRST of all: It is a FACT that The Commercial Dispatch admitted in its article that it knew beforehand that Clinkscales’ account was PRIVATE. The Commercial Dispatch admitted that it “accessed the page through one of Clinkscales’ 2,044 Facebook friends.”

Again, to make such an admission is about as dumb as a thief going to the police and confessing publicly that he broke into a house and stole items then gets indignant when the policemen arrest him. Making this admission was stupid because in essence the journalist has possibly thrown her source under the bus. Just as the University of Mississippi law professor indicated that nothing is really private in the Internet/electronic social media age, by the same token it is quite possible through electronic footprints that the judge could very well track down who the culprit is and end up filing her own lawsuit for libel and invasion of privacy. She might even be able to get Facebook’s help. Who knows how far such a case could be pushed and how many ramifications may emerge should she decide to test it in the realm of electronic media privacy laws? If one may

elaborate on another note: She has a right to speak her mind freely in her electronic judge's chambers.

Perhaps The Commercial Dispatch should check with Edwin Snowden and learn more about why the U.S. government is after him. Snowden entered a contract when he agreed to have access to classified documents, and it was the government which EXPECTED him to keep these documents private. We are not arguing the morality or immorality of Snowden's actions or even that of the judge's Facebook 'Friend's actions, but rather the FACT that he accessed and made public what was stipulated by the government as PRIVATE, and the FACT that the Friend allowed Third Party access into an account to which that Third party had no legal rights.

It is no secret that mainstream media outlets have been accused of having nil or no diversity (especially where African Americans are counted) in their newsrooms even in the 21st Century.

So when one looks at a Mississippi newspaper which has practiced its share of Jim Crow reporting since 1879 reasserting a philosophy that Blacks should be seen and not heard or that Blacks themselves have no right to criticize other Blacks whom 'whites' might find more, shall we say, palatable? Surely, whites have criticized whites. One can venture that The Commercial Dispatch has called out and criticized those whites who wanted the Freedom riders to come into Mississippi or argued that Segregation should be outlawed. The white mainstream 'medium' was the message. The pervading message throughout the South.

For The Commercial Dispatch to paint Judge Nicole Clinkscales as participating in racial politics and using the proverbial 'Race Card' because she supported President Barack Obama and other Democrats is ludicrous. The Commercial Dispatch which has been around since 1879 cannot be so naïve 'not' to know that judges, too, are politicians? That they run in political primaries? That they are chosen along party lines and political dogma? Even Supreme Court candidates are nominated along party lines and dogma. The Commercial Dispatch seems truly upset that she supports a Black president (one we might add that we do not even support on everything!) and that she can have a say about a person she allegedly believes to be a sell-out and an Uncle Tom. Yes, even we as a non-mainstream press have made editorial decisions on whom we do not feel serve the African American economic and educational concerns. We have that right just as a white mainstream press feels it can make editorial decisions on other whites whom they feel do not serve their way of editorial makeup.

We agree with Judge Clinkscales that there is a possibility that the school board has been Willie Lynched—which is to say that certain Blacks are selling out their community for their own self-serving purposes—issues we shall address in the future. Make no mistake about that.

But this attack on the Honorable Judge Clinkscales goes deeper. This is about a lily white Mississippi press feeling it has carte blanche to take down a Black judge at its whims. At least without protest.

The irony of this is that it might be the judge who has the last say in a libel suit.



*This Editorial is on the Editorial, Op/ED, Black Paper, Law, and Mississippi lanes on The Mid-South Tribune and the Black Information Highway at www.blackinformationhighway.com . *Welcome, Travelers!*