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THE ESTABLISHMENT OF JUSTICE AND RESPECT FOR THE LAW

1980 LAW DAY ADDRESS TO
MISSISSIPPI COLLEGE SCHOOL OF LAW

by

*Chief Justice Neville Patterson**

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In the brief time permitted I will address "the establishment of justice and respect for the law." Indeed, this is a broad subject, but surely a significant one, bearing in mind the fact that those who wrote the preamble to our Constitution listed the establishment of justice as the pre-eminent value which justified the revolution and made way for the Constitution of the United States, subject to which we serve. From this historical fact, the establishment of justice, we need reflect upon the meaning of justice. To a degree it defies exact definition, yet it probably exists in each of our minds. After reflection, I believe that justice in a philosophical sense means to give every person that which is his or her legal due. I expect perfect justice is something to which judges and lawyers will always aspire, but which will never be fully attained. What we can do short of the nebulous perfection is to endeavor to improve the quality of justice through greater respect for the law, which would be an attribute to justice, lawyers and judges. To be sure, there is no way for lawyers and judges to be extricated from the layman's concept of fair dealing and his concept that justice is attained through lawyers and judges. Indeed, I agree with this layman's concept, because lawyers and judges in the practice of their profession have much weight in the development and direction of the law. This is as it should be, because it is our chosen profession and because we are seen as the living embodiment of the law whether we care for this role or not.

Either fortunately or unfortunately, in recent years there has been a tremendous increase in litigation, literally swamping the courts with disputes of every conceivable kind and fashion. Court congestion and

overloaded dockets, have become the norm rather than the exception. Whether this increase in litigation is the result of a greater awareness of constitutional rights seeking expression through the courts, or whether because of increased crime, or because of greater negligence in our driving and carelessness in our business affairs I do not know nor would I hazard an answer. I can and do say, however, that the increase in litigation has led too often to undue delays in receiving a trial. It has also led to plea bargaining in criminal cases and compromises in civil suits that would not have otherwise been made except for the specter of long delay. Please do not understand the last remark as one of displeasure to plea bargain or compromise. It seems fairly obvious, to me at least, that these processes have eroded to a great extent laymen's respect for the law, and of course, this necessarily carries with it the thoughts of justice having been impaired.

The one great common denominator emanating from the many judicial conferences that I have attended, the one great criticism of the courts and mentioned by the Chief Justice of the United States Supreme Court himself on many occasions, is that justice unduly delayed is justice denied. In this vein I suggest that it would behoove every judge and lawyer, as well as lawyers-to-be or students in this state to give their thoughts and efforts toward making the legal process more efficient in order to produce a speedy trial. To be sure, in this request I recognize that efforts have been made and are continuing to be made for greater efficiency in the courtroom, including the Supreme Court upon which I serve. Unfortunately, time does not permit me to delve into efficiency in greater detail.

The next great concern as shown by numerous polls, is that obtaining justice under law is too expensive. Many, many citizens with justifiable complaints find that the cost of resolving their complaints simply is not worth it. It seems obvious that our great Constitution, which by the very terms of its preamble sought the establishment of justice for every individual, is thwarted if that individual cannot afford it. His inability to pay in effect denies him his constitutional right. I think sometimes that most of the criticism with regard to cost is directed to the prolonged litigation in federal courts, but realistically, this thought may not be valid because most citizens average only one personal contact with the law during their lifetimes, and this experience dictates to a great degree their respect or lack of it for the law. Since recent surveys show that ninety to ninety-five percent of the cases in these United States are tried in the state courts as opposed to the federal courts, the thought that I have suggested is probably not justified in fact, but if this last premise be correct, then again respect or lack of respect for the law must be placed at the threshold of lawyers and judges.

Recent polls by eminent persons hired to conduct the survey show that members of our profession no longer enjoy the prestigious position they once held. This is to be regretted although the polls did indicate

that a judge's image in the eyes of the public was better than a lawyer's. Again, I would like to place the blame at someone else's doorstep, believing that the lawyer and judge image is better in the rural states than it is in the more populous ones, and it is, but once again our prestige is not elevated a great deal. I suggest the time has come for lawyers and judges to give serious consideration to the upgrading of the profession and to the restoration of its constitutional prestige.

In my humble judgment, and I need to make clear that I am speaking as an individual and not for the court, this can be done only by adoption of more efficient rules of procedure to guide litigation through the court system to a speedy and just conclusion. The medical profession and other professions are quick to adopt scientific changes and medical techniques as they come along in order to promote the health and welfare of their patients. Other professions do the same and even though it must be acknowledged that the legal profession differs in that no magic or quick cures come along; we nevertheless must recognize that the public changes, the mores of the citizens change, and there is a continuing change in commerce and banking, necessitating judges and lawyers to open their eyes to the true state of facts.

We cannot measure the law and justice by the success we attained by the rules in years gone by any more than a merchant can gauge his years of success in the 1920's by modern retail outlets. Lawyers are advocates attuned to the exigencies of the case they are trying to bring to a successful conclusion, but justice cannot be framed by the needs for the moment of an advocate in trying his case. Neither can justice be attained, in my opinion, by a judge who is satisfied with the rules he has long known and therefore is comfortable with. *The courts do not exist for the convenience of judges nor for the enrichment of lawyers.* They exist only for the purpose of dispensing justice. At least, it is so under the Constitution. I am afraid that oftentimes our very professionalism leads us to forget this overriding principle.

I would urge those in the profession to give greater thought to justice as it applies to the lay citizen and somewhat less thought to the overriding desire to win the lawsuit at all cost, and the judges must remember also that the dispensation of justice is their first obligation in the society that exists today with all of its changes. Let us not become so engrossed in the right or wrong of instant replay upon a questionable call that we overlook the greater spectrum of the event itself. To this end, I suggest upgrading and continuing legal education for both attorneys and judges so they may be constantly prepared to meet the changing problems under changing standards of performance fixed by both legislative and judicial determinations. As an example, I finished law school in 1939, some forty-one years ago, and to suggest that all of the standards and embodiments of the law that then existed are absolutely valid now to the exclusion of since intervening constitutional standards made by judicial determinations of the

United States Supreme Court would be to suggest an absurdity. Those standards now have application to state courts and lawyers through the fourteenth amendment, whereas formerly they did not. Continuing study is necessary for efficient performance, hopefully, with no greater expense to the litigant.

In conclusion, I do not care for the role of being a harbinger of distressful news, but I am fairly frequently written and called by lay people concerning their complaints. I am also exposed to the polls concerning our profession, and although they are not presently as high as formerly, all is not lost. Hopefully, I have teased the minds of those mature lawyers and judges who are present to some action though I acknowledge that I really have doubts about it, because I have learned through experience that both judges and lawyers are change-resistant due to their very success. More ambitiously, I trust that these few words will instill within the budding lawyers and judges in the audience a great desire in the fulfillment of their professional ambitions to meet the constitutional dictates of the framers of our Constitution that justice be established for all. I prophesy that the law schools in this state which adjust themselves and their teachings to modern conditions, while retaining the values of the eternal truths, will become the predominant legal institutions of the nation. This concludes my Law Day remarks.