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Law Day Remarks

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We assemble here on this Sunday, the first day of May, 1977, to make our contribution to the Law Day objective of fostering greater public understanding of our legal and judicial system. Throughout the nation, the air is filled with rhetoric as judges, lawyers, public officials, ministers, teachers, and other interested citizens devote their best efforts to convincing their fellow Americans that our system is a good one worthy of their support.

It is appropriate that we undertake such an annual project with its important goal. The ideas expressed by so many thoughtful writers and speakers will be helpful in increasing the public support of the system and, thereby, strengthening and improving it.

But it is my view that inspirational rhetoric is not enough. Law Day speeches and writings that are little more than litanies of our blessings are only temporary stimulants to the listeners and readers. Moreover, they tend to tell us where we have been and how well we have done. Talk of the future is too often in terms of what we should do to preserve what we already have — or an outline of our vague dreams of an improved system. When the talk is done or the reading completed, the inspiration begins to fade and the cares of the day again preempt our thoughts. Defects in the system remain, cynicism prevails, and the system continues to serve, but not completely satisfy us.

Thus, from Law Day to Law Day, we proceed, knowing that we have a fine system that has never reached its full potential. We are inspired in May, disenchanted in June; we are pleased when we read a decision with which we agree; we are disappointed and angry when a judge or lawyer misbehaves; we are resentful of the tax bill that supports the system; we are thankful for the freedom the system defends; but we are too busy to be involved in efforts to improve it.

I recognize that our legal system is the best in the world. I contend that our judicial system is a good one, that it functions around the clock to provide justice for each of us, and that it is an important force in our continuing struggle to remain free.

But please don't fault me for not taxing my mind to find more eloquent ways of saying so. Don't be disappointed that I have not brought thoughtful and meaningful quotations of great Americans to reinforce those propositions. Accept the fact that I do believe in and love our system and want you and everyone within the sound of my voice to do likewise.

Then, having done that, hear my practical suggestions for some specific action that, if implemented, will actually cause the people to have more

*Justice, Supreme Court of Florida. LL.B., 1949, Stetson University. This article is the text of a speech given at the University of Florida College of Law during a special Law Week ceremony, May 1, 1977.

interest and confidence in the system. As a predicate for my suggestions and illustrations of the need for better public understanding, consider these real life incidents of recent date.

A gentleman called the office of every justice of the supreme court last week and suggested that he was a bit tired of all the talk about increasing the justices' salaries. He said he makes far less than we do and speculated that he probably would never earn that much. His final suggestion to me, through my secretary, was that, if I am not satisfied with the pay, I should give up the job.

I believe that he represents a substantial number of citizens who are as mad as can be about the way things, in general, are going and about the judiciary's activity in particular. He is certainly interested in the system.

Then, about a week ago, the speaker of the Florida House of Representatives, himself a lawyer, in a dramatic gesture left his podium and went down to the floor of the house to suggest that the seven-man supreme court is, in effect, issuing "one-judge opinions" and that we do so behind a cloak of secrecy. He was quoted as saying: "Why should they be allowed to sit over there behind closed doors and let one judge make the determination for all of them or depend upon staff clerks to go around and make decisions for them. . . . If that's the case then we ought to know about that."[1] His remarks were published throughout the state. He is in error, of course, but he is interested in the system and concerned about his lack of knowledge of its operations.

Finally, I want to tell you about a recent letter to the editor of the *Tallahassee Democrat*. The writer pretty well summed it all up when he wrote: "An easier way to cut taxes would be to bulldoze a big hole in front of the Capitol on Monroe Street, place all the politicians and lawyers in it and cover them up."[2]

This citizen is also interested in the system and sees politicians, including judges, and all lawyers as enemies. I regret to say that he represents the view of many good people who are interested but not close enough to the system to appreciate how it works.

These incidents have a common theme. There is interest expressed, but there is also suspicion and concern about that which is not understood. Explaining away the unfounded fears will not suffice. There must be action — visible and dramatic — to give the people an unmistakable signal that their system works and is deserving of their confidence and support.

One helpful form of action would be to move the entire system closer to the people. The people build the courthouses, pay judicial salaries and provide the aides, secretaries, clerks and other supporting staff. They erect and maintain the jails and prisons, and they pick up the tab for the entire correction system, including the probation and parole operation. Lawyers, whether working for state government, state attorneys, public defenders, or private clients, are paid by the people. The taxpayers also pay for the

1. St. Petersburg Times, Apr. 23, 1977, §B, at 14.
2. Tallahassee Democrat, Mar. 26, 1977, at 4.

institutions where all of those who work in the system are educationally trained for their responsibilities.

Yet we seldom ask the public to do more than just pay the bill. A few serve on juries and a very few are members of nominating or qualifications commissions. Most people have no contact with our legal system unless they are called as witnesses or forced into litigation. This is something that should be corrected.

At least some of the conferences of appellate courts should be open to the public. Many decisions made at judicial conferences are about administrative matters, court rules, court schedules, and the like. There is absolutely no reason why the public should not be invited in for those considerations.

Opening the deliberations about litigants' cases must be approached with more caution. An individual judge with a decision to make will privately review the facts and the law, hear argument of counsel, and then make his decision as dictated by his conscience. There is no way that his thought processes can or should be open to observation by anyone.

In the appellate setting, the case conferences involve the same process, but with more than one research effort and more than one conscience. The give and take on precedent and interpretation of evidence is different than a discussion of a zoning matter or a proposed appropriation.

Appellate court conferences are designed to review research, expose oversight, force consideration of other approaches, and refine the opinions explaining the decisions. We found, in the legislative halls, at city and county commission tables, and at school board meetings, that even discussions of routine matters were somewhat more restricted when conducted in public. In judicial considerations, the restrictions will be more pronounced.

In executive and legislative activities, the trade-off was found to be wise. What was lost in uninhibited private discussion was more than balanced by the public's being able to watch all governmental activities.

Whether the trade-off will be as beneficial in judicial activities is uncertain. Whether the system will lose so much by prohibiting private discussions of intricate points of law, precedent, and philosophical approaches to problems that the benefits will not be full compensation can only be known through experience.

My foremost concern about opening consideration of specific cases is the problem that will be generated by people contacting members of the judiciary to give their reaction to issues being considered. It is proper for a constituent to contact his senator or representative to attempt to persuade him to vote in a particular way. However, in the interest of fair play, we do not permit private contact or correspondence with judicial officers. In fact, those officers take great pains to restrict their activities and even their friendships to avoid even an appearance of impropriety.[3] Judges and justices are also forbidden to receive ex parte communications about matters under consideration.[4]

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3. CODE OF JUDICIAL CONDUCT, Canons 2, 5.
4. *Id.* Canon 3(A)(4).

There is a serious and continuous effort to ensure the impartiality of the judiciary, but even with our present system, the questions we ask from the bench at oral arguments are often interpreted as indications of our thoughts on individual cases and stimulate public response. It will be difficult for a judge to make a citizen understand why he cannot listen to him or read his letter when the citizen has seen the television account or read in the newspaper about the judge discussing the merits of the case and the rule of law to be applied. A few people write or call now, even though they do not know which judges are on a given panel, to whom the case has been assigned, or what any judge thinks the decision ought to be. If a citizen knows who is assigned to write the opinion, what each judge's views are, and which way the case is to be decided, it will be very hard to discourage him from offering his suggestions as he does to his legislator or city commissioner. In such a situation, can the loser in any case have confidence that the tendered suggestions were not persuasive?

I would open all judicial conferences that do not relate to specific cases and invite the public to attend. I would move cautiously to open some conferences on select cases, in the beginning, to test the reaction of the public and the effects on the rights of the litigants. Precautions against lobbying would be necessary. We must make sure that no litigant is treated unfairly and that nothing is ever done to give any litigant cause to suspect he has received unfair consideration.

In an additional effort to increase public interest and understanding, the supreme court should conduct hearings in places accessible and convenient to the public. Every county has county and circuit courts, and all interested citizens can visit them at will. District courts of appeal sit in each circuit within the district. They could increase the number of such visits. But the supreme court sits only in Tallahassee. It should schedule oral arguments in other places in the state so everyone who cares to see it in operation may have the opportunity to do so.

The supreme court's internal operations manual, which has already been drafted, should be given wide public circulation. It explains how the business of the court is conducted and should eliminate the air of mystery that now surrounds the internal functions.

The experiment recently authorized by the supreme court for television and still-camera coverage of trials and proceedings in all courts should be given every opportunity to succeed.[5] There is no reason the people cannot be invited into the courtroom through the medium of television. All that is required is a proper judicial attitude, the cooperation of the attorneys, and consideration by the media representatives so that the witnesses and jurors are not distracted. The first consideration is a fair trial or hearing for the litigants. That can be achieved in the presence of television and still cameras if all who are involved are willing to make it so.

The revived practice of the chief justice reporting to the legislature on the state of the judiciary should be continued. The judiciary is an integral

5. *See In re* Petition of Post-Newsweek Stations, Fla., Inc., for Change in Code of Judicial Conduct, No. 46,835 (Fla. June 14, 1977).

part of the total system of state government. It is as important as the executive and the legislative branches. The problems and progress of the judiciary should be placed before the representatives of the public in a detailed and comprehensive manner.

Almost all members of the legislature, the cabinet, and the supreme court are traditionally present when the governor addresses the joint session on opening day. This year, on the day on which the chief justice made his appearance, attendance left something to be desired. Perhaps a different day or a different format should be considered. However, a continuation of this opportunity for the citizens to learn of their judicial system should be preserved, improved, and fully supported.

With respect to the Florida Bar, I remind the members that it is the nature of their profession to incur animosity. They are advocates. They are obliged to represent unpopular clients and advocate their positions. In most lawsuits, someone wins and someone loses. They cannot expect all losers to be good sports.

Much of our work is mysterious and confusing to laymen. They cannot understand why we say "inter alia" when we mean "among other things," why we say "per curiam" when we mean "by the court," or why we say "vel non" when we mean "or not."

It is partly as a result of such confusion and the animosity which we incur that we were included, by an interested citizen, among those consigned to the hole in front of the capitol to be covered up. The situation is not hopeless, however, and we need not resign ourselves to such a fate.

Each individual lawyer must work to bring credit to the profession. The legal profession, indeed the entire system of justice, is judged by the worst of us. Any good reporter will tell you that the news story is that one small kitten refused to come down from the tree until the fireman arrived, not the fact that 150 cats did not climb trees. So it is with members of the bar. Every individual member of the bar must dedicate himself or herself to live so that he or she will not provide the basis for any professional criticism. Rules for discipline should be revised to provide procedures appropriate for the present 20,000-member bar and designed to build public confidence.

The chief justice has appointed a committee to review and revise the bar disciplinary rules. Meetings began in May, and the revisions should be ready in a year. Public input will be solicited and considered. The goal of this committee will be to formulate a procedure designed to cope with the heavy load of investigations and prosecutions resulting from the increased numbers of practicing attorneys. The time between complaint and final decision will be reduced, and consideration will be given to a system of full-time paid referees to handle the cases.

The bar president has suggested that the new procedure should be broad enough to review complaints of incompetence and neglect in professional undertakings. This will be explored, as will lay participation in the procedure. The question of openness of disciplinary procedures will be visited. Few members of the bar still cling to the concept of secret or confidential

proceedings after probable cause has been found to exist. It is our intention that, when the committee's work is done, the members of the public will be more justified in reposing trust in the legal system that touches their lives in so many ways.

Every effort should be made to inform the public of bar activities. Attorneys are officers of the court. Each member of the bar is an official part of the system of justice authorized and supported by the public. The people are entitled to know what the organized bar is doing at all times.

Public support is necessary for the upgrading and improvement of our entire system. If they are to lend their support, the people must be informed. If they are given the facts and made to feel a part of the system, they will respond with interest and meaningful contributions toward improvement. We make a serious mistake when we limit public participation to paying the bills.

In addition to efforts by the bar and the courts to increase public interest and understanding, the legislature should provide an example by its interest and understanding of the problems and successes of our system of justice. The legislature should provide needed judges, supporting staff, and facilities for efficient operation of the system.

The record is clear — the Florida courts are carrying a workload well above the average. Our system is processing many more cases than comparable states. Delays and backlogs are fewer than in most other states. But, we could improve, and we should.

Nothing is more frustrating to litigants than delay. Defendants in criminal cases receive a speedy trial but often experience long delays in the appellate process. Delays, although short by comparison with other jurisdictions, can be disastrous to the parties and ought to be shortened even more.

Every judicial officer has the ongoing responsibility to try earnestly to expedite the cases without reducing the quality of the work or injuring the rights of the parties. It is my observation that this is being done. The supreme court is setting the pace and the tone and is reducing the backlog of cases each month. Every echelon in the system is committed to do the same.

There is a need for a few more judges at the district court and trial court level. That need should be met. There is also a need for a few more positions for supporting staff. How foolish to enjoy the service of a competent, industrious judge and force him to work at less than his full capacity because of inadequate staff assistance.

If the judges, juries, advocates, and others in the system are to work efficiently, their work quarters must be adequate. If office space is provided blocks away from courtroom and colleagues, if the given space is so cramped and so overheated that it is unbearable, if the air conditioning system drops soot on opinions and court files and the ceiling leaks on the desks, or if the library is not supplied with needed books, the system will function below capacity. Such defects ought to be corrected.

Finally, judicial compensation should be sufficient to retain the good judges. Whenever this subject is discussed someone invariably observes that, no matter what judges are paid, there will always be a group of lawyers

ready to fill any vacancy. I feel certain the observation is accurate because there will always be lawyers who are independently wealthy and who would need no compensation; there will always be lawyers who are so hungry for power or prestige that they would willingly live in poverty, if necessary, to attain it; and there will always be the mediocre lawyers who can hardly make it in private practice and who are looking for a relatively secure, steady job.

If we select our judges from those or similar groups, we will fill the positions alright, and the taxpayers will save a few dollars. But, we will also condemn our system to mediocrity. The legislature should set the compensation at a level that will make it desirable for the judges who have been, or could easily be, successful in the private practice to serve on the court. The quality of justice is directly related to the quality of judges. None of the other suggestions are worth implementing if the judges lack excellence.

There is not now, nor will there ever be, a perfect legal system. There will always be human errors, human failings, and, perhaps, a little corruption. So it is in every system, whether it be government, private business, or church work. There is much room for improvement, and we are wrong if we do not move to make those improvements. As you might have surmised, I see most long-range improvements flowing from better public understanding and expanded public involvement.

Make changes in our procedures to remove secrecy and mystery, involve the people in the system in new and important ways, conduct ourselves so as to reflect credit on our system, provide enough qualified people to make the system effective and efficient, and give them a decent place to work. Do all of those things, and the system will be improved; but more than that, it will have more credibility with the people.

For my part, I would much prefer that the outspoken Floridians talk of major improvements through the coming constitutional revision effort rather than cast a shadow on the entire system by accusing it of improper, secretive activities. I would rather they call their legislators and tell them to support the system than be so outraged and suspicious that they spend their time inviting judges to leave the system. And of course, I would rather they speak of lawyers as officers of the court, protectors of right and liberties, than enemies who should be buried in front of the capitol. I believe we can move to change these attitudes.

Accordingly, we should make this Law Day different from others. Let us go forth this year with the realization that, no matter how wonderful our present system may be, it could be significantly better. Let us resolve to take the action necessary to interest the people in our system and induce them to join with us in a partnership dedicated to making improvements.