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LAWYERING IN THE NEW MILLENNIUM: REFLECTIONS OF A JOURNEYMAN TRIAL JUDGE *

THE HONORABLE JOSEPH F. ANDERSON, JR.**

President Palms, Dean Montgomery, Distinguished Members of the Faculty, Graduates of the Class of 1997, Family, and Friends:

What a joy and what an honor to be with you here on the Horseshoe on this occasion. I thank you for the compliment of asking me to speak and to show my appreciation, I will not afflict you with many words. I realize that I am the last impediment that stands between you and the world that awaits; and, because I do not wish to be trampled in a stampede, I shall confine my remarks to a subject of manageable scope.

This day marks the completion of your formal training for the bar. I know this day is a happy one, not only for the graduates but also for parents, spouses, and children as well. Undoubtedly you all feel a glow of accomplishment. Many of you may also feel an equally satisfying sense of relief, perhaps mixed with a bit of uncertainty about the future that lies ahead. I believe that you will find that future to hold a rewarding and interesting career that will provide you with many opportunities to benefit not only yourself but also your community. Making the most of those opportunities is the great challenge before you.

Let me assure you at the outset that your formal education at the USC School of Law provides you with an excellent foundation for your career. Indeed, I am confident that you will quickly come to appreciate the value of your USC Law School diploma. The quality of the work being done at our law school was recently brought home for me by my trial arising out of the 1994 crash of USAir Flight 1016. That crash generated dozens of wrongful death and personal injury actions that were

* Address to the Graduating Class of 1997, University of South Carolina School of Law (May 9, 1997).

** United States District Judge, District of South Carolina, Columbia, S.C.

filed, literally, all over the country and transferred to this district for a consolidated trial.

As you might expect, the attorneys involved in these cases represented the top echelons of the trial bar—aviation litigation specialists from New York, Washington, Chicago, Houston, and Los Angeles, among other places. The plaintiffs' steering committee, which I appointed to coordinate all pretrial activities and to serve as principal trial counsel at the consolidated trial, consisted of six lawyers, three of whom were USC Law graduates. Several other USC graduates were actively involved in some of the individual cases or in assisting in the defense.

I felt a great sense of pride watching these local attorneys during this trial. I was impressed both by their skills, which clearly matched those of the many nationally renowned attorneys involved in the case, and by some equally important intangibles like their courteous behavior towards opposing counsel and witnesses as well as their candor with the court. As you graduate, you join a fine cadre of attorneys whose professionalism is an unspoken testament to the faculty and programs here at our law school.

To the graduates, let me say that the graduation ceremony and diploma you receive today tell the world that you are ready to take the next step in your professional lives. Your formal education is an important step in the learning process. If it has been completely successful, however, it has taught you just how much more there is to learn. A lawyer's training never really ends. You will mature as a lawyer only with continuing study and experience.

As you go forward with your professional career, you also have an obligation to preserve and improve our system of justice. There is no other government institution from which so much is expected as the American system of justice. Covered extensively by the media, monitored closely by the public-at-large, and administered by men and women of differing philosophies, our system always has been and always will be a subject of debate, both within and without its ranks.

Looking back on my twenty-two years at the bar, I have come to the firm conclusion that the American people believe, fundamentally and absolutely, in the rule of law. They revere the concept of justice, and their conscience tells them to obey the law as they understand it.

Regrettably, in my view, recent events have served to undermine public confidence in our legal system. On the criminal side, several trials on the west coast, seemingly endless in duration and surrealistic in character, have come to symbolize what many Americans perceive to be a dysfunctional justice system. Part of the blame for this must be accepted by those judges who have poorly managed the trials and by the egocentric attorneys who have taken advantage of that poor management. But some of the blame rests with other legal professionals for failing to emphasize that such cases are the exception and not the rule.

Public attitudes about the civil justice system are also frequently distorted by a few atypical cases or even less reliable indicators. I find it quite ironic that our system, which is designed to be a search for the truth, continues to be the victim of distorted half-truths about bizarre jury verdicts and judicial rulings. Outrageous

runaway verdicts are reported with glaring headlines, while the corrective action our system provides—reduction in the verdict by the trial judge, for example—frequently goes unmentioned. Some goofy cases, such as the little league ball player suing his coach because he was hit on the head by a fly ball, are simply fashioned out of whole cloth. That case, widely reported and touted as an example of a system gone awry, has actually been traced back to a Jay Leno monologue. It simply never happened! But that story and others like it, are often driving forces behind efforts to drastically reform our system of resolving private disputes.

It is my sad duty to tell you that the performance of some egotistical lawyers and judges, together with a campaign of misinformation by those who would stand to gain from attacking our present system, have caused public confidence in the work that you and I perform everyday to be at an all time low. While these circumstances are distressing, they present you and me with a tremendous opportunity to improve the perception of our profession, along with improving the profession itself and the society it serves.

On the eve of a new millennium, our overarching challenge, as lawyers and judges, is to restore public faith in a system that was once recognized as the fairest and best administered in the world. I am convinced that continued unanswered attacks on the legal profession and the legal system will have dire consequences not only for our profession but also for our country. If we are not careful, we as a society will “throw the baby out with the bath water.”

This is where you come in. The interrelated tasks of speaking out and defending our system and, when appropriate, working to improve our system will fall to your generation. Let me herewith propose a script for you:

Winston Churchill once said that the best measure of the quality of a society is the quality of its justice.¹ America is distinguished from other countries by the quality of its law and how it is used by its people to expand liberty and opportunity. Our law represents our national dreams, our system of justice towards one another. The assumptions that we make every day, the security we take for granted, the social compact that allows us to live together peacefully; these are the result of law.

We need to remember that law is mostly the things that *don't* happen. It is merchandise *not* stolen from stores. It is cars that *don't* run stop signs. It is the promotion of our business community through patents and trademarks that protect intellectual property. It is the nonviolent making and unmaking of Presidents and the orderly transfer of goods and property from business to business and person to person. Law is everywhere around us. The structure of our lives together is built upon it.

[O]ur system of justice is an old masterpiece that deserves to be dusted off and prominently displayed . . . Who better than [you ladies and

1. Cf. Remarks of The Honorable Louis L. Stanton at the 1988 Judicial Conference of the Second Circuit, in 125 F.R.D. 197, 211 (1988).

gentlemen, who will soon be participants in] the justice system and the beneficiaries of its professional rewards, to begin to re-illuminate this portrait of [a vibrant and independent court system] and the importance of the rule of law to our continued vitality as a nation?²

Although we must be ready to defend our system from unwarranted attacks, we must also remember that even the best of systems cannot remain static. We must continue to refine our rules of procedure in an effort to rid our system of the twin evils of undue delay and excessive costs. We should encourage alternative dispute resolution through traditional methods such as mediation and innovative methods such as summary jury trials. We must ensure that the judiciary is composed of men and women capable of presiding fairly, but firmly, who will not allow either public sentiment or swashbuckling litigators to make a mockery of the search for the truth. Our eight-hundred-year-old system of trial by jury must also be prepared to take advantage of the vast technological changes that will continue to shape our society.

As Chief Judge Deanell Tacha of the Tenth Circuit has observed,

[i]t is appropriate that [we as] lawyers and judges begin the effort to focus attention on the 'big picture' because we have, to some extent, brought this problem on ourselves. To state what the public has known for several decades: we in the legal profession largely have been talking to ourselves! We speak our own language, associate mostly with each other, belong to and participate in our own organizations, and increasingly represent business entities³

in ways which distance us from individuals involved in every dispute.

Economic pressures and the increasing complexity of practice have caused attorneys "to huddle in larger law firms, develop specialties, and become increasingly conscious of the billable hour."⁴ As a result, we have, as a group, become "decreasingly involved in the civic activities of our communities. We even dedicate our 'leisure time' to the all-important task of 'rainmaking.'"⁵ In short, there are numerous factors causing our profession to evolve away from the civic life of our nation.

As a profession, we need to reverse this trend and renew our civic commitment. It is no accident of history that many of our nation's best leaders have been lawyers. "The problem-solving capacity that is the hallmark of the lawyer is [equally] well-suited to solving the national problems"⁶ of today: drugs, youth gangs, homeless-

2. Deanell Reece Tacha, *Renewing Our Civic Commitment: Lawyers and Judges as Painters of the "Big Picture,"* 41 U. KAN. L. REV. 481, 485-86 (1993).

3. *Id.* at 486.

4. *Id.*

5. *Id.*

6. *Id.* at 487.

ness, health care, and economic opportunity. “We can better ourselves and our neighbors by putting [our problem-solving] skills to use”⁷ in these areas.

Lawyers are trained to gather and analyze facts, to facilitate and shape enlightened debate, to guide others to informed judgments, and to give structure to ideas. We learn the skills required to organize a community so that people can live together while pursuing their individual and sometimes conflicting interests. We also learn to influence, directly or indirectly, the conduct of others, and to exert moral leadership.

In my experience, the best lawyers are deeply involved in schools, churches, and synagogues. They are leaders, giving of ourselves to serve through charity, the arts, social services, and government work. Increased voluntarism will help our profession make our communities more successful and repair our somewhat tarnished image.

To move back into the lifeblood of the community, to [serve as] respected and listened-to members of elected bodies, to resolve in positive ways the difficult issues of the day, we must [sometimes] shed our adversarial shells. We must understand that [Thomas] Jefferson, [James] Madison, [Dorthea Dix], [Abraham] Lincoln, and [Martin Luther] King would not have so affected our history if they had treated every debate as a contest to be won. Instead, they, like scores of true heroes before and after them, understood that the views of others deserve respect and thoughtful consideration, and that good decisions and constructive progress take root not in winning and losing but in compromise, tolerance, and cooperation.⁸

A few years back, I was at a gathering of young lawyers, and I overheard a reference to an attorney who was “the first in his class to own a BMW.” Whatever area of law you choose to enter, you can enjoy a comfortable standard of living. But let me suggest to you that the worth of your career is not going to be measured by the size of your bank account or the make of your car. There’s only one way to achieve a full and rich life, and that is to serve others.

So let me challenge you to be the first in your class to serve as a member of school board, to perform two hundred hours of pro bono service, to organize a Habitat for Humanity project, to serve as a Scout leader, to raise funds for your law school, or to teach an adult literacy course. Let me also challenge those of you who are so inclined to offer for public office. I consider my six years in the legislature to be among the most interesting and rewarding of my career.

Arthur Vanderbilt, Chief Justice of the New Jersey Supreme Court, once wrote that

7. *Id.*

8. *Id.* at 488.

every great lawyer must be prepared, not necessarily to seek public office, but to answer the call for public service when it comes. The attorney whose professional thoughts begin and end with his [or her] own private clients is a pitiable mockery of what a great lawyer really is.⁹

Today, I welcome you to the ranks of an honorable profession. Hopefully, the training that you have received has not only equipped you with a thorough technical knowledge of the law, but it has also imbued you with a deep and abiding sense of the importance of the work that lies ahead of you as you bear our law school's high standards into the world.

The values that you hold as the goals of your life are within your power to create and achieve. It's up to you. On this your graduation day, as Holmes said—Sherlock, that is, not Oliver Wendell—“The game's afoot.” May God speed and bless that game for each of you. And may you each treat that precious degree, stained with sweat and tears, as your sword and shield to guard, defend, and nurture the system of justice that we all hold dear.

9. Arthur T. Vanderbilt, *The Five Functions of the Lawyer: Service to Clients and the Public*, 40 A.B.A. J. 31, 32 (1954).