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Mississippi Supreme Court Presiding Justice Jess Dickinson Speech at Access to Justice Commission Conference

Hon. Jess Dickinson

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SPEECH BY JUSTICE DICKINSON
AT THE ACCESS TO JUSTICE COMMISSION CONFERENCE

INTRODUCTION BY ERIN GROTHEER

On October 24, 2012, the Illinois Supreme Court held its first Access to Justice Commission conference hosted at the Bilandic Building in Chicago. The purpose of the conference was to discuss fundamental limitations to access to justice and to start a discussion on solutions to enhance access to justice. More than 125 persons from different areas of the legal profession attended the conference. Illinois Supreme Court Chief Justice, Thomas L. Kilbride, has particular interest in the topic of equal access to justice because of his years of legal service to underrepresented populations.

Mississippi Supreme Court Presiding Justice Jess Dickinson was the keynote speaker at the conference. Justice Dickinson was awarded the Chief Justice Award during his first year on the Mississippi Supreme Court in 2004 and again in 2010 for his work in advancing the administration of justice. Justice Dickinson is a charter member of the Mississippi Access to Justice Commission (http://iln.isba.org/blog/2012/10/22/access-justice-commission-hold-1st-ever-conference). Edward Grossman, Executive Director of Chicago Legal Clinic, was in attendance for Justice Dickinson’s speech. Mr. Grossman was so moved he recommended sharing the text of the speech with a larger social justice audience.

“I had the recent good fortune to attend an equal justice conference in Chicago, which was attended by many judges, including every current Justice of the Illinois Supreme Court, as well as many legal services attorneys. The point of the conference was
to examine the equality of justice, particularly to the poor, under our current legal system.

The guest speaker for the conference was Presiding Justice Jess H. Dickinson of the Supreme Court of Mississippi. Somehow, in my willingness to stereotype, I thought he would be kind of a “redneck” conservative right wing person.

I believe that one is inspired when words or writings have an influence on the mind or the soul. After thirty plus years of providing legal services to the poor, I thought that I had heard just about everything one could say to inspire lawyers to carry out such an important mission. I did not feel I would hear much inspiration from Justice Dickinson. It turned out that I was not just wrong, I was very wrong (you almost never see where a lawyer admits that in writing). I promise that when you read the words of this speech you will be inspired, as I indeed was. That inspiration provided me with a renewed understanding about the importance of equal justice under the law and a feeling of renewed vigor in pursuing the legal rights of those less fortunate. What follows is the text of a great speech. Drink it in and absorb its contents."

The Journal for Social Justice would like to thank Mr. Grossman for suggesting this speech. Further, we would like to commend the Illinois Supreme Court for addressing fundamental issues of access to justice. Finally, we would like to especially thank Justice Dickinson for allowing us to publish his inspiring speech, his call to action, his reminder why we should continue to fight for those who cannot fight for themselves. This speech is produced in full without edits or alterations.

Speech:

Over the past half-century, as the number and percentage of impoverished Americans has increased, we (through our state and federal governments) have responded by dramatically increasing entitlement spending, and by establishing and funding new assistance programs. For instance, our 2011 federal budget
includes over $1 billion to provide cell phones to the poor. But at the same time, we have continuously, systematically, and increasingly denied the poor fair and equal access to courts.

In America, there is 1 lawyer for every 429 persons in the general population; and yet, only 1 legal services lawyer available to serve every 6,415 persons who live in poverty. Out of every 100 persons who are qualified for legal services help, and who have a qualifying legal need, only 30 seek assistance from a legal services office - often because they are unaware a legal services program exists. And of the 30 who do seek help, 15 must be turned away.

So 15% get help. But what about the remaining 85%? A few are fortunate enough to get pro bono lawyers or help from private legal aid programs. The rest - a very high percentage - either try to represent themselves, or just take whatever comes.

This suggests three important questions: Should someone do something about it? If so, what can be done, and who should do it? Before addressing the first question, let's review a little history.

*Equal justice - whose idea?*

On September 6, 1620, 102 people, including 3 pregnant women and over 30 children, left their homes, churches, friends, and - in many cases - their families, to board the Mayflower and seek a new and better life on the North American continent.

By the time they reached what we now call Provincetown Harbor on Cape Cod, they had discussed how they would govern themselves in this new land that boasted abundant natural resources and opportunity, but no constitution, laws, legislatures, or courts.

After much discussion about the principles and values they considered important, these Pilgrims signed an agreement that history would later call the Mayflower Compact. And although the United States of America was not to be born for another 156 years, her heart began to beat that day because the Mayflower...
Compact proclaimed - loud and clear - the concept of equal justice for all.

Equal justice - part of who we are

By 1787, America had won her independence. She was 11 years old; and like most 11-year-olds, she needed a little guidance, so our Founders began the process of drafting a Constitution.

When the delegates first met on May 14, 1787, they began - just as the Mayflower passengers had done a century-and-a-half before - by discussing the principles and values they felt were too important to trust to future legislative bodies. And their discussions turned into debates - and often into passionate arguments. These great patriots - Jefferson, Madison, and many others - continued, day after day, for 126 days, before they finally reached agreement.

And when they began to actually write our Constitution, they did not - as one might think - begin with Article I. They began with a paragraph that proclaimed to the world, and to future generations, the five bedrock principles and purposes of the Constitution.

The Constitution's first purpose was to "form a more perfect union." The second was not (as applying logic to current expenditures might suggest) to "provide for the common defense" or to "promote the general welfare" or even to "secure the blessings of liberty" - those would come later. Our Constitution's second purpose - its placement suggesting it was the second most important principle upon which our government was founded - was to "establish justice."

"We the people of the United States, in order to form a more perfect union, establish justice . . . ."

The invisible problem

And here we are, over 220 years later. Counting the President, the Congress, our federal and state courts, our governors and state legislatures, we have more than 6,000 women and men
in positions of leadership and great power in this country. So if -
as I believe - they are all patriots who love America, why do we
have this chronic, cancerous justice gap that threatens one of
our founding principles?

The answer lies, I think at least partially, in the lyrics of "The
Boxer" - a song Paul Simon wrote in 1968 - about a poor boy
who struggles to overcome poverty and loneliness in New York
City. According to Simon’s lyrics, the boy can be found

"seeking out the poorer quarters where the ragged
people go - looking for the places only they would
know."

And he cries out for help, but no one hears because, according
to Simon, "a man hears what wants hear disregards the rest."

The truth should be told. And the truth is a sad commentary
on our priorities. Far too many poverty-stricken children,
abused women, elderly and disabled citizens, veterans, and
others who cannot afford to pay a lawyer, cry out in desperation;
but their cries - for decades - have gone unheard. "A man hears
what he wants to hear, and disregards the rest."

Each year, I ask my law students at Mississippi College School
of Law, what they think makes America a great country. Their
responses are almost always the same. They begin by pointing to
our Constitution. I then ask them why they think so, and they
explain the freedoms of the First Amendment and the protec-
tions of the Fourth, Fifth, Sixth, Eighth, and Fourteenth
Amendments.

When the students finally wind down, I say, "Let me read to
you from some other constitutions around the world." I always
begin with excerpts from the Constitution of the Peoples’ Re-
public of China:

Citizens of the People’s Republic of China enjoy
freedom of speech, of the press, of assembly, of
association - freedom of religious belief - Freedom
of the person . . . inviolable - the right to criticize
... any state organ or functionary - Women enjoy equal rights with men in all spheres of life. . . .

And then, I read them a few provisions from the 1936 constitution adopted by communists in Russia, 19 years following Bolshevik Revolution - some call it the Stalin Constitution:

[C]itizens of the U.S.S.R. are guaranteed by law: (a) freedom of speech; (b) freedom of the press; (c) freedom of assembly, including the holding of mass meetings; (d) freedom of street processions and demonstrations - No person may be placed under arrest except by decision of a court . . . .

Finally, I say, 'If you still aren't convinced that just having a great Constitution is not what makes America great, let me read from Germany's constitution when Hitler came to power in the Third Reich:

In the Reich, and in the states, administrative courts have to exist, according to the laws, to protect the individual against bureaucratic decrees - All Germans are equal in front of the law - Men and women have the same rights and obligations - Legal privileges or disadvantages based on birth or social standing are to be abolished - All Reich inhabitants enjoy full freedom of liberty and conscience - [And my personal favorite] Undisturbed practice of religion is guaranteed by the constitution, and is placed under the protection of the state.

**Equal justice - some lucky ones**

We do, of course, have a great constitution. The Fourteenth Amendment says:

No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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In addition to “Equal Justice Under Law” on the Supreme Court’s east side, there is another inscription carved above the marble columns on the west side: “Justice - the Guardian of Liberty.”

There inspiring words - “Equal Justice Under Law”, “Justice, the Guardian of Liberty”, “Equal protection of the laws” - don’t mean anything if they are not applied to the lives of the least among us. There are so many examples of the least among us who suffer in silent acceptance of a system that, to them, places no value on their right to justice. A few do get lucky.

Krisina and Daniel Chamblee. The Chamblees are good people. Proud people. But Daniel is disabled, Krisina is not educated, and they - and their two little girls - live in poverty. Based on a false complaint, the State sent social workers to their home to take their children. They had no money for a lawyer. And under current constitutional interpretation, they were not entitled to legal representation at the placement hearing, as they battled the State and its attorneys for control of their children.

Tara Walker - a legal services lawyer - took their case. After investigating and uncovered the truth, Tara made the appropriate arguments in court, and got the Chamblees their children back. Daniel later stated - with no doubt in his mind - “I honestly believe without [Tara], we would never have seen our children again.”

Judy Mills. For years, Judy and her two children were subjected to abuse. On one occasion, her husband picked her up, slammed her against a wall, and slashed her face with a fork. He would often leave Judy and the children for long periods of time, without money - sometimes with no electricity or food. Later, when Judy was asked how she felt during those dark times, she said: “As horrible as it sounds, I really . . . I just wanted him to go ahead and kill me;”

Judy found no friend in the Fourteenth Amendment’s promises of due process; and no comfort in the words carved

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above the Corinthian columns of the Supreme Court. But she found a friend in Brent Schellhammer, a legal services lawyer who took her case, helped her get a divorce, child support, and protection for her and the children.

Anna Alaman. Anna was born with a severe disability. She had a simple dream... just to spend her life doing something to help other people. But her disability and medical problems led the State to remove the teenager from her home, take her out of school, and move toward putting her in a nursing home or an institution.

Later, Anna was asked how she felt when she learned the State wanted to institutionalize her. I believe Anna’s simple words should be engraved above the doors of every courthouse in America - so that we judges and lawyers would have to see them every day when we go to work. She said: “I felt like, what am I gonna do? I don’t know what to do. I don’t know the laws, you know... or what my rights are. What am I gonna do?”

Anna was lucky. Lucy Wood took Anna’s case for free. She stopped the commitment proceedings, and forced the school to take Anna back so she could complete her education. Anna now has a family and she works in a kitchen, helping feed children. What might seem not much to many, is Anna’s American dream come true - and all because of one lawyer’s commitment to equal justice.

It’s up to the lawyers

If we are to survive as a nation, our citizens must believe their courts are fair. I think most still do, but we are losing ground. There are approximately 50 million American citizens who live in poverty. That is twenty-percent of our population. Over 16 million American children live in poverty. And for them - every day - we close our courthouse doors a little bit more.

For years, federal funding for legal services for the poor has been criticized and cut. Last year, there was a serious move-
ment in Congress to abolish the program altogether. No talk (as far as I know) of reducing or eliminating the billion dollars (2 1/2 times funding for legal services) budgeted for cell phones for the poor.

As important as Legal Services is to the principles of justice and fairness in our courts, it is unrealistic to hope for enough additional funding for Legal Services to solve the problem. Our only hope is to increase both lawyer participation in, and efficiency of, pro bono programs.

I believe we need a full-time pro bono coordinator in every population center of every state, whose job would be to establish relationships - personal relationships - with local lawyers, organize and coordinate pro bono cases in the area, and persuade the lawyers to take them. The truth is, if we don’t dramatically increase pro bono participation, millions of impoverished citizens - in Mississippi, a third of our children live in poverty - have no chance at fair and equal access to our courts.

I know some view Legal Services as too much government. And many lawyers feel that we at the Supreme Court, and those in leadership at the Mississippi Bar, shouldn’t push pro bono programs. “Too much interference with the legal profession,” they say. “Too much infringement on the lawyer’s time.” But I call equal justice for everyone a big part of how we got here, and a necessary principle of America’s greatness.

So when my law students turn it back on me and ask what I think makes America great, I say a big part of it is people like Tara Walker, Brent Shellhammer, and Lucy Wood; people who go out every day and fight for the principles on which country was founded; people who have dedicated their lives to the proposition that due process and equal protection are more than pretty words carved above marble columns; people who believe in heart of hearts that - even though Paul Simon’s ragged people may not have equal bank accounts or country club memberships - they have a right to stand equal before the law in our courts.
People who believe we should not just HAVE a great constitution - we should make it work . . . for everyone.

Jess Dickinson is an adjunct professor at Mississippi College School of Law, a Presiding Justice on the Mississippi Supreme Court, and for nine years, has served as the Court's liaison to the Legal Services community.