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# Law Day 1981

Harry A. Blackmun
*U.S. Supreme Court*

Remarks of Harry A. Blackmun

Associate Justice, United States Supreme Court

at

Dedication of new Law School Library Annex

Athens, Georgia

May 2, 1981

It is a happy day when we can be here, on this campus of the University of the great State of Georgia, to celebrate the accomplishment of still another step -- this Library Annex -- in the building of a law school that originated in 1859.

It always interests, and assures, me that so often, as in Georgia's case, an educational institution is thought of and founded almost before anything else emerges following the surmounting of the hard facts of sustaining life in a new wilderness. But it happened in this State, as in so many others, when this University was incorporated in 1785, almost 200 years ago.

And Georgia has produced great sons and daughters -- among them, Erskine Caldwell, Lucius D. Clay, Jullette G. Low, Tyrus Raymond Cobb, Robert Tyre Jones, Jr., John C. Fremont, Joel Chandler Harris, Dean Rusk, Martin Luther King, Jr., Sidney Lanier, Margaret Mitchell, Courtney H. Hodges, Jimmy Carter, Walter F. George, Walter F. White, Richard B. Russell, and even five Justices of the Supreme Court of the United States:

James M. Wayne (1835-1867)

John Archibald Campbell (1853-1861)
(appointed from Alabama)

William B. Woods (1880-1887)

Lucius Quintus Cincinnatus Lamar (1888-1893)
(appointed from Mississippi)

Joseph R. Lamar (1910-1916)

I am told that this new facility represents an investment of approximately $1.75 million. One, of course, might say that that is only money. It does not directly represent or account for the intangible things that, although more elusive, are of greater value: talent, ethics, example, ideals, scholarship, principles, devotion, dreams. Bricks and mortar do not make lawyers or leaders. New buildings may not even be essential for the development of good lawyers. But one cannot deny that buildings of this kind help to provide incentive and an appropriate atmosphere for the flowering of those talents that are peculiar to the legal profession.

New law school buildings indeed are appearing over the country, as they do in times when the Law is accepted as a way to civilized progress. I have been privileged in the recent past to see a number of these buildings -- at the University of Pittsburgh, at the University of Missouri at Kansas City, at Creighton University in Omaha, at Washington University in Saint Louis, at Georgetown in Washington, at Pepperdine in Malibu Beach, at Brigham Young in Provo, at Hamline in Saint Paul -- and I can say without hesitation that this one compares favorably with all of those in its emphasis on the practicalities of law practice, as well as on its theory, and in the happiness of the physical structure.

But what is there left for anyone to say on an occasion such as this, anything that Mr. Justice Black did not say when he was here at the dedication of the Law Library itself in 1967? One could speak, as often has been done, of the historical development of the law as we know it in the Anglo-American tradition; or of the law's majesty, as the legal idealists would have it; or of the law as an instrument for Justice, however that may be defined; or of the profession as an avenue of service; or of significant Supreme Court decisions of the last few Terms; or of the law as a mere path to a livelihood. But I prefer to speak briefly of the promise of this structure, of what it stands for, and of what it holds out for the years ahead.

I need offer no excuse when I hold up before you, as I so often do, this little booklet that contains the Constitution, the document that is our blueprint for government, as well as our Bill of Rights, and that constitutes the source and the heart of our constitutional jurisprudence. This particular copy has 30 pages. The first 18 are the original document, and, of those, 1 1/2 pages are only signatures. The remaining 12 are the added material. It is available at the Government Printing Office. The cost, once 15 cents, is now 30 cents.

In some lay audiences I have presumed to ask how many have examined the Constitution, or any part of it, or any Amendment

to it, within the last six months. The hands that are raised with an affirmative answer always are few. Yet this document is what all of us live by in these United States. It permeates our daily actions, our conduct with others, our impact with authority. Like the Bible in our supposedly Judeo-Christian society, we let it gather dust on the shelf, and we are content just to read about it occasionally.

At this point I take the liberty of repeating a litany I have employed on other occasions. It is a recital of what I have observed at the Supreme Court of the United States during the 11 years I have been privileged to be there.

The Court is a special place from which to observe, for one has a view of all that is happening on constitutional issues in the courtrooms of America. One sees what people are litigating about, not only with each other but with their governments, federal, state, municipal. One gets a sense of their desires and of their frustrations, of their hopes and of their disappointments, of their profound personal concerns, and of what they regard as important and as crucial. The following is what I have seen. It is not all good, and it is not all bad:

On the negative side are things that are also obvious to you. We see in our cases:

1. The widespread drug problem with its consequent misery, its abandonment of moral standards, and its accompanying crime.

2. The absence of safety in our streets, our parks, our homes, everywhere.

3. The ever-present challenge to the basic guarantees set forth in the Bill of Rights, the constant attempt of government to impinge bit by bit upon those rights, an impingement sometimes occasioned by abuses in the assertion of those rights, senseless disregard and attack upon law enforcement officers, and vandalism everywhere.

4. The pollution in every street, every public place, along the highways, in the natural waters we value so highly.

5. The growing and seemingly insolvable needs of America -- poverty -- the unnecessary injury to life and body and property and the human spirit.

6. What seems to be the gradual disappearance of private and parochial schools because of financial problems, a decreasing supply of personnel, and the difficulty now to obtain significant public aid.

7. The increasing dependence upon big government -- the plight of the cities -- the States' desperate efforts to keep solvent in the face of a widening need for welfare even during periods of seeming affluence.

8. The bigotry and hatred that flow from racial prejudice.

9. The changes in moral concepts -- the public servicing of pornography and license -- the ultimate acceptance of the obscene and of the massage parlor -- that bow in the direction of the inevitability of the lesser dimensions of human nature.

10. The many new problems of the electronic age, surveillance and bugging, the pen register, unlicensed copying, record piracy.

11. The seemingly perpetual conflict over welfare -- claimed inequality -- the stark evidence of the welfare state in which we seem necessarily to live.

12. The clamor over the gagging of the press -- the tension between the First Amendment's guaranty of a free press and the Sixth Amendment's guaranty of a fair trial.

13. The loss in individuals of the senses of personal obligation and of personal dependability.

14. What some feel is the loss of America's moral leadership in the world at large, a decline, seemingly, in the integrity demands of the several professions, the failure of the church and of the schools and of the family to provide guidance.

Yet on the positive side, we see:

1. The constant application in American courts of the principles of the Bill of Rights, day by day without much noise or clamor.

2. The increasing awareness and a broadening concept of individual rights and freedoms.

3. The struggle with the media in connection with the invasion of privacy and with defamation under the guise of a free press.

4. The recognition of rights of those in prison or on probation or parole.

5. The recognition of rights of those in mental institutions.

6. The continuing stress upon equality of educational opportunity.

7. The recognition of the presence of constitutional rights for school children.

8. The long overdue revolution in the criminal law from my days in law school.

9. An awareness of the value of our environment, and the constant pressure now to do something about it.

10. The racial revolution.

11. The voting revolution -- one man, one vote -- the elimination or lowering of durational residency requirements.

12. Broadening concepts of privacy, occasioned in part because of pressures of the press to invade, and in part because of the sexual revolution.

13. A vast demand for and strengthening of ethical standards for the judiciary.

14. A growing demand on the part of the public for performance and for integrity in public office and for a greater openness in the administration of government.

And then we see some issues, emotional, always agonizing, and either positive or negative, depending on the point of view: the death penalty -- reverse discrimination -- abortion -- affirmative action -- inverse condemnation -- limits upon commercial advertising -- professional advertising -- televised court proceedings -- closure of criminal trials.

And, finally, one has glimpses of what lies ahead -- the problems that will present themselves as science takes us still farther into knowledge about life itself, as we learn more about extra-terrestrial regions and matter, as we develop the law of the Sea and the law of Space -- all this in our relationships with others and within the framework of our Constitution.

Thus, today, as for many years, we have both the negatives and the positives, the discouraging and the encouraging, that which leads easily to despair, and that which projects hope and faith in the coming generations and in the future -- and we see more of the same down the road. We see, in sum, what I think is a constant, seething, economic, domestic, ethical or, if you

will, legal struggle. Yet I am not discouraged by it, for it all is, I believe, a striving among us as a people to evolve that which is right and that which is fair. Could we call it a struggle for Justice under a Rule of Law that must constantly be reaffirmed?

What has all this to do with you, as professional people, as business people, as students, as citizens of Georgia and of these United States?

I think it has everything to do with you, for the law is a distinct part of your life. You cannot escape it and you would not want to be free of it. You are persons who are actively engaged, engaged with people, and not confined in your outlook to the mountain-top or the isolated laboratory or a remote corner of a library.

With all that as background, may I attempt to leave with you a few, perhaps unrelated, and perhaps for some of you repetitive, thoughts for this dedication;

1. One hears today, although less frequently than a few years ago, those, including some radical lawyers, who excoriate the system, who deplore the way it operates, and who suggest its abolition. My answer to that kind of talk is that I, for one, still love this old land of ours. While I worry about our Country, as I suspect you do, I am not discouraged. I know that the land and our system, even as you and I, have ugliness

and warts and abrasions and inequities and poverty and injustice and wretchedness and rottenness and crime and spoliation, and almost every kind of thing that disheartens one. Lawyers who work with people, and particularly those who work with people who are deprived, are aware of this.

But others before us have been discouraged with the state of our Country, too. One may envision how it was for John Marshall as he, with all the others, struggled through that terrible Winter of 1777-1778 at Valley Forge. One may also envision how it was for Abraham Lincoln in Washington and for Jefferson Davis in Richmond and Montgomery during those frightening days of 1861-1865, when the Nation was tearing itself apart and little seemed to be accomplished on either side except utter waste and misery. And some of you will remember, as I do, the despair of 1932, less than 50 years ago. We have defects and we have injustice and we have the absence of justice. But we also have in this building and in this Law School, and, it is to be hoped, in all the law schools of our Country, the teaching of what we regard as ethics and the Rule of Law, and a desire to send out from these halls young men and women well equipped to achieve justice for those who otherwise might be denied it.

I was fortunate to have been at Aspen, Colorado, last summer where Professor Norval Morris of the University of

Chicago Law School and I again moderated a two-week seminar on the general subject of Justice and Society and the Individual. A month earlier, Mr. Justice Stevens and Professor Louis Henkin of the Columbia University School of Law had moderated a similar session. We and the seminar participants read and studied Plato and John Locke, Thoreau and Martin Luther King, Jr., H.L.A. Hart and John Stuart Mill, John Rawls and Gerald Dworkin, Robert Nozick and Kai Neilsen, Alexander Bickel and McGeorge Bundy, and many others. And "Billy Budd" and "Measure for Measure" were thrown in for sweetening. We discussed and argued about civil disobedience, the relationship between law and morality, justice and the right to personal autonomy, distributive justice, racial discrimination, sex discrimination, retributive justice, the proper scope of the criminal law, and justice in the international context. And we concluded with Solzhenitsyn's address at Harvard and with some thoughts about the just person. Participating in that group of 27 were professors of law, federal judges, general counsels of national and international corporations, government officials, and practicing lawyers. The interest, the devotion, and the dialogue were serious and were intense. After that experience, repeated twice for me now, no one can convince me that today there are no responsible legal voices in our society or that no one is concerned with what Justice is, or whether we really

measure up, or how to achieve Justice, or how to make it available for the little person as well as for the influential one. Much by way of critical comment came to the surface of that seminar, but the remarks were also contructive. Perhaps we solved little or nothing, but each of us was exposed to new approaches and to new thoughts, and each was provoked into examining critically what usually is taken for granted, and with a long view of the law, not just the exigency of the particular case.

2. Hanging in the reception room of my chambers is a photograph of the earth taken by astronaut William Anders from Apollo VIII as it circled the moon on Christmas Eve in 1968, 12 short years ago. Many of you, perhaps most of you, remember. An estimated half billion people watched on television vicariously exploring. And then you recall that Colonel Anders said this: "For all the people on earth, the crew of Apollo VIII has a message we would like to send you." He and Commander Borman and Astronaut Lovell read successively from the Book of Genesis. And at the end the Commander added: "and from the crew of Apollo VIII we close with good night, good luck, a Merry Christmas, and God bless all of you -- all of you on the Good Earth." It was, indeed, a time of emotion. But it was also a time of spontaneous evaluation on the part of the three astronauts speaking from a point in space no man had

known before. Those words, I trust, are important, prophetic, and challenging -- the Good Earth.

The earth is good and this Spring, as every Spring before, the cherry blossoms did bloom in Washington, and the dogwood and the azaleas, as they did as beautifully here in Georgia. And next Spring, a year hence, they will bloom once again.

Will we be able to keep it that way? And will we in law do our utmost to keep it that way?

3. Just a few short years ago, Mr. Justice Marshall was invited to Texas to dedicate a new law bulding named after him at a predominately Negro school. The students presented him with a plaque commemorating his significant accomplishments in practice, particularly for the Negro people. The plaque read essentially this way:

"If you had not been there, we would not be here."

There is an overwhelming tribute in those words. With hope, and with assurance, I turn that phrase upon this School of Law at the University of Georgia, on those who serve it as faculty or in an administrative capacity, and on those who study here now and in the future. May it be that this School and those who work in this facility, in whatever capacity, will carry that same sense of obligation to those who follow them so that there always will be someone who can and who will say:

"If they (you) had not been here, we would not be where we are or what we are."

4. Thirty years ago, in 1951, at the 75th Anniversary of the founding of the Legal Aid Society of New York, the very first of its kind in our Country, Judge Learned Hand sounded the call and reaffirmed the mission of the lawyer with his familiar statement: "Thou shalt not ration justice." One can easily imagine the imposing and awesome judge pronouncing that "commandment." (I know he was imposing and awesome, for I was thrown out of court once by Judge Learned Hand. "Of course," he was wrong and his theory of decision adverse to my position was soon repudiated by the Second Circuit.) Judge Hand's words, however, must continue to thunder today and throughout the years ahead. "Thou shalt not ration justice."

But the same Judge at a different time also wrote other familiar words: "Liberty lies in the hearts of men and women. When it dies there, no constitution, no law, no court can save it. No constitution, no law, no court can even do much to help it." To maintain that spirit of liberty with its warmth and its hope, and at the same time to refuse to ration justice, is the responsibility that those who labor in the vineyard of the law have assumed and must continue to assume.

May this building's presence enhance the opportunity of those who come here to learn what law is and what justice is,

and enable them to go out from here well equipped and determined to preserve the Rule of Law, and hence of justice and of liberty.

Let us not ever underestimate the importance of all this. Plato, about 2400 years ago, had Socrates utter these words:

> "I beg you not to suppose that this is a matter which calls for jesting on your part . ... The subject we are discussing is one which cannot fail to engage the earnest attention even of a man of small intelligence; it is nothing less than how a man should live."

That is what this building is all about. That is what the law is all about. And that is why we are here in this place on this day.

At Commencement at Brown University in 1937 Chief Justice Charles Evans Hughes, of the Brown Class of 1881, delivered a sweeping salutation to his college at a significant moment in her history. I repeat that salutation here, only inserting the name of Georgia where he used the name of Brown:

> "It is always old Georgia, and it is always new Georgia. I am here to greet the new Georgia of this era, to hail the dawning of a new day full of the brightest promise."