5-5-1956

Law Day 1956

Robert B. Troutman

Robert Troutman
May 5, 1956

MS 2011-18

UNIVERSITY OF GEORGIA LAW DAY

MAY 5, 1956

We gather again on Law Day, we lawyers. It is fitting that we do so. Here we renew our friendships, greet and clasp the hands of our fellow members in a great profession. We review its great principles and its accomplishments. We rededicate our lives to its ideals.

We recall that justice is man's highest calling. It is the supreme duty of government. Under our republican system it is everyone's responsibility. None can escape his share.

Its administration is made a coequal with the other branches of our government. The Judicial Branch in many ways possesses the ultimate power because it has the last word. It holds the other branches - legislative and executive - within the confines of the fundamental law as laid down in our written constitutions. It is the final guardian of our rights and our freedoms. By its decisions the law and the government are brought home to the citizen.

Our profession supplies the judges who constitute our courts. Likewise, it furnishes the counsel who represent the parties, public and private, who seek the decision of these judges. We are given a license to play those roles. The people set us apart to play them well. Upon us, therefore, rests the prime responsibility to see that the judicial system so operates that justice will prevail. This responsibility can be met only when every individual is accorded justice in his case. The very foundation of our government and our society is laid upon the

doctrine that each individual is a child of God and is entitled to justice at our hands. In the eyes of God and under our system of justice there exists no unimportant human being. We are the constituted agents to maintain his rights. In fact, as we sit in judgment upon each other, we exercise some of God's prerogatives.

We point with just pride to the record of the past, when courageous men represented by courageous lawyers stood before the bar of justice in resistance to the tyrant. We rejoice over the instances when the natural law was made to withstand the assault of those who would deny its application. Lawyers, both at the bar and on the bench, hammered out the rules in cases involving the individual citizen which finally resulted in our treasured bill of rights. Freedoms of speech, of the press, of worship were first won in the court houses, by laymen and lawyers who fought a single case at a time to establish them. It is a record to which we may, today, point with pride. It is one of our great heritages from the past. It could have been written only because of the courage of men at the bar and of the independence of men upon the bench.

From this record we learn and perpetuate two great guiding principles. There must be justice for the individual in his particular case. And there must be an independent judge upon the bench whose only desire is to see that justice prevails at all times and at all hazards. A Chinese writer states it: "I desire life. I desire justice. If I must choose between them I would choose justice."

There can be no lasting peace without justice, for "peace is the fruit of the tree of justice."

It seems to be man's fate, as he struggles against the forces of evil, to meet and live through great crises. They are testing times. His civilization is subjected to the fire of conflict and confusion.

The history of our court decisions is filled with cases of individual rights and responsibilities which disclose and record the conflict. Many of those decisions have been the spark that set off the conflagration.

Some criticize our profession for turning its eyes backward to perceive what solution was found by our ancestors for similar problems. We think we learn from examining them. We believe that we may profit from the experience of those who trod the paths before us, blazed a trail and even left landmarks to guide us from the errors of the past.

Briefly I turn your eyes and your ears to the springtime of the year 1856. The Dred Scott case had had its first argument before the Supreme Court of the United States. Emotions were high. North and South were in violent disagreement over the meaning of the Constitution and over the proper role of the Court upon the issue. The judges were in doubt. They needed light to guide them. They ordered that the case be reargued. The decision came down early in 1857. It gave rise to vicious attacks upon the Court from the North, which violently disagreed with its conclusion. These attacks were met with the staunch defense of the Court by the South, which won a temporary victory. Among these defenders was Robert Toombs, an alumnus of the University upon whose campus we meet today, and a senator from this State. In four years a bloody war settled at least one of the issues. It decided that no state could withdraw from the Union.

There followed in quick succession the adoption of amendments to the national Constitution which conferred upon us a dual citizenship. They spelled out in general language that this citizenship carried with it rights which no state could deny. Thus we came to live and have our being under two flags. We owe allegiance to both. Within this 20th century we have fought two - and some say three - great wars in defense of the nation. All eligible citizens, men and women, regardless of creed or race or place of residence, responded to her call. Every patriotic citizen is proud of his response. Those of us who survived that service can never completely discharge our obligation to those who gave their lives in the defense of the nation and the principles for which it stands. In fact, our heads are lifted a little higher when we repeat the pledge of allegiance to the national flag, which ends with the exalted phrase "with liberty and justice for all."

1956 finds us again confronted with a decision of the Supreme Court of our nation which has confounded us all; and enraged many of our people, especially those of us who live in the South. It strikes at the same great problem of the dividing line between national and state power under our Federal system. Apparently, this time the North approves it. And the South finds itself in vocal and violent opposition to the Court. We think it is erroneous. One hundred of our representatives in Congress describe it as "illegal." We know that it is contrary to precedents established by the same Court when the Judges composing it were different men. We know that in reliance upon the prior decisions the Southern States have substantially changed their position. They had spent billions

of dollars in the establishment of separate schools for the children of the two races making up their citizenship. We know, too, that this change in decision was brought about without the change of a word in the Constitution. In effect, it is an amendment to the Constitution by interpretation. The opinion says times have changed. It says education by the states has assumed a position of greater importance than it had in 1868, when the 14th amendment was adopted, and that change in circumstances requires that its restrictions on state police power over its citizens and its schools be applied. It need not be discussed at length. You and I are familiar with it. In my considered opinion as a lawyer it is erroneous. If times have changed, let the Constitution be amended to conform to the change. No nine men possess the power to change the Constitution and should not assume it.

It has aroused great emotions among our people. Feeling is high. Hatred and fear, our most elemental emotions, are involved. Boycotts are threatened and in some areas are being invoked. Political parties are exploiting these conditions to the utmost. Our lowest and meanest sides are being appealed to. The great words on Georgia's State Seal of "Wisdom, justice and moderation," are not only ignored, but those who advocate their application are likely to be stoned. It is almost certain that in some quarters he will be assailed as one who is against the Southern white man in his battle for state's rights.

Permit me to say here that all of my mature life I have openly fought for the preservation of local self-government, at all levels and at all times. It is not a new role for me. When in 1936-1937, the New Deal under Franklin Roosevelt sought to pack the Supreme Court, I led a

campaign in our State to defeat the movement. The ire of the National Democratic Party which went into power in 1933 was aroused because the judges on the Court did not share the New Deal's interpretation of the Constitution on the subject of economics. And the forces behind the "Roosevelt Revolution" were determined to man the bench with judges who did share those views. The effort to pack the Court failed. But Roosevelt won out. By death and resignation the "Nine Old Men" faded away and he and President Truman remade the Court with men who interpreted the Constitution according to their liking. Not a Southern voice was raised in opposition to their selection or confirmation, as I now recall.

Congress, under both political parties since 1933, has expanded, again and again, the power of the Federal Government. It has found support by the Court's interpretation of the Constitution. Personally, I have thought it to be a mistake. My belief has always been that liberty can be preserved only by local self-government.

Let us not be misled. Because of the failure or ineptitude or inability of the states to meet the demands of the people for services, the Federal Government has been called upon. Lunches for our school children, soil conservation, public electric power projects, aid for the blind and the crippled child, financing of school and college buildings, price support for the farmer's products, the fixing of wages, working hours, and conditions of the people, financing of hospitals, money for medicine (including vaccine for polio) and medical care, even the apprehension and conviction of criminals (Al Capone was never convicted of a state offense. He was too big.) And lastly, the construction of dams on our

rivers which guarantee to my City of Atlanta a water supply, are but a few examples of the entry of the Federal Government into the realm normally reserved for the states. All had the approval, and many, the active sponsorship of the "State Rights" members of the Democratic Party. However, the Republican leaders have given the same lip service to the preservation of the integrity of state sovereignty. Eisenhower, the candidate in 1952, in one of his Texas speeches, uttered a pronouncement of the doctrine worthyof John C. Calhoun. Time does not permit a quotation, but I have it for those who desire to recall it. And along with it one of similar import from Franklin Roosevelt, made in 1932.

It is natural to look to the Federal Government for appropriations. It is far removed. It has billions to spend. It is our government, after all, and is spending our money. At the same time, it is big. It operates through bureaus and courts and judges, in whose selection we have no direct voice. Thus it is removed from local control. While we resent what we regard its "interference," we continue to call upon it for money -- our money -- knowing that it comes with strings of regulations tied to it.

This latest Court decision has brought on a crisis. We are looking for a solution. We seek a remedy. For every citizen, who desires to preserve his life, his liberty and his property, it must be a remedy within the law. Everyone who reflects for a moment knows that we must live under law or there will be chaos and anarchy, in which all rights are ignored.

As lawyers, we know that to have law and order we must have courts, and that without independent and courageous judges upon the bench

there can be no hope of preserving our institutions and our liberties. The judge who decides a case out of prejudice or partisanship cannot be trusted. One never knows when he may be on the unpopular side of a case or when the mob may cry for his head to fall. His only hope is a trial before a court made up of judges who have the independence and fortitude to see that his constitutional rights are maintained.

So well recognized are these principles that I apologize for repeating them. I do so only as a prelude to my conclusion.

My fellow lawyers, the path of duty lies clearly before us. We cannot escape our responsibility in this crisis. Our task is to find a solution within the law.

We live in the twentieth century. We are the best trained members of our profession America has ever known. At least more wealth and time have been spent on our education than at any previous time. All the tools of modern science are available to us. Our courts in Georgia are operating more efficiently and expeditiously than at any time in my life. For that, we lawyers, on and off the bench, can take merited credit.

We have participated in two great wars in this century. They were total wars. Millions lost their lives in them. In fact, more were killed than in any 50-year period of man's history. None escaped its consequences. Everyone hoped and prayed for peace -- a lasting peace.

We created an organization dedicated to avoiding another one, The United Nations. We continue to spend billions of dollars in helping the less fortunate people, both at home and abroad. We are spending more of our wealth on education than ever in our history. All of this -- both in war and in peace -- is aimed at preserving peace. By it we hope to

find the means by which men of all creeds and races can live upon this God-given earth, at peace with one another. But as I stated earlier, "peace is the fruit of the tree of justice."

As we are drawn closer together on this planet because of the discoveries and advances of physical science, we must find similar advances in the science of human relations. It is the key to peace. We must test our principles of freedom within the realms wherein the physical sciences have thrown man.

I submit that there is a freedom which is not expressed in our bill of rights. Nor is it found in our legal literature. Rarely have I heard it mentioned in conversation. It is so self-evident that it must be implied in our Constitution. It is the freedom to choose one's associates. To me, it is as fundamental as the freedom of speech or of the press or of worship. No government has the right to compel a citizen to associate with another, except where there is an overriding public necessity, such as within the armed services or exercise of domestic police power. The state has power to protect the exercise of this right because it involves the peace of the community. It has the duty to preserve peace among its people.

Upon this principle the states may find a solution of the segregation issue.

The slightest investigation reveals that segregation is being practiced voluntarily all over America - in the homes, in the business establishments, in the clubs, in the churches, in the lodges, and in the residential neighborhoods. How can it be forbidden by court decree in the

state supported educational systems? It includes the liberty of the citizen to have a reasonable choice in attending school and in sending his child to school.

It may be that Georgia's plan of the private school is the wise course. It is a drastic remedy and is not without many serious problems. One thing is certain: It will restore to the parents some of their responsibility to actively interest themselves in the operation of the schools and the selection of those who shall teach the youth of the South.

Within this doctrine of freedom of choice there may be other remedies. The school system may be rearranged so as to permit a choice. As lawyers, we know that within the law, if we would segregate the children in a public school system, we must get the Court to reverse itself, amend the Constitution, get Congress to act under the power conferred by the fourteenth amendment, or so change the public opinion of America as to cause the decision to be ignored. Resolutions of interposition and even nullification are ineffective unless the Southern States can attract other states who are willing to join in the assertion of their sovereign rights. All these measures require support from outside the South. Our problem, in essence, is how to get that support. Up to now, no other section has signified an inclination to unite in effectuating any remedy suggested. Our campaign has just begun. Our own forces are not united on a program. In many quarters hate and prejudice have obscured the vision and blinded one way that may lead us out, viz, the recognition that it is contrary to the principles of natural law and justice to deny the right of freedom of choice in the selection of one's associates. It imports equality in the right of choice as between the races. No government has

the power to compel the members of one race to associate with the other, nor has an individual the right to compel it. It is in this area of compulsion that the resentment arises. The white people resent the court's compulsory integration. And the negro resents the compulsory segregation of the state laws. Freedom of choice removes the cause. It eliminates the compulsion which each race resents.

Every day, throughout our nation today, everywhere, this is the voluntary practice of our people. It is unthinkable that it can be denied to the South. It can be the road to a peaceful solution. It may save our public school system. Our duty as lawyers is to help the people find a peaceful solution, within the law of the land.

Finally, as we seek a remedy, upon us rests a supreme duty as officers of the court, as judges, as men and women privileged and set apart to make the machinery of justice work. It is to see that every individual citizen, regardless of race or creed, shall receive justice under law. That is our daily task. As we meet that responsibility we shall be judged, now and hereafter. We are administers of justice. When the people overthrew the doctrine of the divine right of kings, they assumed the task of rendering justice to each other. It is a sacred duty! As we judge others, so shall we be judged. The eyes of the world are upon us. We are the testing ground as to whether two races can work and live side by side in peace and in justice to all.

In such times of emotional stress little people suffer and are hurt. Those who need protection in their innocence are the special objects of our care. We shall be called up to justify the existence of our

profession and the worthiness of our membership therein.

There is a Chinese proverb, that the ear cannot hear unless the heart will listen. I have perfect faith that the lawyers of my State will meet their responsibility. Their hearts are open to listen to every member of God's family who cries for justice.

If we respond and see to it that justice prevails, not only will the world listen but we will find peace of soul.

(Presented by Robert B. Troutman)