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Adolph A. Birch Jr.

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EQUAL JUSTICE AND THE ALJ

Chief Justice Adolph A. Birch, Jr.*

In my forty or so years in the profession, I have learned to love it immensely. I realize that it needs some fixing in places and that in some ways it needs to return to core values of civility and equal justice in the areas in which it has strayed. But we cherish the system, and we celebrate--despite its faults--those persons such as yourselves who daily deliver on the promise--equal justice under law.

And I have a certain frustration, an uneasy tension, which I am sure you share, with the way we feel about the system and what we perceive to be the public's cynical and less informed view of that very same system--the lawyers and judges who operate it. Indeed, these are troubled times for us in the legal profession, and especially is this so for those of us in the judiciary. The latest lawyer-bashing joke changes daily, much like the news of the day. The information delivered to us by radio, television, print media, carrier pigeon, drums, or smoke signals all trumpet this same sad song: the rule of law is under broad attack, equal justice under law is in extreme straits, and judges and lawyers everywhere are pilloried and pummeled for their unwavering allegiance to those great principles.

True, we live in an advanced and complex society. By the mere touch of a button we are able to transfer funds across the continent--across the world for that matter. Man has been to the moon and back, and now we seek to determine whether life exists on other planets. Effortlessly we communicate, travel, plan, and think in global terms. And for the lawyer as well as for the judge, laptop computers, laser printers, and facsimile machines have revolutionized our way of work and our way of life.

Time was when a man's word was his bond, his reputation worth his life, and even lawyers and judges accepted the writings on

*Abridged Remarks of Chief Justice Adolpho A. Birch, Jr., to the National Association of Administrative Law Judges Crowne Plaza, Nashville, Tennessee November 11, 1996.

Moses' tablet as a final judgment order, a final decree--nonnegotiable, non-appealable. While most of us, arguably, still subscribe to the "Thou shalt nots" inscribed on the tablets, an alarmingly increasing number do not. As a consequence, now, more than ever before, lawyers and judges and courts and justice systems must step up and play a larger role in delineating the boundaries and establishing the rules necessary to control our daily interaction.

And even as we accept the fact that a complex society requires complex laws, we must diligently and continually monitor our own conduct within the system in which we work to ensure that equal justice under law is a reality for all citizens.

The American Bar Association recently published a comprehensive Legal Needs Study, and its findings are at once illuminating, unsettling, and downright disturbing. As a result of thousands of interviews, the central conclusion of the study was this: "Our civil justice system is fundamentally disconnected from the lives of millions of Americans."

As law and technology race toward an accommodation, large numbers of citizens are being left behind. As a country, we spend nearly \$100 billion annually to purchase lawyer's services, yet over 23 million lower and middle income households have unmet legal needs each year. And the figure is increasing.

Among households with less income, two reasons are most often cited for failure to access the civil justice system to resolve legal problems. The reasons are: (1) We didn't think it would help; and (2) We were concerned about cost.

Some of you are asking "How can we judges help? Just what can we do?" After all, you say, we get all of our business brought to us, we're not, in the main, proactive. I found the following points in the study to be most responsive and appropriate:

1. We must find ways to give the pro se litigant a fighting chance;
2. We must examine and modify, if necessary, the various roles judges play in the resolution of legal issues. To expand on this, we should all be open to a change of attitude from a limited access adversarial system to a more open non-adversarial system, in the proper case.
3. Courts and courthouse and hearing rooms should be more

responsive to the requests of ordinary citizens for information and assistance in navigating through the system. Why shouldn't we give such assistance and information? For did we not construct the system? Do we not know just how to get through it?

Alternative dispute resolution mechanisms must be given expanded and virtually unlimited functions in resolving disputes out of court through mediation, arbitration, neighborhood justice centers, and the like.

And justice for all . . . not the pledge of allegiance, not the movie, but the principle. John Jay, the distinguished Chief Justice, said it well in 1794. Justice is indiscriminately due to all, without regard to numbers, wealth, or rank.¹

This great constitutional mandate has reverberated throughout the centuries as the lofty goal of most civilized societies. But at no other place in modern history is the mandate "equal justice under law" taken more seriously by more persons than in the United States of America. This commendable attitude notwithstanding, it is too often the perception that the term "equal justice under law really means, for some people, "equal justice for all who can afford to wait."

Esteemed Justice Hugo Black, Supreme Court of the United States, said in Griffin v. Illinois, 351 U.S. 12, 16 (1956).

Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the Royal Concessions of Magna Carta: "To no one will we sell, to no one will we refuse, or delay, right or justice. . . . No free man shall be taken or imprisoned, or disseised, or outlawed, or exiled, or anywise destroyed; nor shall we go upon him nor send upon him,

¹State of Georgia v. Brailsford, 3 U.S. 1,4(1794).

but by the lawful judgment of his peers or by the law of the land."

All lawyers and judges must acknowledge and take consummate pride in the fact that our job description was written many, many years ago. It is based, at least in large part, on the inscriptions on those tablets most people attribute to Moses. But more so is it grounded in the mandate that comes to us by way of a single sentence which reads as follows: "No free man shall be taken or imprisoned or disseised of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty, or property but by the judgment of his peers, or the law of the land."

If those words have a familiar ring, or if you're getting a strange or eery feeling that you've heard them before, or seen them somewhere before, you are absolutely correct because the language comes from Article 1, Section 8 of the Tennessee Constitution. And with the necessary apologies to the federalists among you, this principle is expressed in the Fifth Amendment to the United States Constitution and in various other of its proclamations. I take this opportunity to express to you my thanks and gratitude for the loyal and devoted way in which each of you in this room has honored and breathed life into those mandates, in your own special way. Your sensitivity of judgment and your continuing efforts to make justice for all a reality deserve the highest recognition.

Thomas Jefferson is reputed to have written the well-known phrase "All men are created equal." It is included in the preamble to the United States Constitution. But it took a lawyer in a small, sleepy, southern town to add a necessary dimension to Jefferson's words. Atticus Finch, I am told, was a character in Harper Lee's fictional work "To Kill a Mockingbird." Whether fully fictional or based upon a real person, Finch's dedication to equal justice knew no parallel. In a closing argument in a criminal case in the early part of this century, Finch took Jefferson's words to a higher plane: Finch said:

We all know all men are not created equal in the sense some people would have us believe—some people are smarter than others, some people have more opportunity because they're born with it, some men make more

money than others, some ladies make better cakes than others—some people are born gifted beyond the normal scope of most men.

But there is one way in this country in which all men are created equal—there is one human institution that makes the pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution gentlemen, is a court. It can be the Supreme Court of the United States, or the humblest J.P. court in the land, or this honorable court which you serve. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts, all men are created equal.²

We are, as a profession and individually alike, indebted to Atticus Finch, and I would venture to say that his spirit lives in each of us.

I deeply appreciate the opportunity to have a word or two with this distinguished group of judges—assembled here in Nashville in convention—judicial officers from the fifty states and territories.

The Supreme Court of Tennessee thanks you, each and every one, for all that you do for the rule of law day after day .

²HARPER LEE, *TO KILL A MOCKING BIRD*, (WARNER BOOKS 1982) 205.

