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American Justice at a Crossroads: Opening Remarks

Kenneth Starr*

This is an important conference, and you honor us by your presence. The American Constitution begins very elegantly, “We the people of the United States, in order to form a more perfect union,” and then there is set forth a series of goals. Common defense, national security, peace at home, and domestic tranquility are all there, but as each person here knows, the first goal identified is to establish justice. When one reflects on that, it was purposeful because if there is not justice there will be no domestic tranquility, and there would probably be nothing to defend. So to reflect on our justice system, to improve it, to ensure its health, is a very noble undertaking. Conferences such as this are an integral part of that.

We come together, mindful of what Hugo Black called our federalism: that there are two systems of justice. And so today, we will be reflecting on the federal system and the state system. How timely it is to reflect on the state system, especially here in California, although we are gathered together from many states, but California at times is a harbinger of things to come in other states. So when we, with a sense of lamentation and loss, see such things as furloughs, court holidays, and courthouse closures, we see that obviously budgetary considerations can very seriously impact the ability of our court system to provide for justice. But we also know, as we gather here under the umbrella of the Straus Institute for Dispute Resolution, that we need to be very smart. Echoed in virtually all if not every single state’s rules of civil procedure, Federal Rules of Civil Procedure number one says this is to provide, or the rules are to be construed so as to provide, for the speedy and efficient resolution of disputes. We have seen at the federal level the Supreme Court of the United States struggling—and somewhat controversially—within bench and bar and others very concerned about issues of access to the justice system and how we do civil justice and be smart about it. Interpretations of Rule 8(a), the federal pleading rule, have been the subject of much litigation, and very controversial decisions

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beginning with *Bell Atlantic versus Twombly*, which interred certain broad language that was a sort of pro-litigation perspective on life in a case from the 1950s called *Conley against Gibson*. States play smart in different ways. As opposed to seeking to cut off the litigation as it were at the pleading stage, they may choose to bring the parties in, especially in complex litigation. The Superior Court for the County of Los Angeles is very innovative in getting the parties in to figure out what's really going on. If we can't resolve it through mediation then let's manage the litigation by judicial intervention very early on. In the federal system, certain courts have "rocket dockets" so you have relative assurance that your civil case, if it's going to go to trial, will actually get to trial in reasonably short order.

Straus looms as this wonderful, wonderful presence reminding and calling us to think smart about the justice system, but also to think about enduring values such as how do we reconcile the parties? How do we get that just and speedy resolution, but also, can we in fact do so in a way that brings about a restoration of broken community? If we were gathered together in 1907, we would be listening to Roscoe Pound, the dean of the Harvard Law School, talking about the reasons for popular dissatisfaction with our justice system. If we were gathered together in 1976, seventy years after the Pound Conference, we would be hearing thoughtful judges, lawyers, and academics gathered together to discuss how it's seventy years after Roscoe Pound gave that watershed speech for the American Bar Association and we're still struggling and asking what is it that we should do now?

Well, today we're here to finally resolve this once and for all. [Laughter] Enough conferences; this is it. This is the watershed conference. There are so many thoughtful individuals who have come together to reflect on these enduring issues of how to establish and maintain justice. When Alan Greenspan was asked, "What is it that's very important in your judgment to have an effective market economy?" he responded very quickly, and Justice Breyer loves to quote this, "The rule of law." There must be a rule of law to establish justice. So, here we are.

I also bring greetings to my good friend and colleague, Tom Stipanowich, who has done such a wonderful job as co-director of the Straus Institute. We lift up with joy the fact that as imperfect as rankings are, the Straus Institute has once again, for the sixth consecutive year, been rated the number one institute of dispute resolution in the country. Will you join me in applauding Tom and the colleagues from Straus, including our beloved Peter Robinson, the co-director who so many of you know from his many years of stewardship and faithful service here at Pepperdine and Straus specifically? He was in the hospital. He had a procedure, and he is home resting. He is with us very much in spirit, and, Tom, I think you spoke with

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him last evening or this morning. We keep Peter in our thoughts and prayers.

And now, would you join me in welcoming someone who is very special to our community and indeed to the entire community of justice and civil dispute resolution: the head of the wonderful—I still call it CPR but you know what I'm talking about—would you welcome Kathleen Bryan, President and CEO.

