

## WHY COURTS SHOULD CARE ABOUT SELF-REPRESENTED LITIGANTS

Jess H. Dickinson, Associate Justice  
Mississippi Supreme Court  
February 1, 2007

It is my honor to address you this evening at the beginning of this important conference . . . and it's wonderful to be in Texas, with its 21 million people, 16 million cows and 69,672 lawyers... and most importantly (according to my oldest son), the great state that gave us Dr. Pepper.

I know that most of you are lawyers. Isn't it great to be a lawyer . . . even with all the lawyer jokes? Some years ago, I read in the "War Stories" section of an ABA publication a wonderful , true story about a young man who was scheduled to go to trial. He was sitting at the table with his lawyer and they were engaged in a heated argument. Suddenly, the lawyer stood up and announced to the court that he and his client could not agree on trial tactics, and his client had fired him. The judge then said to the young man, "I'm going to continue your case to give you a couple of weeks to find a new lawyer." The young man stood and replied, "That won't be necessary, Your Honor, I won't be needing a lawyer because I have decided to tell the truth."

I realize I'm going to be preaching to the choir a little bit tonight, so I hope you will forgive me if I say things you've already thought of. It seems to me an impossible task for this small brain of mine to come up with something original and inspirational, but I'm going to try, because my subject tonight is something that most people, even those in our profession, seem to treat with casual indifference; but it is a subject about which I care, and I know you care, very deeply.

I have been involved in Equal Justice issues for about four years now, but I know that some of you have been on the front lines of this fight for decades, and I am truly humbled at the invitation to address you this evening. I know a little of what is in your hearts and what you have sacrificed and, before I begin, I just want to say that you have my admiration, my gratitude and my respect.

In Mississippi, one of the great trial lawyer legends was Boyce Holleman, from my hometown of Gulfport. He tells a story about a banquet at the Ole Miss Law School, where he was scheduled to deliver the keynote address. They were having dinner prior to his speech, and as the waitress passed his table, he said to her, "Lady, get us some more butter." Well, she had been serving a room full of lawyers all night, and you could tell she had endured

about enough. She looked at him and replied, "You're gonna have to say please." That surprised Mr. Holleman, and he said to her, "Ma'am, you must not know who I am." She said, "No, I don't... who are you?" He said, "I'm Boyce Holleman, the keynote speaker here tonight." She replied, "That's very interesting, Mr. Holleman. But the problem here is that you don't seem to know who I am." He said, "No, I don't. Who are you?" She said, "I'm the one who decides whether or not you get some more butter... and you're gonna have to say please."

There is a great lesson, I think, to be learned from that story. In calculating a person's worth, we don't always need to concentrate so much on where they are on the ladder of positions and titles. . . Sometimes, we need to look at what they know how to do.

This conference is about self-representation. Empowering people who have legal needs to know what to do, and how to do it for themselves, in certain situations. The question I would like to explore tonight is why? Why should we spend our time here on a subject like that? The short answer is that pro se representation is a part – a very important part – of the concept of "Equal Justice for All." My use of the word, "concept" was not accidental.

I chose the word carefully. I call “Equal Justice” a concept because I do not believe it is a reality.

I read an article recently in which Robert Gray, past president of the ABA said “The judicial systems of the United States are structured to ensure access to the courts and equal justice under law for all citizens.” There may be some who believe that statement accurately describes our judicial system but, with all due respect to Mr. Gray (whom I admire very much), I don’t happen to agree. I believe his statement was more about how things should be, rather than how they really are. Allow me to borrow his words and add a couple of my own.

“The judicial systems of the United States should be structured to ensure access to the courts and equal justice under law for all citizens, but they are not.”

Mr. Gray went on in the article to say something else with which I do fully agree. He said,

“The Constitution establishes the fundamental right of access to the judicial system. The courts, as guardians of every person’s individual rights have a special responsibility to protect and enforce the right of equal access to the judicial system.”

In other words, the concept of equal justice and equal access to the judicial system is not some dream or aspiration, relegated to the drawing

board or the agenda of the long range planning department. It is a fundamental constitutional right that should be the top priority of all three branches of government.

When I was in law school, I traveled with Professor George Cochran and my Supreme Court Practice class to Washington, D.C. to hear an oral argument before the United States Supreme Court. I will never forget, as a young law student, approaching the main entrance of the Supreme Court building on the west side. There were sixteen marble columns which seemed to be holding up the words inscribed there: "Equal Justice Under the Law".

Every time our school children pledge allegiance to the United States Flag, they recite the words, "One nation, under God, indivisible, with liberty and justice for all." Not "justice for the rich" or "justice for the powerful" or "justice for the connected" or "justice for those who can afford a good lawyer." It just says, "Justice for ALL". You and I pledge it, we believe in it, we want it to be true... but deep down in our heart of hearts, we know it is not. Those with money and power get a lot more "equal justice" than the poor and the weak. Wives of corporate executives and wives of supreme court justices get a lot more "equal justice" than ex-wives who are singles mothers, scrapping to make minimum wage so they can feed and educate their

children. (Please do not think my views are sexist. I use the term “ex-wives” rather than “ex-spouses” because of statistics I will mention shortly).

In George Orwell’s wonderful book, “Animal Farm”, there are two lines that should hit us all right in the face. You will recall that the farm animals felt oppressed, and so they took over the farm, much the same as we took over this country in the American Revolution, to guarantee the rights of all citizens. Well, the animals took over the farm to guarantee the right of all the animals. But it didn’t take long for Napoleon and Snowball, the two lead pigs, to become addicted to position and power. As they used their secret military police of nine attack dogs to help them amass more and more personal prosperity and wealth, they became fat and arrogant, and their hearts became hardened to the plight of the other animals.

Whereas in the beginning, they had instituted seven great commandments, one of which was “ALL ANIMALS ARE EQUAL,” somehow that great commandment was changed to read: “ALL ANIMALS ARE EQUAL, BUT SOME ARE MORE EQUAL THAN OTHERS”. Orwell goes on to include that wonderful line toward the end of the book: “Somehow it seemed as though the farm had grown richer, without making the animals themselves any richer . . . except of course the pigs and the dogs.”

We have prospered in this country during our 230 year history, and I know I'm still preaching to the choir, but we have grown fat and lazy, just like the pigs in "Animal Farm" and we (and when I say "we" I mean the legal profession and the judiciary) have allowed some of the principles on which this great nation was founded to slowly fall by the wayside. One of those principles is equal justice under the law for all citizens.

Many people believe that those involved in the legal profession – and especially those of us in the judiciary – have lost the moral authority to sit in judgement over what is just. They say we seem to turn our backs on those in our society who are most in need. They think the failures in our system are the result of purposeful discrimination against the poor. But I think it's something different from that. In the song, "The Boxer," by Simon & Garfunkle, there is a line that says, "A man hears what he wants to hear and disregards the rest". I think many lawyers and judges don't hear the poor and don't see their problems because they don't want to hear them or see them. They don't want to be reminded of the inconvenient truth that there are many poor, weak, and powerless people falling through the cracks every single day. But because of a small, but very strong, dedicated, and tenacious group of

people, many of whom are in this room, I am happy to report that there is hope.

I attended an equal justice conference a few years ago in Austin, TX and I heard a powerful and moving presentation by Texas Supreme Court Justice Harriet O'Neil. She introduced us to a video produced by the Texas Access to Justice Commission, and she kindly sent me a copy. As I watched the video in my office in Jackson, I saw stories of how Texas lawyers are helping the poor and the weak to stand up to the rich and powerful, and achieve some measure of justice.

I saw a Hispanic couple who lost their home in a tax sale because they didn't pay a few hundred dollars in property taxes. I saw a young mother who had no money, and who felt she had nowhere to turn for help and protection from an abusive husband. As I watched these people, and heard their stories, my heart began to fill with sympathy and anger, and my eyes filled with tears – not so much for the Hispanic couple or the young mother, because some very dedicated lawyers with Texas Legal Services helped them. But my heart went out to the millions of others out there who need help. Real people we're never going to hear from, and never going to get to. Real families with real children, who live on a minimum wage income.

You know minimum wage is only \$10,300 per year. I am not here to lobby for raising the minimum wage... that's another fight for another day. But we in the legal community – and especially we in the judiciary – must recognize that a family living at or below the poverty level has no money left over for lawyers.

Well, many say let them turn to legal services. Isn't that what Legal Services is for? Experience teaches us, and teaches us pretty well, that the Congress is not going to appropriate enough money to properly fund legal services. And the states aren't much better. In my state of Mississippi:

- 1 in 5 persons live in poverty;
- 1 in 3 children (doesn't that grip your hearts a little bit? One-third of our children) live in poverty;
- One-half of our female heads of household live in poverty.

And yet, despite these shocking statistics, our Legislature appropriates no money whatsoever for legal services. So what is left?

This conference on self-representation represents the potential for a very real and very important contribution to the solution. Why can't we change the system a little bit? What are we afraid of? Why don't we simplify things so people who don't have money... people who can't get help from legal services, are in a position to handle many of their own legal problems.

As we prepare for this conference, I would like to plant a simple concept in our minds. We have to care, we have to prepare, and we have to dare. Now I know you care, or you wouldn't be here. And I don't have to tell you that caring is important, but caring isn't enough. It only brings us 1/3 of the way. Allow me to get personal for a moment.

Before being elected to the Supreme Court in Mississippi, my family and I lived in Gulfport, on the Mississippi Gulf Coast for over twenty years. We attended the same church for twenty years, where we watched our friends' babies being born, grow up, get married, and then have babies of their own.

On the evening of August 28, 2005, we were at our home in Jackson (we have a home in Jackson where I serve on the Court, and one in Gulfport). We knew Hurricane Katrina was threatening the Gulf Coast region. We called our friends and one of our sons who lived in Gulfport and invited them to come to Jackson to ride out the storm with us. No one did.

On the morning of August 29<sup>th</sup>, we woke up and learned that the greatest natural disaster in American history had ripped through our home, the Gulf Coast, killing hundred and hundreds of people from New Orleans to Mobile, some of them our friends. Tens of thousands of homes ripped from their foundations, and so many people were left with nothing. No home, no

car, no job, no food, no electricity... nothing. We, of course, were in a panic. We wanted to get down there and find out if everyone was o.k., but we were told that no one could travel south. There were no phones, no cell phones, no news at all. We waited a few days and then we decided we had to go.

Now, I promise you that we cared very much about our friends and loved ones, but I want you to suppose for a moment that, as a result of our caring, we just blindly followed our hearts, without stopping to think about preparation. Imagine we just jumped in the car and headed south, with no planning.

"Look!" Here comes Jess and Janet Dickinson!" "Thank God you are here. Things are awful! We don't have any water... did you bring us some bottles of water? Wal-Mart got blown away, did you bring some baby formula? The power is out everywhere did you bring some flashlights and batteries???" In other words, "Thank you for coming, we know you love us, but did you come prepared?"

I would like to take credit for what we actually did, but it was my wife, Janet who checked with the Highway Patrol and the Red Cross to see what was most needed and where. She said, "Let's go to Wal-Mart and fill up the

back of our truck with things people will need.” We learned the specific times we could deliver supplies because there was a curfew. The military had taken over everything. And after we prepared, we then headed south. As a side note, I wish I could tell you that we were fully prepared for what we found, but we were not.

But all the preparation in the world will not transform a person, who doesn't have a heart for people, into an effective advocate for those in our society who have no voice. You have to have a heart for this work. There is a wonderful line from the movie, “Jerry Maguire” “If this (indicating the heart) is empty, this (indicating the head) doesn't matter” I certainly don't think I can say it better than the Apostle Paul in I Corinthians, Chapter 13: “Though I speak with the tongues of men and of angels, and have not love, I am as sounding brass and a clanging symbol.”

But even if we have a heart for the poor and weak in our society, and we do all we can to prepare, that is still not enough. It only gets us two thirds of the way. Our hearts can be full to overflowing with, compassion, concern and desire to do something for those who have nothing. We can attend every seminar from here to Vancouver and buy every book ever written on the subject; Give lectures, keynote speeches and power point presentations;

but if we don't have the courage, will and determination to put it all into practice, we will never get that final one-third of the way. That's the "dare" part.

It takes courage, will and determination to step out there and get;

- Necessary rules changes from the courts;
- Needed legislation from the legislature;
- Crucial support from the Governor's office;
- More funding from various sources.

It takes courage, and it takes work. I said my goal tonight is to plant a concept in our minds as we prepare for this conference. We have to care and we have to prepare and we have to dare. One without the other two might get our names in an article or our pictures in some trade publication. Two out of three might get us appointed to a board or commission; it might even get us an award or a title. But it takes all three to translate into real, tangible help for those out there who desperately need it.

I know you care, and I know you are willing to prepare, but it is so important, in my view, for us to take what is in our hearts (that the love of justice and fairness and what is right); and add it to what is in our minds (those things we already know and those things we are sure to learn here

during this conference) and then step out there and dare to do something that needs to be done, but which no one else is willing to do... something that really does make a difference in the lives of real, hurting people, because I promise you, there are countless numbers of them out there. They are people who will never thank us; people you and I will never know, but people who are depending on us. People who don't know what to do, who feel they have nowhere to turn. We may be their last hope. Let's not let them down. Let's not let ourselves down.

Thank you for the honor of your attention for these few minutes. I look forward to meeting each of you at this conference. God bless you.