

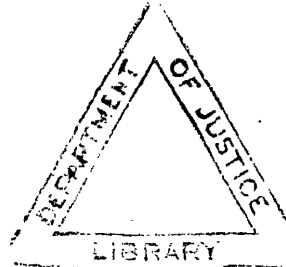


# Department of Justice

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BY



ATTORNEY GENERAL ROBERT F. KENNEDY

at the

Annual Meeting

of the

MISSOURI BAR ASSOCIATION

Hotel Muehlebach

Kansas City, Missouri

September 27, 1963

I am grateful for the opportunity to talk with this distinguished group.

Yours is one of the strongest and most vital bar organizations in the country. That you have won the American Bar Association's top Award of Merit twice within the last four years is an honor that speaks for itself -- and I am impressed too by several other examples of your leadership in matters of civic concern.

Your scheduling of a discussion on the representation of the indigent accused is only one such example.

Everything I have read and heard about your activities suggests courage, high principle, and true engagement with the social realities of our time. You are to be congratulated.

But it is regrettable that the same spirit is not shared by all lawyers and public officials throughout the country. If it were, our nationwide problems in civil rights would be much less severe than they are.

To a far greater extent than most Americans realize, the crisis in civil rights reflects a crisis in the legal profession -- in the whole judicial system on which our concept of justice depends.

I'd like to discuss three legal propositions with you. Each of them is part of a time-honored and noble tradition -- and each of them, today, is being used to threaten the very foundations of law and order in this country.

The first is the proposition that it is proper and just to avail oneself of every legal defense to test either the validity or the applicability of a rule of law.

The second is that a court decision binds only those persons who are a party to it.

The third is that a court-made rule of law should always be open to re-examination, and is susceptible to being overruled on a subsequent occasion.

All three ideas are basic to our system of justice; none of them needs any explanation or defense to an audience of skilled advocates such as yourselves.

But today we have only to pick up a newspaper to see how these honorable principles -- used in isolation, invoked in improper contexts, espoused as absolutes and carried to extremes -- have placed the sanctity of the law in jeopardy.

Separately and on combination, they are being proclaimed by lawyers and public officials as the justification for tactics to obstruct the enforcement

of laws and court orders -- as the rationale, that is, for withholding justice and equality from the grasp of millions of our fellow Americans.

We are all familiar with the catch-phrases of that rationale, and with the air of righteous indignation in their utterance.

The argument goes something like this:

Brown versus the Board of Education is not the law of the land; it governs only one particular set of facts and is binding only upon the litigants of that case.

Only when each separate school district, each state, and each new set of administrative procedures has been tested and judged on its own merits can it be said that a binding decision has been reached.

And furthermore -- so the argument goes -- a decision like Brown, repugnant to certain segments of the population and clearly difficult to enforce, may conceivably be overruled as bad law.

To resist it, therefore, is merely to exercise one's constitutional right to seek reversal of a judicial ruling.

When stated that way and surrounded by rhetoric, the argument can be made to have a gloss of respectability. It can even take on the disguise of patriotic, high-minded dissent. Indeed, it is a position publicly espoused today by the governors of two states, by a past president of the American Bar Association, and by a federal district judge who recently overruled the Brown decision on grounds that its findings of fact were erroneous.

We cannot blame a layman -- even a reasonably fair-minded layman -- for being confused and misled by this kind of reasoning.

But to lawyers, it smacks of duplicity. When it comes from the mouths of other lawyers, we must recognize it as professionally irresponsible. And when it comes from the mouths of public officials, we must recognize it as nothing more or less than demagoguery.

Let's go over those three legal principles one at a time. Let's examine each of them and look for the danger that lies within it.

What do we really mean, as lawyers, when we say that it is proper and constitutional to avail oneself of every legal defense?

Surely the Canons of Ethics make clear the impropriety of using dilatory tactics to frustrate the cause of justice.

We have only to imagine that principle being constantly applied across the board, in day-to-day litigation, to see that for all its validity it must be met by a counter-principle -- a concept that might be called the principle of good faith.

Every lawyer knows -- though his clients may not -- that nothing but national chaos would result if all lawyers were to object to every interrogatory, resist every subpoena duces tecum and every disposition, seek every possible continuance and postponement, frame unresponsive pleadings, and resist court orders to a point just short of contempt.

We know that tolerances are built into the system. We know what the margins for evasion and dilatory tactics are -- and we also know that the system would be hard put to stand up under a concerted effort to exploit them all.

There must obviously be a strong element of good faith, of reciprocity and cooperation, if our court system is to work at all. Take away that good faith, elevate the right to avail oneself of a technicality into an absolute -- and you bring the very machinery of law to a standstill.

What about the second proposition -- that a court decision binds only those who are a party to it? Clearly, this too is a principle that conceals as much as it says.

Every lawyer knows -- though his clients may not -- the distinction between the holding of a case and its rationale. We know that although the holding contains a specific disposition of a particular fact situation between the litigants, its reasoning enunciates a rule of law that applies not merely to one case but to all similar cases.

Often there is room for much discretion and honest disagreement as to when cases are alike or unlike. But clearly, in the matter of desegregation, there can be little or no room for argument in good faith as to when one situation is different -- in the legal sense -- from another in which the law has been laid down.

The county is different, the names of officials are different, but the situation -- in all legally significant respects -- is identical.

There is something less than truth in a lawyer who insists, nine years after the Brown decision and a hundred years after the Emancipation Proclamation, that a law of the land, a guarantee of human dignity and equality, is merely the law of a case.

We come now to the third principle -- that a court-made rule of law is always open to re-examination and must be viewed as susceptible to being overruled.

No one can prove in strict logic that any given case will never be overruled. But with regard to the Brown decision, I think we can all agree that the probability of its permanence is so overwhelming as to counsel the abandonment of anyone's hope for the contrary.

The decision was, after all, a unanimous one. Since 1954 there have been six vacancies in the Supreme Court, which means that by now a total of fifteen justices have endorsed it.

True enough, it was in itself an overruling of Plessy v. Ferguson, 56 years before. But that reversal had been widely expected through several generations of legal thought. The whole pattern of American and world history pointed to the abolishment of the "separate but equal" concept; and the reform established by the Brown decision was all but inevitable.

Moreover, and more importantly, it is clearly a decision that the vast majority of the American public holds to be morally correct.

To suggest, at this point in history, that there is any real likelihood of the Brown decision's being reversed is irresponsible to the point of absurdity.

No lawyer would advise a private client to contest the validity of a decision as solidly established and as often reiterated as this one; he would not want to victimize his client by raising frivolous questions.

Yet a client is being victimized every time this frivolous question is raised today--and the client is the American public itself.

Right now, all over the nation, the struggle for Negro equality is expressing itself in marches, demonstrations, and sit-ins. It seems very clear to me that these people are protesting against something more than the privations and humiliations they have endured for so long.

They are protesting the failure of our legal system to be responsive to the legitimate grievances of our citizens. They are protesting because the very procedures supposed to make the law work justly have been perverted into obstructions that keep it from working at all.

Something must be done--and it's a job that can only be done by members of the legal profession.

First, we have got to make our legal system work. We have got to make it responsive to legitimate grievances, and to do this we must work to prevent the unscrupulous exploitation of all the obstructive devices available within the system.

Only when our judicial system offers fair and efficient adjudication does it deserve the public confidence; and it seems to me that American lawyers everywhere have a clear obligation to make that confidence justified.

Second, we have a job of education to do. The public must be better informed about the nature of our legal system -- and this includes a better understanding of each of the principles and counter-principles I have discussed with you today.

Only if we are able to instill that understanding will people with grievances begin to realize that there is a practical and realistic alternative to street demonstrations and sit-ins.

But we have to make sure both that there is an alternative, and that the nature of that alternative is clearly understood.

If we can accomplish this, I believe we will begin to see a new phase in the movement for civil rights -- an increased awareness that sit-ins and demonstrations do not in themselves cure social evils.

They serve to awaken the public conscience, and they can form a means of protest when no other means are available, but they will not dictate solutions -- they can only alert us to the problems.

And in the long quest for solutions, we lawyers have a great deal to offer.

We are part of an intricate system that has developed over the centuries as man's best hope for resolving disputes and appraising policies -- for working out solutions to problems.

If this system of law -- of equal justice for all -- can be kept viable, and if people of all backgrounds and of all races and creeds can begin to fully understand and fully take advantage of it, then -- and only then -- will we stand to realize the promise of democracy, both for ourselves and for the world.