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Closing Address, April 8, 2000

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Abstract

Vincent Saldanha thanked the participants for attending the conference. He noted that it is also an uncomfortable situation to presume to speak on behalf of the poor, as the poor are neither voiceless nor invisible. He noted, however, that the discussions over the previous days were devoid of arrogance and patronage. He went on to note that, despite the many international perspectives presented at the conference, there were a great deal of commonalities between the issues facing those who provide legal services for indigent populations. Mr .Saldanha argued that there is a fundamental right to justice, and noted that this conference raised the issue of how (or whether) this right should be codified and promoted.

CLOSING ADDRESS

APRIL 8, 2000

SPEAKER: Vincent Saldanha, *The Legal Resources Centre, Cape Town, South Africa*

MR. SALDANHA: Ladies and gentlemen, friends, I have prepared a closing address of some eight pages. With your permission, if I might just put that to one side and maybe just talk to you about what I think is in that address and what we have done for the last two and a half days here in New York.

I must, at the outset, say that I have always had great discomfort in talking on behalf of the poor. The poor are not voiceless, and neither are they invisible. I would believe that very many of the people here do not have mandates from the poor to talk on behalf of them, and so when we do meet at occasions like this and talk about what we believe to be in the best interests of the poor, I believe that is a solemn duty for us; a duty that we carry out, not with any arrogance, neither with any sense of prescription, and certainly not in the tone of patronage. We have carried our duty out over the past two and a half days, and I think we have done so in a measure that the poor might be proud of us. We do not know.

The theme of this conference has been partnerships across borders. It was certainly a pretty insightful theme to have been chosen by the organizers of the conference. The presentations have been really extraordinary. What has been very interesting, and I do not believe by sheer coincidence, has been the resonance of what people have been saying from the different countries. That could certainly not have been a coincidence. The problems that we face all around the world are shared and, in a sense, our problems and our successes are somewhat universal.

At the same time, I think we are mindful enough to note sometimes the very fundamental differences in our legal traditions in the countries from which we come. While we define those differences in terms of our different cultures and our traditions, it does not debar the sense of universality of the work that we do in providing access to justice.

When we started on Thursday, I think we were all struck by

the very insightful comments of the opening address, and certainly the first panel. I want to dwell on that day, because I think it set a very important tone for what we did over the last two days.

Michael Cooper set out what have been the issues that brought us together here at this conference. He raised the issue of poverty, which brings us together, and a sketch of the ever-increasing accumulation of wealth around the world and the deepening crises around poverty. That has brought us to New York, and that has fashioned what we said and what we will do in the next decade.

He has also pointed out that the work that we do for the poor is regulated by the law. That is our job. That is what brings us together to look at what that law is and how we make that law accessible to the people that we serve.

He also spoke about the concern about the shrinking resources throughout the world for access to justice. And, we have seen in every presentation the resonance of shrinking resources and how each of us, in our different jurisdictions, attempts to respond to it. The wonderful thing about this conference is that we have been able to learn from one another and, when we go back, how we can use the ideas and the strategies used by other people.

Michael Cooper also said that there is a quest amongst all of us who are assembled here to find new and effective ways of dealing with the problems in the work that we do. And that quest is defined out of sheer necessity. So, I believe he would be vindicated if he were to listen to all which has been said and how we have attempted to deal with each of the issues.

I was particularly impressed with the presentation by Catherine Branson the judge from Australia, whose opening remark was that the crisis is not only about money and resources, but about how we provide access to justice for the people that we serve. And she used very interesting examples of the work that she does, of the work that is done in Australia, and the challenges of providing access to justice for people of different cultures, people with a different language, and people with different priorities asserting their fundamental rights. What I think Justice Branson did was to open up the whole debate around access to justice.

If there is anything I would remember from what she said, it

was that the issue of access to justice is about the rule of law, and it is not just the procedural aspects of that rule of law, but the substantive content of the rule of law. I think that definition excited some of us, because that is how we look at the issues of access to justice. How do we ensure that the law which governs people has both a fair procedural content, but at the same time, has a substantive quality about it that will enable people to live their lives in decency?

I think Hina Jilani, of the Women's Legal Aid Cell, reminded us very graphically of the difficulties and the problems of women and domestic violence, and the cultural norms, and the role of the courts in her own country, Pakistan, to demonstrate the importance of the substantive content of the law. It is as important as simply providing a lawyer to go to court with.

As a South African, I certainly would not give up the temptation of commenting on the Truth and Reconciliation Commission, which was so graphically and inspiredly spoken about by Alex Boraine. After all, the Truth and Reconciliation Commission is what is on everybody's mind. Everybody looks at South Africa and they say, "Well, has it succeeded. What can we learn from it and where else can we transpose this notion of trust and reconciliation?"

As Alex said, many of us were involved in some of the very hard and very difficult debates about whether we should set up a Truth and Reconciliation Commission in South Africa. I remember, in the dark days of struggle I myself would have advocated, "Let's have Nuremberg Trials." That was the refrain of many. It required a sober and hard assessment from us. It was not what the generals had said to Nelson Mandela that persuaded us. It was taking a hard look at what we were as a country and what were the prospects of successful Nuremberg-type trials. Because there are many who have simply not taken advantage of that process, of applying for amnesty, the difficult challenge for us is how to deal with them. Do we allow impunity to exist in South Africa as it exists elsewhere in the world?

The story of our Truth and Reconciliation Commission is far from over, but I think it is too early for us to assess whether it has been a success or a failure. There are debates about whether it has brought about any reconciliation. We would like to think, and we would like to justify, that there has been some measure

of reconciliation. I think, unfortunately and unfairly, we are talking on behalf of people who, in their ordinary lives, have seen no real fundamental reconciliation and change in their lives. Because reconciliation in that context, as elsewhere in the world, must be a social and economic reconciliation of people, not simply being able to live together and being able to exercise their right to vote. It is more fundamental.

Now, the Truth and Reconciliation Commission was a wonderful process. It allowed for the international community to look at our country.

I think it is appropriate that I pay tribute to those wonderful lawyers from the United States who traveled to South Africa during that period and, at their own cost, came to monitor that process and were the international window. They were the people that we had the hard debates with. We asked them, "Were we meeting our international obligations with the Truth and Reconciliation Commission? What of our obligation and international law." We argued and debated whether "to prosecute those who had committed crimes against humanity through the institution, through the carrying out the deeds under Apartheid." So to them we pay a deep tribute.

I remember when Joan Vermeulen first came to Cape Town, and we had these hard debates about it. A number of lawyers from all over the United States came, and I think it was a very wonderful experience for us to be able to interact with them on those very hard and difficult issues.

The rest of the conference took us to what I think was the heart, the meat, and the sinew of the issues that we had to deal with. The various panel discussions threw out a number of themes and, at the same time, also threw out a number of deep tensions that exist in our work, which are some very fundamental contradictions that we have to grapple with on a daily basis.

One tension that immediately comes to my mind has always been the tension of, "What is the public interest?" Who determines what is the public interest? Who fashions it? We have heard our colleague today, Martin Böhmer from Argentina, begin to talk and begin to address how they fashioned the public interest.

One of the other tensions that we face is the use of law students at clinics, the tension between meeting the needs of pro-

viding access to justice and, at the same time, providing education and training the students. That is a tension we confront very often in South Africa, as does everybody else where those models are used. We will have to confront and deal with those tensions. They certainly are not insurmountable. It is our task to be able to resolve that; to be able to meet what are the needs of providing access to justice and, at the same time, be able to give training and education opportunities to students.

One of the number of themes that has been addressed is around funding from the World Bank—and I would like to think that the initiatives of the World Bank, whether they friend or whether they foe, are still in the early days. It is important, I think, that the World Bank makes the endeavors that it does about the independence of the judiciaries in developing countries. But the same time, it would be somewhat irresponsible of us to ignore the difficulties that the World Bank has imposed on some of the developing countries for the structural adjustment programs. And so, whether friend or foe, that is going to be the responsibility of the World Bank itself. The onus lies with the World Bank to establish its credibility—or rather, to re-establish its credibility—in the developing world. It cannot be taken for granted.

The first principle, I think, that recurs and is a refrain throughout the presentations is the independence of the judiciary and the importance of it. Our work in providing access to justice for poor people and public interest work is nothing if we do not have strong and independent judiciaries. Likewise, the independence of the legal profession and the conducting of its practice and its work with people are fundamental. The refrain recurs all the time when we talk about the constraints of funders and of the state on our work.

Another issue is the principle of accountability: Who are we accountable to? Sometimes it is very difficult to be accountable to the poor when they are not paying for your services. It is much more easy to be accountable to the clients that pay. But it is not only the question of accountability to the client, it is the accountability to those who provide the money that enables us to do the work that we do, either the state or funders, and the tensions and sometimes the inherent problems of that relationship. That is a principle which we will grapple with for many years to come.

Linked to the notion of accountability is that of what we at home in South Africa also call a people-driven process and relationship. Providing access to justice must be people-driven; it must be client-driven. People have raised their concerns where in many jurisdictions there are lawyer-driven legal aid programs. How do we give more and greater content to the notion of a people-driven legal relationship with our clients?

Ancillary to the people-driven approaches must be the principle of maintaining and upholding the integrity of the legal services that we provide and that raises very difficult issues of standards. Whose standards do we apply? What standard? Is there a lesser standard for the poor than for the client that pays? We have heard comments in the last discussion that there is no compromise on standards. We will not give any lesser service. If anything, our responsibility is to give a greater commitment and service to the people we work with. I think that is important. And the reaffirmation of the integrity of the services that we provide, as we have heard in the panel today, is so important for us.

The last principle I think is related to the notion of the rule of law, and I call it the role of law. What role does law play in our societies? We have heard that law regulates how our societies operate, but at the same time, law is fundamental in the processes that are able to transform our societies.

We have seen it in South Africa in the Constitution-making process. We believe that our Constitution is a tool that we use to transform our society, and therefore, lawyers are able to use the Constitution as a tool, and its provisions to change and give greater meaning to the lives of people.

We have heard today that we use the law as part of the process of changing society, and therefore, as lawyers, we do not only use strategies of litigation and leave it to the courts. But using the law requires us to look at other strategies that will enable us to make a change and to use the law to bring some relief to the people that we work with.

I think that was the exciting and really lively debates and approaches that we heard this morning from our colleagues working in Nigeria. Those are the hard debates and strategies that we need to have. How do we use the law, and not only the law in its procedural and formal content, but the substantive part of it? And more importantly for us in the developing world,

how do we use those rights in our constitutions, embodying socio-economic rights and heralded in international instruments? How do we use them to make change and to hold our governments accountable?

The irony is that some of the developed countries in the world pay scant regard to using those international instruments. We hope that lawyers will begin to put pressure on our governments to start showing greater respect to the international instruments, because if you provide access to law, then the law must be used and applied equally and effectively.

Where to? In preparing for this closing address at home, I raised it with my colleagues in the Legal Resource Centre. I asked a colleague and said, "At the conference perhaps I should address the notion of the right to justice."

Now, you will recall that it was Justice Earl Johnson who spoke about the right to equal justice and lamented very soberly, and I believe very seriously, about the problems in this country around access to justice, in particular, in civil matters. As he surveyed the world, he seemed to become more despondent with what he found at home. But he raised, and other speakers also raised, the notion of the right to equal justice.

Is there such a right? In our constitutions, many of us have wonderful bills of rights, and we have rights to environmental justice, criminal justice, administrative justice, social justice, and economic justice. But, nowhere explicit is there enshrined the right to justice. Do we simply take it for granted, or does it lurk somewhere in our constitutions and we need to invoke it before our courts that there is a right to justice? I am not too sure.

I would like to argue that the right does exist. We talk of it—effectively here we are talking about the right to justice. Maybe it should be codified a little more clearly, if not in our own constitutions, then at least at the international level. I think that that is one of the challenges that this conference raises for us. How do we encode to ensure that the right to justice prevails and exists as an international standard for all of us and for all of our governments to be held accountable to?

Hopefully, those debates around whether the right exists, and should exist, or should be codified will be taken further, to other conferences and to other debates. In the corridors and over tea, let us debate the notion of whether that right should

exist, whether it exists, and, if it exists, how does it exist? And does that mean that we now have to sit down and relook at the instruments and begin to put it a little more clearly?

There is no compromise about justice. When we talk about access to justice, we will be talking about accessing the right to justice. That is really what I think we are talking about, accessing the right to justice. So I leave you somewhat provocatively with those thoughts and comments about that enterprise.

Where to? Networking. Will we all remain in contact over the e-mail and write to one another? We will not. I have been to far too many conferences in which we share business cards, e-mail numbers, and telephone numbers. We do not. We are just too busy. But maybe with what we have done over the last two days and, if we have learned anything from one another, then simply saying we will is not good enough. Maybe there is a responsibility on us. Part of that social partnership responsibility is at least to keep in contact, to share, to debate together, to find common solutions. Maybe that is what the social partnership is about. So we bold the movement of providing access to justice, and the lawyers we involve in access to justice around the world can become part of it. We've got to start somewhere, I think.

In closing, the people who invited us here, all of us, had some great sense of vision in bringing us all together here in New York to discuss the very difficult, very exciting topic which I think all of us are already passionate about and work very hard at. The people have displayed great vision. The New York Bar, the New York Lawyers for the Public Interest, and all the others who have been organizing have displayed a vision in bringing us together in New York. Let us vindicate that vision of theirs. When? I cannot say. It might not be soon, and it might not even be in our own lifetime, when we are able to vindicate the vision of why they brought us together here in New York.

But this much I think we can say: the guarantee that we give to the poor is that that vision will be vindicated, and it will be vindicated not only for the poor, but I think for all the people of the world.

Thank you.

MR. COOPER: I feel quite inadequate standing before you after that address, but I feel a need to put some punctuation on the two days.

For two days you have been looking at access to justice issues from many perspectives, from a background of many cultures. But the problems that you have been addressing are not unique from culture to culture. Hunger is hunger around the world. The lack of a roof over one's head exposes you to risks of disease, wherever you are and whatever stars you look up to.

There are many different ways of addressing these needs, and that is what you have been discussing for the past two days. They are not mutually exclusive—I do not think any of them are mutually exclusive—they are complementary, and it is for that reason that we invited you here to learn from you, have you learn from each other, and to teach one another.

The conference will end, but the need to communicate and to collaborate, to cooperate, and to rededicate ourselves to addressing these needs will continue.

The proceedings of the conference are going to be published by the *Fordham International Law Journal*, for which we are very grateful, and they will be sent to all of you.

We cannot come together physically very frequently—it is just simply not practicable—but in the year 2000 we can communicate quite effectively without coming together physically. And so I am asking the planning committee for the conference to come up with some ideas as to how we can communicate effectively and continue to talk with one another about these fundamental issues and how we can address them effectively.

You have come a long way. Some of you will be heading home shortly, some of you will be heading home later, but you can draw a little bit of sustenance from some cookies we have in the reception hall on your way.

Thank you.