

The Texas Bar Journal graciously thanks Richard North Patterson for allowing us to reprint his 2012 Annual Meeting General Session Luncheon speech in its entirety.

By Richard North Patterson

It's terrific to be talking with this particular audience, not only because we share a common profession, but because so many of you have been kind enough to read my books. So I want to thank you not only on my behalf, but that of my five children. As I often remark when people ask why I'm so prolific — novelistically, that is — alimony and tuition are a real inspiration to one's art.

I'm also grateful to be here because I wasn't exactly counting on this at the beginning of my writing career, when the publication of my first novel rocketed me from *unknown* to *obscure* virtually overnight.

The Lasko Tangent was what one might call an instant rare book. My hardcover publisher printed 5,000 copies — many with 35 pages missing, creating somewhat more of a mystery than I'd intended — and I learned how easy it is to hide five thousand books from a populace of 250 million people. But when I asked my paperback publisher if we couldn't print a few more copies, she answered, "We're going to tease them a little." To which I responded, "Couldn't we at least try foreplay?"

She was not amused.

Then there was *Escape The Night*, in which I resolved to write some truly authoritative sex scenes, and the only one who noticed was my mom. This is true. My mom called up and, after some hesitance said, "Well, I really like your novel."

Detecting a certain tone of maternal reserve, I asked, "What's wrong, Mom?"

"Nothing, really," she replied. "It's just that I wondered why that couple" — referring to the male and female protagonists — "made love so much."

"Gee, Mom," I told her, "I didn't think they made love *that* much. To me, they're just a typical urban couple."

Well, she was so alarmed by that revelation that, for the next six months, whenever she'd ring me up she asked, "Is this a good time to call?"

And when I finally had a great success with *Degree of Guilt* I faced a new challenge: explaining to interviewers why a group perceived to be as untalented, unimaginative and unlikable as American lawyers was drawing such an audience. There were a number of possible explanations, some of them truly unattractive. But I finally found the correct response: “Can you imagine a television series entitled “The Young Accountants”?”

Anyhow, here I am — extraordinarily lucky and extraordinarily grateful for it. It goes to show that if you just live long enough, anything can happen. And it surely proves that when F. Scott Fitzgerald said, “There are no second acts in American lives,” he was dead wrong. So I’m all the more grateful that my work involves one of the most important ingredients of a civilized society: the written word — the work of disparate people from countless different backgrounds, which nonetheless illuminates our common humanity. For good writing helps us cross the artificial lines of race, gender, age, social class, sexuality and nationality, not only entertaining us, but enabling us to imagine a more compassionate self, and a kinder world. And to have contributed to that in *any* way, however small, is a privilege.

But, to me, a particularly important truth is that I got here not *in spite* of our profession, but *because* of it. So while I don’t want to unduly encourage all of you to start writing books, I feel obliged to reveal the truth: litigation is basic training for novelists.

This isn’t because — despite what our nastier critics might suggest — that I’d mastered the art of making stuff up before I’d ever written a line. But consider what litigators must do to be any good at all:

Investigation and Research: Mastering not only the facts, but also new bodies of knowledge and expertise;

Narrative: Arranging all this into a coherent story, with a conclusion that makes sense;

Characterization and Psychology: Understanding human complexity, so that you can tell your client’s story to other human beings with beliefs and complications of their own;

Writing In a Clear and Compelling Way: Engaging the interest of America’s most tired and cynical audience — judges and their law clerks.

Add to this:

A Great Setting: Where clients tell you the damndest things, surprise waits in ambush, and the truth of character and events is revealed in the most unexpected ways.

Moral and Ethical Complexity: Where the search for truth is balanced by a concern for systemic fairness, as represented by the rules of evidence and our system of constitutional rights.

A Social Crucible: An arena that addresses the great questions of our time, from *Brown v. Board of Education* to *Roe v. Wade* and beyond.

These are wonderful tools for a novelist. But they are also, for the most part, morally neutral. So I want to stress how some of the most admirable aspects of our profession serve the work of a novelist, and how these same attributes should temper the poisonous contention that threatens our social fabric as a whole

We know what lawyers look like at their worst: deceptive; dishonest; mindlessly contentious; skilled in obfuscating or concealing the truth; closed to any argument contrary to their perceived interests; and completely without scruples in advancing their agenda. These lawyers are sometimes called by another name — candidates.

But look at who we are *supposed* to be and, in most cases, *are*: curious; open to argument and new information; intellectually honest; devoted to our clients but also to the rule of law; dedicated to protecting the rights of all; and mindful that we serve the interests of our society, rather than society existing to serve us.

This is the spirit in which I've addressed such subjects as abortion, the death penalty, and the Israeli-Palestinian tragedy. I don't always make everyone happy: that's the lot of lawyers and novelists alike. But I hope I've treated these subjects as the complex things they truly are — actually, morally, and emotionally. That's my obligation as I see it, and, to fulfill it, I sought out people on every side of those questions.

That's the spirit of the lawyer. And it is time that we brought that to the broken political process that, I believe, threatens to turn this country into the decline of Rome with that special touch of Paraguay.

Start with how we speak to, and about, each other — a coarsening of our public dialogue that isolates groups of citizens from each other, shriveling our empathy, imagination and sense of common purpose, while reducing our institutions to instruments of partisan warfare, bent on promoting chosen interests at the expense of others. For there is simply no escaping the mindless divisiveness of contemporary American politics; the insidious role of a mass media that prefers

power over truth; and the domination of our campaigns by a marketing mentality so soulless that it invites contempt and disbelief.

These themes hardly exhaust our problems. There are so many it is hard to choose among them. Those which leap most easily to mind include the threat of terrorism; our sometimes misguided response; a fiscal crisis where we have parked our debt in China; and the growing educational and financial gulf among our citizens in the face of economic decline. But running through each of these problems is the cynicism of modern politics, which turns Americans against each other and erodes a common commitment to the common good.

Whatever my personal beliefs, I'm appalled by partisanship run amok, where politics means prejudice, and policy yields to glibness and dishonesty. Historically, our president and other elected officials won elections by seeking consensus, and enlisting the support of those in the political center. But too often our modern political strategists follow a very different model: turn out supporters with a fixed point of view, demonize those fellow citizens who support the other side, and persuade those in the middle through negative campaigning that our electoral system is way too toxic to care about. This degraded public dialog has created a politics of bitterness—where news outlets exist to perpetuate prejudice, not enlightenment, and where political leaders do not engage opposing ideas, but villainize those who voice them.

In this new politics of disparagement, division, and distrust, the exploitation of cultural differences and social anxiety has become a surrogate for addressing the very real problems Americans face in common. Never mind that much of this divide is based on a parody of one side or the other, and that truth and fairness is not the exclusive property of either. In the echo chamber of modern media, far too many candidates and commentators have figured out that if they can appeal to our fears by repeating the same lies and exaggerations until they become accepted truth, they will never have to seriously address the wealth gap, the health gap, the loss of jobs, the failure of our schools, the decline of opportunity and the dawn of a new Gilded Age where a wealthy few increasingly enjoy privileges reminiscent of the late Nineteenth Century.

Through this grotesque over-simplification of American society, millions of Americans have been a political lab experiment, and discussion of a coherent public policy which addresses the common good has been replaced by a nation filled with people who — increasingly — see the other as the enemy of the America they imagine. Equally damaging, our civic debate is infected with lies, deceptions, and half-truths, ignoring Senator Moynihan's famous comment

that “we’re entitled to our own opinions, but not our own facts.” This witch’s brew of ignorance, fraudulence, and anger can destroy our society as effectively as any foreign enemy, and it is contrary to everything that we, as lawyers, are taught to believe.

Then there is the almost equally degrading handmaiden of this decline in our public life: the exploitation of false or irrelevant charges — often about private conduct — to destroy public careers. The current tendency to cheapen our public discourse with personal attacks will, like the slow dripping of water on a stone, erode our collective sense of decency and compassion, even as it deprives us of men and women of good public character. Martin Luther King was an adulterer, and he made our country far better than it was.

A glance at our news outlets reveals how far the media have diverged from the ideals our own profession teaches. Increasingly, our purveyors of news occupy niches, in which the written and spoken word is meant to confirm our settled biases, persuading us that politicians or media with a different point of view are peopled by degenerates, charlatans and liars. For a society that is bombarded with so much news, too little of it encourages empathy for people and problems outside our own direct experience, or any interest in ideas other than those that keep us from entertaining new ones. A look at the *New York Times* bestseller list for non-fiction confirms this: on any given week, the most successful books about politics are the literary equivalent of a food fight, waged by propagandists who profit by spattering their targets with calumny intended to foreclose thought, not promote thought. And so our society increasingly lives in gated communities of the mind.

We cannot afford this *any* longer. We face a time of national peril unique in our history—including a gradual erosion of security for ordinary Americans that could, over time, spell the end of the expanding opportunity, which was the hallmark of 20th Century America. We have done better before, and can again. But to do so, we must rise above this cacophony of meanness, and regard each other with compassion, good will, and the humility to know that all of us have so much more to know about each other. That is part of what we learn as lawyers.

Another tenet of the law is that every citizen is entitled to justice, including a good defense and access to the courts. We understand that this ideal will never be perfectly realized — whether or not we believe in the death penalty, all of us know capital cases that serve as cautionary tales. But, like all imperfect beings, we are all dedicated to helping the system we serve do better than it has.

Contrast this aspiration to the role of money in our electoral process. Sadly, the way we finance our political campaigns is little better than an elegant form of bribery, in which all citizens' votes are supposed to count equally, but some citizens' *voices* are much louder than others. It is bad enough that our candidates are forced to spend countless hours raising money, or courting lobbyists who can raise it in bundles, giving them a place at the table when laws are drafted and policies are set. Worse, as a matter of law, special interests are now deemed to have the same rights as citizens under the First Amendment, enabling them to spend millions in undisclosed dollars to promote political causes, often through grossly deceptive advertising. This ignores what is obvious to anyone familiar with life in Washington or any state capital: that money not only buys access, but all too often buys outcomes that change all of our daily lives. The unspoken principle seems to be that the law should help the most powerful interests in our society counterbalance the parlous effects of letting ordinary people vote. Even George Orwell would be impressed.

To some, this may sound harsh. But instead of our profession ennobling politics, the demands of partisan politics have begun degrading the courts — often shrouded by judicial philosophies that serve a political agenda. On this count I readily confess to a certain bemusement when some of our current justices claim fidelity to the “original intent” of framers who denied the franchise to women; who included men who — whatever their manifest virtues — owned and sometimes slept with their slaves; and who collectively would have been perplexed by the very thought of an assemblage as open and diverse as this one. To me, one might as well assume that all scientific thought stopped before Newton, Darwin and Einstein — or, that Edmund Burke, the great conservative thinker who believed in organic change, is unfit to read. I sometimes suspect that deploying “framers’ intent” is just another way for judges to inflict their own political and social biases. In 1954, for example, it would have been all too easy to ignore the mass of contemporary knowledge showing the damage done by segregated schools, simply by suggesting that the decision in *Brown v. Board of Education* was never contemplated by Thomas Jefferson. Fortunately, that was *not* an issue in 1954. But does anyone truly doubt that it would come up now?

This concern is *not* a matter of conservative versus liberal. Whether the decision at issue is *Casey v. Planned Parenthood* or *Citizens United*, the country loses when our citizens believe that law has devolved into politics by another means. When the Supreme Court appears to be an

agent of the most partisan forces in our politics, and justices seem to be nominated to carry out their agenda — after whatever coy disclaimers they may utter before the partisan attack dogs of Judiciary Committee — it erodes the credibility of all courts. It is one thing to have a judicial philosophy that guides a judge's appraisal of the law. But when a closed mind and a rigid ideology are prerequisites for appointment to our highest court, something precious is lost.

Yet more and more of our judicial aspirants advance their prospects by aligning with groups, ideological in nature, that believe that our legal system is just another instrument for imposing their political and social beliefs on their fellow citizens. It is not for nothing that the media now covers the decisions of federal judges by routinely noting the president who appointed them. And God help us when the spirit of *Citizens United* infects the election of state judges, as it already has in some instances, allowing corporations to advertise in support or opposition to jurists who pass on their cases.

I realize that this is not a “feel good” speech. But I offer this critique because I feel good about you as lawyers — the principles you embrace, the crucial role you play in this society as a whole, and your commitment to preserving a legal system that is free from politics and passion. Many countries are, or purport to be, democracies; very few have a judiciary whose history is as pivotal and principled as ours. Through your example, your advocacy, and your dedication to the rule of law, it falls to you to preserve that. And then, whatever else, this special institution — our American judiciary — will inspire and protect the next generations of men and women alike.

Thank you.