

LAW DAY SPEECHES
GARFIELD COUNTY BAR ASSOCIATION
APRIL 10, 1990

[Editor's note: The following two speeches were delivered in Enid, Oklahoma, upon request from Jones, Bryant & Hambrick: "[T]he focus for law day this year is 'generations of justice' with a special focus on the elderly and the youth, I hoped that you would agree to an interview as part of a law day television program aimed at youth. The focus would be on why you decided to become a lawyer and a judge.]"

BEFORE THE GENERAL PUBLIC: CHEROKEE STRIP CONFERENCE CENTER

I am honored to be invited to take part in your Law Day Ceremonies of the Garfield County Bar Association. This is coming home for my wife Helen and me. She was born in the family home of her parents—Bill and Glowrene Hoehn—at 1120 Wynona—and grew up there. We are always delighted to come back to Enid to see Helen's sister, Eleanor Hornbaker, and her brother French, and our many friends here.

This is an important year in American Judicial History. We have been celebrating the bicentennial of our country since 1976 when we marked the 200th Anniversary of the Declaration of Independence. Now, we are at the point of other bicentennials—that of the cornerstone of our federal judiciary was the Judiciary Act of 1789 was celebrated last year. That monumental statute created our federal judicial structure. But it is this year—1990—when other milestones are reached—the first session of the Supreme Court of the United States was February 2, 1790—and so this year is really the bicentennial of what I feel we should particularly note—the 200th anniversary of our truly unique American system of a *dual* structure of courts—state and federal—geared to work together—each with their special highly important functions to make this marvelous machine of democracy run. It takes only a few glimpses around—to Tiananmen Square for example—for us to realize that our Constitution—

given life by our court system to an important degree—is what really sets us apart from despotism or anarchy that prevail abroad.

Stopping to remember these remarkable events of 200 years ago is worth our time. It gives us a sense of direction—*where* we are going. This reminds me of a story about Justice Holmes of our Supreme Court. The story is that he was going on a train trip alone. The conductor came through for tickets and recognized Justice Holmes. He paused and said, “Justice, we’re honored to have you on board. . . . I’m taking up tickets, if I may.” The Justice looked up, searched his pockets, searched again and seemed not to have his ticket in hand. The conductor said, “Please don’t trouble about your ticket Justice Holmes. Just send it in to the company when you find it. It’s not important.” Justice Holmes said, “Oh yes, it is important; I’ve got to find out where I’m going!” Perhaps our bicentennial commemoration will help us know where we are going.

To realize the unique nature of our American system—particularly the so-called third branch The Courts—we must remember that we are talking about *a dual* system of courts. It surprised me to learn that of all the civil and criminal court cases in these 50 states of our Union, the federal courts hear and decide only 3% of the cases. It is your very hard-pressed state judges who are hearing 97% of the American cases. Of course, there must be a central authority and there is—the Supreme Court of the United States—and as Article III of the Constitution makes clear—“The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish.”

But under that Supreme Court, this remarkable system of a dual structure of courts functions—50 state court systems as well as the lower federal courts. There are approximately 30,000 *local and state* judges, magistrates and justices of the peace whose decisions can ultimately reach the high Court. It is this body of judges who must be mainly available for the cases and controversies of the 240,000,000-plus Americans.

This program this evening is part of the Law Day U.S.A. Program around the country. This is celebrated near May 1 each year. The event was started in 1958 by a presidential proclamation of President Eisenhower for “a special day of celebration by the American people in appreciation of their liberties and to provide an occasion for rededication to the ideals of equality and justice under laws.” Since that Presidential

Proclamation of 1958, the ceremony was reaffirmed by a joint resolution of Congress in 1961.

The president of the American Bar Association, Mr. L. Stanley Chauvin, Jr., has sent an important message to us all about the Law Day celebration. This is the 33rd celebration of Law Day and the theme for this year's Law Day U.S.A. is "Generations of Justice." As Mr. Chauvin pointed out, this theme embodies our national commitment to the rule of law through a system of justice and maintaining a system to allow Americans to adjudicate their disputes in a fair and peaceful manner.

This year's Law Day U.S.A., as Mr. Chauvin also said, represents a continuing effort to extend justice to all generations. And now we see, more than ever, the need to assure justice and equal protection under the law to Americans on both extremes of the generation scale. We know that our children desperately need protection today by our legal system. Our national statistics show that nearly 40% of those living below the poverty level in the nation are children. Far too many of them are homeless. And teenage unemployment and pregnancy are epidemic. Protection against legal abuses of these defenseless children can be afforded only by the experience and skill that lawyers can exercise on their behalf, when other efforts have failed.

At the other end of the generation spectrum we see the difficult and complex problems faced by the elderly. Medical and technological advances make it possible for us as Americans to live far longer lives. The percentage of citizens more than 65 years of age is now greater than ever in our country's history, and persons over 85 constitute the fastest growing segment of the American population.

This "aging of America" has created special legal concerns. Critically important is life planning, necessary to anticipate and protect the elderly from legal and financial hardships. Older Americans have to come to grips with a growing maze of complex laws covering areas such as housing, discrimination, guardianships, Medicaid and Medicare, social security and pensions. These issues are ones again where the need for lawyers is clear when other solutions are not available for the redress of the problems of the elderly.

But in addition to the needs of both the children and the elderly, we know that other generations of Americans continue to face special legal needs. These generations suffer from a lack of access to our court system. Sadly the drug crisis continues to dominate our justice system and threatens to deny access to justice for future generations of

Americans, as the courts are compelled to turn their major attention to dealing with the drug prosecutions that inundate the courts, federal and state.

To make this 200th anniversary of our dual state and federal court systems mean something, I suggest that this is a particular point at which all of us working in the legal system—lawyers and judges—must realize that ours are not merely our personal professions. They are the means by which we make a living for our families and ourselves. But if we are satisfied with that goal alone, making enough of a living, the system will continue to have considerable disrespect. This is because of the widespread perception that the system of justice is not really available to ordinary Americans in the mainstream of our society, and is instead only on call for the very powerful or wealthy.

I believe that if we as lawyers and judges will look back on our professional lives, we will realize that the times at which we have been truly satisfied and felt a sense of accomplishment were when we had achieved the best results for others, to present their case well and win a just verdict, to defend a person against a groundless charge, or to stand up for a client against unfairness or discrimination and make the legal remedy work for them. That goal of “Equal Justice Under Law” which we see on the courthouses must be the constant challenge of us all so that this judicial system can truly meet its goals.

BEFORE THE BAR ASSOCIATION: OAKWOOD COUNTRY CLUB

Well, Helen, here we are back at the Oakwood Country Club. Here our engagement was announced in the Spring of 1963 and here our wedding reception was held on June 29 that year. It’s great to be here with you again—this time for your County Bar functions celebrating Law Day U.S.A. for 1990. We have looked forward to coming and are grateful for your warm hospitality.

Coming back to Enid helps us to keep in perspective the importance of friends and being back in Oklahoma and in Enid. Perspective is important for us all. This reminds me of the story about the girl who had gone off for her first semester of college. Just after that first semester ended she wrote home:

Dear Mom and Dad—I need to level with you about what’s been going on here at college.

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First, I have moved out of the dorm. I'm living with Tom now. I'm pregnant, *and* I flunked calculus.

Love—

Your Devoted Daughter

P.S. Dear Folks—Actually, I'm *not* living with Tom. I'm still staying in the dorm. I'm not really pregnant. *But* I did flunk calculus—I just wanted you to see this all in *perspective!*

We are gathered here—lawyers and judges and guests—all to observe your celebration of Law Day U.S.A. for 1990. As I was saying at the Conference Center, this is actually the true Bicentennial of the Federal Judiciary of this nation—and thus of the dual system of courts in America. The first gathering was in February 1790 and the first actual session of the Supreme Court was on February 2, 1790. Thus we are just past the Bicentennial of the creation of our dual court system.

When we mark these dates and observe these bicentennials, we are now down to the part of history dealing with us—lawyers and judges and how we fit into this mosaic of American history. What does the public really think of us? How are we serving the needs of people in all walks of life? The problem that worries me, along with many of you, I know, is the public perception of us as lawyers and judges. Are we really dedicated to professional service of all who need us, or are we focusing on the time records, the billings, the bills for raising salaries of judges predominantly—or are we adequately worrying about the way we handle the needs of our clients and the litigants waiting for our court rulings.

I know there is a real emphasis on pro bono work by lawyers to handle the problems of the indigent people of our society. Of course, the Sixth Amendment of our Federal Constitution and Supreme Court decisions such as *Gideon v. Wainwright* have assured the indigent representation in criminal cases in the federal and state courts. But the problems of the very needy, of course, are not criminal cases alone, but a myriad of legal problems from landlord and tenant disputes, discrimination cases, and the like. Equal justice under law is a challenge that covers these subjects just as it does criminal cases. I know there is an increasing emphasis on pro bono services by lawyers and your Bar Association and those throughout the country are emphasizing this duty

increasingly. This is an imperative for all of us, because we cannot be satisfied when a large segment of our population is compelled to throw up its hands and say the legal system won't work because it's not available for them. As a Bicentennial resolution for us all, I suggest that we resolve that this profession will meet the needs of *all* who have just cases, and that they are not left to their own devices and to criticism of the courts and the legal profession as well.

We don't want the perception of the lawyer as a very canny practitioner. Chief Justice Rehnquist told us a story in March at the Judicial Conference about a confrontation between the devil and a young lawyer. The devil turned on the new barrister and said:

“If you will make a pact with me, I will give you a tongue of gold. All men will beat a path to the door of your offices and want you to represent them. You will achieve victory after victory in the courthouse and become famous through the land. I do demand, however, that you pledge me your soul, and the soul of your wife and all of your children.”

The lawyer is supposed to have hesitated a moment and then said,

“What's the catch?”

For Helen and myself, I want to express our real thanks to you for your hospitality in inviting us to be with you. We have enjoyed your warm friendship and renewing associations here at Enid, more than you know.