

2009 JEFFERSON MEDAL ADDRESS

by
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Thank you, Davy, for that kind introduction and for this wonderful medal. I am very grateful to be recognized by the New Jersey Intellectual Property Law Association in this special way. I accept this medal with a great sense of humility. To be invited to join the group of exceptional people who have won this medal is truly overwhelming—especially for this ordinary patent attorney from Brooklyn.

I am pleased to see so many of my friends here and especially my colleague Judge Pauline Newman. It means a great deal to me personally that she came all this way to be here for this event. I should note for those who may not have been aware that Judge Newman just last week was herself recognized by the Intellectual Property Owners Association with their Distinguished IP Professional Award, an award that was well deserved.

My career has come full circle. I started as a government employee, moved into the private sector, and have returned to government in my current position. When I started as an examiner in 1965, a career in government, particularly in the federal government, was viewed quite differently from what it is today. Many positions in the executive were considered quite challenging, and came with a decent – almost competitive – salary, with great security and a robust package of fringe benefits. The Patent Office, as it was known in those days, was a particularly interesting place to work. The technology was interesting, but not necessarily overwhelming in complexity. The pace was modest and easily managed. The law was stable and for the most part understandable.

But things at the Patent Office, as in many institutions, have changed considerably over the past four decades. The technology of today's inventions is immensely more complex than ever before. The length and breadth of applications is

greater. The volume of prior art is much larger. The legal issues are more intricate and harder to comprehend. And the law is in a continual state of change. Compounding all of this is the attitude of many that the work of the PTO in general, and the examiners in particular, doesn't really matter and that the only thing that counts is what happens after the PTO is done.

Let me be as clear as I can. That attitude is wrong, and the patent system is suffering as a result. The work of the PTO and of the many examiners who serve in that agency is neither secondary in importance nor deserving of derision. To the contrary, the work of the examiners is of the utmost importance, and it is critical that President Obama appoint a new director who is intimately familiar with the law, who understands the needs of the patent community, and who possesses the vision and ability to reenergize, revitalize, and restore the PTO to the leadership position it once had and this country so critically needs.

It is not only the PTO but lawyers as well who face challenges ahead. Several years ago, before coming on to the bench, I worked with a jury consultant in connection with a trade secret case. As part of our preparations, our consultant conducted a poll of potential jurors. Among the questions asked in this poll were a series of questions intended to develop a sense of how the potential jurors in that community perceived lawyers. When asked to rank lawyers in comparison with other professions, lawyers were ranked near the bottom along with used car salesmen and insurance brokers. When asked why the lawyers were held in such relative disrespect, the polled individuals answered that "lawyers will say anything and do anything to advance their client's cause."

The consultant then asked the same potential jurors what they would look for in a lawyer if they were in serious trouble and needed to hire an attorney to represent them. Interestingly enough, the answer was exactly the same: they would look for a lawyer who would "say anything and do anything to advance their cause."

I think it is fair to say that over the years, we have seen high and low watermarks in the reputation and conduct of lawyers. But I am encouraged by the extent to which the time honored ideals of the legal profession are being embraced of

late in such widely popular activities as the American Inns of Court.

I have a special interest in the American Inns of Court. That interest began when I first joined the court and first attended a meeting of the Giles Rich Inn. As many of you know, I occupy the seat previously held by Judge Rich. I have the privilege of occupying his chambers. There isn't a day that goes by that I do not think about him and the profound affect he had on our profession. I can remember as a freshman examiner hearing Judge Rich at a lecture at the Patent Office in 1965. He was an icon even then. He was, of course, co-author of the '52 Patent Act. He was a former practicing patent attorney and a former Jefferson Medal winner. Until his death, he was the oldest active federal judge in American history. Little did I think back then, sitting in the audience of the PTO auditorium, that some day I would occupy his seat on the federal bench.

So I felt a great connection with Judge Rich when I came on to the court and a sense of responsibility to do my best to live up to his name and reputation. I had known for some time that there was an Inn of Court that bears his name, but I really didn't know what it was all about and had never attended any meetings. I decided to check it out for myself. I attended a meeting and was impressed to see in attendance so many leaders of the Washington patent bar: Judge Michel, Judge Newman, Judge Lourie, Gerry Mossinghoff, Ralph Oman, Don Dunner, and Bob Armitage, among others—interestingly, all former Jefferson Medal winners. I also saw the bright faces of many students and young lawyers, all eager to learn in a setting free of any agenda relating to billable hours or client development. I enjoyed the meeting so much that I began to attend on a regular basis. And I have been attending regularly ever since.

The concept of the American Inns of Court was championed in the late 70's by Chief Justice Warren Burger, in collaboration with Chief Judge Howard Markey—yet another Jefferson Medal winner. At that time, many in the legal community were concerned about so-called Rambo-style litigation tactics and a loss of civility among members of the bar. So the Chief Justice created a committee of the Judicial Conference, which is the governing body of the federal judiciary, to explore whether there should be a national

organization to promote the goals of legal excellence, civility, professionalism, and ethics patterned after the English Inns of Court. In due course, the committee recommended the creation of the American Inns of Court Foundation, which was formed in 1985.

Up until 2006, out of the over 300 American Inns of Court around the country, there were only four that focused on intellectual property: The Giles Rich Inn, meeting at the Federal Circuit; The John Lifland Inn, meeting here in New Jersey; The Ben Franklin Inn, meeting in Philadelphia; and—get ready for this—The San Francisco Bay Area Intellectual Property American Inn of Court, meeting in Northern California. I was astounded to find out that there were no IP Inns of Court in Chicago, Los Angeles, New York, or Boston. I could not accept the fact that my friends and former colleagues in the intellectual property bar in those four cities, which have always been hotbeds of IP activity, did not have the opportunity to share in and contribute to the American Inns of Court movement. So I decided to try to do something about it.

I am very proud to report that through the efforts of some wonderful friends, former colleagues, and great lawyers, there are now active IP Inns of Court in all four of those cities, with more IP Inns in the planning stages in Albany, Austin, Houston, Atlanta, and Seattle. The people who made this happen deserve to be recognized: Olivia Luk, of Jenner & Block in Chicago and the founder and prime mover of the Richard Linn Inn; Vern Schooley, of the Fulweider, Patton firm in Los Angeles and the founder of the Los Angeles Intellectual Property Inn; Dave Conlin, of the Edwards Angell firm in Boston and the founder of the Boston Intellectual Property Inn; and two people who are here with us this evening: Anthony Giaccio, of Kenyon & Kenyon in New York and the founder of the William C. Conner Inn; and last but not least, my classmate from Georgetown, my former partner at Foley & Lardner, and my partner in all of these Inn of Court efforts, Hal Wegner. These people represent the best of our profession and are the true leaders of the bar. The Inns of Court are well represented tonight. Although Ben Franklin couldn't make it, I am pleased to report that both Judge John Lifland and Judge William Conner are here.

I began my remarks about the American Inns of Court with reference to the late Giles Sutherland Rich and the affect he

has had on my life. Four days from now will mark the tenth anniversary of his passing, and I would like to conclude my remarks with a salute to his memory. In my mind, he is the most noted American patent jurist of the second half of the twentieth century. I am told that although he received numerous honors over the years, there was no award that pleased him more than his Jefferson Medal, which he proudly displayed in the living room of his home. To be in his company tonight as a fellow Jefferson Medal recipient is more meaningful to me than you will ever know. I am very grateful, and I thank the officers and members of the New Jersey Intellectual Property Law Association for this wonderful honor.