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# Opening Remarks of the 13th Annual Eastern District of Texas Bench-Bar Conference

Frisco, Texas

October 15, 2009

*The Honorable David J. Folsom\**

*The Honorable T. John Ward\*\**

*Mr. Christopher T. Coco\*\*\**

*Mr. Clyde M. Siebman\*\*\*\**

MR. SIEBMAN: I'd like to open the 13th Annual 2009 Eastern District of Texas Bench-Bar Conference. We've set a record attendance—I think there are over 400 or 425 that have registered for the conference, so it is a fantastic year. This is also the first year I believe that the conference has actually been in the Eastern District of Texas.

We've always held it, historically either in Galveston at Moody Gardens or in Lake Conroe at the center there. It is nice to have it back in the Eastern District of Texas; I know for those from out of town, it's hard to believe that you can be in the Eastern District of Texas and just 20 miles from DFW airport. That's also kind of a neat turn that it can be so convenient and be in the district. Without further comment, I'm going to turn the conference over to our presiding judge, David Folsom.

JUDGE FOLSOM: Thank you, Clyde. On behalf of all the judges of the Eastern District of Texas and the court family, we welcome you to this 13th annual conference. The first conference took place under the leadership of Chief Judge Richard Shell in 1996 at the St. Louis hotel in Galveston. Soon thereafter, it was moved to Moody Garden, and this conference continued under the leadership of Chief Judge John Hannah and then Chief Judge Thad Heartfield.

As many of you know, I became the Chief Judge January 1 of this year to my dismay. I tried to talk Judge Heartfield into serving at least another couple another of years, but I could not persuade him to do so. As Clyde said, this is the 13th annual meeting; many of you may have seen your handouts that bear a 2008 date. As probably most of you know, the 2008 meeting was cancelled due to Hurricane Ike. I discovered in the past six or seven months that there is a tremendous amount of work that goes into the planning of one of these conferences. I cannot take a lot of credit, and most of the program was actually the program put together by Judge Heartfield for last year's conference. There have been many, many individuals involved in making all the necessary decisions.

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\*\*\* Eastern District of Texas Bar President.

\*\*\*\* 2009 Bench-Bar Conference Chairman.

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So much we owe to so many. I will try not to mention everyone, but needless to say, our President Chris Coco, Vice-President Larry Phillips, Glen Timms our Treasurer, our planning committee which is a very lengthy list, and I invite you to look at the members of that committee which is posted out in the lobby. Particular thanks should go to Betty Schroeder in my office and Dave Malen's staff who was very involved in the planning of this conference. As Clyde said, this is the largest conference in the history of the annual Bench Bar meeting.

I think that over the years, this conference has been very successful to improve relationships between the judges of the Eastern District and the members of the bar who practice in front of us. I think our bench has always been open to your comments, criticism, and thoughts, from the rules committee on up.

It's very good to see so many individuals that I know and for those judges, it's nice to see some individuals not in the context of a Markman hearing. But this has gone a long way to foster relationships in our district. I understand that this is the largest bench-bar organization and meeting in our circuit. Maybe one of the larger ones in the nation, I'm not sure. We hope that everyone has a good time, and we hope this is a learning experience for all of us and is constructive in all regards.

I do have to mention on a sad note, I'm sure most of you are aware of the death of one of our beloved members of the bench, Judge William Wayne Justice. I would like to dedicate this conference to him, and to his memory. In that regard, I'd like to call on Judge John Ward for a few comments concerning the life and times of Judge William Wayne Justice.

**JUDGE WARD:** Thank you Chief. I was driving up late here yesterday afternoon after having a claim-construction hearing, and the Chief called and said 'they want you to do this.' I thought that once you get up to the United States District Judge you didn't have to do that anymore. But when Chief calls, you respond. I'm glad to have this opportunity.

Wayne Justice passed away this past Monday at the age of 89. He was a graduate of the University of Texas Law School in 1942, and as soon as he got out of law school, he entered the United States Army and spent most of his army career in the China, Burma, and India theaters, where he was discharged in late '45 I believe, as first lieutenant and he returned to Athens, Texas to enter the practice of law with his father. There, he met the love of his life, Sue, who survives him along with his daughter Ellen, his son-in-law, and one granddaughter. Judge Justice served in the Eastern District of Texas from the end of June 1968 until June 1998, creating the vacancy which I filled. My first day in the office was September 27, 1999.

Prior to being appointed judge of the district, President Kennedy appointed him as United States attorney in 1961. In 1966, Lyndon Johnson reappointed him, and then in 1968, as I said, he was appointed and confirmed by the United States Senate as a United States District Judge.

I started practicing law in the Eastern District in the first week of July in 1968, and I made my first appearance before him that week. It turns out that

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Mrs. Simmons, his loyal secretary, told me later that it was the first time the judge had been in a court room. I recalled that with him back a few years ago, it made quite an impression on me. I was so scared that I could barely walk. He did not recall it, so he made more of an impression on me than I made on him.

Judge Justice's landmark legal decisions are large in number. I do not have the time to list them here or discuss them. Suffice it to say that during his time on the Eastern District bench, he changed people's lives, he gave people opportunities they would not have had, and he changed the policies of the great state of Texas, during a time when doing so was very unpopular. I would like to refer you to the article that appeared in yesterday's Austin-American Statesman for a thorough treatment of many of his legal decisions. From my perspective as a young lawyer, the thing that always stood out in my mind was that he was the most courageous judge that I have ever known, because he believed in the United States Constitution, and he applied the United States Constitution as he understood it, and he did the right thing, for the right reasons, and he never looked back. I think that will be the legacy that he leaves us.

Eric Albritton is out there among you, and he was one of Judge Justice's last law clerks. I have spoken with Eric, and he told me that the greatest thing he learned during his clerkship from Judge Justice was that you never allow other people to define you. You define yourself by what you do, and the reasons you do it. When I came on the bench, Judge Justice was not on the Eastern District. I was always a lawyer in front of him, and I appeared and tried many cases in front of him. I do not know if Judge Folsom selected me to speak today because I hold the record for the number of dressings-downs, but I can assure you that every time he dressed me down, I was well-deserving.

In talking with Judge Folsom over the last few years, I cannot recount the number of times that he has commented about how kind and helpful Judge Justice was to him when he came on the bench in 1995. I remember my second day in the office, I got a call from Judge William Steger's chambers asking if I would have a minute to visit with him that day. Of course, I was down there within a minute. I was not quite used to this idea that I was a judge and he was a judge, so I was still responding in the same way that I responded as a lawyer.

Judge Steger talked to me that day for probably a good hour and a half about many different things. One of the things was the importance of collegiality among the judges, and about how all the years that he had been on the Eastern District bench, which started in December of 1970, how important it was to the administration of justice, and for that to continue. As I best recall, he said, "Wayne and I are on the opposite ends of the political spectrum," and that was probably a classic understatement. He continued, "you know, we never had a cross word about the court or how we did things." It made an impression on me.

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About two years later, I was in the redistricting saga that was tried down in Austin. That case went on for seven weeks. I had coffee with Judge Justice in his chambers many mornings before we were to start the redistricting trial because he came in early as he always did. I would go in and visit with him, and he invariably would tell a story about something; he had a favorite and I am going to share it with you before this is over with, but without any prompting from me, he said to me almost the exact same words that Judge Steger had said. I think it is important for you to know these two gentlemen, with great differences in political beliefs, had a bond between them that was calculated to try to deliver the best form of justice that they thought was possible.

Judge Justice's law clerks would tell you that he really liked lawyers. He loved the legal profession and thought it was a very noble profession. He loved being a United States District Judge. He was the consummate, genteel professional. He would not tolerate incivility in his courtroom among counsel. He insisted that everyone follow the rules, and he applied them evenly.

He was a kind person, but he could be tough. He expected you to conform to whatever he said the rule was, particularly when he enacted using the pre-trial order in the Eastern District of Texas. It was not a good sign when he called your case, and you answered, and the first question out of his mouth was, "Mr. Ward, could you explain to me why you didn't follow my form in paragraph so and so?" That was not a good sign. I think there are several of us older folks that might remember that. You never wanted to cross the line that he had drawn on a ruling, and just bumping up against it was fraught with danger. Many of you who have tried cases in my court know how I feel about motions in limine—well, that was not original with me. I learned that at the foot of the master.

One thing I still remember while trying a case was that my partner, Mr. Sharp, was getting up there in age and did not hear well, and we had a ruling that morning about some evidence. Mr. Sharp had a witness on the stand and he was beginning to get into him pretty good, and he was beginning to get close to that line, and without an objection from opposing counsel, I heard, "counsel approach." By the time we got to the bench, the top of Judge Justice's head was red—that did not bode well. While Mr. Sharp said, "I didn't understand, I didn't hear it that way," Judge Justice looked at me and he said, "Mr. Ward, you be sure that he understands my ruling." Of course, as I melted down into my shoes, I went back down in that same trial and we were able to communicate after that.

The story he loved to tell his clerks occurred in this very same trial. To illustrate his compassion, the very next day, there were three defendants, and there was a witness on the stand that did not have a thing in the world to do with our party's case so I was relaxed. My seat was right in front of Joyce Alvarez, a clerk, and right above her at the next level was Judge Justice.

I was sitting there, and I had developed a habit of taking a rubber band and putting it around my hand and expanding it.

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The witness was on the stand, that rubber band came off of my hand, Joyce Alvarez ducked, and it was like a guided missile—by the force of gravity I was saved because it landed just short of him. He looked down at that rubber band, he looked at me, and he says, “the court’s going to be in recess.” By that time, the top of his head was red. When that marshal said the court was in recess, I hit that door and I said, “Mrs. Simmons, I got to see the judge.” She said, “I imagine he would like to see you.” She buzzed him, he allowed me to come in, and I walked in. Fortunately, the color was beginning to get back to normal, and he just had a look of puzzlement on his face. I apologized profusely, the look of puzzlement somewhat went to amusement, and then I finally saw that lop-sided grin that he had. He said, “I think I understand, I’ll see you back in court.” I turned and I went to the door, and as I got to the door, I heard him say, “Mr. Ward,” of course I turned. I thought this was it. He said, “don’t let that happen again.” I never carried another rubber band in my briefcase.

In closing, I want to tell one final story about my colleague, Judge Leonard Davis. Judge Davis came on the bench, and was one of the first appointees by President George W. Bush. Many of you may know, but some of you may not know, that during Leonard’s practice career, he also served as general counsel for the Republican Party for the state of Texas. He appeared before the United States Senate at his confirmation hearing, and he was asked by the chairman, “Who is the federal jurist that you most admire?” With that background and their political divide, Judge Davis said, “William Wayne Justice, from Tyler, Texas.” He went on to explain to him why, and he has repeated this explanation to me a number of years ago—he used a phrase in that explanation, and I almost heard that exact same phrase Monday night when I called Judge Davis at home after Judge Folsom had informed me of Judge Justice’s passing. I wanted to make sure that Judge Davis knew, and he already knew, so we had a discussion about Judge Justice. The phrase he used was simply this, “he was such a great guy.” And so he was.

Thank you.

**JUDGE FOLSOM:** Thank you John for those very appropriate comments. In case you didn’t read the Dallas Morning News today, the headline summarized the career of Judge Justice—“Champion of the Downtrodden.” With that, I would like to officially open the 2009 conference and call on Chris Coco, the President of the association.

**MR. COCO:** Thank you, Your Honor. I would like to echo Judge Folsom’s comments about welcoming you here to the conference and thank you for attending. One of the good things about becoming President of the Bar Association is that there are many wonderful people that step up and help put on things like this conference. Unfortunately for the Association, I have been the President for the last two years, and that was solely because we did not have a meeting last year due to Hurricane Ike, so I am for the sake of the association going to enter some term limit restrictions for the sake of the by-laws.

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I do want to say that last year, there was a group of people that worked very hard to get the conference together, but unfortunately, we weren't able to have it. So to start off the conference this year, I would like to thank Judge Thad Heartfield for the guidance that he provided us last year. The good thing, and I want Judge Heartfield to know this, is that his guidance last year shaped what we were going to do; Clyde and the committee were able to build on that foundation and take some of the good things that were planned for you last year and implement them this year. She's not here, but I do want to thank Kristi Wernig in Judge Heartfield's office. She has been the lynchpin for putting the conference together for the last few years and she's worked tirelessly, so if any of you are in Judge Heartfield's court, at any time, I would appreciate it if you just gave her a word of thanks. That being said, I would like to go ahead and start the conference this year.