

NJIPLA JEFFERSON MEDAL SPEECH

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Thank you for this great honor, even more appreciated than you might guess, because I happen to be an avid fan of Thomas Jefferson. So for me, your award of this Jefferson Medal is like it would be for Chris Christie to get a Bruce Springsteen Medal! The difference is that here I am, getting the Jefferson Medal, and he doesn't get the Springsteen Medal, at least not yet.

But I am sincerely crazy about Jefferson, and will tell you some of my favorites among his greatest hits, briefly in just a moment.

You know, judges like us rarely get any feedback, much less positive feedback, while performing our duties. Mostly, any feedback we do get comes as appellate reversals of our decisions – or more spectacularly, en banc reversals!

Which of course for me calls to mind these jovial lines from Gilbert & Sullivan's opera "Trial By Jury," where the chorus assembled in court greets the judge with this ingratiating verse:

All hail great Judge!
To your bright rays
We never grudge
Ecstatic praise.
All hail!

May each decree
As statute rank
And never be
Reversed in banc.
All hail, All hail!

-- To which a suitable response from the judge might well be drawn from the Captain of H.M.S. Pinafore, in another G & S show, who declared thusly when asked whether any adversity ever befell him:

What, never?
No, never!
What never?
Well, hardly ever!

Of course, when you take your oath of office as a federal judge, you are not there for feedback, whether positive or negative, but to do your job, right? Even when it comes to hitherto unfamiliar facts and rules of law, right? Patents, bankruptcy appeals, habeas corpus, for example, did you say?

Well, when that kind of challenge would arise for me as a baby judge, I had my stalwart colleagues Judge Anne Thompson and Judge Garrett Brown at my side then – as they are indeed here tonight; each a former Chief Judge of our District Court, and Garrett a former Jefferson Medalist here as well.

When I came to them as I was getting started, Judge Brown would smile broadly and say, “You took the oath of office as an Article III federal judge, so by definition you are now master of every field of law in our jurisdiction.” And there would be Judge Thompson, patiently and laboriously showing me by action and instruction how to do the job on a daily basis. Even though she says I usually didn’t listen to her good advice and preferred to make my own mistakes!

Anyway, in this job you just put your head down and work at it; and it usually turns out okay, with the help of the litigating bar and our outstanding court staff and law clerks.

This past March, I once again had the privilege of attending the Federal Circuit Judicial Conference in Washington, and if you have not been you really should go if you can. The members of that Court are so welcoming and hospitable, and the program is invariably informative for those of us in the IP field.

This year, Judge Kathleen O'Malley did a fabulous job of organizing the whole conference. Chief Justice Roberts greeted us in his remarks, and each of the Federal Circuit judges spoke candidly on a panel in which they all participated. Judge Pauline Newman was particularly intriguing, giving us a running history of that distinguished court from its founding in 1982 and right up to the present day. I am thrilled that we are again able to welcome Judge Newman and Judge O'Malley to our midst tonight.

The night before that Judicial Conference, at a dinner for those of us District and Magistrate Judges who attended, we had a very special evening with Justice Sonia Sotomayor, introduced to us by Federal Circuit Judge Jimmie Reyna. It was a warm and casual gathering. She said that much as she loves being on the Supreme Court, she misses the District Court and thinks it would be fun to spend her retirement presiding back in that court, rather than riding circuit. As she put it, and here I quote not verbatim but in sum: "In the District Court, I was QUEEN! I didn't have to ask two or eight colleagues how to rule. I just did it!"

Now, speaking as a District Judge, I can certainly vouch for the autonomy aspect of the job. But I assure you that I have never felt like a Queen up there; more like a foot soldier or maybe a coach driver!

Speaking of driving, another place you really must visit is Monticello, the mountaintop home of Thomas Jefferson in his native Virginia. Easy to get to, you just head west off Route 95 as you approach Richmond, and in little more than an hour you are there, leisurely strolling through his fascinating house and verdant gardens. This is the only American house on the United Nations list of World Heritage Sites.

You can literally feel Jefferson's presence in the rooms that he designed and occupied there – and his endlessly curious scientific mind is on display in the instruments and artifacts with which he surrounded himself.

He had a polygraph – not a lie detector, no, but a machine with two pens, one for you to hold and write with, and the other to write mechanically on an adjacent piece of paper. That way, you had a copy of every letter you wrote, for your file. He called that device “the finest invention of the present age.” By 1809, he wrote that “the use of the polygraph has spoiled me for the old copying press the copies of which are hardly ever legible... . I could not, now therefore, live without the Polygraph.”

-- Fun fact about Jefferson: There is a whole section in the Monticello website of “Spurious Quotations” attributed to him but never uttered by him. For example, he did not say, “Good wine is a necessity of life for me.” But he definitely did say, and he meant it, that “I cannot live without books.” When the Library of Congress was burned by the British in 1814, Jefferson's largest personal collection of books in the nation, almost 7,000 volumes, went to reestablish that Library. He immediately set about acquiring his next several thousand books.

Jefferson's famous love of natural history and science was truly deep and abiding. Days before he finished his two terms as a reluctant President of the United States and retired from public life to

Monticello, he wrote to his dear French friend Pierre DuPont (father of E.I. DuPont who started a little company in Delaware). This is what he wrote to Pierre DuPont on March 2, 1809:

“[W]ithin a few days I retire to my family, my books and farms; and having gained the harbor myself, I shall look on my friends still buffeting the storm with anxiety indeed, but not with envy. Never did a prisoner, released from his chains, feel such relief as I shall on shaking off the shackles of power. Nature intended me for the tranquil pursuits of science, by rendering them my supreme delight.”

There at Monticello, having withdrawn from public life at last, Jefferson concentrated upon designing and building for the University of Virginia, and on his own scientific pursuits including his endless experimentation with horticulture in profuse variety. On August 20, 1811, he wrote these deathless lines to his friend Charles Willson Peale:

“No occupation is so delightful to me as the culture of the earth, and no culture comparable to that of the garden. Such a variety of subjects, some one always coming to perfection, the failure of one thing repaired by the success of another, and instead of one harvest a continued one through the year. Under a total want of demand except for our family table, I am still devoted to the garden. But though an old man, I am but a young gardener.”

Back to the here and now we come with some of his mellow words ringing in our ears. Yes, Jefferson was the Secretary of State who functioned as the first patent examiner, and signed United States Patent Number 000001 in 1790. He was also the founder of the United States Patent Office in 1802 while he was President. Wouldn't he marvel at the scope and variety of patents and other intellectual property that obtain federal protection for innovation today.

What would he think of our modern intellectual property laws? Well, in truth, they haven't changed fundamentally from the U.S. Patent Act of 1793, authored by – who else? – Thomas Jefferson. I think he would be pleased, to see our laws today faithfully promoting the purpose stated in Article I, Section 8 of the Constitution, granting Congress the power “To Promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

Senator Orrin Hatch, Chairman of the Senate Finance Committee and a long-time member of the Senate Judiciary Committee that screens all Article III federal judicial candidates, delivered a spellbinding address to us at the Federal Circuit Judicial Conference in March. And as we see in tonight's dinner program, Senator Hatch received this very Jefferson Medal from the NJIPLA in 1997.

Senator Hatch has been a dedicated craftsman of our intellectual property statutes during his long tenure of 41 years in the Senate. At our conference, he spoke favorably of the roles of the Congress and the federal courts in tending to the emerging needs of science and technology even while staying firmly rooted in the purposes of those laws. For example, he expressed particular pride in the pharmaceutical patent Hatch-Waxman Act which bears his name, and he even offered some practical suggestions for how to tweak it to work even better in the current legislative scheme.

Is the work that we do collectively in this field, especially in the face of the revolutionary complexity of modern technology, an easy job? Definitely not. Can any of us do it without each other? No; it is a dialogue in each case and on each issue. But if we do it with diligence and good faith, we can be reasonably confident in the fairness of the outcome, whether favorable or not in the particular situation.

I would like to leave you with one of my favorite quotes from all the legal literature it has been my privilege to absorb in my half century of exploring and loving the law. It was in a setting much like tonight, back in March 1900, at a dinner of the Suffolk, Massachusetts Bar, when the legal giant and Civil War hero Justice Oliver Wendell Holmes, Jr. addressed those gentlemen. He was talking about life as well as the law (including patent law, which he did address as a Justice) when he said this:

“Every achievement is a bird on the wing. [F]rom the point of view of the world, the end [purpose] of life is life. Life is action, the use of one’s powers [, and] to use them to their height is our joy and duty... . Life is an end in itself, and the only question as to whether it is worth living is whether we have enough of it.

“I will add but a word. We are all very near despair. The sheathing that floats us over its waves is compounded of hope, faith in the unexplainable worth and sure issue of effort, and the deep, subconscious content which comes from the exercise of our powers... . [T]hese thoughts have carried me, as I hope they will carry the young men who hear me, through long years of doubt, self-distrust, and solitude. They do now, for, although it might seem that the day of trial was over, in fact it is renewed each day. The kindness which you have shown me makes me bold in happy moments to believe that the long and passionate struggle has not been quite in vain.”*

If Holmes were speaking here tonight, I am sure he would have extended these wishes to the young and older women who now have the good fortune to have joined the ranks of practicing attorneys, and

* Holmes, O.W. (1943). *The Mind and Faith of Justice Holmes*. New York, NY: Random House, Inc.

to those who support all of us in this challenging intellectual property field of the law.

And if Thomas Jefferson were to emerge from his study once more tonight, he would surely prompt us that as long as you or I take an interest in science and the law, “but tho’ an old person, I will be a young patent lawyer.”