

Continuing the Wesleyan Way with Public Service

I am honored to deliver the Stanley Reed lecture to you this evening.

The first thing I did to prepare these remarks was to take a virtual campus tour on the Wesleyan website, which I believe ought to impress anyone seeking a quality undergraduate education in a smaller college. What impressed me most were the stated principles of the “Wesleyan Way”: Honor; Support for each other; Competing with Integrity; and Love for each other. For, in many ways similar principles have guided my coworkers and the wonderful persons I have had the privilege to meet and work with during my career as a public interest lawyer for more than fifty years. I have titled this talk “Continuing the Wesleyan Way with Public Service” because I truly believe you will not find a more gratifying and rewarding way to spend your lives than in service to others who need it. That will be true whether you chose to do so as a lawyer, a teacher, social worker, medical professional, or any other profession

This evening I am joined here by a lawyer and a Judge who embody these principles to the fullest, your President Darrell and Board Chair Phillip Shepherd. While I have only recently learned about President Darrell’s outstanding career as a lawyer and as your President, I have followed Judge Shepherd’s career for many years, a man of great character, determination, fairness, and love of the law- a distinguished jurist in every way. You are fortunate to have him as Chair of your Board of Trustees.

Tonight, I will focus on my experiences as a lawyer, first in the Civil Rights Division of the Department of Justice in the 1960's, and second in providing legal services in civil matters to the poverty population of Appalachian Kentucky-my two careers in the law. However, I will begin by describing some of my personal history and the persecution my family suffered in Germany as it helps to explain my choice of careers and my pride in this country – as is the case with so many other immigrants. We cherish the opportunity to live in this free country, and one in which the Rule of Law is a cherished principle. Under the Rule of Law, no one is above the law; and all citizens have the right to be treated equally and fairly.

The Rule of Law in this country is founded on our system of justice. Indeed, the preamble to our Constitution places the establishment of justice first, even before providing for the general welfare, insuring domestic tranquility or our common defense. To be sure, our justice system has its failings and those failings invariably fall on the poor and disadvantaged. But ultimately, albeit slowly, even at a snail's pace, the system makes a much-needed course correction. It took over one hundred years after Reconstruction for Blacks in this country to regain the right to vote and the other basic rights of citizenship, such as employment, education, and housing..

A major contribution in that long legal campaign to restore these legitimate rights to black citizens was made by your very own alumnus, Justice Stanley Reed for whom this lecture is named. In 1944, sitting as a Justice of the United States Supreme Court, Justice Reed decided and wrote a significant voting rights opinion in the case of *Smith v.*

Allwright, striking down the white primary system. The states had claimed that the Democratic party was a private entity and could set its own rules, limiting participants to whites. Justice Reed, joined by seven other justices, held that this was unconstitutional. The state could not be allowed to delegate its authority over elections to the Democratic Party to allow this kind of racial discrimination. It was a very significant ruling in the long road blacks travelled until their right to vote was finally secured with the Voting Rights Act of 1965.

We can be saddened by the slow pace of our judicial system and at times, some of its results, Nevertheless, even with its imperfections, our Rule of Law continues as a bedrock principle of this nation.

My family's experience was different. We lived in Nazi Germany where the Rule of Law was absent. Fascism ruled, and the law was determined by a single Dictator, Adolf Hitler. It was the very antithesis of the system in our country

During the 1930's after Hitler came to power, he and his Government mounted a relentless campaign to denigrate Jews. The fact that Jews who had lived there for generations considered Germany their homeland- as we consider the United States to be ours- and that many Jewish men fought for Germany during World War 1 was irrelevant. The Nazis claimed that Jews were inferior, and that white German Christians, pure Arians were the master race. They openly encouraged the boycotting of stores owned by Jews and made it illegal for various Jewish professionals, doctors and lawyers, to continue practicing their profession. There is a poignant, historic photograph in which the members of the Supreme Court of Germany are shown swearing their

allegiance as a Court to Adolf Hitler and his principles of racism and bigotry- principles which, when implemented, would result in the extermination of six million Jews.

I was born in Magdeburg, Germany, a large industrial city about sixty miles from Berlin. My father was a school teacher in the Jewish school system which had become segregated on Hitler's orders, and he was an Assistant to the Jewish Congregation's Rabbi. We lived in a second-floor apartment in a small apartment building which was adjacent to the Synagogue, the Jewish house of worship.

On the night of November 9, 1938, referred to as the "night of broken glass," "Krystal night" the Nazis set fire to and bombed virtually every Synagogue in Germany. During the night, the Nazis broke into our apartment, roused us into the Synagogue courtyard, and had us watch as they made a bonfire from the holy scrolls and the prayer books which they hurled out of the Synagogue. Then they dynamited the interior of the Synagogue. We watched -my father and mother, my brother, then two and a half years old, and my grandmother, my father's mother who was visiting with us. My mother asked one of the Nazi storm troopers if they were going to kill us. The unnerving answer was that he did not know. After completely ransacking our apartment, they left.

The following day my father was arrested along with about 200 other Jewish men in the community, and they spent sixteen horrific days in the Buchenwald concentration camp. Most of the time, they were ordered to simply stand. They received little food or drink. During those sixteen days twenty of their number died or were killed.

While my father was in the concentration camp, my mother sent me to relatives in Frankfort, my father's sister, her husband and their son Bubi who, like me was seven years old. Since the Nazis had virtually destroyed our apartment, including the bathroom fixtures, my mother spent the night with various friends, and she took my two-year-old brother to the family of a babysitter. She and the other women affected by their husband's arrest, spent their time imploring local officials to help them obtain the release of their husbands. They were apparently successful. As the men were released and given thirty days to leave the country. I am often asked how this could have happened- that they were released. This was before the implementation of the "final solution" which would see the murder of six million Jews- so, for some there were still opportunities to leave the country. Even so, many could not find sponsors in other countries or arrange for transportation out of the country. and were unable to leave. We have learned that some of the other concentration camps were much more restrictive in who they released and when. It was all very arbitrary.

We were among the fortunate ones. My father had a sister living in Rotterdam, Holland, with her husband and four children. With that connection, we were able to get to Rotterdam, where we spent a year in a detention center, a building that had been an overnight hostelry for travelers about to board a steamer on the Holland America line. During that period my father started a school for the children of the refugees in the center. He did such a good job with the school that the Dutch government wanted to move us to a new camp they were constructing called Westerbork. This would become the camp to which Jews were taken from their Dutch communities, and, after the German

occupation, every Tuesday the train would be filled with residents of the camp and the train would then take them to the Auschwitz concentration camp in Poland where they would be murdered.

Fortunately, a friend from Germany who my father had helped with a Fundraising campaign for a Jewish charity when we were in Magdeburg, was able to intercede and made it possible for us to board one of the last ships to leave Holland. The ship arrived in New York, on February 22, 1940. We saw that flags were flying everywhere. We thought they were flying for us, and then we learned that it was George Washington's birthday- now President's Day. As we moved through the immigration line, the immigration officer promptly changed my name from Hans to John and my Brother's from Horst to Harry.

Unfortunately, my father's mother, his brother, the families in Frankfort and Rotterdam were not as fortunate as we were. Fourteen of our immediate family members were killed in the concentration camps.

My mother, father, brother and I escaped that horror, and found a home in this country; so, we will always be eternally grateful that this country opened its doors to us. Although trained as a teacher in Germany, my father had been unable to find work in New York when they arrived in this country. So, he went south. He served as a lay Rabbi for the Congregations in Spartanburg, South Carolina and Gastonia, North Carolina on alternate weekends, and during the week he worked as a janitor in a textile mill in Spartanburg. After a few months, he was able to save enough money to furnish a modest apartment and to have us move to Spartanburg.

Three years later we moved to Gastonia, North Carolina, which became home until my parents retired many years later. One of the high points in our lives as a family came when my parents became United States citizens. I can remember my parents' studying the booklet on the basics of citizenship for their naturalization test. The day my mother and father were sworn in as citizens of this country in the federal Court in Charlotte, North Carolina was a day to remember. Following the ceremony, my father took us to the Piedmont Diner for a celebratory lunch. It was the first time we had eaten out as a family, since my parents had not been able to afford that kind of a treat.

I started working at an early age. I had my first newspaper route at age 13. In Gastonia I worked in various retail establishments after school and on weekends. I became an Eagle Scout and served as a counselor for several summers at a camp in the North Carolina mountains. Scouting was very important to me, as it taught me the fundamentals of good citizenship, a love for the outdoors, and principles of collegiality, service and leadership. I was proud to serve as President of my Senior Class; and I went to Duke University on a tuition scholarship. At Duke I worked four years in the Dining Hall system in every position,, bussing dishes, cashiering, being a head waiter, and running the food storeroom. I obtained a Degree in Chemistry, and through the Air Force ROTC, became a Second Lieutenant in the United States Air Force in 1953. After a year of navigation training in Houston, Texas, I was stationed with a flying group in England during 1955 and 1956. This was during the time of the cold war with Russia. Many of our exercises were near the Russian border and included the Special Forces. I appreciated my time in the military and made many lifelong friends.

More importantly, the Air Force provided me the eye-opening experience that changed the course of my life.

The military had desegregated. From the time we came to Spartanburg in 1940, I lived in a segregated society. Total segregation, schools, public accommodations, housing, employment, restrooms, and drinking fountains. That was the society into which our immigrant family landed, and we were happy to be there safely. So, my consciousness about this evil system of segregation was not really raised until this tour of duty in England.

There was an occasion when my crew ferried a plane back from England to the United States. A fellow officer and friend, Abe Jenkins, the Radar operator on the crew was an African American from South Carolina. After delivering the plane to the Grumman factory in Long Island, he and I boarded the train in New York to visit our families, still in our uniforms.. When the train reached Washington, D.C., he excused himself and said he would see me again in England. I asked him where he was going, and he said he was going to the back of the train where the blacks were sitting. He said there would be trouble if he stayed with me, as the train headed further south. I was shocked, and it was an eye-opening moment. From that time on, I hoped that I would have an opportunity to help change this pervasive discriminatory system, which our nation- with the aid of our courts-- had tolerated and governmentally supported for over 100 years.

So, using the GI Bill, I was fortunate to go to law school at the University of North Carolina.. After graduating, I began my legal career as a trial lawyer for the Civil Rights Division of the United States

Department of Justice from 1962 to 1970. Those were exciting years in our nation's history, as our Government finally recognized the need to undo the caste system that had subjugated citizens of color to second class citizenship in all aspects of their lives.

In those years in the Civil Rights Division, I learned to appreciate the tremendous courage of black citizens who were the first to attempt to register to vote in their communities, or to seek to have their children obtain a quality education in a previously all white school, rather than in the black schools which were so sadly defective and deficient. In a terrible hostile environment, they risked their livelihood and even their lives to secure rights which the rest of us as white citizens could take for granted. I saw that we, as lawyers for the United States could help to make it happen through the Courts.

Initially, it was slow going, as many of the federal judges before whom we practiced had grown up in the south and were reluctant to bring change to the segregated system in which they had lived all their lives. So, our victories came slowly with a handful of courageous judges leading the way. Those judges withstood tremendous community pressures to maintain the segregated system, and often became totally isolated in the communities where they had lived all their lives for having done their duty under our rule of law. It is a high point in the history of our Court system.

With the passage of the Civil Rights Act of 1964, and, following the Selma march, with the passage of the Voting Rights Act of 1965, our nation declared an end to state imposed discrimination in education, in places of public accommodation, in public facilities, in employment-

and perhaps most importantly in voting. It would still require action by the Courts to see that these laws would be followed. Indeed, the Civil Rights Division lawyers found themselves litigating with recalcitrant southern state officials in each of these areas.

Time does not permit me to go through what is really a litany of litigation in these civil rights cases as the resistance to implementing these laws continued. A good example of this litigation involves the first election in Dallas County, Alabama, after the passage of the Voting Rights Act, the Alabama primary election in May 1966. As part of the Voting Rights Act of 1965, Congress declared that in states where blacks had been deprived of the right to vote as demonstrated by registration statistics, there would now be an opportunity for voter registration by federal examiners, at locations throughout the south. Thousands of blacks were registered by the examiners.

On that 1966 primary election day, blacks voted in large numbers at their precincts, especially in Selma, the county seat. Dallas County still used paper ballots and there were 73 candidates for 24 nominations. Perhaps the most significant was the one for Sheriff in which the infamous Sheriff Jim Clark was seeking reelection. Sheriff Clark, an avowed segregationist, had interfered with attempts by blacks to register on such a pervasive scale, that the federal court had ordered him to stop his unlawful and intimidating practices against blacks who were seeking to register.

This election was also the first time that black election officials were assigned to work at the polls, primarily in the predominantly black precincts. As the night wore on after the polls closed, the new black

election officials were slow in tallying the results. The Election Commissioners, all white, became suspicious of the delay, claiming there must be fraud going on, and then decided to impound the six boxes where most of the blacks had voted.

The following day the Commissioners decided that there must have been fraud in the voting or tallying, so the fair thing to do, from their point of view, would be not to include these predominantly black boxes in the total count. And that was what they did!

The Civil Rights Division then filed a federal court action to require the counting of these ballots, claiming that these voters had a federal right under the Voting Rights Act to have their votes counted. After a two-day trial in which I presented the Government's case, we prevailed. The federal judge held that that he saw no evidence of fraud, and while there might have been some minimal mistakes, the voters were entitled to have their votes counted. A secondary result of this outcome was, that, with the counting of the ballots in those predominantly black boxes, Jim Clark's efforts at reelection failed. A moderate white candidate won. As a note of historic progress, some years later, three of Selma's newly elected five commissioners were black and they were installed by the first federal black judge in Alabama..

My experience in the Civil Rights Division provided me with an incredible opportunity to learn to practice law with a highly skilled, hardworking and dedicated group of attorneys. It would stand me in good stead as I moved on to become a legal services lawyer in Appalachia.

When we moved to eastern Kentucky almost forty-eight years ago, it was my hope that I could establish a first-class law firm to provide representation to low income persons on the same basis as the fine representation that could be provided to corporations and others who had the means to afford their attorneys. There were serious legal issues to address, those which involved the systemic issues of poverty in the region, especially those related to the single economy of the region- an economy based on the ownership and the extraction of coal. There were also the thousands of day to day issues faced by the low income people- consumer matters, disability issues, housing, and family law. So there was much work to be done by the fledgling Appalachian Research and Defense Fund of Kentucky (a name that preceded me), or Appalred, as we became known.

Over the years that followed, I was joined by an outstanding group of lawyers who were committed to ensuring that our clients obtained the highest quality of legal representation.

We engaged in legal battles for over eighteen years to overturn the interpretation of the Kentucky Courts that allowed coal companies the right to strip mine a surface owner's property without his consent. Our clients treasured the mountains where they lived and opposed the surface mining of their property. Indeed, they were required to pay the property taxes on their lands even as it was being mined. In the end it took a Constitutional Amendment, which we drafted and which we would defend in Court to ensure that the landowner's consent would be required before strip mining could take place on that property. A statewide campaign in 1988 to "Save the Homeplace" by a citizens

group, called the Kentucky Fair Tax Coalition, now called Kentuckians for the Commonwealth, resulted in the passage of the Amendment by 92% of the voters.

We litigated many environmental cases. In an especially important one, we obtained an injunction from a federal judge that forestalled the construction of a dam that would have flooded some of the wonderful Red River Gorge area, including our own client's property. Happily, after a careful study, then Governor Julian Carroll decided to oppose the project and it died.

We successfully represented coal miners who had been discriminated against for having complained about unsafe conditions in the mines and were able to restore them to their jobs. We helped disabled coal miners obtain better legislation that provided them with benefits for having developed pneumoconiosis, the crippling black lung disease that comes from years of exposure to coal dust, and we represented them with their claims for these benefits. Today we see that the rate of black lung disease has been increasing, especially among younger miners and that less than twenty per cent of black lung claims are approved. We cannot truly appreciate the debt we owe to the many working miners who sadly face a time with a life-threatening breathing disability when they should be enjoying their retirement.

Apart from these coal related issues, we immediately learned that we needed to devote resources to the problems that low income citizens face on a daily basis; the abused spouse who needs a custody and permanent protective order; the client whose house can be saved from foreclosure by timely representation; the nursing home resident

threatened with eviction; the disabled social security claimant whose claim will succeed if representation can be provided; the special needs child who needs an advocate to assure that the school board is providing an appropriate education. The list goes on, but each year the case numbers now reach into the thousands of clients just in our own 37 county service area. By 1980 we had grown to a staff of forty-eight lawyers working from 11 offices in the 37 Appalachian counties. Unfortunately, federal funding has not kept pace with the growing need for these services. Indeed, it has been cut and inflation has added to the toll. Today Appalred operates with only twenty-two lawyers from six major offices to attempt to meet these needs.

Fortunately, about 15 years ago, we were able to establish a new non-profit agency to focus on the coal related issues I described, the Appalachian Citizens Law Center, or ACLC. This center, supported by private funding, and attorney fees has four attorneys; and you can read about their fine work on the Center's website, appalachianlawcenter.org. We are grateful that the low-income citizens of our area can look to the staff of both of these non-profits for legal assistance.

To complete the picture for you, there are three other legal services agencies that provide services to low income citizens in the rest of the state. Here in Owensboro, you will find one of the offices operated by Kentucky Legal Aid, headquartered in Bowling Green. The other two agencies are Legal Aid in Louisville, and Legal Aid of the Bluegrass which is headquartered in Covington. So, at least on paper, there is a legal services agency available to every low income citizen in the state.

You may have seen recently that a group of 18 citizens who were receiving Medicaid benefits challenged the Bevin Administration's proposal to change the Medicaid rules in Kentucky that would have potentially dropped approximately 93000 persons from the rolls. It would have instituted a work requirement and the payment of premiums. The successful lawsuit, which prevented these new proposed requirements from going into effect, was filed in federal court in Washington, D.C. by a coalition of public interest non-profits with the lead being our own Kentucky Equal Justice Center, headquartered in Lexington. I am privileged to be on their Board.

Similarly, you may have read the recent news accounts about the awful situation in which some four thousand recipients of Social Security Disability benefits, all previous clients of Eric Conn, a Floyd county lawyer are going through hearings to establish that they were, in fact disabled when they were represented by Conn many years ago. Conn has pled guilty to bribing an administrative law judge to short circuit the system and award benefits to these recipients. There is no evidence that any of the clients were involved in this fraud. Appalled lawyers immediately began to represent hundreds of these clients at hearings and recruited over 150 volunteer lawyers to represent these clients via video connections with the client and judge. This volunteer effort must be seen as a high point for lawyers doing their best to ensure that these clients have representation.

I sit on Kentucky's Public Advocacy Commission which oversees our Kentucky Public Defender System. So, I want to talk briefly about these wonderful lawyers, as well. As you well know, the least popular

person in the courtroom is the lawyer defending the criminal defendant. Yet, the system of justice we treasure could not work if they did not do their utmost to assert the rights that a defendant is entitled to- and most prosecutors would echo that sentiment. Still, our defenders must handle caseloads that are far too high; and it is a struggle in each legislative session to maintain the very minimal funding to support our excellent statewide system of public defender offices. Without such a system, often defendants are wrongfully convicted, and unfortunately even in death penalty cases. Just this year, because of the work of the Kentucky Innocence Project, part of our defender system, two men, in their twenties at the time of the alleged crime. were set free after being convicted for a 1995 murder of their friend, after DNA evidence established their innocence. They were serving life sentences. The Innocence Project nationally has freed more than 350 persons who were wrongfully convicted, twenty of whom had served many years on death row. All were exonerated through DNA evidence. In Kentucky, of 97 cases where the defendant was sentenced to death since 1976, 49 have been reversed, and 35 of those have been sentenced to less than death on retrial. 34 are still pending. Does this not demonstrate the importance of an adequate defender system, and does it not make you question the use of the death penalty itself?

It is important that we speak out about these issues which are important to us- whether it is the funding of legal services and the public defender or other issues you care about. Womens' and LGBTQ s rights are certainly important ones to include. It is important to me to keep telling the history and story of the Holocaust, for it is too easily forgotten. The alt right and the Holocaust deniers would like nothing

better. Take the time to visit the Holocaust Museum in Washington, D.C. or one of the local Holocaust museums, like the one in Cincinnati.

And similarly, important is the recently opened National Museum for Peace and Justice in Montgomery, Alabama, which confronts the history of slavery and the more than 4000 lynchings that took place in this country between 1877 and 1950. 167 of these lynchings took place in Kentucky. Indeed, I just learned about the Lynching Museum in Russellville, Kentucky which documents a horrible lynching of four men in 1908. The museum was opened ten years ago by a local volunteer, Michael Morrow, who felt this story needed to be in the public eye. We must own up to these periods in our history, so we can truly dedicate ourselves to achieve the values we care about – freedom, equality, and justice for all our citizens.

I have tried to show you how rewarding a public service career as a lawyer has been for me. As I stated at the outset, whether you chose to be a lawyer, teacher, social worker or to make your contribution in any number of other helping professions, you will be gratified by the work you do in the service of others. To be sure, the values you are striving for-the Kentucky Wesleyan Way-will stand you in good stead. In that regard, I leave you with a quote from Nelson Mandela from Amnesty International newsletter.

“Like slavery and apartheid, poverty is not natural. It is man-made, and it can be overcome and eradicated by the actions of human beings. And overcoming poverty is not a gesture of charity. It is an act of Justice. It is the protection of a fundamental human right, the right to dignity and human life.”

Let us all do what we can to give meaning to those words!