

Remarks of United States Senior Circuit Judge  
Frank M. Coffin, introducing  
The Honorable Drew S. Days III,  
Solicitor General of the United States,  
Fourth Coffin Lecturer on Law and Public Service.  
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Portland High School Auditorium  
Portland, Maine

Unlike those who have appeared in this lecture series in other years, our speaker tonight merits not only some defining comments about himself but also about the position he occupies. For while we can assume that everyone knows what a lawyer does, what a Supreme Court Justice does, and that many, if not everyone, know what a Chief Judge of a federal Court of Appeals does, the office of Solicitor General of the United States is not generally on the tip of everyone's tongue.

First of all, I hasten to say that the title does not mean the big boss of all who work the streets in aid of Mrs. Warren's profession. Second, the Latin root word, "sollicitare," doesn't help very much; it means to agitate or disturb, and while our Solicitor General may on an occasion want to agitate, he more often wants to bring about conditions that make agitation unnecessary. Third, even though the title is borrowed from England, the English solicitor is not a member of the bar, a barrister, and can argue only in the lower courts while our Solicitor General is the mirror image, appearing only in the highest Court.

What it is, as many of the nation's top advocates have agreed, is the best legal job that the executive branch of our government offers. Created in 1870, the position calls clearly for a top "political" presidential appointment, yet by a tradition rarely violated is one where the occupant is allowed and expected to exercise his best, independent professional judgment. Among the most important offices in the land, the staff of the S-G is minuscule. When my law school dean, Erwin Griswold, first worked in the S-G's office in 1929, he was one of five assistants; when he became the Solicitor General in 1967, there were sixteen assistants; and even now there are only two dozen.

But the universe of responsibility is enormous. The office represents the United States before the Supreme Court; this means that the Solicitor General or an assistant must today brief and argue two thirds of the cases heard by the Court. The S-G is in a sense custodian of the quality of governmental advocacy in our highest court, often rewriting the briefs of other departments and agencies. Perhaps the most onerous responsibility is deciding when the federal government should take an appeal from any adverse decision in any of the thirteen circuit courts of appeal. This decision is not left to the nearly one hundred U.S. attorneys, or else the Supreme Court would be wiped out by a flash flood of appeals. But this means making over a thousand decisions each year.

I have two vignettes of this process, neither one of which can be called typical. The first involves Dean Griswold when, as a raw youth, just out of law school, he served as an assistant to Charles Evans Hughes. Hughes would become so absorbed in working on a particular case that he would ignore the pile of cases accumulating on the floor behind his chair, waiting for a decision to take or not to take an appeal. Young Griswold knew that time in which to take an appeal was running out on some of the cases and that his boss would be severely criticized if the

government defaulted in an important case. So he screwed up his courage and sent out, in the Solicitor General's name, telegrams to U.S. attorneys, directing them to take a protective appeal which could later be dismissed. He was then all of 25. In later life he reminisced that he knew he was being very brash, but also felt he had no alternative. He always told Hughes of his actions. He reports the reaction: "He never thanked me; and he never criticized me either."

Well, times have changed. I suspect that cases pending decision are not stacked up behind Drew Days' chair. Today there is a sophisticated and layered process of decision. But I have heard one story from an unreliable source that opens a little window on how some things get done. It seems that General Days was teaching a class at the University of Georgia. In the middle of the class, he was interrupted to take a call from the White House. A court of appeals had just ruled against the government. The president was to have a press conference in ten minutes and would be asked if the government would appeal. He was told, "You have five minutes." The S-G paused, drew a deep breath, then with great deliberateness and aplomb announced, "In our considered opinion, we will authorize an appeal."

Enough about the office. Now something about the man that you may not have known. Like Gilbert and Sullivan's modern major general, this modern Solicitor General is a man of many parts. To the somber vestments of the office he has added considerable panache in food, fashion, and song. As professor at Yale Law School hosting students at his home, he would serve the humble fare of pizza. Since then, my unreliable informant reports, he has developed gourmet tastes and leads his deputy solicitors general on forays to try out various bistros and their exotic specialties. These young assistants are no fools. They are keeping and saving their gustatory notes. Do not be surprised to read the best seller lists some day and find "The Workaholic Gourmet" or "Gourmet Forays with General Days." As for fashion, he, together with the Vice President, set off a minor trend when they both appeared on crutches with injured Achilles tendons. For a time, no one was anybody who could not produce an ailment traceable to characters in the Iliad. And finally, song. Whether or not the President expects talented guests to sing for their supper, it is again reported that, on the occasion when the Yale Russian Chorus appeared at the White House to honor Boris Yeltsin, our Solicitor General joined in with his mellifluous tenor. Truly, a very modern Solicitor General.

Though still a young man, our speaker is completing three decades of dedicated action, scholarship, and teaching in the very crucible of stress in modern law and society -- as lawyer for the NAACP Legal Defense Fund, as Assistant Attorney General for Civil Rights, as law professor and Director of the Schell Center for Human Rights, and now as Solicitor General of the United States.

I had the privilege this morning of listening to General Days as he spoke in a crowded lecture hall at the Law School. At the end I could not imagine having a more inspiring law school experience than to listen to one of the nation's top legal officials, who is at once a person of high competence, proven dedication, refreshing candor, and unblemished character.

I present with pride Solicitor General Drew S. Days, III.