

D.C. Circuit Judicial Conference
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Philadelphia, Pennsylvania

Remarks of Judge David S. Tatel
in Remembrance of Judge Louis F. Oberdorfer

Louis F. Oberdorfer: Born February 21, 1919 in Birmingham, Alabama; graduate of the Yale Law School; served in the United States Army during World War II; law clerk to Justice Hugo Black; founding partner of the law firm that became WilmerHale; Assistant Attorney General in the Kennedy Administration; co-chairman of the Lawyers' Committee for Civil Rights Under Law; first president of the Legal Services Corporation; appointed to the United States District Court by President Carter; husband, father, grandfather, great-grandfather; friend and hero to so many; died on his birthday, February 21, 2013.

Throughout his remarkable career, Louis Oberdorfer was motivated by two deeply held convictions. The first – that lawyers have a professional responsibility to ensure that everyone has access to the courts regardless of race, wealth or personal views – could be seen at work in 1963 when, at Louis's suggestion, President John F. Kennedy called on the leaders of the bar to create what was to become the Lawyers' Committee for Civil Rights Under Law. We could see Louis's belief, along with his love of history, at work a year later when Attorney General Robert Kennedy sent him to Alabama to convince southern lawyers to advise their clients – local hotels, restaurants and theaters – to obey the newly enacted Civil Rights Act of 1964. Louis told the lawyers the story of General Andrew Jackson during the War of 1812. Held in contempt of court by the very federal judge the General had jailed following the Battle of New Orleans, Jackson paid his fine, saying in words Louis quoted a century and a half later: "Obedience to the laws, even when we think them unjustly applied, is the first duty of a citizen." And we could see how strongly Louis felt about the role lawyers play in protecting the rule of law when, as co-chair of the Lawyers' Committee, he stood before the Supreme Court in *Alexander v. Holmes County*, arguing against the Nixon Administration's effort to end court-ordered bussing, a key element of its southern strategy. He made the Court a classic Oberdorfer offer: If, as the Justice Department claimed, it had too few

lawyers to enforce court orders in Mississippi, the Lawyers' Committee would send volunteers to do the job. Six days later, a unanimous Supreme Court ordered the immediate desegregation of Mississippi's schools.

Judge Oberdorfer's other guiding belief was his deep confidence in the federal courts as the ultimate protector of constitutional rights. We can see this at work throughout his hundreds of opinions, especially those concerning the treatment of prisoners and criminal defendants.

Regarding prisoners, Judge Oberdorfer was way ahead of his time. Years ago he explained that "the disenfranchised and despised criminals who inhabit our prisons are helpless in the arena of the public's attitude. They have no political influence. They have no lobbyist. Few lawyers will represent them." When a certain federal appeals court reversed a district court order aimed at reducing prison overcrowding, what did Judge Oberdorfer do? You guessed it: He called on the DC Bar to create a cadre of volunteer lawyers – what he called “energetic lawyer-statesmen” – to represent inmates with “legitimate grievances.”

We can also see Judge Oberdorfer's judicial philosophy at work in his decisions as a sentencing judge. Along with his dear friend, Judge William Bryant, the Judge was again ahead of his time. An early and vociferous critic of the Sentencing Reform Act, he deplored the Draconian and unfair sentences for crack cocaine. In one opinion, which Judge James Robertson called a “masterpiece of legal writing and a window into the frustration – even the anguish – of the judge's job,” we can see Judge Oberdorfer's characteristic compassion and candor. In considering the constitutionality of the crack-cocaine disparity, the Judge thought it significant that the defendants were addicts and “bit players in the conspiracy,” emphasizing what he called “the racist origins” of the enhanced sentences for crack cocaine.

Louis Oberdorfer, Jim declared, was “a certified member of the Greatest Generation who

has been aboard the pendulum of history” long enough to have seen his views on prisons and sentencing largely vindicated.

In 1948, Justice Black wrote this in *Chambers v. Florida*: “No higher duty, no more solemn responsibility, rests upon this Court, than that of maintaining [a] constitutional shield . . . for the benefit of every human being . . . of whatever race, creed or persuasion.” Justice Black would have been proud of his future law clerk’s extraordinary career. For myself, I was indeed fortunate to have known Louis Oberdorfer for virtually all of my career, to have had such a wonderful friend and mentor, and to be a member of that generation of lawyers whose values have been so deeply shaped by this remarkable man.