



**WHAT:** Law Day Speech by OSBA President Jane Taylor

**WHEN:** Monday, May 1, 2006 (Law Day)

**WHERE:** Toledo Rotary Luncheon, noon  
Zenobia Shrine, 1511 Madison Avenue, Toledo, Ohio

**TOPIC:** **The importance of a fair and impartial judiciary**

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*The following is the text of OSBA President Taylor's remarks to the Toledo Rotary for Law Day 2006:*

Good afternoon and thank you for inviting me to join you today as we celebrate Law Day 2006.

Law Day was established by President Dwight Eisenhower in 1958 to commemorate our American heritage of liberty, justice and equality under the law. This day provides all of us with an opportunity to reflect on these important democratic principles, and to re-commit ourselves to upholding them.

I would like to spend a few minutes today speaking about our justice system, specifically the importance of the judiciary as a co-equal branch of our government.

More than two hundred years ago, our nation's founders designed a constitutional democracy based on a system of checks and balances. A fundamental part of this system is a fair, impartial and independent judiciary—judges who are able to act without concern for the day-to-day whims of politics, and election-focused politicians, in order to protect every citizen's individual liberties, and to uphold our Constitutional rights, and prevent the tyranny of the majority.

For more than two centuries—for as long as our nation has existed—this separation of powers has worked to protect and defend our freedom. Our progress as a society often has been forged by a judiciary free from partisan politics; a judiciary acting on the basis of what is right and just, not on what is popular; a judiciary therefore able to protect the ordinary citizen.

A recent report by Justice At Stake, a national partnership working to ensure fair and impartial courts, stated a bipartisan majority of Americans -- 84% of those surveyed -- value the role our courts play in protecting individual rights and providing access to justice. People want courts to be fair and impartial, and guided by the law and the Constitution -- not by political pressure and special interests.

These reports are encouraging especially at a time when a growing vocal minority of citizen groups, and an alarming number of our leaders, are attacking our judiciary, and demonstrating a

lack of respect for this branch of government that is charged with insuring access to justice.

Not that long ago, we saw a rush to judgment by the executive and legislative branches of government in the Shiavo case. Certain members of Congress who disagreed with the court's decision threatened, "The time will come for the men responsible for this to answer for their behavior." They referred to the federal judges who issued opinions with which they did not agree.

And just weeks ago, Ohio was at the center of attention nationally because a judge in Columbus, exercising discretion, entered a sentence that provided house arrest and treatment instead of jail time for a sex offender. The facts are that the case resulted in a plea bargain and the judge exercised that discretion based on the facts presented in court. Some members of the public and certain elected officials expressed their disapproval with the judge's decision, even calling for investigations and the judge's impeachment. The Ohio State Bar Association advised those concerned to gather the facts and then determine which, if any, of the Constitutional provisions that exist for reviewing judicial conduct, might be appropriate to consider. We urged the executive and legislative branches of Ohio's government to proceed cautiously, to gather all the pertinent facts and not rush to judgment. We believe that those who called for careful, thoughtful investigations were on the right track. It is vitally important for Ohioans to understand that our disagreement with a judicial decision cannot be allowed to undermine a fair and impartial judiciary.

Others stood with us in our efforts to protect the judiciary from an unjust assault. Sally Bloomfield, president of the Columbus Bar Association, said, "America's judges accept the fact that they must withstand public pressure, carry out the laws within their jurisdiction, and render decisions free from bias or prejudgment. It's called an independent judiciary, and it is the keystone to American justice. Without it, impartial justice as we know it would fall by the wayside. Popular justice would quickly take its place, -- popular, that is, to those in power."

Judge John Adkins, president of the Ohio Judicial Conference, reminded Ohioans that the Ohio Code of Judicial Conduct says, "a judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism." This rule in the Code is critical to a judge's ability to remain impartial, true to the oath of office as judge and to the constitutional rule of law.

Judge Adkins agreed with Ohio Supreme Court Chief Justice Thomas Moyer who noted the current hostile environment "could seriously damage the impartiality of the courts."

This most recent case reminds us that judges have been under attack not because they have committed an offense worthy of impeachment or other disciplinary proceeding, but simply because sometimes highly publicized rulings are unpopular.

It may be easy to understand, and even sympathize with, those who are sometimes disappointed with seemingly inappropriate or unfair judicial decisions. But imagine if judges could be removed from the bench simply because some disagree with their decisions: Would the falsely accused have a fair opportunity to vindicate themselves in court? Would ordinary citizens or business interests have an impartial forum to seek redress?

Those of us in this room know a judge is called on to interpret the law; to keep the courts working and decide cases; to explain legal procedures and make procedural rulings; to mediate among parties to settle disputes; and to make fair and impartial decisions, listening to the facts and applying the law. And that is exactly what we should expect our judges to do.

The history of our nation is filled with examples of how our courts, working independently and free from political intrusion and oversight, have issued controversial and sometimes very divisive opinions, always accountable to the Constitution, the Rule of Law and most importantly to the respect of the people. Think back for a moment to the year 2000, the decision by the Supreme Court of the United States in *Bush v. Gore*. A highly charged political environment with a nation divided and the presidency to be decided by just a few votes. The Court decided the case. The loser stated disagreement with the decision, but respect for the Rule of Law. No riots in the streets, no martial law declared. We went about our business and life went on. Respect for the Rule of Law prevailed and our governmental structure remained intact.

There have also been times when the courts have not measured up to their Constitutional responsibilities, but for the most part, our courts have been true to their Constitutional charge in areas such as ending the vicious practices of segregation, in extending voting rights to all Americans, and in protecting average citizens from unwarranted government intrusion. We should be proud of this legacy.

We must not forget the role of the justice system as a defender—a defender of society against those who commit crimes, a defender of the free enterprise system, and as a defender of individual liberties.

I believe that, as citizens, we must stand up for fair and impartial courts and the public's access to justice. So how can we help insure that the judicial system remains fair and impartial? To start, do not remain silent when the judiciary is attacked. Get the facts and share with those involved the importance of a fair and impartial judiciary to the preservation of our democracy.

In an effort to remind our citizenry of our rich judicial heritage, the American Bar Association is undertaking a project called "The Least Understood Branch." The effort is directed at civic education, a return to basics, in order that our citizenry – from students to civic and community organizations – understand what is meant by the separation of powers and the role of the judiciary in a free and democratic society. We can all play a role in this effort, and I can tell you that the Ohio State Bar Association intends to take a leadership role.

United States Senator Lindsay Graham of South Carolina recently reflected on what he believed our citizens should expect at the courthouse – any courthouse across this great land:

"It doesn't matter who you are, how much money you make, whether you're popular or not, it is a place where you can have your day. It's a place where the weak can take on the strong. And whatever political differences we have...need to be parked at the courthouse door."

We must not forget that the American justice system resolves 100 million cases each year—simple, complex, routine, extraordinary. Most of these cases are resolved successfully, fairly and impartially, under the rule of law. A few are not, but our system provides a Constitutional process so that wrongs may be righted insofar as is possible under the law. We cannot allow a vocal minority to undermine the delicate balance among the branches of government that has been crafted by our founding fathers. To undermine this balance would mark a departure for our

nation— a ripping up of our Constitution and its values – the very Constitution we hold up as a model to struggling nations throughout the world.

So, as we celebrate Law Day this year, I ask you to join me in reflecting on these important democratic principles, and in honoring our system of justice, which former Solicitor General Theodore Olson describes as “the most respected branch of our government, and the envy of the world.”

Thank you.

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<p>The Ohio State Bar Association, founded in 1880, is a voluntary association representing approximately 25,000 members of the bench and bar of Ohio as well as nearly 4,000 legal assistants and law students. Through its activities and the activities of its related organizations, the OSBA serves both its members and the public by promoting the highest standards in the practice of law and the administration of justice.</p>
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