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## Justice Franklin S. Spears: A Son's Perspective on His Father In Memoriam.

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## **JUSTICE FRANKLIN S. SPEARS: A SON'S PERSPECTIVE ON HIS FATHER**

**CARLETON B. SPEARS\***

“If the law isn’t clear in a particular area, just do what makes common sense, and you will be right 99% of the time.”<sup>1</sup>

My father, Franklin S. Spears, was only 27 when I was born in 1958. Throughout my life, I have looked up to him feeling absolutely assured that my father knew everything there was to know. After all, he was the University of Texas student body president before I was born, a state representative and state senator before I was in the first grade, a district judge before I left elementary school, and a justice on the Supreme Court of Texas before I graduated from law school.

My father was definitely ahead of his time.<sup>2</sup> While a state legislator, he was instrumental in passing legislation that has benefited Texas and the city of San Antonio. Specifically, my father is credited with the passage of legislation that started the medical school in San Antonio and with legislation that authorized the feasibility study for a four-year university that we now know as the University of Texas at San Antonio. Dad introduced numerous bills that did not pass at the time, but were later adopted by the Texas Legislature. For example, he advocated, although unsuccessfully, a provision requiring the state to set aside a wider median along all highways to meet future mass transit needs. If that provi-

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1. My dad gave me this advice when I became a state district judge in 1988, while he was on the Supreme Court of Texas. Not wanting to appear like he was trying to tell me how to do my job, it was the only professional advice he gave me during my judicial career.

2. Franklin S. Spears was elected to the House of Representatives at the age of 27. Four years later, he became a state senator. At the age of 37, he became a state district court judge; ten years later, he was elected to the Supreme Court of Texas.

sion had been enacted, many of our current traffic problems would have been alleviated.

I have always compared my father to Jimmy Stewart in the classic movie, *Mr. Smith Goes to Washington*—Dad was young, idealistic, honest, and did what he believed to be right, regardless of the consequences. Prior to becoming a district judge, he ran for Attorney General at the age of 35. He was destined for big things; some people even believed he would become Governor of the State of Texas. Unfortunately, he ran head-on into John Connolly's political machine. Although Connolly later supported Dad in his race for the supreme court, I know that Dad never forgot what Connolly did to him. Fortunately, the loss made it possible for Dad to enter the judicial branch, a move that was greatly influenced by his Uncle Adrian A. Spears, the former United States district judge, chief judge of the Western District of Texas. In fact, it was Uncle Adrian who raised Dad after Dad's father, Senator J. Franklin Spears, died in 1946, when my father was only 14 years old.

I have a long line of lawyers in my ancestry. In addition to Dad, my brother Scott Spears of Austin, several cousins, my grandfather, great-uncle, and great-grandfather were all lawyers, as well as my great-grandfather who was the speaker of the senate in Tennessee during the 1920s. In a way, we all have big shoes to fill. My family work ethic can be summarized by a quote used specifically to describe our Uncle Adrian: "He demanded perfection . . . but would accept excellence." The same can be said of my father.

Many lawyers have told me that when my father was a trial judge, they liked him particularly for his quick wit and keen ability to pick the salient issues out of any case. While I tried to emulate him, or at least his reputation, while I was on the bench, I found that I had a long way to go to fill his shoes completely.

The public first took real notice of my father's skills during his tenure on the supreme court. He worked hard while on the court, including spending six to eight hours every Sunday preparing for conference on Monday. In addition, he personally read each application for writ of error, a job some justices left to their staff and briefing attorneys. He felt the same way about writing his opinions. He insisted on writing the first draft of every opinion he authored. He believed it was wrong to shift this duty to the briefing attorneys as other justices often did.

I remember when I was in law school, I suggested that Dad include in his opinions “profound” statements worthy of quoting, similar to those famous lines found in Justice Holmes and Justice Cardozo’s opinions. Now that I think about it, who was I to give him advice about how to write opinions? He went on to prove that he was quite capable of writing a succinct, but thorough, opinion over the twelve years he was on the supreme court.

Anyone looking over the opinions he authored would realize that Dad led a revolution in Texas law. He advanced and modernized Texas law in numerous areas, ridding Texas of archaic rules whose reason and rationale had long passed. I am particularly proud that others label him as the “Father of Modern Tort Law.” I cannot begin to count the number of lawyers who have come up to me, praising my father for the opinions he wrote on some of the leading cases of the day. It is amazing to think that he had so much to do with updating the law in so many different areas. Many of the old rules of law cried out for change. Basically, he would use a number of methods in his opinions to justify the change that took place—common sense, logic, fairness, and the status of the law in other states were among his justifications in supporting these changes.

In spite of his efforts to modernize outdated laws, Dad was a staunch supporter of precedent. In the last few years, he became critical of the supreme court’s lack of adherence to the principle of stare decisis. He felt rules of law were changing for political reasons rather than the pursuit of justice. He was anguished to see the court overturn previous rulings that were less than ten years old.

As I reflect on why I admire my father so much, I am reminded of an incident that occurred when he was the liaison to the State Bar. A problem arose with the staff of the State Bar charging items on the State Bar’s tab. Dad felt it was wrong and promptly made his position clear that he would not tolerate such a misuse of State Bar funds. Instead of sweeping it under the carpet as others might have done, he criticized the Bar for allowing it to happen. I warned him that he was likely to lose friends by pursuing the issue, to which he responded: “I’d rather have their respect than have them be my friends.”

I also respect my father for the knowledge he possessed. I frequently wanted to engage in discussions on various legal subjects in order to sharpen my own knowledge and to have an opportunity to

debate with him, but he really did not enjoy talking business at home, preferring to keep the conversation light. However, on that rare occasion when we did discuss an issue of law, he knew the case history, the laws of other jurisdictions, and the exact point that needed to be addressed in each case. At times, I would take the opposite position just to liven up the conversation. It didn't take him long to dispense with any argument I might bring up. He knew what he was talking about and simply relied on his wit and quick thinking to dispose of my position each and every time.

As with all fathers and sons, we disagreed on various things. Being raised in the 1960s and 1970s, I could not admit to wanting to follow in his footsteps. I suppose I never quite realized how similar a path I had taken until one day during a lengthy sermon in church, I listed over forty obvious things that I had in common with my father. At that moment I finally realized that I depended on him quite a bit in my life's plan.

Dad was a dedicated father. In December of 1988, he travelled by Greyhound bus from Austin to Huntsville to swear me into office at the new judge's school offered by the State Bar. The trip took close to six hours, with a stop in Houston. I doubt the bus driver on that route ever saw another supreme court justice on his bus.

On a personal side, Dad loved to sing barber shop harmony. In 1969, his quartet, the Mark IV, won an international championship. Dad was an outdoorsman who enjoyed sports such as golf and tennis. He was an intramural champion in tennis at the University of Texas. His picture can be found in Gregory Gym on the university campus. He enjoyed doing crossword puzzles, constantly testing himself and building up the massive vocabulary that helped him in his opinions.

In his last couple of years, my father greatly enjoyed playing with his only two grandchildren—my children, Shelby and Caleb. It was a wonderful sight to see my hard-headed three-year-old take on my dad, the great supreme court justice, who had an equally hard head. No one else dared, and no one else would have been allowed to win, either.

To this day, I deeply admire my father. I have always been very proud of him and he will always serve as my guiding light of justice and fairness. Although he is gone, his ideals will dwell forever in the hearts and minds of his family and friends.