

END NOTES: Arguing before the United States Supreme Court

Arguing before the United States Supreme Court is not like making a 30-minute speech. It is a “hot” court, meaning justices have read the briefs, studied the issues and are prepared to ask pointed questions. I was able to speak three minutes before being interrupted by Justice Sandra Day O’Connor. From then on, I took 54 questions in my remaining 27 minutes! It was apparent that some of the justices were very opposed to the law, while others were open to it.

Prior to arguments, counsel is instructed about the time allotted. Each side has 30 minutes and no more. A green light on the speaker’s podium illuminates when five minutes remain and when the red light illuminates, we were instructed, you are finished. Not another word. No “...and in summation, Mister Chief Justice...” Finished. Sit down. Well, shortly after my green light illuminated, Justice Breyer began asking a long, convoluted question that, in the transcript, was two paragraphs long with several hypotheticals. As he was posing his hostile query, I was mentally preparing to try to answer him. But just as he finished, my red light illuminated! I thought, “whew, I am saved!” But Chief Justice Renquist pronounced, “General Stovall, you may answer the question.” I wanted to say, “But, I made it to the red light. I shouldn’t have to answer!” I did, of course answer and, to no one’s eventual surprise, Justice Breyer wrote the dissenting opinion finding our law unconstitutional.

After the argument, on the steps of the Court, 24 television cameras awaited me from national and Kansas outlets. I did interviews before and after the argument with NPR, ABC, CNN, 60 Minutes, Newsweek and many other prominent broadcast and print media because there was such interest in this seminal approach to protecting women and children from repeat sexual offenders.

END NOTES: Attorney’s Fees in the Master Settlement Agreement

After the Attorneys General and Big Tobacco executed the Master Settlement Agreement (MSA), resulting in the largest commercial litigation settlement in the world’s history (\$368 billion), public attention turned for the first time to attorney fees. The MSA established a 3-member mediation panel to determine fees for every law firm that participated. (One member chosen by Big Tobacco, one by the law firms and one agreed to by both.) The Kansas firm (Entz & Chanay), that represented us, was awarded 1.5%. That percent of Kansas’ share of \$1.6 billion was significant, but it was in line with awards across the country. Our counsel had agreed to represent Kansas exclusively on a contingency basis with NO guarantee of any payment and in the face of negative sentiment to sue Big Tobacco. It is important to remember that, prior to the AG litigation, Big Tobacco had NEVER paid a cent in litigation so our counsel were taking a big risk. The other firms I interviewed demanded a guaranteed hourly rate plus a percent of the settlement or no hourly rate but 25%. The firms would have scoffed if I had offered them 1.5%.

Prior to being elected Attorney General, I had been employed by Entz & Chanay and I was severely criticized, after the settlement, for having hired them. (No criticism was uttered initially when I retained them and most thought we would lose.) But I stand by my decision. Entz and Chanay was the only firm willing to take our terms. They did an extraordinary job in representing Kansas and did a service to all the states in defeating the “joint defense privilege,” thus, opening up thousands of pages of previously protected documents written and held by Big Tobacco. I was and will always be proud of the work Entz & Chanay performed on behalf of the state of Kansas.

END NOTES: Remembering the Staff

People have often said I was a good Attorney General and, if that is true, it is because I had tremendous staff members that were invaluable and to whom I remain grateful. We were all proud to serve the people of Kansas and we mourn those whom we have lost: John Campbell (Senior Deputy), Steve Rarrick (Consumer Protection deputy), Pat Peter (Criminal Prosecution deputy), John Bork (Criminal staff attorney), Rich Smith (Legal Opinion & Government Counsel staff attorney) and Terry Gross (sexual violent predator staff attorney). And, of course, we mourn the loss of Robert T. Stephan, the 39th Kansas Attorney General.

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