

# The Hero

**Broadus A. Spivey**

Lawyers need the “right stuff” to succeed. We must have role models to cross the threshold from good to great. Reflect for a moment about the people who have inspired you. Lawyers need heroes too. Heroes, regardless of age, sex, race, size, or life circumstance, have similar characteristics: exceptional bravery, outstanding achievement, noble characteristics, power, wisdom, unusually high moral standards, distinguished intellect, superhuman courage, strength, character, or just innate ability.

We salute our 1999 International Lawyer of the Year – Feng Xiumei. We honor Ms. Feng, our youngest hero, and we are honored by her presence.

Everyone in this audience is aware that our distinguished new fellow, Mr. Dikgang Moseneke, is a hero of monumental proportions. Mr. Moseneke was imprisoned at the age of fourteen because he wrote some disparaging remarks about the South African government in a personal letter to a friend. As a mere child, Mr. Moseneke was placed on Robben Island – the infamous island just offshore from Capetown where the Apartheid government at that time in South Africa impounded political dissenters with the worst criminals. He was thrown into a cell with that society’s most scurrilous offenders. The violent inmates were described by Nelson Mandela, one of the most universally recognized heroes of all time and a fellow “convict” of Mr. Moseneke, as being “... hardened criminals, convicted of murder, rape and armed robbery ... brawny and surly ...” With superhuman strength, endurance, and faith, Mr. Moseneke survived this horrible ordeal.

Mr. Moseneke’s wife is also with us today, and she has heard the praise and accolades we have heaped upon him. I suspect that though she, too, adores him, she does not keep him on a high pedestal. No man is a hero in his own home, for his spouse tends to be well aware of his flaws as well as strengths. I know from experience around my homestead that my “heroism” is not a quality with which Ruth Ann is absorbed.

A fellow traveler with the hero is the anti-hero. The classic anti-hero is the devil, who stood in opposition to many Biblical figures. The Old Testament was not my only introduction to Lucifer; I learned about the devil was when I was about seven. I grew up in the Panhandle of West Texas where in the fall and winter the wind blows from the west so hard that the sun is lost behind the sandstorms. As a child, I did not have many books to read, so I often read the Bible. After reading about the devil, I made the mistake of asking my mother if he really existed. She was incensed by my doubt and lectured me until I was ashamed that I had asked. According to her, the devil existed not only in the Bible, but also within many humans, some in the neighborhood. She made it clear that I obviously had a little more devil in me than was good for me.

We need not dwell too long on anti-heroes, because we know all too well who they are. Among humans, Adolph Hitler is a blueprint of the anti-hero. Scores of documentaries, literature, and movies detail the horrors of his reign of terror. Yet, he made heroes of Eisenhower, MacArthur, Montgomery, and a host of other Allied military leaders.

I would like to touch upon a few select heroes who have inspired us to achieve excellence in our work. We do not have enough time to cover our innumerable heroes, including all those gathered in the audience today, but let’s talk about some of the classic superhuman figures that have gained hero status throughout the ages. We will also look at some local heroes who have brightened our daily lives.

## Legendary Heroes

God is the ultimate hero, whether it be the God of Genesis who made the world in six days and rested on the seventh, the Gods of the ancient Egyptians, the God of Islam, Buddha, or the higher power of Bill W. A hero is not a God, but must earn God-like qualities.

One mythical hero who became embedded in my early memory is Beowulf. This Old English myth was first recorded more than 1,000 years ago. Beowulf was a strong, young Scandinavian warrior who fought an evil and savage monster, Grendel, in a fierce battle and defeated the monster when he pulled off its arm. When Grendel’s mother sought revenge on Beowulf, he fought with and killed her too. Beowulf became King of the Geats, and he reigned for 50 years. He then fought his last battle with an angry dragon. He killed the dragon but was mortally wounded in the process and died as a result of the dragon fight.

Odysseus, or Ulysses, is a supreme hero, part myth and part reality, and Homer recorded this ancient story. Odysseus's heroism lay not only in his strength but also in his head. He knew his own weaknesses as he traveled, and he fashioned ways to overcome these frailties. While sailing through the straits, he knew of the sirens on the shore who lured sailors onto the rocks. Odysseus finessed them by being lashed to the mast before approaching the sirens so that they could not entrap him.

In high school, I read the story of "The Devil and Daniel Webster," in which author Stephen Vincent Benet based the story's hero on a real luminary, Daniel Webster. A farmer with a poor crop prospect cut a deal with the devil to deliver a fine crop in exchange for his soul, then the devil came to collect his debt. That cunning farmer retained the great advocate, Daniel Webster, as his champion. Webster out-argued the devil, and the farmer retained his soul.

The storybook hero Daniel Webster meant a lot to me as a child. I was a farm boy who knew the significance of crop failure. I learned to cuss by hearing my Dad when it hailed. Those hailstorms destroyed our crop and the entire year's income would melt away with the hailstones. He would stand on the porch and cry out the bluest words you could ever hear. The cussing was so bad that my mother would jump onto the bed and put a pillow over her head. I did not understand why he yelled so loud, so long, and so much, but I imagined my father was himself arguing with the devil.

Forrest Gump is a hero of Hollywood lore. When watching the movie, you realize that Hollywood has created a new and unique hero. From the very beginning of the movie when he runs with his leg braces falling off until the "life is like a box of chocolates - you never know what you're gonna get" comment, he exudes the heroic qualities of nobility, bravery, generosity, and wisdom in his own simple way. The movie illustrates that heroes come in all forms.

Numerous heroes, such as Moses, are found in religious texts. (Ruth Ann disagrees that Moses is a hero, because she believes that like most men, he wandered around for 40 years because he would not ask for directions.) One of my favorite Biblical heroes is David, for two reasons: first, David provides motivation for all trial lawyers who attempt to "slay" corporate opponents of giant proportions. Second, the story of David reminds us that accomplishing the impossible really is possible, as illustrated by one of my trials in Judge Lucius Bunton's court in Texas. Any lawyer who has not tried a case in Lucius Bunton's court has never had a "speedy" trial. In this trial, the Attorney General had announced it would take three weeks, and Judge Bunton allocated only three days. We tried the case in three days, working each night until midnight. The last night the jury returned a verdict for the plaintiff at 2:00 A.M. In the Order on my Motion for Judgment to include attorneys' fees, Judge Bunton wrote, "When David went forth to battle against Goliath, the smart money was not on David."

### **Military Heroes**

Military history is replete with heroes. I never think of General George Patton as the original Patton; I think of George C. Scott. George C. Scott breathed life into Patton and cleaned him up better than the record. There is a vast reservoir of heroic military figures: Genghis Kahn, Roland, Napoleon, Robert E. Lee, Ulysses S. Grant, MacArthur. Admiral Chester Nimitz is a Texas and U.S. military hero. The Nimitz Museum in Fredericksburg, Texas, west of Austin, is a beautiful museum and illustrates what tremendous, real-life heroes we had in World War II. Another hero is General Jonathan Wainwright, who marched 55 miles with 70,000 other American prisoners of war in the "Bataan Death March" in the Philippines. Only 55,000 of them made it to the prison. The photograph of him in Life magazine may be the most poignant war photograph of all time. Anybody who recalls the vision of General Wainwright when they finished the march remembers how frail and tired he was. He was barely alive.

Do any of you remember Ruby Bradley? On the February 23, 2000, edition of the NBC Nightly News, Tom Brokaw talked about the forgotten heroes of the military, including Ruby Bradley. She was a Major in the United States Army and is the most decorated woman in American military history. She was an army nurse and served our country in World War II and the Korean War. Major Bradley received 34 medals and citations, including two bronze stars for bravery. She spent 37 months in a Japanese prison, losing 80 pounds because she saved most of her food for the children in the prison. She also smuggled in medical supplies for the sick. Ruby Bradley is still alive, lives in West Virginia, and is now 93 years old. Major Bradley is but one of many true, existing heroes whom most of us have never heard of or just do not remember.

There is another war hero you have not heard of, my Uncle Bud from Edna, Texas. He was a tall handsome man, about 6'3", and a cattleman from South Texas. Ruth Ann thinks of him as very handsome and a much better dancer than me. He was in World War II and went over the hump in Burma. I was probably the only school kid who knew what "the hump" was, because Uncle Bud would talk about it every now and then to me. In my mind, there is no question that my Uncle Bud won World War II in that Burma campaign.

Many people compare sporting events with military battles, and the sports world has many of its own heroes, such as Babe Ruth, Tom Landry, and Darrell Royal, who is the epitome of integrity. Coach Royal was “assisted” in becoming a hero by his anti-hero, Barry Switzer. Also Coach Cliff Gustafson, the winningest coach in NCAA baseball history, is a hero to all who follow University of Texas sports. Coach Gustafson is soft-spoken, had never been thrown out of a game, and is the ultimate example of integrity, skill, guidance, and humble confidence.

### **Trailblazers**

Colonel Charles Goodnight, born in 1836, is a heroic figure in my part of the world. He was the first white settler in the Panhandle of Texas, which includes expansive and rough canyon country. He did not try to subdue the Comanche Indians who lived there and ruled the Panhandle. Instead, he befriended and ultimately earned the respect of the Comanche Indians. He created the first and the largest cattle ranch in the Palo Duro Canyon area. In fact, it was at one time one of the largest ranches in the world. I know quite a lot about Colonel Goodnight, because I went to the small rural school in Goodnight, Texas, named for him. Goodnight School was so small that my older brother, David, graduated as valedictorian, salutatorian, and the only graduate of his class.

Even though we know of these famous and not-so-famous heroes, many are without real recognition for their contributions. That will change for at least one hero, Sacajawea, a Shoshoni American Indian. Until recently, I remembered her name only from history class in school, and all I knew about her was that she accompanied Lewis and Clark on their expedition from the Northern Great Plains to the Pacific Ocean and back from 1804 through 1806.

Sacajawea was 16 years of age and nearly 9 months pregnant when she was hired with her husband, a French-Canadian tracker, as a guide for the Lewis and Clark expedition. She had her baby just before they left on their trip up the Missouri across the mountains to the Pacific Ocean and all the way back. The journey took two years and four months. Lewis and Clark’s expedition was one of the most recorded of all explorer travels, and from their journals we know that she was a most respected and valuable person on the trip. The journals provide details not only of the heroic things she did, but also of every time that she or her son, John Baptiste, was sick. The journals make clear that all of the explorers held her in high regard.

Sacajawea’s great value on that trip, however, was much more than accompanying them, keeping the explorers on the right path, taking the right river, and knowing which roots and berries were edible. Her greatest contribution came when the expedition arrived at the majestic Rocky Mountains going west. They could not go any further in their boats, and they needed horses. The great horsemen in that country were the Shoshoni tribe from whom Sacajawea had been kidnapped as a child. She was able to interpret, negotiate, and purchase horses for Lewis and Clark for the trip over those mountains. Had it not been for her, they might have only made it to the mountains and back. Her presence also restrained the Indian tribes of the Midwest from attacking the explorers. The Indians reasoned that if these intruders had a Shoshoni woman with them who wanted to be there and was not a captive, then there was no threat. Her heroism knew no boundaries.

Sacajawea is becoming better known to us now and receiving new recognition because a modern hero has stepped in, Ms. Glenna Goodacre. Glenna’s husband, Mike Smith, is a fellow in the Academy. Ms. Goodacre grew up in and gained her initial fame in Lubbock, Texas. She now has a studio in Sante Fe, New Mexico, and was the designer of the Vietnam Women’s Memorial in Washington, D.C. Glenna is one of the 22 artists and sculptors in America chosen by the Department of Treasury to vie for the design of the “golden dollar.” When the Mint reviewed all of the presentations, the top two winners were designs by Glenna Goodacre. The mint chose a design with Sacajawea and her baby for the obverse side of the coin. The Mint has plans to strike a limited number of the coins in .999 pure gold.

### **Statesmen**

Teddy Roosevelt and Winston Churchill are statesmen who deserve the designation of hero. My 12 year-old grandson, John, advised me to include Teddy Roosevelt as a hero. Many others were on my list, but he argued for Mr. Roosevelt, saying “Teddy Roosevelt was the first great leader to institute affirmative efforts to conserve our natural resources” (such as Yellowstone National Park). He was the first to realize the significance of identifying and preserving our national resources by legislation and presidential order. I told John that I thought of Roosevelt as a hero because of the Panama Canal. Teddy Roosevelt is a real hero also in the judicial field because of his success in breaking the economic stranglehold of giant corporations, including Standard Oil, through litigation.

Then, there are the modern-day heroes from South Africa. If you have not read Nelson Mandela's autobiography, Long Walk to Freedom, you need to. It should be on the required list for anyone concerned about liberty and justice. It gives one an insight into what was really happening in South Africa while we received the official line from our "news" source, the CIA. Mandela's personal lawyer and friend George Bizos, who was also inducted into the Academy in South Africa, is a hero of the greatest historical proportions. He and his father escaped when the Nazis took over Greece. They slipped out of the country in a rowboat at night and went to South Africa where they were free for a while. But, when things began to change there as well, George Bizos became a lawyer and represented more citizens who were persecuted and prosecuted for treason than any lawyer in history. He was not a popular man amongst those in power during the Apartheid years. George Bizos's compassion, resourcefulness, resoluteness, and sheer ability to fight successfully against the oppression of the South African government make him a true hero.

### Advocates

Now, we will take a glimpse at less universal heroes, beginning with some heroic lawyers. Each lawyer whom I am going to briefly mention is exceptionally talented and successful in our profession. Yet, none are my heroes because of outlandish talent or shocking verdicts. Their heroism stems instead from each giving back to the legal profession and to society in a way that inspires and motivates others to do the same. "Bread cast upon the water."

First, I must mention Forrest Bowers of Lubbock from whom I learned to practice law. Forrest Bowers, along with Bob Huff, are two of the finest, most powerful lawyers whom I have ever known, and Forrest Bowers did something that I thought at one time to be most unkind. He came to watch my cross-examination of a neurosurgeon, and when the defense attorney called his neurosurgeon to the stand, that doctor nearly destroyed my client's case. I was prepared and cross-examined the neurosurgeon with an unquestionably brilliant cross-examination. When I sat down, I was so proud because Forrest had come to watch me. He started out, "Broadus you did a good job, you did a great job. That was a fine cross-examination, but you lost that jury." I said, "Why do you say that?" He replied, "When you finished there at the chalkboard, you flipped up that chalk. You looked like a smart aleck to that jury." The jury indeed gave me a mediocre verdict. His statements hurt me, and I was irritated with him for some time. Yet, that was just one of the many lessons I learned from Forest Bowers. His perception of reality and willingness to tell me what I was doing wrong molded me as a young lawyer and makes him a hero to me.

Next, there is Scotty Baldwin, every trial lawyer's hero, but mine for a reason that is different from what you might expect. One day when I was out of law school for about three or four years, I had a problem. Scotty had tried a similar lawsuit, so Bob Huff suggested that I call him. I was intimidated, but I did. He spent 45 minutes with me on the phone giving me tips and advice. I'm sure that he does not even remember doing this, but I know that I was not the only young lawyer with whom he spent 45 minutes or an hour or two hours on the phone or in person. Scotty helped to mold me as a lawyer as he has helped mold so many others. If Texas has one intellectual leader, it must be Scotty.

Ronnie Krist is another hero to me. Ronnie first achieved fame when he represented the families of the three astronauts who died in the space capsule in the 1960's. When I saw him at a bar convention, I said, "Ronnie what in the hell are you doing representing these three astronauts? You don't know a thing about space travel!" And he said, "No, but I know how to hire an expert who does." However, I will not pay him greatest tribute for this case or not even Turner v. General Motors, the great products liability case in Texas. Instead, his greatest accomplishment lies in his family. He and his wife have raised three wonderful children. All three are lawyers, two boys and a girl. Karyn just finished a couple of years prosecuting in Austin and now does appellate work. Scott and Kevin are practicing law with Ronnie in Clear Lake City. They are not just fine lawyers, but three of the finest human beings you can imagine. You cannot have three fine children such as these without being a great person and setting a great example with a lifetime partner like Carole.

Joe Jamail is one of our greatest lawyers, but, to me, he will always be a hero because of his stamina as well as his brilliance. He is 75 years old, but he's not always out partying, vacationing, or relaxing somewhere. Even today he is out there battling for his clients, trying cases, and carving our legal history. Pennzoil could never find a mightier hero.

I would be guilty of omission if I did not talk about Bob Gibbins, another great lawyer who has tried so many cases. What separates him from the other great lawyers is his intensity for his clients' causes mixed with his sense of humor. He has a saying for every occasion. One time when he was successful against a giant in the State Bar, I complimented him. He said, "Broadus, it is not the size of the dog in the fight, it's the size of the fight in the dog." He had a saying for juries that I never understood, but somehow the jury always did. He would look at a jury and say, "I have no pride, no vain, or nothing else when it comes to representing my client." I never knew what that meant. But it was effective. The juries loved it.

The most endearing story about Bob's sayings involved a man charged with murder in Plainview, Texas. The District Attorney asked for the maximum penalty and offered Bob a deal. Bob conveyed the offer to his client and said, "Here is a chance to live. If you don't take it, you have a better chance of 'riding old Sparkie' than winning." Bob awaited his response. His client replied, "Mr. Gibbins, let the big dice roll." As always, Bob let the big dice roll and he won the case.

There is a lawyer outside of Texas who has a profound knowledge of arcane facts and trivia, Jim Ackerman. But like all real heroes, Jim is human and can err. I recall an experience I had with him at the Landalozi Game Camp in South Africa. As always, Jim brought up a topic I knew little about, weights. I had heard of the short ton and long ton. These are common terms of weight. Jim brought up the third ton, the Navy ton, that threw off his wife, Lorrain and me. So, Lorrain and I conspired to beat him at his own game and asked him how many acres are in a hectare, a metric measure of geographic area used in South Africa. To our surprise and pleasure, Jim missed the answer by several acres. (The answer is: 10,000 square meters, or 2.47 acres.) That is the only time in all of my chats with Jim Ackerman that I ever was able to beat him at his own game. Every hero needs at least a tiny flaw, and he finally exhibited his.

The hero that you would least expect me to list is Dicky Grigg, who is a wonderful attorney. Dicky and Mary Gay have twins: Erica, who is in law school, and Lane, who is a coach at Westlake High School in Austin. Aside from his career and family success, what sets Dicky apart is his commitment to helping children. First, he has touched and influenced the lives of his two nephews, his sister's son and the son of Mary Gay's sister. Neither boy received adequate guidance from his own father, and both could have been destined for a very different future had it not been for Dicky, a constant father figure in their lives. Dicky has used his legal background to help underprivileged children. He started a scholarship program in the Texas Trial Lawyers Association and recruited Ruth Ann to help him raise money for the scholarships and to help in selecting the recipients. The scholarships go to needy students who probably would not be able to attend college without this financial help.

Dicky also goes to one of the most impoverished and roughest schools in Austin, Mendez Middle School, and teaches mediation skills to the students. The students at Mendez were once at each other's throats, literally and physically, but Dicky has a way of communicating with them and has helped turn around many of these kids, teaching them how to solve their own problems. He has made a powerful impact on their lives. To me, he is a really great lawyer, but he is an even greater person. He truly has achieved hero status.

## Clients

Some of our clients are the biggest heroes in our lives. We all have had clients who have helped us more than we have helped them. I have had three clients in the past ten years who were badly injured, yet who exhibited bravery, wisdom, and patience of heroic quality. One is Todd Reese, who is a paraplegic from an accident and was at the lowest ebb of his life before his trial. The jury favored him, and he prevailed in his suit. He overcame his depression after the trial and went to law school. He is now successfully practicing law in Austin, happily married, and the proud father of a handsome and healthy son.

The second is a Southwest Airlines pilot who was injured while parasailing. Unbeknownst to him, the parasail was attached to his body upside down. As a result, the parasail plummeted downward and pulled the pilot into a pile of rocks, causing him to become a quadriplegic. I have to admit that I was skeptical about taking his case at first. I was concerned that the jury would discredit him, thinking that, as a pilot, he should have known about the principles of flight and checked the parasail. Then, when he drove from Florida to Austin in a specially-equipped van before his first trial setting, I scolded him, thinking that the jury might not believe that anyone who could drive across country was so seriously injured. The jury, however, appreciated this young man who wouldn't say "I can't," for they returned a very favorable verdict for him. He now takes seriously disabled children flying in his specially-adapted airplane. His program is called "Challenge Air."

The third client hero is Carleton Ranney, a young boy who was 11 years old when he went to Camp Longhorn, a summer camp near Austin. A counselor driving the camp van on a field trip was swerving back and forth and allowing the boys in the van to "have fun" by not wearing seat belts and sliding across the seats. The van flipped over three times, and Carleton and three others were thrown from it. Carleton was paralyzed. He was taken by Star Flight to the hospital and could barely talk. When he saw his mother, he said, "he (the driver) took my dream away." Thankfully, we won a settlement for this young man which has helped him on his way to making an even greater recovery with a terrific attitude, grit, and bravery.

I share these particular cases with you because none were clients whom we would typically label "heroic" at the outset. Ultimately, through superhuman determination, patience, and courage they were able to overcome their obstacles. They brought me some of my greatest satisfaction as an attorney.

My greatest client here is Cassie Allbaugh. She is such a nice young lady. Some would say naïve. She grew up in Arkansas. Cassie was hired as a Youth Director at the First United Methodist Church Fort Worth, the fourth largest Methodist church in the world. It is a very influential church, among the most powerful in the world, with its large membership including some of the wealthiest and most influential people in Fort Worth. Not long after being hired, Cassie faced an unbelievable trial of her own – the minister of the church began to “hit on” her. He was not just any minister but one of the most commanding ministers in all of Methodism.

I must interject by saying that I, too, am a Methodist, but not by immediate choice. I grew up in the Baptist church and knew that to be the “best church.” When Ruth Ann and I started romancing and I later proposed marriage, she wanted me to become a Methodist. I said, “Absolutely not – I am a Baptist and if you are going to marry me, you are going to be a Baptist.” She asked me to visit the Methodist church, and I said, “Sure.” After going over there and seeing how easy it was to be a Methodist, I became a convert on the spot.

A few years ago, I received a call from a lawyer in Fort Worth. He would not even tell me over the phone why he was calling me. He invited me up to see the Fort Worth rodeo, and, while I had more pressing things to do than see the rodeo, I accepted his invitation. We talked, and he told me the situation briefly while we watched the rodeo. The topic was about a young woman’s claim that this very powerful minister had sexually harassed her. He asked if I would talk to her. I knew that I had to be careful taking on an institution like that with a person of such prominence and who was afforded such respect, because I knew that his reputation could be destroyed by merely making the accusation.

I hired an ex-FBI man to do the investigation and he returned with confirmations of sexual harassment from three other women. Then, I sought counsel from my former Sunday School teacher. He suggested that I call the Methodist Bishop. When I called the Bishop, I knew that even his faith would be challenged, because he had to face the possibility that this eminent minister was the subject of the most serious accusations. He would not take action on my word alone, so I invited him to talk to my clients, of whom there were four at that point. He talked to them and afterwards said that he would investigate.

Mere words cannot describe the ordeals that Cassie and the other women who stood up with her suffered after the case began. Knowing that this was a town where social prominence and religion reigned supreme, I tried to prepare them as best I could, but even I did not expect the onslaught of cruelty, which, especially Cassie, was forced to endure. Her closest friends literally spat on her. One night she went home to her apartment to find an intruder with a gun, cocked and ready. She finally talked him out of using it and gave him her purse. His last words were “I was supposed to kill you.” She then called the police, but they were slow to respond. One member of the church who had the courage to stand up for her was run off the road by a “mysterious driver.”

To say the least, this was a very unstable situation. I was afraid that the case would never go to trial because it was such an extremely explosive fact situation. By the time we tried the case, there were seven clients willing to go through a trial, and the jury found for Cassie and the others. However, her trials and tribulations did not end with that verdict, nor did those of the other women who stood with her. Each woman was castigated and eventually run out of town. Only two of the seven remain in Fort Worth.

These women were unlikely heroes and certainly appeared to the parish as the anti-heroes of the Methodist Church. However, each had the courage to come forward with the truth. That courage is what so many clients have that deserves our homage and recognition. Clients like these make heroes of us.

I never promised that this would be an enriching experience for you, but just so you will not leave this room without feeling some gain, Ruth Ann has brought one of the new golden dollars for each of you. (I think that Ruth Ann came up with this idea to try to lure people in here, and she wanted to promise all of you that you could have a golden dollar if you came, but I intervened.) However, we both thought that it would be neat for you to have one of them as a memento.

If you remember nothing else, remember that the hero whom you see on this dollar is representative of all heroes, both famous and unknown. We must acknowledge them, for it is through these wonderful people that we recognize our own potential as humans to effect change. We all have a little hero in us, and we all must contribute to enrich the lives of others.