

TRIBUTE TO
JUSTICE JAMES A. (JAIM) BAKER
Respectfully submitted — Justice Harriet O’Neill

Shortly after I arrived at the Texas Supreme Court, I produced my first draft opinion. For those of you who are not judges I will tell you, a legal opinion is a daunting thing. Especially the first one you put on the table. It establishes that important first impression among your colleagues; it says who you are. I worked so hard. It had to be perfect. I spent weeks framing the issue, researching the law, carefully crafting what I hoped would be a compelling legal analysis that would win my colleagues’ votes. Finally it was ready to circulate, and I went to conference full of hope — and some trepidation. My hard work paid off. I garnered a unanimous vote, with very few substantive suggestions. Justice Baker went out of his way to tell me — “Good job” — sensing, I’m sure, that as the Court’s baby judge I needed reassurance. I went home — elated.

Imagine my surprise the next morning to find, in my chair, a marked-up copy of my opinion with comments from Justice Baker. It looked like an architectural drawing — or maybe I should say a demolition. It was filled with straight ruled lines, red ink, comments meticulously penned in the margins. It was thoroughly — and painstakingly — reconstructed. It must have taken him hours. “Avoid prepositional phrase.” “Active not passive voice.” “Avoid footnotes, keep sentences short and simple.” Somewhat annoyed, I started to pen back — “jump in lake.” But first, I decided to take a closer look. Well, yes — that does sound better. Yes, that’s a good suggestion. Oh — good catch. That does come across clearer. Suddenly I realized, my opinion had been transformed. And it hit me — I’d been Bakerized.

This term is now firmly embedded in the legal lexicon. A word that Bill Pugsley defines as follows:

transitive verb “Bakerized” 1: to vigorously edit a brief in the style of Judge Baker, as in “Jamison’s draft was Bakerized beyond recognition.” 2: to transmute mud into light, as in “you better Bakerize that before Hecht gets hold of it. 3: (my personal favorite) to remediate a college education by example.

Anyone who has worked for Justice Baker has shared the experience, and is quick — and proud — to recount it. It actually becomes a game — can I write something that will come back with no red marks? Before you know it — you’re looking at the law through the Baker lens.

It is a difficult task to stand before you and try to describe the man I knew and loved so much — in the short time that I have today. While preparing my remarks, I found myself returning again and again to the Bakerisms. And it struck me that they represent much more than isolated word choices, preferred syntax, punctuation, picky technicalities. They stand as a metaphor and reflect the very essence of the man. They show a number of things:

1. *A deep love of the law.* Justice Baker was the consummate jurist, and he was constantly honing his craft. Although as a judge he wrote the law, he was a voracious and unabashed student of the law. The first time I saw Justice Baker in person, I was on the court of appeals and was speaking on some topic at a legal seminar. There — on the front row — was Supreme Court Justice Baker — the guy who graded my papers — taking notes. Justice Baker was always striving to improve his skills, sharpen his abilities, because he truly loved the law. It showed in the painstaking way he edited the Court’s opinions — even those he disagreed with. There was nothing more disconcerting than to go to conference and hear Justice Baker state: “Your opinion is just plain wrong, and I will dissent. Now, as to that prepositional phrase on page 8”

2. *Respect for his colleagues.* The Bakerisms reflect the respect that Justice Baker had for his colleagues. Even when an opinion was not his own, Justice Baker took the time to improve the writing because he wanted his peers to shine. He wanted the Court’s work to be the best that it could be. When Justice Baker disagreed with a position he did so forcefully, but always with respect.

3. *A sense of order.* Justice Baker felt things should be done the right way. Opinions must follow a logical order — Background, Standard of Review, Application of Law to Facts, Conclusion. His personal life, too, reflected a sense of order, a place for everything. Justice Baker was “old school” — in the best way. And we profoundly respected him for it.

4. *A sense of humor.* Bakerisms were generally delivered with a tinge of humor. After Justice Baker left the Court, he wrote me a note about an opinion that I had authored. “Well done,” he said, “thoughtful and articulate analysis. Your friend, Justice Baker. P.S. Your sentence on page 11 is 28 words long — shame on you.” Justice Baker had a keen sense of humor, a twinkle in his eye and an infectious laugh. At my first Court conference, the pressing inquiry from my fellow justices was the initials I should go by. You see, our votes are generally recorded by initials, and we often refer to each other that way in internal court correspondence. My last name seemed to cause some confusion. O’Neill — what to do with the apostrophe? I was solemnly asked if I wanted to go by HO or HON. I quickly responded that I would much rather be known as HON — pronounced “hun” (as in “honey”) — than HO, pronounced — well, never mind. Justice Baker roared with laughter, and from that moment on he always called me “Hon.”

5. *Knowing what’s important.* Bakerisms value the simple over the complex. Never use a phrase when a word will do. Be simple and straightforward. “Keep sentences short/simple.” Justice Baker was a master at it. Darin Darby, a former briefing attorney the Judge affectionately referred to as “D-Square,” recounts that, before oral arguments, Justice Baker would often engage in discussion with the members of his chambers about an upcoming case. On one particular occasion the discussion was especially animated. Justice Baker was happy to see that Darin, one of his more reticent clerks at the time, was animatedly engaged in the discussion. Justice Baker gave him the floor. Eventually the discussion ended, and Justice Baker went down to the robing room to get ready to take the bench. Before he did, he phoned Darin from the robing room and said: “D-square — you need to xyz.” Then he hung up. Sure enough, the shy clerk looked down, examined his zipper, saw that Justice Baker had spoken the truth, and resolved the problem immediately. Justice Baker’s

words were brief, to the point, and, in this instance, particularly meaningful.

6. *A zest for life.* My personal favorite Bakerism was, “avoid prepositional phrases.” Jim preferred the active over the passive voice. And that, too, is a reflection of the man. Justice Baker was passive in nothing. He loved life and embraced it with passion. He would often say, simply and with enthusiasm: “I’m for that!” His opinions were active voice and — heaven help us — so were his dissents. He penned a dissent to one of my opinions that began with the quote: “Once more into the breach, dear friends, once more . . . the game’s afoot!” Or “the fix-it gang rides again.” Or “we all know what’s going on here.”

Justice Baker’s burning and most enduring passion was his wife, Claudia — every bit as spunky as Jaim and a full-fledged member of the Court family. Claudia — I have never known a woman more loved. Justice Baker was passionate about his family, his daughters Carroll and Cathy, and his grandchildren — Emily, David and Madison. You were his treasures, and he loved you in the active voice. Jim was passionate about his faith, his friends, and his colleagues on the Court.

7. *A sense of purpose.* Writing for Justice Baker meant avoiding at all cost the use of footnotes. He felt that if the point was important enough, if it had a purpose, it should go into the opinion — or it shouldn’t be there at all. One year his chambers decided to play a prank on Justice Baker. An opinion was scheduled to go out and, after much review, it was put into final form. Marla Broaddus and Susan Kidwell created a fake document. They dropped a footnote that violated every single Bakerism: 50-word sentences, filled with prepositional phrases and obscure Latin terms. They put the blue-backed copy of what they represented to be the issued opinion in his chair and surreptitiously watched as he read and became increasingly agitated. “Ms. Broaddus,” he called, “could you come in here?” At first, they told him they had been strong-armed by Justice Owen into adding the footnote to the opinion. But finally, they let him in on the scam. And he loved it.

8. *A strong work ethic.* As the Bakerisms were prolific, so were his opinions. During his time on the Court, Justice Baker authored a total of 145 opinions. His straightforward style enabled him to resolve the most complex issues in words that lay people could understand. He had tremendous respect for juries and, when their verdicts were challenged, he carefully waded through volumes of records, properly crediting all evidence that supported their findings. Justice Baker afforded great deference to the lower courts’ discretionary decisions, and he abhorred interference with trial court proceedings by mandamus. There is certainly not enough time here today to cover all of his many opinions. Legal scholars will be citing to them for generations to come. But I can tell you that Justice Baker had a conservative and consistent judicial philosophy, and he tirelessly dedicated himself to timely decisionmaking.

9. *Respect for his fellow man.* Finally, and perhaps most importantly, Bakerisms demonstrated Justice Baker’s profound respect for his fellow man. It was important to him that the

law not be esoteric or swayed by political winds. It must be written so that the common man would understand. The law was intended to protect the mighty and the humble, and he treated those two just the same.

Now that I have explained the Bakerisms, you will understand the following opinion that I have written about Justice Baker's life. It is structured according to his sense of order. You will note that it has no footnotes, as there were no footnotes in Judge Baker's life; he considered everyone important enough to weave into the very fabric of his life story.

I. Background

(See above)

II. Standard of Review

Devout adherence to the law, judicial restraint, humility, and the greatest respect for all.

III. Application of Law to Facts

(The body of this opinion is collectively written by the entire Court family, who responded with an outpouring of love and admiration to my e-mail requesting three words that best describe Justice Baker. These words come from all corners of the Court. From the Clerk's office, the staff attorneys, the mail room, the judges, the law clerks, the executive assistants, the custodial staff and many others. The best tribute I can imagine for Justice Baker — short of instituting a moratorium on mandamus in his honor — is to share those words with you.)

Kind. Caring. Sincere. One of a kind. He always asked about my son. I could only hope to be half the man he was. Gentleman. Mr. Justice Baker. Friendly. An extraordinary jurist. Compassionate. Respectful. Honest. Approachable. Always cheerful. Twinkly. He truly cared so much about all of us. He got things done. His door was open for any situation. Determined. Gregarious. Diligent. A man who inspired loyalty from every employee he ever had. Honorable. Stable. He was a man of his word, and neither he nor his words will be forgotten. A role model — we are never too old to have one.

He's the only person I've ever known who noticed every single time I did anything to my hair.

Witty, self-effacing, friendly to everyone. He and Claudia showed up at my surprise birthday party at the Broken Spoke in full cowboy gear.

He was a good boss — considerate of one's time, gentle in correction, patient with human frailties, responsive, generous and supportive. His manner charmed people, especially younger folks who found in him a mentor of exceptional ability. He possessed a large and pleasing smile and a laugh that celebrated life.

He taught me so many things — how to write succinctly, how to cherish your spouse and family, how to love learning and learn something new every day, how to stand up for your principles, and how to live life to the fullest, to the very end.

IV. Conclusion

Justice Baker lived, as Oliver Wendell Holmes said it, “greatly in the law.” More than anyone I know. He made an indelible mark on the jurisprudence of the state, and on all whose lives he touched. He left this world a better place, and for that we are forever changed and eternally grateful.