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Justice Louis D. Brandeis: "The People's
Attorney"

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By the time President Woodrow Wilson nominated him for a seat on the U.S. Supreme Court in 1916, Louis Brandeis, the nation's first Jewish Justice, had forged a reputation as a brilliant, innovative, and influential attorney. He was an advocate to be feared. Judges at all levels acknowledged how much they learned from him. The Supreme Court embraced his novel legal arguments and approach to the law—"the Brandeis Brief"—which ushered in an era of "sociological jurisprudence" and enjoys enduring influence. On top of this, he was known as "the People's Attorney."

Despite the widespread professional admiration and, in many quarters, demonstrable affection for Brandeis, his nomination was met with stiff opposition by powerful corporate, political and social interests, which led to a bitter and intense confirmation fight that lasted four long months. What inspired such deep controversy? The explanation lay in his stunning record of success and influence, what he stood for and represented and who he was.

Brandeis was just 18 years old when he enrolled in the Harvard Law School, from which he graduated in 1877 with the highest grades it ever awarded. He stayed on at Harvard for a year of graduate work, and in 1879, he joined a classmate, Samuel Warren, in founding a Boston law firm, Warren and Brandeis. His early clients were small businesses. His success was staggering.

Before long, powerful corporations, which recognized his exceptional talents and skills, paid large sums for his advocacy skills. In the 1890s, at a time when average lawyers were making \$5,000 a year, Brandeis was earning \$50,000.

After amassing a fortune while representing powerful and well-heeled clients, Brandeis changed course, following his heart, philosophical principles and progressive impulses. He won many cases while representing the working class—unions, women and the small fry of society—and with those victories earned the enmity of big business and corporate giants and those who resisted economic regulations and social reform.

Brandeis, who considered public service to be a civic responsibility, was deeply involved in public affairs and decided, often, not to charge a fee for his work. He was the first to do pro bono work, a practice that his contemporaries regarded as eccentric. This captured the attention of the press, who nicknamed him "the People's Attorney." As a lawyer, particularly in labor cases, Brandeis was more than an advocate defending his clients. He sought solutions to problems.

In 1905, for example, in representing Boston policyholders in a life insurance scandal, he became a student of the insurance industry and, after learning that savings banks were more efficient than insurance companies, he invented savings banks life insurance. In other cases, while acting as a mediator, he identified workable compromises to settle labor strikes and persuaded companies to raise their stock dividends while simultaneously lowering customer costs.

In 1908, Brandeis was hired by the State of Oregon to defend a 10-hour law for women in the landmark case of *Mueller v. Oregon* and introduced the "Brandeis Brief," a model for what legal reformers called

"sociological jurisprudence." Brandeis spent just two pages arguing legal precedents and 100 pages amassing facts and statistics to demonstrate the ill effects of long hours on working women. In sum, in an approach that he would bring to the Supreme Court, Brandeis argued that the facts demonstrated that a "reasonable basis" existed for the state legislature to assume that working more than 10 hours a day represented a clear danger to the "health, safety, morals, and welfare" of women.

Brandeis' detailed brief and focus on the facts behind the labor legislation persuaded the Court to uphold the statute. His commitment to educating the judiciary on the social and economic effects of legislation became the model for defending reform measures that attorneys across the country continue to use. Years later, Justice Felix Frankfurter called the Brandeis Brief, "epoch making."

Brandeis at the Bar was best remembered for his rigorous application of facts to the law. Brandeis' national reputation brought him to the attention of Woodrow Wilson. He helped Wilson develop the basic arguments for his "New Freedom." Brandeis believed that "bigness" was antithetical to democracy and that the solution to the problem of trusts in the nation was not the regulation of monopolies, as Theodore Roosevelt suggested, but the regulation of competition, so that all businesses could compete on a fair playing field. Brandeis also believed that big government posed a threat to democracy and argued for retaining the power of states to act as "laboratories" to test the wisdom and utility of reform measures.

Brandeis' appointment to the Supreme Court in 1916 overcame strong and nasty headwinds. Big business and corporations, mindful of his success in winning judicial support for economic regulations, lined up against Brandeis. Former President William Howard Taft

declared Brandeis "unfit" for appointment to the Court. Anti-semitism was raging across the country, and Brandeis's "Jewishness" was marshalled into the battle to deny him a seat on the Court. Justice James McReynolds, a notorious anti-semite, opposed the nomination. Years later, when Brandeis joined the High Bench, McReynolds refused to participate in one of the Court's ceremonial functions. He wrote to then Chief Justice Taft, "As you know, I am not to be found when a Hebrew is about."