PROCEEDINGS IN THE SUPREME COURT OF THE UNITED STATES

In Memory of Mr. Justice Jackson[1]

MONDAY, APRIL 4, 1955

Present: MR. CHIEF JUSTICE WARREN, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE BURTON, MR. JUSTICE CLARK, MR. JUSTICE MINTON, and MR. JUSTICE HARLAN.

MR. SOLICITOR GENERAL SOBELOFF addressed the Court as follows:

May it please the Court: This morning, in the Conference Room, there was a meeting of the Bar of the Supreme Court in honor of the memory of Mr. Justice Jackson.[2] The meeting was addressed by Mr. John Lord O'Brian, Mr. Gordon Dean, and Professor Paul Freund. Resolutions read by Mr. Sidney Alderman, Chairman of the Committee, were adopted.[3] With your permission I will read the Resolutions.

[1] Mr. Justice Jackson died in Washington, D. C., on October 8, 1954. See 348 U. S. VII. Services were held at the Cathedral Church of Saint Peter and Saint Paul, in Washington, D. C., on October 12, 1954, and at St. Luke's Protestant Episcopal Church in Jamestown, N. Y., on October 13, 1954. Interment was in Maple Grove Cemetery at Frewsburg, N. Y., on October 13, 1954.

[2] The Committee on Arrangements for the meeting of the Bar consisted of Solicitor General Simon E. Sobeloff, Chairman, Mr. Dean Acheson, Mr. Thomas E. Dewey, Mr. Marion H. Fisher, Chief Judge Edmund H. Lewis, Mr. John Lord O'Brian, and Judge E. Barrett Prettyman, Sr.

[3] The Committee on Resolutions consisted of Mr. Sidney S. Alderman, Chairman, Mr. Thurmond Arnold, Mr. James V. Bennett, Mr. Francis Biddle, Mr. William Marshall Bullitt, Mr. Edward B. Burling,

RESOLUTIONS

Associate Justice Robert Houghwout Jackson died suddenly of a heart attack on Saturday, October 9, 1954, at the age of sixty two and at the height of his brilliant judicial career. On the convening of the Court on Monday, October 11, MR. CHIEF JUSTICE WARREN made the following statement:

"One short week ago this Court convened for its 164th Term, its membership intact and cheerfully anticipating the work before us. Today the chair of our Brother Jackson is vacant, and we are sad indeed. He passed away last Saturday suddenly but by the Grace of God without suffering. For this we are all grateful, because he lived and died as was his great desire—active and useful to the end.

"Able lawyer, statesman and jurist, his passing leaves a great void in this Court. We shall miss greatly his wise counsel, his clarity of expression and his genial companionship.

"For 20 years, as General Counsel, as Solicitor General, as Attorney General of the United States, and as a member

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Mr. Charles C. Burlingham, Mr. Howard C. Buschman, Jr., Mr. James F. Byrnes, Mr. Ernest Cawcroft, Mr. Benjamin V. Cohen, Mr. Alan Y. Cole, Mr. John F. Costelloe, Mr. G. Bowdoin Craighill, Sr., Mr. Donald Cronson, Mr. Homer S. Cummings, Mr. Walter J. Cummings, Jr., Mr. John F. Cushman, Mr. John W. Davis, Mr. Gordon Dean, Mr. Thomas J. Dodd, Mr. Allen W. Dulles, Mr. Newell W. Ellison, Judge Charles Fahy, Professor Paul Freund, Mr. Harold J. Gallagher, Mr. Murray Gartner, Mr. Robert J. Gill, Mr. Tappan Gregory, Judge Philip Halpern, Judge Learned Hand, Mr. Charles A. Horsky, Mr. Benjamin Kaplan, Mr. Arthur H. Kent, Mr. Allen T. Klots, Mr. Monte M. Lemann, Mr. William P. MacCracken, Jr., Mr. J. Howard McGrath, Mr. Henry S. Manley, Mr. James M. Marsh, Mr. William D. Mitchell, Mr. Phil C. Neal, Mr. C. George Niebank, Jr., Chief Judge John J. Parker, Mr. George Wharton Pepper, Mr. Philip B. Perlman, Mr. Herman Phleger, Mr. E. Barrett Prettyman, Jr., Mr. William H. Rehnquist, Mr. Samuel I. Rosenman, Mr. Whitney North Seymour, Mr. Francis M. Shea, Mr. Robert G. Storey, Mr. Telford Taylor, Mr. Harrison Tweed, Mr. Herbert Wechsler, and Mr. William Dwight Whitney.

of this Court, he labored manfully with the complex and baffling problems of our time. His contributions were great. He has earned his rest.

"Funeral services will be held tomorrow afternoon at three o'clock at the Washington Cathedral, this city. His body will then be taken tenderly to Jamestown, New York, the little city of his youth, where, in pleasant and familiar surroundings, it will abide in peace among his earliest friends.

"In respect to his memory, this Court will now adjourn until Thursday, October 14, 1954, at twelve noon."

THE CHIEF JUSTICE, all the Associate Justices, and the Clerk and the Marshal of the Court accompanied the remains, along with the family and the office staff of Mr. Justice Jackson, to Jamestown, New York, and the members of the Court acted as honorary pallbearers at the funeral services at Jamestown and at the interment at Frewsburg.

Justice Jackson had suffered a previous attack in the spring of 1954 and had spent several weeks in a hospital in Washington and recuperating at his beautiful home, Hickory Hill, at McLean, Virginia. His doctors gave him the choice between years of comparative inactivity or a continuation of his normal activity at the risk of death at any time. With characteristic fortitude he chose the second alternative. He returned to his work on the Court, sat at the session of May 17, 1954, and joined in the unanimous opinion of that date in the school segregation cases. After a restful summer vacation at his home, at the Bohemian Grove in California and on a fishing trip in Canada, he returned for the present term of the Court and sat at its opening session on Monday, October 4.

The members of the Bar of the Supreme Court are met today to honor his memory and to record their estimate of the man, of the lawyer, of the judge, and of the statesman.

He was a self-educated and self-made man in the Lincoln tradition and his life will ever be an inspiration

to young men of our time who, all too often, tend to feel that ours may be no longer a land of opportunity.

He was born at Spring Creek, Warren County, Pennsylvania, on February 13, 1892, the son of William Eldred and Angelina Houghwout Jackson. His father, a lumberman, farmer and stock breeder, was a stubborn Scotsman who wanted his son to be a doctor and refused to assist him in obtaining a legal education. He died when the son was a young man. His mother, a woman of strength and fortitude, with the best characteristics of her Dutch ancestry, had a profound influence on her son's life and character. She died shortly after he became Associate Justice. He was the only son and is survived by two devoted sisters, Mrs. Helen J. Adams and Mrs. Ella M Springer, both of Frewsburg, New York.

When Robert H. Jackson was five years old, the family moved across the state line to Frewsburg, Chautauqua County, New York, a small village some five miles south of Jamestown. There he attended grade and grammar school. In 1910 he graduated from Jamestown High School. He never attended college, but immediately entered the office of Frank H. Mott, an able young lawyer and like Jackson a Democrat, to study law. He attended Albany Law School for one year and then resumed his studies in Mr. Mott's law office. He passed the New York bar examinations and was admitted to practice on November 24, 1913, at the age of twenty-one, when he would normally have been graduating from college. He always retained the view that the old system of studying in a law office provided one of the best schools for a legal education.

Years later, in his thoughtful address on "Training the Trial Lawyer" [4] delivered at the dedication of The Stanford University School of Law, he made witty reference to his own law education, saying:

"Considerations of an autobiographical nature would make it immodest for me to suggest what a law school

[4] 3 Stanford Law Review 48, 50.

should teach and how best to teach it. I am a vestigial remnant of the system which permitted one to come to the bar by way of apprenticeship in a law office. Except for one term at law school, I availed myself of that method of preparation which already was causing uneasiness—to which feeling I must have added, for the system was almost immediately abolished. You may be comforted to realize that I am the last relic of that method likely to find a niche on the Supreme Court."

He was always an omnivorous reader. He devoured everything he could lay his hands on in history, biography, philosophy, the law and the classics of literature, so that he became an extraordinarily well-read man. He was a lifelong student of the Bible, an Episcopalian and a thirty-third-degree Mason. He was a deeply religious man but was bound to no orthodoxy.

His farm boyhood taught him the strength and solace that comes from nature and the out-of-doors life. He was an ardent horseman, fisherman, camper, hiker; best of all, he loved a morning canter or a summer camping trip with his daughter, Mary. In these recreations he found release from the turmoil and contentions of an active professional life, although it is said he sometimes argued his cases on horseback.

Standing and reputation came to him rapidly in that greatest school for trial advocates, the general, country and small-town practice. He was early made Corporation Counsel of Jamestown. Like Lincoln he was a railroad trial lawyer and represented a typical clientele of corporations, large and small, and of individuals, rich and poor. He was vice president and general counsel of a short-line railroad and of two traction companies and was director and general counsel of a local bank and of the local telephone company.

He practiced alone until 1919, when he became junior member of the firm of Dean, Edson & Jackson. In 1923 he formed a partnership with Henry S. Manley and Gerald A. Herrick under the firm name of Jackson, Manley

& Herrick. The firm became Jackson, Herrick, Durkin & Leet in 1927 and continued until 1933. It was during this period that Robert Jackson developed a social philosophy emphasizing the rights of the individual, of the underprivileged, of small business, and opposing monoply and oppression in all their forms.

Talents such as he possessed made it inevitable that he should quickly achieve recognition beyond his local community and county. He was one of the leading spirits in the organization of the Federation of Bar Associations of Western New York and was its President from 1928 to 1930. In 1933 he was elected Chairman of the National Conference of Bar Association Delegates, then a section of the American Bar Association. In that position he came into contact with lawyers from all over the Nation and his national reputation began to grow.

He never sought a career in public life, and, when such a career was pressed upon him, he entered upon it with great reluctance. He prided himself on being a countryman and a country lawyer. He wanted to accumulate a modest competency and to live the life of a country squire. He refused all offers to join Buffalo and New York law firms. But, as a Democrat of prominence, in a county in which Democrats were a distinct minority, he attracted the attention of Governor Franklin D. Roosevelt. In 1930, on the nomination of the President of the New York State Bar Association, he was appointed to serve on a special commission created by the legislature of New York to investigate the administration of justice in that State. Three years later Governor Herbert H. Lehman named him director of the New York Scrip Corporation, organized to handle negotiable scrip which the legislature had authorized State banks to issue as an emergency in the current financial stringency.

When the Democrats took over the national administration under President Roosevelt, this up-state country lawyer and Democrat was promptly urged to come to Washington. His reluctance was overcome and early in

1934 he accepted appointment as General Counsel of the Bureau of Internal Revenue, Treasury Department. While in that office he conducted important tax litigation with ability and was specially designated as counsel for the Securities and Exchange Commission in the litigation which tested and sustained the constitutionality of the Public Utility Holding Company Act of 1935. In 1936 he was appointed Assistant Attorney General in charge of the Tax Division, Department of Justice, and was later placed in charge of the Antitrust Division.

As Assistant Attorney General he was one of President Franklin D. Roosevelt's ablest advocates in supporting the Bill to Reorganize the Judicial Branch of the Government, in 1937. His interesting book, *The Struggle for Judicial Supremacy,* shows that he was attracted by the ultimate purposes of that plan rather than by the method proposed.

On March 4, 1938, President Roosevelt made him Solicitor General of the United States, upon the appointment of Stanley F. Reed to the Supreme Court. As Solicitor General, his ability to understand and expound issues, no matter how ramified or complex, together with his surpassing skill in oral argument, won the admiration of the Court and of his brothers at the bar. It was a position which he enjoyed perhaps more than any other he ever held.

On January 4, 1940, he was appointed by President Roosevelt as Attorney General, to succeed Frank Murphy, after the latter's appointment to the Court. His work in that office was concerned principally with questions arising out of World War II. President Roosevelt's executive agreement with Great Britain, exchanging fifty over-age destroyers for naval and air bases in the British possessions in the Western Hemisphere, was negotiated on his advice as Attorney General. The international law aspects of this transaction, as well as the legal basis for "Aid to Britain" and the rights of the United States as a nonbelligerent, were clearly and powerfully set forth in his

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address at the Havana meeting of the Inter-American Bar Association, in which he took the position for the United States that the war of aggression waged by Germany was in violation of American treaty rights and that the doctrines of international law did not oblige the United States to remain indifferently neutral but authorized aid to those resisting aggression.

During all this time the future Justice had been completing his self-education, building himself upon himself, preparing for a greater career. His foundations were native ability, general reading, sound common sense, and long and successful experience as a trial and appellate court advocate.

When on June 12, 1941, he was nominated Associate Justice by President Roosevelt, his nomination was promptly confirmed on July 7 by the Senate. Four days later he was commissioned and took the oath of office. He took his seat on the Court on October 6, 1941, filling the vacancy caused by the elevation of Associate Justice Harlan Fiske Stone to be Chief Justice of the United States. During the thirteen years of his judicial tenure he was absent from the Court for over a year and a half on the historic Nuremberg war crimes mission. Thus his active service on the Court comprised less than eleven and a half years, but in that period he made a contribution to our federal jurisprudence seldom excelled in the history of the Republic.

He wrote a total of 318 opinions. Of these, 151 were opinions for the Court, 42 were concurring opinions, and 125 were dissents, although a few of his opinions which we have classified as for the Court were concurred in by less than an actual majority but announced the judgment of the Court.

With little formal education, he developed a literary style wholly different from the styles of Holmes, Cardozo, and other great stylists who have adorned the Court. He was as much given to aphorism as Holmes but was much less cryptic. One never had to labor over his pungent

phrases to discover a hidden meaning. He would simply state, "Chaos serves no social end." [5] Or, speaking of the Court, he would dryly remark, "We are not final because we are infallible, but we are infallible only because we are final." [6] Or he would tersely state, "Environment illuminates the meaning of acts, as context does that of words." [7]

He wrote with a trenchant, concrete, Saxon style of great beauty and vigor, nurtured chiefly on the King James version of the Bible and on Shakespeare. He contributed to the literature of the Court elements of freshness, clarity, and originality that will never be forgotten.

A slightly skeptical strain in his thinking, his devotion to freedom of the individual and particularly to freedom of thought and belief, and the charm of his style, are all well illustrated by the following from his separate dissent in *United States* v. *Ballard:* [8] "All schools of religious thought make enormous assumptions, generally on the basis of revelations authenticated by some sign or miracle. The appeal in such matters is to a very different plane of credulity than is invoked by representations of secular fact in commerce. Some who profess belief in the Bible read literally what others read as allegory or metaphor, as they read Aesop's fables. Religious symbolism is even used by some with the same mental reservations one has in teaching of Santa Claus or Uncle Sam or Easter bunnies or dispassionate judges. . . . I would dismiss the indictment and have done with this business of judicially examining other people's faiths."

He had a faculty for stripping away nonessentials and laying bare the heart of a controversy. An effective advocate before he came to the bench, he became and remained a lawyer's judge. He exposed fallacies in argu-

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[5] *State Tax Comm'n* v. *Aldrich,* 316 U. S. 174, 185, at 196.

[6] *Brown* v. *Allen,* 344 U. S. 443, 532, at 540.

[7] *Cramer* v. *United States,* 325 U. S. 1, 33.

[8] 322 U. S. 78, 92, at 94, 95.

ment relentlessly but with unfailing courtesy and good humor. He admired and enjoyed good advocacy. His expressive face was quick to show appreciation of a professional job well done.

He made many contributions to legal literature and to the work of bar associations. He wrote many important law review articles, and all over the United States and in Canada, England, and France he delivered memorable addresses on legal subjects. In 1954 the New York bar awarded him its gold medal for distinguished service to the law and to the legal profession. For a year and a half before his death he served diligently as chairman of the special committee set up by the American Bar Association to conduct a comprehensive study of criminal law and procedure in the United States. On November 2, 1953, he delivered an address at the laying of the cornerstone of the American Bar Center at Chicago, eloquently attesting his devotion to the law as a science and as a learned profession. In the title and in the text of that address he used an expression which has been carved over the portal of the Center, calling it "A Cathedral to testify to our faith in the rule of law."

Friendliness was one of his outstanding characteristics. It is safe to say that no member of the Court in our history has had a wider circle of intimate and devoted friends among lawyers and jurists all over the world. He liked to be called "Bob" and usually signed his personal letters that way. Although he had great zest for his work as a member of the Court, he often chafed under the cloistered isolation of the judicial position and always loved to come into intimate and social contact with kindred spirits. His charm of personality, his engaging humor, his conversational and anecdotic gifts, and his frank and forthright manner of expression endeared him to all. But, deeper than all this, he had a faculty of inspiring loyalty in friends, in associates, and particularly in subordinates, that goes only with great personality.

He was a prodigious and indefatigable worker. His opinion for the Court in *Morissette* v. *United States* [9] is a good example. Although the case dealt with a narrow and technical question as to when a claim of right constitutes a defense to a charge of criminal conversion of property, Justice Jackson wrote an opinion of twenty-nine pages, coming to grips with the entire vexing problem of the intent and culpability intrinsic to a charge of crime and bringing extraordinary research and erudition to the service of deep moral insight.

He wrote the opinion for the Court in *Board of Education* v. *Barnette,*[10] overruling the contrary decision in *Minersville District* v. *Gobitis* [11] and holding that the action of a State making it compulsory for school children to salute the Flag and to take the oath of allegiance violates the First and Fourteenth Amendments. In that opinion he said:

"The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." [12]

And, after a close analysis of the reasoning in the *Gobitis* case, he said:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." [13]

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[9] 342 U. S. 246.
[10] 319 U. S. 624.
[11] 310 U. S. 586.
[12] 319 U. S. 624, 638.
[13] 319 U. S. 624, 642.

His separate opinion, "concurring and dissenting, each in part," in *Communications Assn.* v. *Douds,*[14] gives perhaps the best summary of his attitude towards freedom of thought and speech. He said:

"Progress generally begins in skepticism about accepted truths. Intellectual freedom means the right to re-examine much that has been long taken for granted. A free man must be a reasoning man, and he must dare to doubt what a legislative or electoral majority may most passionately assert. The danger that citizens will think wrongly is serious, but less dangerous than atrophy from not thinking at all. Our Constitution relies on our electorate's complete ideological freedom to nourish independent and responsible intelligence and preserve our democracy from that submissiveness, timidity and herd-mindedness of the masses which would foster a tryanny of mediocrity. The priceless heritage of our society is the unrestricted constitutional right of each member to think as he will. Thought control is a copyright of totalitarianism, and we have no claim to it. It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error. We could justify any censorship only when the censors are better shielded against error than the censored."

Justice Jackson had personal and professional courage of the highest degree. All knew exactly where he stood. On occasion he could confess his own previous error. In *McGrath* v. *Kristensen,*[15] he differed with his own opinion as Attorney General and refused to be bound by it. In his concurring opinion, among other illustrations of graceful and good-natured surrendering of former views to a better-considered position, he invoked, as applicable to his situation, Mr. Justice Story's statement, "My own error, however, can furnish no ground for its being adopted

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[14] 339 U. S. 382, 422, at 442–443.

[15] 340 U. S. 162, 176, at 178.

by this Court . . ." and Lord Westbury's statement, "I can only say that I am amazed that a man of my intelligence should have been guilty of giving such an opinion."

He was one of the few Supreme Court Justices in our history to take leave of absence from his judicial position in order to perform for the United States an international mission. President Truman, on May 2, 1945, six days before Germany's surrender, appointed him by executive order, "as the Representative of the United States and as its Chief of Counsel in preparing and prosecuting charges of atrocities and war crimes against such of the leaders of the European Axis powers and their principal agents and accessories as the United States may agree with any of the United Nations to bring to trial before an international military tribunal."

This was a draft to service which Justice Jackson accepted as a patriotic duty. It was a tremendous organizational problem, an outstanding diplomatic responsibility, with the duty of preparing and prosecuting a criminal trial unprecedented in history. If ever a man literally gave his heart to the service of his country, Justice Jackson gave his in that mission.

He conducted the four-power negotiations in London with Great Britain, the Provisional Government of France, and the Soviet Union, resulting in the Agreement and Charter of August 8, 1945, denouncing the plotting and waging of aggressive war as an international crime and setting up the International Military Tribunal. He directed for the United States the negotiations for the drafting of the indictment filed with the Tribunal. He largely directed the combing of the war-torn European Theater for the evidence and he took the leading part in the trial.

This is neither the time nor the place to attempt a summary or evaluation of the Nuremberg trial or of its place in history. Suffice it here to say that it made Justice Robert H. Jackson a world figure. His opening statement and his final summation to the Tribunal will

take high place in any history of forensic eloquence of the twentieth century. His handling of the difficult international negotiations was in the best tradition of American diplomacy.

His introduction to a recent book on the Nuremberg trial,[16] just off the press a few weeks before he died, was one of his last published writings and contains his estimate of Nuremberg in retrospect. In it he gave his own answers to the criticisms which have been directed against that proceeding. He ended it with his personal, ultimate conclusion, "that the hard months at Nuremberg were well spent in the most important, enduring, and constructive work of my life."

Mr. Justice Jackson returned from Nuremberg covered with honors from European countries. He was the guest of the Government of Czechoslovakia in Prague, before the iron curtain closed around that brave little country. He was the guest of the Austrian Government in Vienna. He was twice received for lengthy audiences by Pope Pius XII. In April 1946, he addressed the French magistrates and lawyers in Paris, on which occasion the Order of Advocates bestowed on him the medal which had been struck off in 1934 for the leader of the French bar, former President Raymond Poincaré, who had died before he could receive it. The magistrates of France also awarded him a special medal. He was installed as an Honorary Bencher of the Honourable Society of the Middle Temple of London. The Cour de Cassation of Belgium, in solemn session, gave him its second reception to an American citizen, the only other having been to Ambassador Brand Whitlock. The University of Brussels conferred on him the degree of Doctor of Laws, and the Prince Regent gave him a state luncheon honoring his contribution to international law. He was received and honored as guest of the Governments of Norway, Denmark, and Sweden.

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[16] *Tyranny on Trial*, by Whitney R. Harris, Southern Methodist University Press, Dallas, 1954.

In this country degrees were showered upon him by colleges and universities all over our land. President Truman awarded him the Medal for Merit. He received another degree of Doctor of Laws from the Ambassador of Poland, on behalf of the University of Warsaw. The country lawyer who had no college or law degree ended with perhaps as many honorary degrees as were ever received by any member of the Supreme Court.

It should be recorded that when he assumed the judicial robe he ceased to be a partisan and a representative of a particular school of political philosophy. His devotion was to the law. He believed in the law and in that element of stability embodied in the doctrine of *stare decisis*. He was no hidebound follower of precedent and said in one opinion,[17] "Of course, it is embarrassing to confess a blunder; it may prove more embarrassing to adhere to it"—yet in another, concerned at the Court's readiness to overturn its own precedents, he tartly remarked,[18] "But I know of no way that we can have equal justice under law except we have some law."

His opinions show a deep concern over the difficult problem of accommodating the sometimes conflicting purposes of maintaining freedom of the individual and, at the same time, a stable order of society under the reign of a rule of law. But he was generally on the side of full application of the Bill of Rights until he was convinced that the rule of law was seriously threatened.

It is not easy to fit his thinking on the Constitution and the law into labeled categories. He had written the Godkin Lectures, which he was to have delivered at Harvard University this year. They will soon be published and will set forth his principal views in his own language.

His basic political philosophy was one of moderation in the conduct of public affairs. His standards of public service and his fundamental ideas on the Constitution and

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[17] *United States* v. *Bryan*, 339 U. S. 323, 343, at 346.

[18] *Brown* v. *Allen*, 344 U. S. 443, 532, at 546.

the law, formed in simpler times in the relative quiet of Jamestown, continued as guiding principles throughout his life.

One of his finest public utterances, showing his great capacity to appreciate the high qualities of one representing a political philosophy different from his own, was his eloquent tribute, as Attorney General, to Mr. Justice Pierce Butler at the memorial services of the Court in the latter's honor.[19]

On April 24, 1916, in Albany, New York, he married Irene Alice Gerhardt, daughter of Henry Gerhardt, a builder, of Kingston, New York. Charming, cultured, gracious, devoted, she remained his companion, inspiration and comfort throughout his career. She survives him, as do their two children, William Eldred Jackson and Mary Jackson Craighill, and five grandchildren. The children and grandchildren were devoted to him and he to them. William Eldred Jackson, who was his father's personal aide in London and in Nuremberg, and his son-in-law, G. Bowdoin Craighill, Jr., are both practicing lawyers.

We of the Bar of the Supreme Court join the members of the family in their grief and express to them our sympathy in their great loss.

Resolved, That the foregoing Minute be adopted; that a copy of it be transmitted to the Attorney General of the United States for presentation to the Court; and that the Chairman be directed to forward copies of it to the widow and surviving members of the family of Mr. Justice Robert Houghwout Jackson.

MR. ATTORNEY GENERAL BROWNELL addressed the Court as follows:

As we assemble today to honor the memory of Justice Robert Houghwout Jackson, our sadness is lightened somewhat when we recall the warmth of his personality,

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[19] 310 U. S. XIII–XV.

the depth of his scholarship, and his great contributions to the science of the law and to the Nation.

Mere recital of the chronology of his life gives vivid color to the unfolding of three great careers: trial lawyer, government administrator, and Supreme Court Justice.

Born on a farm at Spring Creek, Pennsylvania, on February 13, 1892, his family moved to Frewsburg and, later, Jamestown, New York, during his early years. His secondary education was completed in Jamestown and his formal legal education consisted of one year of study at the Albany Law School. This abbreviated course of formal study often prompted Robert Jackson to make himself the butt of disparaging remarks about his untutored background. They served, however, quite unintentionally to sharpen the awareness of the audience or reader that here was a man in the tradition of Lincoln who made his way from self-education in the law to world-wide recognition as a brilliant scholar and jurist.

In 1913, at the age of 21, Robert Jackson began the practice of law in Jamestown. The passing years brought him deserved recognition as an able advocate and sound counsellor. During these years, his searching, receptive mind began to respond to his thirst for understanding of the many subjects making up well-rounded scholarship. With his naturally keen mind, talent for expression, and abundant energy, Robert Jackson was well on the way to distinction of the highest order.

His service for the State of New York in the early 1930's in the investigation of the administration of justice in that State and in directing the handling of the State's negotiable scrip program so commended him for attention that he was called to Washington in 1934 to serve as General Counsel of the Bureau of Internal Revenue, Treasury Department. He thus began a seven-year career in public administration. In retrospect, it is easy to understand why high achievement inevitably was to come. Strong, straightforward, clear-thinking, well-informed, and loyal, his outstanding talents were succes-

sively pressed into the service of the Nation through appointment as Solicitor General of the United States in 1938, and as Attorney General of the United States in 1940. As a well-seasoned trial lawyer, with experience and soundness of judgment, his service in those positions reflected great credit upon the offices and earned for him eminent standing at the bar.

It is said that he perhaps enjoyed the challenge and advocate's duties as Solicitor General as much as any other he had ever undertaken. During that period he presented argument to this Court in a long series of cases which have left large and lasting imprint on the pages of legal history. Among the prominent cases of that period, which he argued with great skill, were those in which the Court upheld the validity of the Tobacco Inspection Act of 1935,[1] the Agricultural Adjustment Act of 1938,[2] federal control of milk marketing,[3] as well as others which marked the assumption of larger responsibilities by the Federal Government for the good of the Nation.

In reference to this period of his life, Justice Jackson displayed his ready wit and appreciation of the art of oral argument when he remarked:

"I used to say that, as Solicitor General, I made three arguments of every case. First came the one that I planned—as I thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that I thought of after going to bed that night."

On October 6, 1941, as the 87th appointee, Robert Jackson assumed his place on the Court as Associate Justice. Here, in the final years of his life, the abundant learning and maturity of experience brought lasting enrichment to the law.

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[1] *Currin* v. *Wallace*, 306 U. S. 1.

[2] *Mulford* v. *Smith*, 307 U. S. 38.

[3] *United States* v. *Rock Royal Co-op.*, 307 U. S. 533.

It is fitting that we of the profession so revered by Robert Jackson should recount with pride and pleasing recollection a few excerpts from his writings which reflect the force of his beliefs.

Justice Jackson was a realist. To him, the law never rose above the dignity of man. This was well illustrated by his first concurring opinion, written less than two months after he took his seat on the Court.

In the *Edwards* case,[4] the Court held invalid, as imposing an unconstitutional burden upon interstate commerce, a provision of California law which made it a crime to bring a nonresident indigent person into the State. Though agreeing with the result, Justice Jackson believed that the Commerce Clause had been invoked in a setting which called for a more spirited and earthy expression of the rights of man. He urged the Court to:

". . . hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing." [5]

Then, with characteristic clarity and vividness of expression, he said:

"Unless this Court is willing to say that citizenship of the United States means at least this much to the citizen, then our heritage of constitutional privileges and immunities is only a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." [6]

It is not the well-turned phrase, however, which earned for Justice Jackson high respect and affectionate regard.

His opinions are models of clarity. In the instance of each of these, there was never the slightest doubt as to

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[4] *Edwards* v. *California*, 314 U. S. 160 (decided November 24, 1941).

[5] At p. 183.

[6] At p. 186.

where Justice Jackson stood and why. In agreement or in disagreement his position was abundantly clear. In economic regulations, civil liberties, taxation, commerce, and in the many and varied constitutional problems before the Court, Justice Jackson gave the same measure of directness and forceful expression.

Easy to memory, for example, is his opinion for the Court in the West Virginia compulsory flag salute case, *Board of Education* v. *Barnette*.[7] As he there said:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein."

In *Haupt* v. *United States,* Justice Jackson reflected his trial training in dissecting the defendant's objections to the interpretation reasonably to be given to factual events. Even in a charge of treason, Justice Jackson noted, for the majority, that "it is not required that testimony be so minute as to exclude every fantastic hypothesis that can be suggested."[8]

And in his opinion, partly concurring and partly dissenting, in the *Douds* case,[9] Justice Jackson laid bare the evil design and purposes of the Communist Party in such simple, but dramatic, terms that any schoolboy could quickly understand the basic character of the problem upon a quick reading.

Action by the Government in proper areas of regulation, and through proper means, found Justice Jackson ready to strike down ill-founded attacks. But he was equally outspoken and determined when legally offensive methods were used in the administration of the law. Perhaps typical both of his directness and artistry in laying bare the heart of a matter, is his statement in the *Di Re*[10]

[7] 319 U. S. 624, 642.

[8] 330 U. S. 631, 640.

[9] *Communications Assn.* v. *Douds,* 339 U. S. 382.

[10] *United States* v. *Di Re,* 332 U. S. 581, 595.

opinion condemning an unlawful search and seizure: ". . . a search is not to be made legal by what it turns up. In law it is good or bad when it starts and does not change character from its success."

In other public expressions we also see the many facets of his interests and personality. Justice Jackson's address at the American Bar Center cornerstone ceremony on November 2, 1953, reflects his lifelong interest in the rules of law and the role of the lawyer and judge in their administration. On that occasion, in discussing the responsibility of the Bar in the administration of justice, he remarked: "Cornerstones are commonplace unless they gain distinction from the vision and faith of those who lay them." He then set forth a standard of moral accountability for the legal profession:

"Our profession is duty-bound to supply bold and imaginative leadership to bring and keep justice within the reach of persons in every condition of life, to devise processes better to secure men against false accusation and society against crime and violence, and to preserve not merely the forms of constitutional government but the spirit of liberty under law as embodied in our Constitution."

One need look no further than Justice Jackson himself for an outstanding example of the force and quality of leadership in the bar to which he alluded. As one of the organizers of the Federation of Bar Associations of Western New York in the 1920's, he continued his strong interest in legal reforms and in maintaining the highest standards of ethics among lawyers until his death, when he was engaged in an intensive analysis and search for reforms in our criminal law and procedure.

Even the briefest biographical reference of Robert Jackson must underscore the warmth of his personality. Friendship was natural to one of his capacity for understanding personal values and the large margin for human error. Justice Jackson was always within reach of people—the high and the small. He was not above the

commonplace in life. Indeed, his entire philosophy was related to the simple, but inviolate rights of the little man. Here was dignity, but not coldness. Compassion without mawkish sentimentality. Scholarship, but not snobbery. Mention of the name of Robert Houghwout Jackson stimulates an immediate feeling of affectionate regard.

A wonderful person—a great American—passed this way.

May it please this Honorable Court: In the name of the lawyers of this Nation, and particularly of the Bar of this Court, I respectfully request that the resolution presented to you in memory of the late Justice Robert H. Jackson be accepted by you, and that it, together with the chronicle of these proceedings, be ordered kept for all time in the records of this Court.

The Chief Justice said:

Mr. Attorney General: You have spoken of our Brother Jackson with great affection and understanding. That your eloquent words are to become a permanent record of his standing in his beloved profession and a lasting memorial to his memory makes them of particular significance to the Court. We all share your sentiments. Tradition requires that I should respond to your gracious words rather than another of his associates who knew him personally and professionally much better than I, and who witnessed more closely the processes of his brilliant mind. This perhaps is unfortunate, but by way of extenuation I say with all confidence that I can match the affection of my associates for our Brother if not their ability to record his many great qualities which could be fully known only to those who were favored by long and intimate collaboration with him. But all of us—even his successor who practiced at the same bar and who served on the Court of Appeals of his circuit—enjoyed that collaboration to a degree—some for many years, others for a few, I for only one Court term.

The others knew every facet of his distinguished career, but even I had a unique, though transient, opportunity before coming to the Court to gain a lasting impression of his strong character, his deep convictions, and his understanding of people. For years, it was a midsummer custom with him, as it has been with me, to make a trek with congenial souls to a beautiful grove of giant redwoods in my native state. Here, removed from the stresses of everyday life, there was opportunity for fellowship, reflection and an exchange of ideas that is rarely available to us in busy American life. In the presence of these giants of the forest with their heads above the clouds, standing serenely there since before the birth of Christ, man is equated to time, size, and importance in the scheme of things. In that majestic setting, through an occasional stroll on the mountainside or a swim in the beautiful winding river or sitting around an evening campfire, I first came to know the man we there affectionately called Bob Jackson. In this relationship I acquired some insight into his mind and character that might not even be revealed in his daily work or in his formal writings for the Court. It was a rewarding experience for me—one I shall not forget.

It often happens that men best reveal their character at such times and also when writing informally of other people. A few days ago my Brother Frankfurter called to my attention a delightful article written by Justice Jackson more than a decade ago concerning what he termed "the disappearing country lawyer." If time permitted, I could with great profit to all of us read it from beginning to end because it is as character-revealing as anything he has, to my knowledge, written. I must at least read two passages from it. In paying his respects to the country lawyer, which he always claimed to be, he wrote:

> "That lawyer has been an American institution—about the same in South and North and East and West. Such a man understands the structure of

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society and how its groups interlock and interact, because he lives in a community so small that he can keep it all in view. Lawyers in large cities do not know their cities; they know their circles, and urban circles are apt to be made up of those with a kindred outlook on life. But the circle of the man from the small city or town is the whole community and embraces persons of every outlook. He sees how this society lives and works under the law and adjusts its conflicts by its procedures. He knows how disordered and hopelessly unstable it would be without law. He knows that in this country the administration of justice is based on *law practice*.

"Paper 'rights' are worth, when they are threatened, just what some lawyer makes them worth. Civil liberties are those which some lawyer, respected by his neighbors, will stand up to defend. Any legal doctrine which fails to enlist the support of well regarded lawyers will have no real sway in this country."

And then, after reciting some of the human foibles of that species, he wrote in summation:

"But he loved his profession; he had a real sense of dedication to the administration of justice; he held his head high as a lawyer; he rendered and exacted courtesy, honor, and straightforwardness at the bar. He respected the judicial office deeply, demanded the highest standards of competence and disinterestedness and dignity, despised all political use of or trifling with judicial power, and had an affectionate regard for every man who filled his exacting prescription of the just judge. The law to him was like a religion, and its practice was more than a means of support; it was a mission. He was not always popular in his community, but he was respected. Unpopular minorities and individuals often found in him their only mediator and advocate. He was too independ-

> ent to court the populace—he thought of himself as a leader and lawgiver, not as a mouthpiece. He 'lived well, worked hard and died poor.' Often his name was forgotten in a generation or two.
>
> "It was from this brotherhood that America has drawn its statesmen and its judges. A free and self-governing Republic stands as a monument for the little known and unremembered as well as for the famous men of our profession."

This could well be a summation of the life of Justice Jackson, both in theory and in practice. There is, however, one exception. He is not destined to be among those of whom he wrote "Often his name was forgotten in a generation or two." So long as America maintains the fight for preservation of our constitutional freedoms, so long as free men anywhere believe that the experiences of the past can be helpful in solving the problems of their day, so long as the decisions of this Court are regarded as a bulwark of human liberty, just so long will the name of Robert H. Jackson be remembered for his high personal character, his dedication to American principles, and his devotion to duty. No finer remembrance than this could be left by any American.

And as the years roll by, generations of the town of his youth will visit his resting place in the peaceful countryside near little Frewsburg, which he loved so well, and there gather inspiration and strength from his fine life and from the pride that he so often expressed of being—in their community—a "country lawyer." To this man—"country lawyer," statesman, jurist, and friend—we humbly pay homage today.

Let the Resolutions be spread upon the minutes of this Court.