

PROCEEDINGS IN THE SUPREME COURT OF
THE UNITED STATES IN MEMORY OF
MR. JUSTICE BYRNES*

MONDAY, DECEMBER 18, 1972

Present: MR. CHIEF JUSTICE BURGER, MR. JUSTICE BRENNAN, MR. JUSTICE STEWART, MR. JUSTICE WHITE, MR. JUSTICE MARSHALL, MR. JUSTICE BLACKMUN, MR. JUSTICE POWELL, and MR. JUSTICE REHNQUIST.

THE CHIEF JUSTICE said:

The Court is in Special Session this afternoon in memory of our late Brother, Mr. Justice James Francis Byrnes.

At this time the Court recognizes the Solicitor General of the United States.

Mr. Solicitor General Griswold addressed the Court as follows:

Mr. Chief Justice, and may it please the Court:

Earlier this afternoon a meeting of the Bar was held to honor the memory of Justice James F. Byrnes. At that meeting resolutions were adopted which had been prepared by a Committee on Resolutions. I shall read the resolutions so adopted to the Court, and the Attor-

*Mr. Justice Byrnes, who retired from active service on the Court October 3, 1942 (317 U. S. vii, viii), died in Columbia, South Carolina, on April 9, 1972 (405 U. S. vii). Services were held at the State House and at Trinity Episcopal Church, Columbia, South Carolina, on April 12, 1972. Interment was in Trinity Episcopal Church Cemetery, Columbia, South Carolina, on April 12, 1972.

ney General will then move that they be accepted by the Court and spread on the Court's records.

The resolutions unanimously adopted are as follows:

RESOLUTIONS

On behalf of the Bar of the Supreme Court, we have met to record our respect for James Francis Byrnes, Justice of the Supreme Court of the United States from July 11, 1941, to October 3, 1942. His death on April 9, 1972, closed a career of unique public service. Many have paid their tributes.[†]

President Nixon: "No man in American history has held so many positions of responsibility in all branches of our Government with such distinction."

Senator Mansfield: "I wish to join in the remarks just made . . . at the passing of an old friend, . . . a man of many accomplishments, . . . a man of integrity, patriotism and deep understanding. Those of us who had the pleasure and the privilege of knowing him will miss him, and miss him greatly."

Senator Scott: "James F. Byrnes was an American's American. His distinguished career spanned five decades, it was capped off by unselfish service to the United Nations and subsequently to his fellow men throughout the world. Historians have placed the great accomplishments of James F. Byrnes high on their list of those who have labored to insure a world of peace."

Senator Thurmond: "His service to the Nation and to the State of South Carolina are hallmarks of great distinction. The scope of his long public career was broad, and he was recognized around the world for his achievements."

[†]U. S. Congress, 92d Cong., 2d Sess., Memorial Addresses and Other Tributes in the Congress of the United States on the Life and Contributions of James F. Byrnes, Washington, D. C., U. S. Government Printing Office, 1972; Proceedings in the United States Senate, April 10-13, 19, May 17, 23, 1972; Proceedings in the U. S. House of Representatives, April 10, 13, 1972.

Senator Hollings: "His was the world of action—the arena of great events. Presidents, prime ministers, and kings eagerly sought his advice. But his wisdom was never exclusively reserved for statesmen and monarchs. It was given as openly and freely to anyone willing to listen."

Governor West: "The State of South Carolina has lost its most honored citizen; the Nation has lost a dedicated servant; and the world has lost a great leader."

General Lucius Clay: "He met with the great and with the humble, and was at home with both. His warm compassion, his deep and abiding loyalty, and his faith in America and its people were ever inspiring. There are only a few—a very few—in a world of many people who can by virtue of both character and achievement be called great. Justice Byrnes was such a man. But of the few who are recognized as great, there are an even smaller number who are both great and good. Justice Byrnes was also a good man."

James F. Byrnes was born in Charleston, South Carolina, May 2, 1879, in a simpler era, when America was about to make its great leap into modern times. The Nation in which he began his life was predominantly rural and overwhelmingly isolationist. But the Nation in which he ultimately rose to leadership was complex, highly industrialized, and intimately involved in the affairs of the world. Few men have lived to witness as much history—as much profound transformation—as did Justice Byrnes.

Those who knew him marveled at the ease with which he moved through the passing years. There was ever present some tremendous inner strength which helped him hold fast to his moorings amidst the changes he encountered. America's greatest men have seemed almost invariably to possess that quality. Through it all, they have retained their fundamental faith in their fellow man and their deep belief in the destiny and goodness

of their native land. James F. Byrnes had that kind of character—that kind of greatness.

Those traits of character were nourished during his early years in Charleston. Jimmy Byrnes was the son of Irish immigrants. His father died before he was born. His mother faced the upbringing of two young children—a girl and a boy—having only about \$200. It took hard work and devotion to see the family through—but these were abundant assets in the Byrnes household. The young boy soon was peddling seafood and selling newspapers up and down the streets of Charleston, while his mother worked long hours as a dressmaker and took on the additional task of leading a local Catholic choir.

Jimmy attended St. James School, but the family resources allowed no additional formal education. High school was out of the question. By age 14, he was working for \$2 a week as office boy in one of Charleston's leading law firms—Mordecai, Gadsden, Rutledge, & Hagood. It was Benjamin Rutledge of that firm who advised young Byrnes to seek an education by reading books in the Charleston Library. His following that advice led to his becoming one of the best informed and educated men of his generation, and his education never ended.

In 1900, when 20, he won a competitive examination for the position of Court Stenographer for the Second Judicial Circuit at Aiken, South Carolina, where, in his spare time, he read law under Judge James Aldrich. From 1903 until 1907 he was editor and publisher of *The Aiken Journal and Review*, a weekly newspaper. He was admitted to the Bar in 1904 and practiced law in Aiken from 1904 to 1908. On May 2, 1906, he married Miss Maude Busch, whom he, as a newcomer to Aiken, had met in the choir of the Episcopal Church there. In casting about for an explanation of the subsequent flowering of his remarkable life, it is easy to see that "Miss Maude" was at the heart of all he was

and did. She was his inspiration—ever his charming, devoted, and gracious helpmate.

Things moved quickly for this young couple. Soon the “public years”—over 50 years of dedicated service to his State and Nation—would begin. As was stated in the citation when he much later received the Doctor of Laws degree from Yale University: “He shattered the tradition that energy ends at the Mason and Dixon Line.” In 1908 he was elected Solicitor for the Second Judicial Circuit of South Carolina. It was rumored that he did not enjoy prosecuting his fellow man. In any event, he, a Democrat, won a seat in Congress two years later and served in that office for 14 years. There he enjoyed warm and constructive associations with the political leaders of that time—men like Joe Cannon and Champ Clark, Speakers of the House—Presidents Woodrow Wilson, Warren Harding, and Calvin Coolidge—and Carter Glass, with whom he worked effectively for the adoption of the Federal Reserve Act, which is still our central banking law. In the House he was identified with many important legislative activities and was soon recognized as a master of the art of persuasion and conciliation. There, as a member of an Appropriations Subcommittee, he met and became a fast friend of young Franklin D. Roosevelt, then Assistant Secretary of the Navy.

At the end of seven terms in the House, he came home from Washington in 1924 determined to seek greater opportunities for public service offered in the Senate. The race that year marked his only loss of an election. Former Governor Cole L. Blease defeated him in a closely contested second primary.

At the invitation of Sam Nichols, with whom he had served in Congress, and Cecil Wyche, he moved to Spartanburg and successfully practiced law there for six years in the firm known as Nichols, Wyche, & Byrnes. In 1930, he returned to politics, defeated Senator Blease, and thus commenced his service in the Senate on the

eve of the first administration of President Franklin D. Roosevelt. He had supported Roosevelt for nomination as Vice President in 1920, and he supported him for President in 1932. President Roosevelt relied upon him to guide much of the sweeping and complicated New Deal legislation. It was a tribute to the talent and tact of Senator Byrnes that as a first-term Senator he could play such an important role without offending the party leaders and committee chairmen. He was easily re-elected to the Senate in 1936.

On visits to Japan in 1935 and to Germany in 1937, Senator Byrnes had been shocked by the mounting evidence of war preparations he observed. On his return from Germany he reported to President Roosevelt his deep concern and his feeling that immediate action was necessary to awaken the Congress and the people to the Nation's imperative need of increased appropriations for national defense. He found that the President fully shared his concern and welcomed his assistance. But it was a long, hard, up-hill struggle, and both the President and Senator Byrnes had to be careful not to get too far ahead of public opinion and the Congress. Then came Hitler's annexation of Austria in March 1938 and the Munich agreements in September. Despite the appeals of the President and Secretary Hull in the spring of 1939 for modification of the Neutrality Act, Byrnes was unable to obtain action by the Congress before adjournment. At the end of August Hitler invaded Poland.

The President then informed Senator Byrnes that he was calling a special session of the Congress for September 21 to take action on the repeal of the Arms Embargo. He asked Mr. Byrnes to come to Washington to discuss the situation with him, particularly the steps he contemplated taking to obtain bipartisan cooperation, both in the Executive Branch and in the Congress. Byrnes not only arranged to clear the way for the confirmation of the appointments of Henry Stimson as

Secretary of War and Frank Knox as Secretary of the Navy, but at the President's request took over the management of the fight for the repeal of the arms embargo in the Senate.

In the summer of 1940 the President requested Mr. Byrnes to represent him on the Platform Committee at the Democratic National Convention in Chicago. Byrnes handled the delicate and bitterly contested war clauses with consummate skill, managing to add the saving words "except in case of attack" to the pledge "not to participate in foreign wars." In August after the fall of France, Byrnes was able to attach for General Marshall an amendment to a defense appropriation bill which would permit the promotion of officers of exceptional ability, like Eisenhower, Patton, Clark, and Bradley over others with higher seniority. He was also able to expedite the passage of the highly controversial Selective Service Act on the eve of the election.

In January 1941, the President called on Senator Byrnes to assume responsibility for piloting the Lend-Lease bill through the Congress. Byrnes was a member of both the Foreign Relations Committee and the Appropriations Committee. During the winter and spring Byrnes gave unstintingly of his time and energy to secure the passage of the Lend-Lease bill and the initial appropriation of seven billion dollars to implement its program.

On June 12, 1941, in the afterglow of their cooperation in the promotion of the needed legislation, President Roosevelt named Senator Byrnes to fill a vacancy on the Supreme Court. The nomination was confirmed by his fellow Senators the same day. He took office July 11, 1941, and sat for the first time October 6, 1941. The transition from the Senate to the quiet chambers of the Court was not altogether easy. But he attacked the new assignment with that lively curiosity, sensitivity, perceptiveness, and practicality which were his trademarks. At a distance he had been an admirer of

Chief Justice Stone. That admiration promptly flowered when they came together in a working relationship, and it was to the Chief Justice that Byrnes turned most often for counsel during his first weeks on the Court.

In the short span of a single term of Court, the new Justice's philosophy hardly had time to take shape, and its full profile is not easily discerned from the 15 opinions he wrote. His brief service on the Bench revealed a dedication to the Constitution as written, a respect for the place of the judiciary, the Congress, and the President, in our form of Government, and a true appreciation of the powers reserved to the States.

His initial opinion was in the important case of *Edwards v. California*, 314 U. S. 160 (1941), in which the Court unanimously held that a California statute making it a crime to knowingly bring a nonresident "indigent person" into that State violated the Constitution of the United States. Byrnes' majority opinion was that the California statute was unconstitutional because it erected a barrier to interstate commerce. JUSTICE DOUGLAS, in a concurring opinion in which Justices Black and Murphy joined, and Justice Jackson in a separate concurring opinion, were of the view that the invalidation of the California statute should be based upon the Privileges and Immunities Clause of the Fourteenth Amendment. The trio of opinions which ultimately emerged were eyed somewhat quizzically by the majority spokesman, fresh from long years in the legislative forum in which earthy compromises were the law of life.

In his maiden opinion, Justice Byrnes revealed that he was not an undeviating disciple of *stare decisis*. In 1837 the Supreme Court had said: "We think it as competent and as necessary for a state to provide precautionary measures against the moral pestilence of paupers, vagabonds, and possibly convicts, as it is to guard against the physical pestilence which may arise

from infectious articles imported, or from a ship, the crew of which may be laboring under an infectious disease." *City of New York v. Miln*, 11 Pet. 102, at 142-143. Although he quoted from the *Miln* language and noted the casual repetition of similar language by the Court over the years, as recently as 1898, *Missouri K & T R. Co. v. Haber*, 169 U. S. 613, 629, he observed that times and attitudes change, and he rejected the notion that one without employment or funds is a "moral pestilence."

Following *Edwards*, Justice Byrnes wrote 14 opinions for the Court. They included three dealing with the priorities enjoyed by federal claims against insolvent or bankrupt debtors, *United States v. Emory*, 314 U. S. 423 (1941), *United States v. Texas*, 314 U. S. 480 (1941), and *United States v. New York*, 315 U. S. 510 (1942); two dealing with insurance for members of the Armed Forces, *Halliday v. United States*, 315 U. S. 94 (1942), and *United States v. Citizens Loan & Trust Co.*, 316 U. S. 209 (1942); and one dealing with each of the following subjects: peonage, *Taylor v. Georgia*, 315 U. S. 25 (1942); an anti-racketeering statute, *United States v. Local 807*, 315 U. S. 521 (1942); a quantitative restriction on corporate landholding in Puerto Rico, *Puerto Rico v. Rubert Hermanos Co.*, 315 U. S. 637 (1942); the Miller Act, *United States v. Irwin*, 316 U. S. 23 (1942); review of an order of the National Labor Relations Board, *Southern S. S. Co. v. NLRB*, 316 U. S. 31 (1942); Indian lands, *Sioux Tribe v. United States*, 316 U. S. 317 (1942); a coerced confession, *Ward v. Texas*, 316 U. S. 547 (1942); an antitrust consent decree, *Chrysler Corp. v. United States*, 316 U. S. 556 (1942); and the Fair Labor Standards Act, *Walling v. Belo Corp.*, 316 U. S. 624 (1942).

Of these, *Taylor v. Georgia*, striking down a Georgia statute binding a workman to his private employment by the threat of imprisonment, and *Ward v. Texas*, reversing a state court criminal conviction based upon

a confession obtained by coercion, are indicative of Justice Byrnes' reaction to oppression on economic or racial grounds, although the result in each case was clearly supported by earlier decisions of the Court. *Local 807* reflects a strong inclination to search for and to honor Congressional intention. And *Southern S. S. Co.*, which involved conduct of seamen considered by the Court to be mutinous, reflects an abhorrence of such conduct so sharp as to require holding that the Labor Board had abused its discretion in ordering reinstatement of the strikers.

Although he wrote no dissents or concurring opinions, Justice Byrnes was in the minority in 12 cases, six times in the company of Justice Black, five in the company of Justice Frankfurter, and one in the company of neither.

It is not easy to speculate how Justice Byrnes' service as a member of the Court would have developed had he remained there for many of the 30 years of life which still lay before him. That was not to be.

Sixty-three days after he took his seat on the Court, Pearl Harbor brought the minds of all to the task of winning World War II. A greatly harassed President turned to Justice Byrnes for counsel in the formulation of military policy and the drafting of needed war legislation. Byrnes put the President at ease by assuring him that if he thought that in wartime because of his—Byrnes'—experience in the ways of the Congress and of the Government he could be of greater service elsewhere than on the Court, he hoped the President would call upon him. Within the week it was arranged that the Attorney General would confer with Byrnes on all the emergency war legislation and related executive orders. Early in January 1942, an omnibus bill known as the Second War Powers Act was submitted to the Congress and passed with record speed. Although the activities of Byrnes outside the Court became known, no public announcement was made, as both the President

and Byrnes thought for the time being Byrnes could be more effective working quietly and unobtrusively.

In the summer of 1942 the inflationary situation was becoming tense. Legislation to establish ceilings on wages and prices was stalled in the Congress. The President's Council and others had recommended to the President that he issue an Executive Order establishing an Office of Economic Stabilization vested with power to control wages and prices, without awaiting action by the Congress. When consulted, Byrnes advised strongly against that course on the ground that the controls were too sweeping and affected too many people to be attempted without congressional approval. The President made another appeal to the Congress, and a fireside chat, and the legislation was approved by the Congress and became effective on October 2, 1942.

The following day Byrnes was summoned to the White House. The President asked him to take a leave of absence from the Court and become the Director of Economic Stabilization. The President also stated that there were other duties beyond those of the Director of Economic Stabilization that he would wish him to assume. Justice Byrnes replied that no one could grant a Justice of the Supreme Court a leave of absence and that the Justice alone was responsible for the discharge of his duties. He further stated that the regulation of wages and prices involved so many decisions with political implications that it would not be proper for him to assume such duties and remain on the Court. He then inquired about the "other duties." The President explained that he, himself, would not have time to devote to the prosecution of the war and the many related diplomatic problems and have any appreciable time left to supervise domestic affairs. He wanted Byrnes to relieve him of the problems on the home front and the jurisdictional disputes which increased with the creation of every new agency. In these disputes he wanted Byrnes to act as "judge" and he would let it be known

that Byrnes' decision was his decision. For all practical purposes Byrnes would be Assistant President with offices in the White House. On October 3, 1942, Justice Byrnes promptly resigned from the Court and accepted appointment as head of the Office of Economic Stabilization. His fellow Justices expressed their deep sense of loss and their awareness that he had been moved by "a sense of duty to render a needed service of public importance in a time of great national emergency." He responded that it was indeed "only a sense of duty [which] impelled me to resign from the Court." (317 U. S. VII, VIII.)

As Director of Economic Stabilization, Byrnes created no organization of his own. He had only four or five personal assistants. He conceived it to be his task to see that the various agencies involved in the stabilization efforts—OPA, Agriculture, War Labor Board, RFC, WPB, and the Treasury—cooperated and worked as a team. He gained the confidence, goodwill and respect of all those who looked to him for guidance—those representing labor as well as those representing management, and those representing agriculture as well as those representing industry. But inflation was already out of hand and the fight to curb the rise of wages and prices without hampering production was a tough one. From October 1942 to April 1943 the rise in the cost of living index was held to 4.3 percent. Byrnes was not satisfied and prepared a stronger, more effective directive known as the Hold-the-Line order. At Byrnes' suggestion, the President asked Judge (later Chief Justice) Fred Vinson to take over as Director of Economic Stabilization in order that Byrnes could devote his energies to expediting the mobilization of our resources for the prosecution of the war. With the aid of Byrnes' Hold-the-Line order which he courageously administered, Judge Vinson was able to hold the rise in the cost-of-living index from April 1943 until his resignation in April 1945 to 3.2 percent.

Byrnes, on May 27, 1943, had become Director of the Office of War Mobilization under an order of the President which authorized him to originate policies and lay out programs that would coordinate the work of all war agencies and departments in any way connected with the production, procurement, transportation, and distribution of civilian and military supplies. It probably constituted a greater delegation of authority than a President had ever previously made. Byrnes became in a very real sense Assistant President. With few exceptions, his authority was respected and welcomed. His first act as War Mobilizer was to call upon all agencies engaged in the war effort to review and report to him their procurement programs realistically and objectively. The President sought his counsel on the most delicate matters affecting his relations with the highest officials in the administration, and with congressional leaders, and left the handling of the troublesome coal and railroad strikes, in large measure, to Byrnes.

In June 1944, the President suggested to Byrnes that he wished him to become the permanent chairman of the forthcoming Democratic National Convention in Chicago and a candidate for Vice President. Byrnes was prepared to proceed as the President wished. But when some opposition in labor circles was voiced to Byrnes, and it appeared that he could not have the exclusive support of the President, he withdrew his candidacy.

After the 1944 election, the President, in January 1945, invited Byrnes to accompany him to the Yalta Conference where postwar planning was to be considered. There Byrnes got a first taste of some of the difficult problems which would confront him later that year as Secretary of State. When Montgomery crossed the Rhine in March 1945, everyone knew the end of the War was near. Mr. Byrnes saw that the great domestic job ahead was reconversion. His had been the task of mobilization. At his suggestion, Fred Vinson

was appointed his successor. In early April Mr. Byrnes returned to his Spartanburg home for a well earned rest. That was not to be. President Roosevelt died April 12.

A few days after President Truman took office, he advised Byrnes that he wished to appoint him Secretary of State, but it was agreed that no announcement of the appointment would be made until the end of the United Nations Conference at San Francisco. In the meantime the President appointed him to the Interim Committee he had created to consider when and how the newly developed atomic bomb should be used. The Committee's recommendation for the use of the bomb, in the opinion of many at the time, saved hundreds of thousands of lives that would have been lost in the prolongation of the War. Mr. Byrnes took the oath of office as Secretary of State on July 3, 1945. One of his first official acts was to sign the protocol formally attesting that the Charter of the United Nations had come into being. He called the day "memorable—for all the peace loving peoples of all nations," but cautioned that peace depended on the will of the peoples rather than on documents.

When Byrnes became Secretary of State, World War II was coming to a close, but the struggle for peace was beginning. The United States and the Soviet Union—each after its fashion—had sought to suppress their differences and to cooperate in winning the war. The war-weary people throughout the world looked to them to cooperate in restoring peace. But with the defeat of their common enemies, the suppressed ideological differences of the two great Super-Powers were beginning to surface and to give rise to fears that the two great allies in war would become bitter and distrusting rivals in the making of the peace.

In this distressing situation Byrnes pleaded for patience and firmness on our part in the pursuit of peace—patience in not abandoning the pursuit and hope of

world peace, firmness in resisting demands which did not advance the cause of peace. While eager to reach agreement where he could find common interest to sustain agreement, he was particularly firm in avoiding any agreement or understanding that would delay or hamper the restoration of conditions of peace and normal life in areas under our control.

Byrnes was a realist. If in negotiation he could not secure all that he wished to secure, he would ask himself whether the cause he pleaded would fare better with no agreement than with such agreement as he could obtain. If he concluded that the agreement he could obtain was better than no agreement, he preferred a half loaf to no loaf. It was this realism of Secretary Byrnes which made possible the restoration of conditions of peace in Western Europe and which laid the foundation for the present strength of Western Europe.

It was Secretary Byrnes who arranged the reparation settlement at Potsdam which confined the Soviet claims for reparations from Germany to reparations from the Soviet zone, apart from only limited contributions from the Western zones. Byrnes foresaw that without such a settlement the Russians would take as war booty or reparation whatever they wanted from the Soviet zone, and then in the absence of such settlement would make inflated claims against the Western zones for additional reparations which would seriously hamper economic recovery.

At the meeting of the Council of Foreign Ministers in Paris on July 11, 1946, Byrnes was able to resolve an equally, if not more, significant controversy in a strikingly similar fashion. It had been agreed in principle at Potsdam that Germany should be treated as an economic unit and common economic policies should be applied in all zones. But the Allied Control Council could not agree on how Germany should be administered as an economic unit. The Soviet Union was dragging its feet and France also was procrastinating. In the

meantime, the economic situation was deteriorating. Whereupon, in the Council of Foreign Ministers, Byrnes formally announced:

"Pending agreement among the four powers to implement the Potsdam agreement requiring the administration of Germany as an economic unit, the United States will join with any other occupying government or governments for the treatment of our respective zones as an economic unit. The continuation of the present situation will result in inflation and economic paralysis. It will result in increased costs to the occupying powers and unnecessary suffering to the German people. The United States is unwilling to share the responsibility for the continuance of such conditions."

On September 6, 1946, Secretary Byrnes made his memorable speech at Stuttgart, formally setting forth the American policy towards Germany which charted the course that the Western Allies were to follow in restoring peace, prosperity, security, and freedom within the allied zones.

The British promptly agreed to merge their zone, and the French did likewise a few months later. The Soviet Union held aloof, but could no longer hamper the slowly developing economic recovery in the West. The merger of the Western zones, called Trizonia, made possible in due course the establishment of the democratically responsible West German Government equipped to play its part in the economic revival of Western Europe.

To shore up Germany against advancing Communism, Secretary Byrnes had made it clear at Stuttgart that America favored economic reconstruction in Germany. He had declared, "The American people want to return the Government of Germany to the German people. The American people want to help the German people win their way back to an honorable place among the free and peace-loving people of the world." As General

Clay said at the funeral of Secretary Byrnes, April 12, 1972, "I think this was his finest hour and the policy which he announced then is still our basic policy. We had taken a major step to accepting the leadership of the free world, later to result in the Marshall Plan, the North Atlantic Treaty Organization, and the establishment of the German Government." The German people still gratefully remember Secretary Byrnes' speech at Stuttgart. In 1956, they held there a Tenth Anniversary Celebration, including a great ovation to Secretary and Mrs. Byrnes who were in attendance as honor guests. A Twenty-fifth Anniversary Celebration was held last year. Secretary Byrnes, then 91, was unable to attend.

In April 1946, Secretary Byrnes had informed President Truman that medical tests had revealed he had a heart problem and that the doctors had advised him to relax. He wished therefore to resign as soon as he had completed the peace treaties with the satellite enemy states. He had submitted his resignation effective July 1, 1946, and agreed with the President he would remain until the treaties were completed. A subsequent test by a different doctor showed no trace of heart trouble. But, being in doubt as to which test most truly reflected his condition, he did not inform the President of the subsequent test, and did not withdraw his resignation. When he had completed the treaties, he reminded the President of his resignation and asked to be released. The President said he had hoped Byrnes had forgotten the resignation. Byrnes' signing the treaties on January 20, 1947, was his last official act as Secretary of State.

After his retirement as Secretary of State on January 21, 1947, he divided his time for the next two years between his home in Spartanburg and law practice in the well-known Washington firm of Hogan and Hartson, which had been founded by his cousin, Frank Hogan. Soon finding himself relaxed and in good health, the

world-renowned statesman, at the urging of many friends, consented to wind up his extraordinary political career by serving his beloved South Carolina as Governor from 1951 to 1955. His term as Governor was one of enlightenment and pointed the way for continuing progress in his State. In his inaugural address he had stated: "It is our duty to provide for the races substantial equality in school facilities. We should do it because it is right. For me that is sufficient reason. If any person wants additional reason, I say it is wise." This set the tone for his administration. His recommendations to the 1951 General Assembly resulted in the enactment of a vast school improvement program designed to furnish equal facilities for all children.

When he retired from public life, January 19, 1955, at the end of his four-year term as Governor, it was said that the school facilities for black children in South Carolina then were superior to those for white children. Two-thirds of the bond money had been spent to provide facilities for black children. When the 1954-1955 decisions of the Court dismantled the dual public school system, South Carolina accomplished the transition gracefully and without violence. During his administration, the State also provided substantial funds for better college and university education of both races, for the care of the mentally ill, and for other needed public improvements.

Mr. Byrnes' own education did not reach high school, but he was a self-taught scholar. His schooling never ended. In his later life he liked to say, "I am being educated by degrees." Starting in 1935, he received honorary doctorate degrees from the following colleges and universities: College of Charleston, Presbyterian College of South Carolina, John Marshall College of Jersey City, University of North Carolina, The Citadel, University of South Carolina, Columbia University, Furman University, Wofford College, Washington and Lee University, Yale University, and University of Pennsylvania.

Having experienced adversity and hardship during his youth, Mr. Byrnes had compassion for all who were similarly situated. In 1948, with his competent and devoted secretary, Miss Cassie Connor, as Trustee, he established the James F. Byrnes Scholarship Foundation, to provide college educations for boys and girls who had lost their parents early in life. He funded it principally with the proceeds of his two books: *Speaking Frankly* (Harper & Brothers, 1947) and *All In One Lifetime* (Harper & Brothers, 1958), and with his retirement pay, and the proceeds of the sale of his "Isle of Palms" home. That private Foundation already has provided college educations for almost 400 "Byrnes Scholars." Since the deaths of Mr. Byrnes and Miss Connors, the fund for the Foundation continues to grow and work under the guidance of executives selected by them, including now two of the former "Scholars." Many of the "Scholars" already have made good in life and are, in turn, making their financial contributions to the Foundation. Friends of Governor and Mrs. Byrnes are contributing, and much of his estate has been added to its usefulness. Approximately \$400,000 already has gone into this magnificent educational enterprise. Mrs. Byrnes early this year wrote: "The results have given us much pleasure and pride and, although we have no children of our own, we now have 380 Scholars who call us Mom and Pop."

In 1943, he was awarded, for his World War II service to our Country, the Distinguished Service Medal, he being one of only 14 civilians who have ever been awarded that honor.

In 1953, while he was Governor, he was appointed by President Eisenhower as United States Delegate to the United Nations General Assembly, where he served with distinction.

In 1941, he was elected Life Trustee of Clemson University, with which he maintained warm associations until

his death. In 1966, he accepted Clemson's formal request, by unanimous resolution, to place the vast collection of personal papers, documents, historical memoranda, memorabilia, and souvenirs of his remarkable life in the James F. Byrnes Room of its main Library, for permanent preservation. A competent custodian is on duty there to make these treasures accessible to researchers, historians, and the millions of others who keep him in revered and grateful memory.

We do

RESOLVE that we, the Bar of the Supreme Court of the United States, express our profound sorrow at the death of Justice James Francis Byrnes, and our grateful appreciation for his long life of public service of the highest order in the Executive, Legislative, and Judicial Branches of his State and National Governments, giving his all to a search for light and truth and justice and the promotion of love, peace, and freedom for all mankind:

IT IS FURTHER RESOLVED

That the Attorney General be asked to present these Resolutions to the Court and to ask that they be inscribed on its permanent records and that copies of these Resolutions be forwarded to Mrs. Byrnes in Columbia, South Carolina.

Robert R. Carpenter, Rockhill, S. C.

Benjamin V. Cohen, Washington, D. C.

J. Bratton Davis, Columbia, S. C.

James E. Doyle, Madison, Wis.

Nelson Hartson, Washington, D. C.

E. F. Hollings, Washington, D. C.

W. F. Prioleau, Jr., Columbia, S. C.

David W. Robinson, Columbia, S. C.

T. Frank Watkins, Anderson, S. C.

C. G. Wyche, Greenville, S. C.

E. Smythe Gambrell, Atlanta, Ga., *Chairman.*

THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General. Mr. Attorney General.

Mr. Attorney General Kleindienst addressed the Court as follows:

Mr. Chief Justice, and may it please the Court:

The Bar of this Court met today to honor the memory of James Francis Byrnes, whose brief tenure as Associate Justice of this Court was characteristic of a lifetime of exceptional service to his Nation. A man of action and of experience, James F. Byrnes is among the very few Americans who have served in all three branches of the Government at the highest levels and with great distinction. His accomplishments, especially during the war and early postwar years, when as "assistant president" he directed the crucial efforts on the home front—and as Secretary of State—laid the foundation of our postwar foreign policy, will surely endure for the life of this Nation.

It is not difficult to see why James F. Byrnes had so important an impact on the history of our country, for he combined to a rare degree the qualities that make for leadership and influence: a good mind, good judgment, character, and energy. These were, of course, rooted in his childhood. Raised by a widowed mother in Charleston, South Carolina, young "Jimmy" Byrnes learned by example the value of perseverance and thrift. The necessities of life meant the end of formal schooling at the age of 14, but not the end of self-education. His discipline in pursuing a course of reading in the Charleston library prepared him well for the study of law in Judge Aldrich's chambers while acting as court stenographer in Aiken.

It was not long after James Byrnes passed the bar, at the age of 24, that he began his career in public

service—first as prosecuting attorney, then for 14 years as Congressman and 10 years as Senator. After one term as Associate Justice of this Court, he served as Director of Economic Stabilization and later as Director of the Office of War Mobilization, Secretary of State, and finally Governor of his beloved State of South Carolina.

Quite early in his remarkable career, James Byrnes had begun to learn, as he later observed, that “in all relationships in life success and happiness can be achieved only by a willingness to make concessions.” This lesson served him particularly well in the Congress where, in his words, “the art of legislating is the art of intelligent compromise.” Those who knew him as a legislator recognized him as a master of this art. But compromise for James Byrnes was never the surrender of principles; it was rather the temporary retreat from one desired objective in order to attain another.

As Congressman and Senator, Justice Byrnes commanded the respect and admiration of his colleagues of both parties. As he later observed, a legislator can achieve distinction if he possesses unusual ability or unusual personality. Justice Byrnes had both, and to these qualities he added, characteristically, unusual diligence and unusual civility. He never let political differences disrupt his personal relations; and he knew well that today’s opponent may be tomorrow’s ally.

Once, after a hard-fought battle over the Administrative Reorganization Act of 1939, in which Senator Byrnes was successful, the leader of the opposition, Harry Byrd of Virginia, was among the first to congratulate Byrnes. “That,” he later remarked of Byrd, “is one of the reasons he is respected and loved.” And so it was with Byrnes himself.

Even before he had served in all three branches of the Government, James Byrnes had developed a strong sense of the importance of separation of powers, which he regarded as the principal safeguard against dictatorship. It was on this ground that he advised against and resisted

President Roosevelt's ill-fated effort to purge the Senate in the 1938 primaries.

When in July of 1941 Byrnes was appointed to fill the seat of retiring Justice James McReynolds, he brought with him his commitment to separation of powers, which, had his tenure been a longer one, would surely have been reflected in his decisions.

His fifteen opinions for the Court could not, of course, do more than suggest the new Justice's developing judicial philosophy. He could later say, however, that the "supreme test of judicial statesmanship," in his view, was "to preserve the balance between the powers of the Federal Government and the powers of the State." He strongly believed that the role of the Court is to interpret the laws and not to make them, and that it should resolve ambiguities by consulting the legislative history in an effort to understand the intent of the legislature.

His colleagues on the Court quickly recognized the new Justice's special abilities and personal qualities. On a draft of one opinion, a colleague wrote: "Neat and complete. I verily believe that you say more by saying less—and what you say is truly good."

Like Holmes, Justice Byrnes believed a dissenting opinion should not be written unless a Justice felt strongly on the subject. He did not find it necessary to write a dissent during his one term, although his opinion for the court in *Walling v. Belo Corp.*, 316 U. S. 624, involving a difficult question under the Fair Labor Standards Act, was drafted as a dissent and was issued as the majority opinion only after it persuaded Justice Jackson to change his vote.

Later, when the President called upon him in a time of national emergency, Justice Byrnes saw that he would have to resign. He has said: "It was not easy to leave the Court, with its opportunity for service, its prestige and security—the work I liked and the Associates for whom I had a genuine affection. But in time of war my duty was plain." And his responsibilities were awesome.

As Director of the Office of War Mobilization, Justice Byrnes was given greater authority than any President had previously delegated, with full responsibility for all federal efforts connected with the production and distribution of civilian and military supplies. When Byrnes resigned from that position several years later, President Roosevelt said he would reappoint him to the Supreme Court when the next vacancy occurred. Byrnes, the political realist, demurred, however, saying that his reappointment would lead to false and damaging speculation that there had been a secret understanding between them.

As President Truman's Secretary of State and later as Governor of South Carolina, James Byrnes completed one of the most diverse and extraordinary public careers in our country's history. In January 1955 he left the Governor's office and public life with an understandable sense of fulfillment. His own words are an especially fitting expression of that sentiment:

"Within me was the satisfaction that comes from the consciousness that through the years I had faithfully tried to discharge my duty. I knew I had made mistakes, because I am human. I knew I had made political enemies because I had taken positions on controversial issues and fought to sustain those convictions. But there was compensation in the knowledge that I had made countless friends whose understanding and sympathy had enriched my life.

"As I thought of the past, overriding all thoughts of personal relations was my realization that this country is truly the land of opportunity.

"Now as I think of the future, my hope is that my experiences may encourage others to dedicate their talents and energies to public service, for I believe with Tolstoi that 'The sole meaning of life is to serve humanity.'"

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 James F.

Byrnes 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:

Your motion is granted, Mr. Attorney General, and we thank you for your statement and tributes of the Supreme Court Bar to our late Brother, James Francis Byrnes.

At the time of this Memorial today, only Justice Douglas of the present Court served on the Court when Justice Byrnes was here, and Justice Douglas has asked me to express his very deep regret that a commitment made before the date was fixed for this memorial service prevents his being here today. In visiting with Justice Douglas about Justice Byrnes, I learned that he and Byrnes had been friends from the time Justice Douglas first came to Washington as a member of the Securities and Exchange Commission more than 35 years ago.

As others have done, Justice Douglas recalled particularly the warm human qualities that have been spoken of so eloquently in the Memorial today. He said few men he had known could concentrate on important governmental problems of the highest order for long hours and yet, when the work was finished at the end of the day, turn to the rich pleasures of congenial friends at dinner. He recalled that a favorite pastime of Justice Byrnes was to participate in singing folk songs and ballads of the South and of America in his rich tenor voice.

When Justice Byrnes came to this Court it was after an enormously active career as a leader in public life, and he found the change to the isolated life of a Justice of this Court not easy to make. But nothing in his opinions while he was on the Court would give any indication of any difficulties in the transition.

Justice Byrnes had a remarkable capacity to adjust to new responsibilities and new situations. When *Taylor v. Georgia* was unanimously decided in 1942, Chief Justice Stone assigned the writing of the opinion to Justice Byrnes for the very sound reason that an opinion by a leading figure from the South gave added force to a holding that the Georgia statute violated federal prohibitions against peonage. From yet another point of view, the opinion in that case reflects the broad national outlook he was prepared to take once he came to this Court and was free to lay aside sectional or regional interests and attitudes.

I had the honor to attend the services for Justice Byrnes in Columbia and heard the eloquent eulogy to him delivered by General Lucius Clay, who in 1944 became Deputy Director, under Justice Byrnes, of the Office of War Mobilization. Later they were intimately associated in Europe following our occupation of Germany. General Clay described very graphically the breadth of vision and the great skill of Justice Byrnes in the representation of American interests in Europe while he was Secretary of State. This, of course, was one of the crucial periods in the development of American foreign policy, and his handling of these problems took into account the natural tendency of every country to turn inward after a war.

Justice Byrnes, as Secretary of State and as a leading political figure in the country, was determined that the United States should not turn its back on the world after the enormous sacrifices that had brought victory. His remarkable talents as a conciliator and a negotiator that had developed through his many years in legislative work enabled him to deal with some of the most difficult and trying problems ever to confront an American statesman or diplomat. His exposition of American policy relating to postwar Europe and the pledge on behalf of the United States that we would support Western civilization and

the restoration of Europe stand out as one of the high points in his remarkable career.

General Clay, who shared some of the most trying hours in Europe in the work of Justice Byrnes as Secretary of State, recalls the same warm human qualities that so many others remember. General Clay told me that these qualities helped to sustain the Justice while he was representing the interests of our country in those difficult times.

In Europe, as in the days when Justice Byrnes sat on this Court, he would renew and refresh himself, after long hours of negotiation and intense dealing with the representatives of Russia, by laying work aside and spending an evening with friends singing the songs that are a common heritage for all Americans. The historians and biographers will chronicle the unique career of Justice Byrnes in the highest levels of all three branches of Government, but his friends will remember him for his humanity and his love of life and people.

Mr. Attorney General, Mr. Solicitor General, on behalf of the Court I thank you for your presentations here today in memory of James Byrnes. We ask you to convey to the Chairman and the Committee on Resolutions our appreciation for their efforts. The resolutions will be made part of the permanent records of this Court.

