

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

MONDAY, JANUARY 23, 1978

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

THE CHIEF JUSTICE said:

The Court is in Special Session this afternoon to receive the Resolutions of the Bar of the Supreme Court in tribute to our late Brother, Mr. Justice Tom Clark. The Solicitor General is recognized for the purpose of presenting the Resolutions adopted by the Bar.

Mr. Solicitor General McCree addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

At a meeting of the members of the Bar of the Supreme Court this afternoon resolutions memorializing our regard for the Honorable Tom C. Clark and expressing our profound sorrow at his death were unanimously adopted.

The resolutions unanimously adopted are as follows:

The members of the Bar of the Supreme Court of the United States have met today to record our respect, admiration, and

*Mr. Justice Clark, who retired from active service on the Court June 12, 1967 (388 U. S. v; 389 U. S. iv), died in New York, N. Y., on June 13, 1977 (432 U. S. v). Services were held at Restland Memorial Park in Dallas, Tex., on June 16, 1977, where interment followed. Memorial services were held at the National Presbyterian Church, Washington, D. C., on June 22, 1977.

affection for Tom C. Clark, who served with distinction as Associate Justice for 18 years, from 1949 until his retirement in 1967, and who thereafter served the public interest with undiminished vigor until the very day of his death on June 13, 1977.

Tom C. Clark lived the law successfully, and to the fullest: as a private practitioner, state prosecutor, federal attorney, Assistant Attorney General, Attorney General, Associate Justice of the Supreme Court, and, finally, as an active senior judge and a roving ambassador of justice dedicated to improving the American legal system.

While easygoing and casual in his ways, he left a monumental record of achievement. His legacy includes not only his contributions to the annals of the Supreme Court, but ranges far beyond the letter of the law to the improved functioning of the machinery of justice and its greater appreciation by judges, administrators, practitioners, and people throughout the United States.

Above all, Tom C. Clark gave of himself, with selfless diligence and devotion, with a genuine care for people's needs, and with a warm and friendly manner which brought out the best in others and evoked their loyalty and affection. Never arrogant, pompous, or sanctimonious, always modest and unassuming, *his* diaries are writ large in the hearts of all those who were touched by his radiance over the years.

I

Justice Clark came to his understanding of the legal process, and his easy rapport with its practitioners, from his own experiences in reaching the legal summit.

An outgoing Texan, in manner and spirit, he was born in Dallas on September 23, 1899. He received his legal education at the University of Texas, graduating in 1922. In 1924, he married Mary Ramsey, the lovely daughter of a Justice of the Supreme Court of Texas. Mary Clark remained his lifelong companion, whose love and devotion he credited as the inspiration for all his accomplishments in later years.

Over 15 years at the Bar of Texas, he became a successful legal practitioner. During part of this time he worked in his father's family law firm, Clark & Clark. Later he served as Civil District Attorney in his home county for six years. His personal charm and gift for dealing with people propelled him into local politics, which paved the way for his move to Washington in 1937 at the start of the second Roosevelt administration.

In January 1937, Tom Clark reported for work at the Department of Justice. There he tried wage and hour, war fraud, espionage, and antitrust cases. His competence, personality, and diligence made for his rapid rise in the Justice Department. As young Ben Tillman, Pitchfork Ben Tillman's son, who traveled with Tom Clark all over the South trying wage and hour cases, once said: "A man who had invoices spread out all over his hotel bed at night—a man who works like that deserves to succeed."

Succeed he did. He worked with the famous trust buster Thurman Arnold, heading the Antitrust Division's West Coast Regional Offices, where he acquired a zeal for antitrust enforcement. Antitrust law became a favorite source of his legal learning, as revealed in his many antitrust opinions for the Court. In 1943, he became Assistant Attorney General, first in charge of the Antitrust Division and then in charge of the Criminal Division. There he prosecuted many major war fraud cases referred to the Justice Department by a junior Senator from Missouri, Harry Truman, who headed a Senate investigating committee—a man whom he later came to call "the best client of my life."

In 1945, Tom C. Clark was appointed by President Truman as Attorney General of the United States, the first head of the Justice Department to come up through the ranks. A vigorous Attorney General, he pressed for active antitrust enforcement, and personally argued key cases before the Supreme Court. A Texan, he filed the first *amicus curiae* brief by an Attorney General in support of civil rights, challenging racially restrictive covenants, culminating in the 1948 landmark *Shelley v.*

Kraemer decision.¹ At a time of domestic insecurity and strife, dramatized by congressional investigations, he implemented a loyalty program for federal employees, and promulgated the first Attorney General's list of subversive political organizations, followed by the prosecutions of the American Communist Party leaders under the Smith Act. His concern with internal security matters carried forward into some of the judicial conflicts which would divide the Court in the years to come.

As Attorney General, his reverence for the Supreme Court, as an institution, was profound. He believed that the Attorney General had a symbolic duty to appear personally before the Court from time to time to present oral argument in landmark cases. At the opening of every Term of Court, Attorney General Clark and his top assistants, dressed in ceremonial cutaways, would show their respect for the Court by their personal attendance.

II

Appointed by President Truman as Associate Justice of the Supreme Court, Tom C. Clark took his oath of office on August 24, 1949. His service over the next 18 years spanned the eras of the Vinson and the Warren Courts.

In his early years on the Court, Tom Clark often followed the leadership of Chief Justice Vinson. He cast not a single dissenting vote in his first term. At first, he regularly voted with the Truman appointees, disparaged by the Court's critics as the Four Horsemen, to uphold the constitutionality of the government's internal security and loyalty programs.

But at crucial junctures, Justice Clark declared his judicial independence. In the famous *Steel Seizure Case*² in 1952, Tom Clark not only voted against his "best client," the President who had appointed him, but split with Chief Justice Vinson who would have upheld President Truman's extraordinary exercise of executive authority.

¹ 334 U. S. 1 (1948). See Remarks of Justice Marshall on Justice Clark at 63 A. B. A. J. 984, 985 (1977).

² *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579 (1952).

While convinced of the government's rights of self-defense against the Communist conspiracy, Justice Clark perceived constitutional limits on those powers. In 1952, he wrote the Court's unanimous opinion holding unconstitutional an Oklahoma loyalty oath forcing state employees to swear that for five years they had not belonged to any organization listed as "subversive" or a "communist front" by the Attorney General of the United States.³ In the Court's view, membership alone, possibly without knowing the character of the organization, did not itself prove disloyalty. Such a statutory restraint on "individual freedom of movement is to stifle the flow of democratic expression and controversy"

Similarly, Justice Clark joined the majority opinion invalidating state sedition laws under the Federal Supremacy Clause.⁴ He wrote the majority opinion invalidating a New York City charter provision requiring dismissal, without notice and hearing, of a municipal employee who claimed the Fifth Amendment privilege against self-incrimination in the course of an investigation concerning his official conduct.⁵

Despite his firm belief in strong law enforcement, he authored the landmark opinion in *Mapp v. Ohio*, extending the rule excluding unconstitutionally seized evidence to serve as a deterrent to illegal law enforcement activities by state officials.⁶

As for the rights of racial minorities, Justice Clark was committed to ensuring all citizens' rights to equal justice under the law. Notwithstanding his Texan roots, his 1953 opinion striking down the Texas "Jaybird" white primary⁷ gave wide

³ *Wieman v. Updegraff*, 344 U. S. 183 (1952).

⁴ *Pennsylvania v. Nelson*, 350 U. S. 497 (1956).

⁵ *Slochower v. Board of Higher Education*, 350 U. S. 551 (1956).

⁶ 367 U. S. 643 (1961). See also *Sheppard v. Maxwell*, 384 U. S. 333 (1966) (massive, prejudicial publicity concerning murder prosecution violated Due Process Clause); *Estes v. Texas*, 381 U. S. 532 (1965) (televising of courtroom proceedings in criminal trial over the defendant's objection constituted denial of due process).

⁷ *Terry v. Adams*, 345 U. S. 461 (1953).

sweep to the concept of "state action" to bar evasion of the constitutional prohibition on discriminatory activities against racial minorities.

Although a deeply religious man, Justice Clark wrote the controversial 1963 opinion that outlawed Bible reading exercises in the public schools as prohibited by the Constitution's ban on the "establishment" of religion.⁸

History will render its verdict on the work of the Vinson and Warren Courts, as the pendulum moves toward its ultimate balance. But the annals of the Supreme Court plainly record that Justice Clark steadily grew taller in office, and kept making important judicial contributions to the Court that he served with great diligence and devotion.

Transcending Justice Clark's role in the Supreme Court's decisional functions was his tireless effort to improve the American system of justice—a mission which he carried out for years above and beyond his Supreme Court judicial duties. To that task he devoted his boundless energy in his final career, which began upon his retirement from the Court in 1967 to avoid any appearance of conflict arising out of President Johnson's appointment of his son Ramsey Clark as Attorney General.

At the peak of his judicial powers, Justice Clark retired from the Supreme Court on June 12, 1967, with the blessings of Chief Justice Warren, who remarked at the Court's farewell ceremonies that "he has been a great companion for us, and he departs with the affection of every member of the Court."

III

As he gained confidence and stature in his judicial responsibilities, Justice Clark devoted more and more of his energies to

⁸ *Abington School Dist. v. Schempp*, 374 U. S. 203 (1963). See also *United States v. Seeger*, 380 U. S. 163 (1965) (interpreting conscientious objector statute to extend to any sincere belief occupying "a place in the life of its possessor parallel to that filled by the orthodox belief in God of one who clearly qualifies for the exemption").

his consuming passion—the improvement of our Nation's legal institutions.

To him, the law was far more than rhetoric or abstractions. He believed that the law remained an empty promise unless the institutions that administered it were able to deliver justice to all the people efficiently and effectively, and unless the people themselves appreciated and understood the role of their legal institutions in a democratic society.

His warm personality and easy charm, gracing a missionary zeal to improve the administration of justice, ideally suited him to his task. He was at home among judges and lawyers everywhere; he addressed hundreds of bar associations; he participated in countless committees, seminars, and programs. His ready smile, his colorful bow ties, his corny automatic alarm watch became legendary at conventions, banquets, and meetings everywhere. He drove himself untiringly; he worked on nights and weekends; he mobilized funds and people in support of his causes.

His ceaseless travels crisscrossed the country to spread the gospel, and to lend the Supreme Court's prestige to noble causes. He spoke to citizens' conferences, Boy Scout meetings, students in grade and high schools throughout the Nation, to broaden their understanding of the American system of justice and the role of law in a democratic society.

Justice Clark was a fervent advocate of the merit selection of judges, a cause for which he provided institutional leadership as Chairman of the Board of the American Judicature Society.

A champion of upgrading professional discipline and ethics, Justice Clark was Chairman of a Special Committee of the American Bar Association whose recommendations for strong self-disciplinary machinery sought to enhance public confidence in the integrity of the legal process.

But his prime preoccupation was the improvement of the judicial system and its administration. In 1956, he became Chairman of the American Bar Association's Section of Judicial Administration, which served as a platform for the coordina-

tion of the federal and state judiciary in joint efforts to improve the machinery of justice. He met with state chief justices to identify their problems and work toward effective solutions. He organized state trial judges in common efforts to modernize courts, culminating in the ABA's National Conference of State Trial Judges in 1958. In 1961, the Joint Committee for the Effective Administration of Justice unified and mobilized the efforts of the leading national organizations working toward the improvement of the quality of justice. He served as the Joint Committee's chairman, driving force, and guiding light. The Joint Committee organized state and regional training seminars, which highlighted the need for an enlarged and permanent program of continuing education for state judges. Under Justice Clark's leadership, the National Judicial College (formerly the National College of the State Judiciary) was born. The College has issued certificates of completion to more than 7,500 judges, and has expanded its programs to include appellate court judges, as well as administrative law and special court judges.

After his retirement from the Court in 1967, his activities never slowed. As a senior judge, he sat on the Courts of Appeals in all eleven Circuits. He even held trial in district court.

Justice Clark also became the first Director of the Federal Judicial Center, which pioneered judicial training programs everywhere. Chief Justice Warren aptly remarked: "It is almost as though his entire career had been preparing him for the mission of the Center."⁹

He was truly a leader of the legal profession. In 1962, he received the American Bar Association's Gold Medal, the ABA's highest award for meritorious service. As Justice Powell once said: "It is likely that Mr. Justice Clark was known personally and admired by more lawyers, law professors, and judges than

⁹ Address before the American Law Institute, Washington, D. C., May 21, 1968.

any justice in the history of the Supreme Court of the United States.”¹⁰

His monumental achievements have made the law a living reality, by elevating the quality of justice through better performance by judges, practitioners, and every participant in the legal process.

IV

Above all, in the final reckoning, underneath the robe and the high office, was Tom Clark, the gentle man who cared, and who loved people.

As his son Ramsey observed in his memorable eulogy for his father, “the best man [he had] ever known”:

“People come first. He wants to do things that are good for people. He knows it will be possible only with reason, tolerance, gentleness, and perseverance. A wholly constructive human being, a man of giant and gentle strength; a man who works from morning to night—not for work, or as an end in itself. Meaningful work, well done. . . . “. . . He always has a good word. Around him let no evil be spoken of any person.”

His efforts were not reserved for the high and mighty. He did not condescend to people; he was everyone’s friend. At the Justice Department, he promoted the interests of career employees and civil servants. He pushed for the desegregation of bar associations. At the Court, he befriended every secretary, messenger, guard, and barber, and was interested in their families and their problems. He personally wrote out and answered every note and Christmas card. He remembered birthdays and anniversaries. He responded to thank-you notes with thank-you notes. His handwritten cards, signed T. C. C., were received and treasured by thousands who knew that he cared.

His chambers at the Court became the home of his judicial family. Alice O’Donnell, whom he graciously called “Miss

¹⁰ 63 A. B. A. J. 984, 985 (1977).

Alice," was a perennially youthful fount of efficient cheer for judges, lawyers, law clerks, and wayfaring strangers. Oscar was the Court's most pampered messenger. Every Clark law clerk became a Clark family member, who shared Justice Clark's confidences and soul-searching in the decisional process. He did not summon his law clerks, but always visited with them. One of them recalls, typically, being welcomed by the Justice to his new duties with the words: "You treat me as your father, and I'll treat you as my son. If you ever need anything, you just whistle." Justice Clark's law clerks joined the Clark family for Thanksgiving dinners. He drove by their homes in his battered Oldsmobile, visited their wives at the hospital, and godfathered their children. They responded with a fierce loyalty and affection.

The Clark law clerks have recently founded a Justice Tom C. Clark Memorial Judicial Fellowship, to honor and continue Justice Clark's work as a "living memorial" for the improvement of justice.

As he walks into the eternal sunset, the friendly Texan who grew taller and taller over the years will remain among us forever as a good man and as a gentle spirit.

Wherefore, it is accordingly

Resolved, That we, the Bar of the Supreme Court of the United States, express our profound sorrow at the passing of Associate Justice Tom C. Clark, declare our deep gratitude for his great contributions to the legal system of the United States, and record our appreciation for his personal warmth and generosity, which have touched countless members of our profession and of our people with a lasting glow of affection for this good man whose life has graced and inspired all of us; and it is further

Resolved, That the Solicitor General be asked to present these Resolutions to the Court and that the Attorney General be asked to move that they be inscribed upon the Court's permanent records.¹¹

¹¹ The foregoing Resolutions are proposed by the Committee on Resolutions, which consisted of the following members: Hon. William O. Douglas,

THE CHIEF JUSTICE said:

Thank you, Mr. Solicitor General and I recognize the Attorney General of the United States.

Mr. Attorney General Bell addressed the Court as follows:

MR. CHIEF JUSTICE, and may it please the Court:

The Bar of the Court met today to honor the memory of Tom C. Clark, Associate Justice of the Supreme Court from 1949 to 1967.

Mr. Justice Clark sat on this Court for 18 of the most challenging and turbulent years of the law in modern America. It was a time when this Court found itself at the vortex of nearly every social upheaval of its day, and few citizens were untouched in their daily lives by its decisions. In 1949, when Tom Clark took his seat, segregation was the law of the land; defendants in state courts could be convicted on evidence seized with no regard for the protection of the Fourth Amendment; schoolchildren participated in daily religious observances; indigent citizens were regularly denied rights available to those who could afford to pay; States could ban the commercial expression of views they found "sacrilegious"; citizens who espoused unpopular political beliefs found themselves distant from the sanctuary of the law.

When Mr. Justice Clark retired in 1967, these wrongs had been banished by a Court that found them unable to survive the bright and healing light of the Constitution. Time after time, Mr. Justice Clark spoke for this Court as it set aright these injustices.¹

Hon. Stanley Reed, Hon. Irving R. Kaufman, Hon. Irving L. Goldberg, Hon. Thomas E. Fairchild, Hon. James R. Browning, Hon. Ivan Lee Holt, Jr., Hon. William H. Erickson, William T. Gossett, Esq., Bert H. Early, Esq., Ernest Rubenstein, Esq., Larry E. Temple, Esq., Dean Dorothy Nelson, Dean Werdner Page Keeton, Robert McKay, Esq., Robert Ash, Esq., James Warren, Esq., Fred Vinson, Jr., Esq., Clark M. Clifford, Esq., Charles Alan Wright, Esq., and Frederick M. Rowe, Esq., Chairman.

¹ See *Burton v. Wilmington Parking Authority*, 365 U. S. 715 (1961);

The years of Tom Clark's tenure were truly years of revolution in American life—a revolution brought about, not by force, but by the utter and irrevocable shift in fundamental concepts of justice. During those years, Mr. Justice Clark was a sturdy lynchpin of this Court, a conciliatory and centripetal force.

He was a man whose humanity and common sense and deep concern for his fellow citizen made him a natural spokesman for the Court in those decisions which touched so many common people. He calmly and forthrightly expressed his dissent when he believed the Court had gone too far or too fast, but it is a measure of his achievement that he was never consistently far from the center of the Court in those often difficult years. Perhaps we might more truly say that the Court never went far in any direction if Tom Clark was not there. The keel of a great sailing vessel is not always visible as it exerts its steady-ing force, and if occasionally the ship must heel or pitch in its mighty attempts to follow its course in difficult waters, the keel will keep it steady. Of Mr. Justice Clark, it may be said that he was the keel of this Court in difficult waters—sturdy and steady and indispensable to the integrity of the voyage.

In every area of the law, Mr. Justice Clark's opinions vividly demonstrate his deep belief that the legitimacy of democratic government—indeed, its very survival—depends upon its keeping faith with the people. "Nothing can destroy a government more quickly," he wrote for the Court in *Mapp v. Ohio*,² "than its failure to observe its own laws, or worse, its disregard of the charter of its own existence."

When he was Attorney General, Tom Clark promulgated the Attorney General's list of subversive organizations; he

Heart of Atlanta Motel, Inc. v. United States, 379 U. S. 241 (1964); *Katzenbach v. McClung*, 379 U. S. 294 (1964); *Mapp v. Ohio*, 367 U. S. 643 (1961); *Abington School Dist. v. Schempp*, 374 U. S. 203 (1963); *Smith v. Bennett*, 365 U. S. 708 (1961); *Anders v. California*, 386 U. S. 738 (1967); *Wieman v. Updegraff*, 344 U. S. 183 (1952); *Slochower v. Board of Education*, 350 U. S. 551 (1956); *Joseph Burstyn, Inc. v. Wilson*, 343 U. S. 495 (1952).

² 367 U. S. 643, 659 (1961).

remained genuinely concerned over the possibility that disloyal Americans might bring harm to this country.³ But this concern, however heartfelt, could not move him to retreat from his steadfast loyalty to the due process of law. In striking down a loyalty oath that the Court thought too sweeping, Mr. Justice Clark reminded us all: "Democratic government is not powerless to meet this threat [of disloyalty], but it must do so without infringing the freedoms that are the ultimate values of all democratic living."⁴

It was fitting then, that Mr. Justice Clark articulated for the Court—and for the Nation—a principle so simple and so just that it has become one of the foundations of public law: that once a government agency or official has set forth regulations, it is not at liberty to disregard them.⁵ Few concepts are more necessary to the integrity of government which Tom Clark so constantly strove to preserve.

Yet Mr. Justice Clark was no foe of strong, effective government. In his opinions for the Court one finds a realistic recognition, perhaps nurtured by his experience as Assistant Attorney General in charge of the Antitrust Division and of the Criminal Division, and later as Attorney General, that the Executive Branch must be able to meet new challenges with new solutions.⁶ But he was a constant foe of irresponsible government, and seldom did his opinions for this Court uphold new governmental approaches to problems without also carefully setting down limitations to insure that those powers would be lawfully and justly exercised.⁷ And he was ever

³ *E. g., Aptheke v. Secretary of State*, 378 U. S. 500, 524-529 (1964) (Clark, J., dissenting).

⁴ *Wieman v. Updegraff*, *supra*, at 188.

⁵ *U. S. ex rel. Accardi v. Shaughnessy*, 347 U. S. 260 (1954).

⁶ See, *e. g., Goldblatt v. Town of Hempstead*, 369 U. S. 590 (1962); *Atlantic Refining Co. v. Federal Trade Commission*, 381 U. S. 357 (1965); *Federal Trade Commission v. Simplicity Pattern Co.*, 360 U. S. 55 (1959).

⁷ See, *e. g., Holland v. United States*, 348 U. S. 121 (1954); *Federal Trade Commission v. National Lead Co.*, 352 U. S. 419 (1957); see also *Wisconsin v. Federal Power Commission*, 373 U. S. 294, 315-333 (1963) (Clark, J., dissenting).

ready to extend the hand of humaneness to correct government action when he perceived that it was being wielded arrogantly or without compassion.⁸

In doing so, Mr. Justice Clark was unfailingly sensitive to "the imperative of judicial integrity,"⁹ recognizing that judicial integrity is fundamental to due process of law and thus to the integrity of government itself. He demonstrated that sensitivity in writing for the Court in one of its earliest encounters of what has proved to be a nettlesome and recurring problem—the conflict between the right to a fair trial and the demands of a free press. One has only to read his description of the intrusion of the press in *Estes v. Texas*¹⁰ and *Sheppard v. Maxwell*¹¹ to realize, as he did, how fragile judicial integrity can be, and how closely its preservation depends upon the protection of the rights of the defendant. Every defendant, said Mr. Justice Clark for the Court, is entitled to "judicial serenity and calm,"¹² free of prejudicial publicity and disruption of the jury's deliberative process:

"Due process [he wrote] requires that the accused receive a trial by an impartial jury free from outside influences. . . . The courts must take such steps by rule and regulation that will protect their processes from prejudicial outside interferences. Neither prosecutors, counsel for defense, the accused, witnesses, court staff nor enforcement officers coming under the jurisdiction of the court should be permitted to frustrate its function."¹³

Mr. Justice Clark understood well that no government could keep faith with its citizens without vigorously guaranteeing

⁸ See, e. g., *Hatahley v. United States*, 351 U. S. 173 (1956); *Cox v. Roth*, 348 U. S. 207 (1955).

⁹ *Mapp v. Ohio*, *supra*, at 659, quoting *Elkins v. United States*, 364 U. S. 206, 222 (1960).

¹⁰ 381 U. S. 532 (1965).

¹¹ 384 U. S. 333 (1966).

¹² *Estes v. Texas*, 381 U. S., at 536; *Sheppard v. Maxwell*, 384 U. S., at 355.

¹³ *Id.*, at 362-363. Cf. *Rideau v. Louisiana*, 373 U. S. 723, 727-733 (1963) (Clark, J., dissenting).

those citizens their rights under the law. Throughout his career on this Court, he unequivocally expressed this Court's dedication to the advancement of civil rights for all Americans. In his first Term, he voted to reverse the conviction of a Negro who had been indicted by a grand jury from which the only Negro known to the white jury commissioners was excused because he was too old to serve. Said Mr. Justice Clark, with characteristic directness: "[The commissioners'] responsibility was to learn whether there were persons among the Negroes they did not know who were qualified and available for service."¹⁴

His opinion for the Court in *Burton v. Wilmington Parking Authority*,¹⁵ as every judge and lawyer knows, gave new meaning to the concept of "state action" at a crucial time in our history, when the Fourteenth Amendment was called forth as the law's cutting edge in the fight against racial discrimination in America. *Burton* served notice to the States and to all people that public property was no place for private discrimination.

And Mr. Justice Clark again spoke for the Court in the seminal cases of *Heart of Atlanta Motel, Inc. v. United States*¹⁶ and *Katzenbach v. McClung*,¹⁷ the companion cases that upheld the Civil Rights Act of 1964 in its prohibition of discrimination in public accommodations and demonstrated unmistakably to the Nation this Court's commitment to a "broad and sweeping"¹⁸ reading of the authority of Congress under the Commerce Clause to combat discrimination.

Tom Clark also firmly believed that law and order are the "wellsprings of democracy,"¹⁹ and he reminded us that "[g]oals, no matter how laudable, pursued by mobocracy in

¹⁴ *Cassell v. Texas*, 339 U. S. 282, 298 (1950) (Clark, J., concurring).

¹⁵ 365 U. S. 715 (1961).

¹⁶ 379 U. S. 241 (1964).

¹⁷ 379 U. S. 294 (1964).

¹⁸ *Id.*, at 305. See also *Hamm v. Rock Hill*, 379 U. S. 306 (1964).

¹⁹ *Chapman v. United States*, 365 U. S. 610, 623 (1961) (Clark, J., dissenting); see *Fay v. Noia*, 372 U. S. 391, 447 (1963) (Clark, J., dissenting).

the end must always lead to further restraints of free expression." *Cox v. Louisiana*, 379 U. S. 559, 589 (1965) (Clark, J., dissenting).

Tom Clark was a true populist, trusting almost without limit the goodness of the American people he so deeply loved, and ever suspicious of those who sought to abuse that goodness for narrow gain. His vision of the law and his fellow man were seldom in conflict, for, as he once wrote: "There is no war between the Constitution and common sense."²⁰

His opinions, like the man himself, were straightforward—never redundant, never prolix. His style was plain and clear, his language free of pretense or obfuscation. He admitted doubt where there was doubt, yet explained the Court's reasoning carefully, as if writing not merely for his fellow lawyers but for all his fellow citizens. Only a great man can explain so effectively his wisdom without the need to flaunt it. Tom Clark was such a man.

Indeed, Tom Clark was an uncommon man. Most of us are privileged to have one and perhaps two careers. He had four. He was a lawyer in private practice for a time, Assistant Attorney General and Attorney General for a time, and a Justice of the Supreme Court for a time. But upon retirement from the Court, he began another career, certainly an important one. He became the foremost expert in and teacher of judicial administration in America. It was in judicial administration that he touched the lives of many young judges. I was among those. He sent me to the Division of Judicial Administration in the American Bar to help. I served under him at the Federal Judicial Center. I worked closely with him in many endeavors.

He was a warm friend. I miss him very much. I miss his wise counsel. One of my first acts as Attorney General was to have his portrait moved into the conference room just outside my office. I then had him for lunch to seek his advice and to show him the new location of his portrait. In typical

²⁰ *Mapp v. Ohio*, 367 U. S., at 657.

modesty, he thanked me for taking him, as he said, out of the basement. His modest manner was given meaning in little ways. For example, he spent the night in our home in Atlanta and my wife was shocked to find that he had made his bed before leaving.

On the death of President Lincoln, Tolstoy, the Russian writer and philosopher, described him as being a great man, and he said that his greatness was in his life's having been rooted in four eternal principles, humanity, truth, justice, and pity. Sandburg recalled this tribute of Tolstoy in his chapter on the Lincoln eulogies, which chapter is entitled "A tree is best measured when it's down." As we measure Mr. Justice Clark, we can say that his life too was rooted in humanity, truth, justice, and pity.

May it please this honorable Court:

In the name of the lawyers of this Nation, and particularly the Bar of this Court, I respectfully request that the Resolutions presented to you in memory of the late Justice Tom C. Clark be accepted by you, and that they, 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, Mr. Solicitor General, the Court thanks you for your presentation here today in memory of our late Brother, Mr. Justice Tom Clark. We ask you to convey to the members of the Committee on Resolutions our deep appreciation for those most appropriate Resolutions.

Your motion that they be made part of the permanent record of the Court is granted.

The 101 men who have come to this Court since 1790 have each had much in common because, of course, they were all lawyers; but each of them has also had some special and unique attributes. With some of them these special attributes were known before they came here, and perhaps explain why they were selected. With others the uniqueness and special

attributes emerged after coming to the Bench. And the Resolutions presented by the Solicitor General and the Attorney General have marked the growth of our late Brother, Tom Clark, in all of his activities.

As they have pointed out, Tom Clark had not one career, but four, each of which was readily identified. These Resolutions have spoken eloquently of his work as a practicing lawyer, first in Texas and then in the Department of Justice. His long tenure in that Department culminating in his service as Attorney General gave him an insight into the workings of Government surpassed by no man who ever came to this Court.

Certainly no Justice who sat here had a greater understanding of the complexities of the twentieth century problems of governing a diverse population of 200 million people. And, as has been said, one can see this rich background and broad experience reflected in the practical common sense of his opinions.

A professional career reaching the high post of Attorney General is ordinarily enough to fulfill the desires and satisfy the ambitions of any American lawyer; but, as we know, it was only a foundation for another career as a Justice of this Court. During his 18 years here, as the Solicitor General has noted, he participated in some of the most crucial decisions, not only of our time but in the entire history of the Court.

There is a cliché that lawyers who are appointed to the Bench from Government service, especially from long service such as he had, have become infected with a pro-Government bias. Tom Clark of course did serve in the Department of Justice a long time, but his opinions as a Justice of this Court and later while sitting on the Courts of Appeals in all of the circuits reveal that old cliché for precisely what it is. No one can find any evidence of a pro-Government bias in Justice Clark's judicial work.

His service as a Justice has now been eloquently and abundantly covered in the Resolution of the Bar, but, as the Solicitor General noted, retirement from the Court after 18 years,

covering this extraordinary period in American history, and something that would ordinarily be the capping of a great career was the beginning of yet another one, the third one, which, happily for this country, covered another decade, literally up to the day of his death.

Long before his retirement from this Bench, Tom Clark had become the vital link between the Supreme Court and the legal profession, a link which is indispensable to the effective functioning of the system of justice in this country. Crucial as is the matter of maintaining communication with the organized bar, the Justices of this Court, at least for the past 25 or 30 years, have been faced with such heavy burdens and constantly increasing dockets that it has been very difficult for them to maintain the kind of contact they would like to have with the practicing profession. Not so for Tom Clark. Somehow he managed to do both.

But once freed from the heavy burdens of serving as a Justice, he expanded his efforts for the improvement of the judicial system. He has been described as both ambassador and missionary, and, indeed, he was both. No problem of the courts, federal or state, escaped his notice or escaped his powers of persuasion to marshal support for solutions.

Two particular activities deserve comment, even at the risk of some repetition. One year after his retirement from this Court, the Federal Judicial Center was created by an Act of Congress, and it was created to address the very problems that had engaged his attention and energies for so many years. The governing body of that Center wisely selected him as the first Director. It was a case of a man and a position made for each other; the need, the time, and the man coincided.

Even though his tenure as Director was relatively brief, due to the statutory age limit fixed by the Congress, his contribution was enormous, and all out of proportion to the length of his tenure as measured by a calendar.

Even as recently as 1968, when the Center was founded, federal judges were far from unanimous as to the need for a research and development program on the problems of the

courts. And many were even less sympathetic to the idea of continuing legal education for judges. But Tom Clark before that time, as both the Solicitor General and the Attorney General have noted, was instrumental in the development of the National College of the State Judiciary, as it was known at that time, and he knew the value of that institution and of its educational programs for judges. And that, of course, gave him an enormously valuable foundation to supply the leadership that was needed to launch the new Federal Judicial Center, where continuing education and special training seminars for judges would be a major factor.

Equally important as his knowledge and experience in how to go about his new task was the credibility that he gave to this new enterprise. I recall one very senior federal judge, a man of large standing and reputation in the federal judiciary, who, among a group of judges, expressed skepticism about the need for the Federal Judicial Center, but then he ended up by saying: "If Tom Clark is for it, it must be sound, and I'm for it." And that was the attitude of the skeptics, shared by many judges, in 1968.

His term as Director of the Center terminated very shortly after I came to this office and when, by statute, I automatically became Chairman of the Center Board. I note that I share an experience with the Attorney General, for on the day the Senate confirmed my nomination I called Tom Clark and asked if he would meet with me and several others for breakfast on June 24, the morning after I was scheduled to take the oath of office in this Chamber. The purpose was to discuss problems, programs, and projects for the future. His typical response was: "Why not sooner?"

I then explained that I thought since he was still in the office of Director, and that until July 23 I was merely a circuit judge who was Chief Justice-designate, it would be wiser to defer any meetings on that subject until I was formally in office. He agreed. And on the morning of June 24, less than 24 hours after I took office, we met for breakfast in his chambers with several other judges and leaders in public adminis-

tration. That was the beginning, or, rather, I should say the beginning of an enlargement of a cooperation with Tom Clark which I had experienced for a good many years before that in the programs and activities that both of us felt were so crucial to the future of the judicial system, in both federal and state courts.

From that day forward, literally to the Saturday preceding his death when I met him in the hall of the Court, and visited on some common problems, my communication with Tom Clark was continuous. There was no problem that reached my desk on which he was not prepared and willing to shoulder responsibilities at my request. Apart from taking specific assignments on programs and projects of the Center, and of the Judicial Conference, I consulted with him frequently informally, at lunch in my chambers or over a cup of tea in his chambers.

When the matter of the selection of his successor was before us, as it was at the time I came here, I consulted with him and followed his recommendation as to the appointment of Judge Alfred Murrah as his successor.

And then, once relieved of his duties as Director, in September 1969, Tom Clark resumed the regular sittings in the Courts of Appeals, in special courts, and the District Courts that have already been referred to. No one in the history of this Court, after retirement as an Associate Justice, has ever engaged in such constant and steady judicial activity, as well as continuing his missionary work.

At this Court's request, he undertook difficult assignments as a Special Master on cases where not only his rich legal background, but particularly his abundant common sense and his great powers of persuasion made it desirable to call upon him.

During the years from 1969 until his death, there was never any occasion in which he did not respond instantly to any request we made of him to take on special assignments, either at the Center or sitting on other courts or as a Special Master. But, at the same time, his sensitivity was such that he was

careful not to interpose his views on his successor, Judge Murrah, as Director of the Federal Judicial Center.

Before I close, I would like to mention just a few personal aspects of his temperament and personality. In the years that I was seeing him frequently, from 1969 until last year, and our friendship had gone back to 1953 when I first began to make appearances in this Court, I noted one thing about him that always puzzled me. He gave the impression of being an unhurried and unharried person. Yet when we came to know him well, we learned that he was about as unhurried as a dynamo, and he gave off the same kind of energy that a dynamo produces. He influenced all those he worked with, and it bears repeating that no one can remember any judge or Justice of this country who had a wider personal acquaintance with so many federal and state judges and bar leaders than did Tom Clark. And these were warm, personal, and lasting relationships, which, quite frankly, he exploited to the fullest to carry out programs of improvement for the state and federal courts.

A further aspect was his deep humility, even as he furnished this dynamic and innovative leadership. And by humility, I mean a willingness to listen to others even while they were being persuaded, sometimes unknown to them, by his gentle but very firm advocacy.

I recall one story told me by the wife of a judge in Minnesota on the occasion when Tom Clark came to the city of St. Paul, my home city, to dedicate a memorial to Roscoe Pound, who had made his famous speech on justice, in the State Capitol in 1906.

For some reason the escort judge was late in meeting Tom—or, more likely, Tom was early in arriving at the appointed place. The wife of the Minnesota judge was awaiting her husband at the time, and she told me that she approached Justice Clark with some apprehension and apologized for her husband's delay and, being conscious that there was some protocol, but not quite sure what it was, she said: "I have never met a Justice of the Supreme Court before; how do I address you?"

With that infectious grin that we all know so well and will never forget, he replied immediately: "Just call me Tom."

This was not an isolated or unusual reaction from Tom Clark, for he was known not to hundreds but literally thousands of state and federal judges and lawyers throughout this country, and except for some occasions where formality was imperative, I doubt that he was ever addressed in any other way than "Just call me Tom."

So we will remember him, along with his remarkable contributions to the improvement of justice, as a bundle of quiet energy, a dynamo in both ideas and execution of those ideas, all of it concealed under the appearance of a relaxed Texas cowboy.

Before I close, I must add a word as to the part Mary Clark, his wife, played in his remarkable career. I should say remarkable careers, for we have all said there were several.

As with her husband, literally thousands of judges and lawyers and law teachers in this country knew her as "Mary." Her contribution to his life and career was very great. And, in a far lesser way, of course, we share the loss she and her family have experienced.

I speak for all members of this Court, and I will undertake to speak for thousands of state and federal judges and lawyers of the United States, in this final salute to a man who has done so much to make the judicial systems work, to make justice meet the needs of our times in all of our courts.

