

PROCEEDINGS IN THE SUPREME COURT OF THE  
UNITED STATES IN MEMORY OF  
JUSTICE REED\*

MONDAY, DECEMBER 15, 1980

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Present: CHIEF JUSTICE BURGER, JUSTICE BRENNAN, JUSTICE STEWART, JUSTICE WHITE, JUSTICE MARSHALL, JUSTICE BLACKMUN, JUSTICE POWELL, JUSTICE REHNQUIST, AND JUSTICE STEVENS.

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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 colleague, the late Justice Stanley Reed.

The Solicitor General is recognized at this time for the purpose of presenting those Resolutions which were adopted by the Bar. Mr. Solicitor General.

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Mr. Solicitor General McCree addressed the Court as follows:

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

The members of the Bar of the Supreme Court of the United States have met today in this Court to record our high esteem and affection for Stanley Forman Reed, who served with exceptional distinction as an active Associate Justice during 19 years, from January 31, 1938, until his

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\*Justice Reed, who retired from active service on the Court effective February 25, 1957 (352 U. S. iv, xiii), died in Huntington, N. Y., on April 2, 1980 (445 U. S. iii, v). Services were held at Trinity United Methodist Church in Maysville, Ky., prior to his interment in the Maysville Cemetery on April 8, 1980.

retirement on February 25, 1957, and after his retirement continued for many years to render notable service to the judicial system and to the country.

On the occasion of Justice Reed's retirement in 1957, Chief Justice Warren, speaking on behalf of the Court, emphasized the fact that Justice Reed had served with 4 Chief Justices and 18 Associate Justices, "all of whom became indebted to him in their joint work of the Court for the wide range of his knowledge, the depth of his wisdom, and the warmth of his personality." Chief Justice Warren said that Justice Reed had "established himself in the hearts of all of us" and had "made a significant contribution to American constitutional law."

Justice Reed lived into his 96th year. His remarkable longevity exceeded that as yet attained by any other Justice in the history of the Court. It is one consequence of his full life that we now find ourselves assessing his contributions with the sharpened perspective permitted by the passage of nearly a quarter of a century since his retirement. Time has brightened our appreciation of his fine qualities and our understanding of the wisdom which he brought to the judgments he made in discharging his responsibilities on the Court throughout a period marked by substantial shifts in emphasis in both constitutional and statutory doctrine. The tributes bestowed in 1957 were well deserved. We add our hearty endorsement today—and, in passing along to future generations of the Bar our sentiments concerning this wise and good man, we give renewed expression of the strong bond of affection for Justice Reed which was always felt by those of us who knew him best.

Stanley Reed was born in Minerva, Mason County, Kentucky, on December 31, 1884, and died at Huntington, New York, on April 2, 1980. He was the son of Dr. John A. Reed, a practicing physician, and Frances Forman Reed. After early schooling Stanley entered Kentucky Wesleyan College, which was then located at Winchester, Kentucky, and he was graduated in 1902. He went on to Yale University for a second bachelor's degree, conferred in 1906. He next studied

law successively at the University of Virginia Law School, at Columbia University Law School and at the Sorbonne law faculty in Paris, without however taking a formal law degree at any one of these institutions. Meanwhile, in 1908, he married Winifred Elgin, of Maysville, the county seat of Mason County, Kentucky, and when they returned from the year at the Sorbonne he read law in the office of a lawyer, in accordance with a practice still common in those days. (He and Robert H. Jackson were the last of the Supreme Court Justices, thus far at least, not to have a law degree.) He was admitted to the Kentucky Bar in 1910, and began to establish a law practice in Maysville. In 1912, and again in 1914, he was elected to the Kentucky Legislature as the representative from Mason County. During World War I he served as a First Lieutenant in the United States Army.

He found law practice challenging and congenial. He was a friendly man, interested in people and their problems, and interested in the economic growth and well-being of the region where he lived. As his clients and friends came to know and to respect the wisdom of his advice, his practice broadened, with the mix of agriculture, mercantile, transportation, property and personal matters that came to a good lawyer in that part of Kentucky.

For about 20 years he continued his practice in Maysville. One of his clients was the Burley Tobacco Growers Association, a substantial cooperative engaged in marketing the crops of its members. His experience in this relationship was a contributing factor in his appointment by President Hoover in 1929 as General Counsel of the Federal Farm Board, a newly formed federal agency directed toward farm credit and the marketing abroad of United States agricultural surpluses. The move to Washington was one of only about 500 statute miles, but it involved an enormous change of environment. He was obliged to leave the neighborhood and local concerns of the Maysville he loved and to concentrate on the issues of national importance which were to dominate the remainder of his life; Stanley Reed made the transition quickly and with notable ease.

In December 1932, near the end of the Hoover Administration, Stanley Reed became General Counsel of the Reconstruction Finance Corporation, which was embarking on a massive program to help rescue the country from the depression, and he served in that important position until March 1935. As General Counsel of the Reconstruction Finance Corporation, which was a creditor subordinate to gold-clause bondholders in a railroad reorganization, he in January 1935 joined Attorney General Cummings in arguing the Gold Clause cases in the Supreme Court (*Norman v. B. & O. R. Co.*, 294 U. S. 240). In this litigation, which he liked to describe as the biggest lawsuit in history because it affected amounts estimated from 75 to 100 billion dollars, he successfully warded off attacks on the validity of the gold-clause legislation that was a keystone of our developing monetary policy.

Thus Stanley Reed was no stranger to the Department of Justice or to the Court when on March 18, 1935, President Roosevelt nominated him to be the Solicitor General of the United States. Within three days the nomination was confirmed by the Senate and on March 23, 1935, he took up his duties as Solicitor General at a time of unusual turmoil and excitement in the development of our national institutions and in the testing of our governing constitutional principles.

Solicitor General Reed discharged his duties as the Government's chief advocate with distinction. It was a distinction which rested upon an earthy and a solid foundation, one consisting of a capable and organized intelligence which first mastered and then clearly explicated the matter at hand.

His service as Solicitor General came during the most intense constitutional crisis that the Nation had experienced since the Civil War. It was a period sometimes characterized as a constitutional revolution, though he would have called it, persuasively, a constitutional restoration. The Government, and indeed the legal order itself, were fortunate in having so steady a hand at the controls when the very foundations of national power were in the balance. He directed the Government's appellate litigation and argued a major share of the constitutional cases—though in that

spacious time, when an hour per side was the normal allotment and two hours were commonly allowed in the more important cases, he sometimes shared the argument with colleagues within the Department or in the agencies involved.

His qualities were those most needed at the time. Without artifice or the embellishment of rhetoric, with simplicity and candor of statement, with dignity, earnestness, and a hard-earned command of the record, drawing on briefs that amassed the relevant industrial and economic facts, Solicitor General Reed clearly won the confidence and respect of the Court, if not always a majority of the votes.

One corollary to this careful approach to his job was a high degree of personal participation in the briefs which bore his name. Preliminary papers, on certiorari or appeals, were reviewed by him in page proof. Briefs on the merits were reviewed, searchingly rather than perfunctorily, before printing. Briefs in important cases (which arose in some profusion in those times) were discussed and developed around his desk.

In the 33 months of his service as Solicitor General, Stanley Reed argued 18 cases, reported in the 295th to the 303rd United States Reports. For a time during this period it seemed as if the basic constitutional powers of Congress to tax and to regulate commerce among the states, would be rendered inadequate to deal with the deep-seated problems of the national economy and welfare. Stanley Reed lost his arguments for the validity of the National Industrial Recovery Act and of the Agricultural Adjustment Act (*Schechter Corp. v. United States*, 295 U. S. 495; *United States v. Butler*, 297 U. S. 1) but so, in 1935, would Demosthenes assisted by Daniel Webster. In cases argued for the Government by others, the Bituminous Coal Act, and, most singular of all, the Railroad Pension Act, likewise succumbed to attacks on constitutional grounds (*Carter v. Carter Coal Co.*, 298 U. S. 238; *Railroad Retirement Bd. v. Alton R. Co.*, 295 U. S. 330). But before the close of his term as Solicitor General the constitutional foundations of national power had been recovered.

Solicitor General Reed successfully argued, or shared the

argument, in the cases upholding the National Labor Relations Act (*National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board v. Fruehauf Trailer Co.*, 301 U. S. 49), the cases interposing barriers of standing which substantially immunized from attack the Public Works and Tennessee Valley legislation (*Ashwander v. Tennessee Valley Authority*, 297 U. S. 288; *Alabama Power Co. v. Ickes*, 302 U. S. 464), and the cases starting the Court's retreat from the overblown application of the doctrine of intergovernmental tax immunities (*James v. Dravo Contracting Co.*, 302 U. S. 134; *Silas Mason Co. v. Tax Commission*, 302 U. S. 186; *Helvering v. Therrell*, 303 U. S. 218).

To these landmarks may be added his winning arguments in the case sustaining the windfall income tax, which recovered the agricultural adjustment processing tax refunds from those who had already recouped from their purchasers (*Anniston Mfg. Co. v. Davis*, 301 U. S. 337), and in the case sustaining the Executive Agreement provisions transferring private expropriation claims against the U. S. S. R. to the United States (*United States v. Belmont*, 301 U. S. 324), along with his unsuccessful defense of President Roosevelt's removal of a Federal Trade Commissioner from office (*Humphrey's Executor v. United States*, 295 U. S. 602). Probably no other attorney has plunged so deeply into the basic law of our Nation in so short a time.

Success as Solicitor General was not measured by victories alone, crucial as those were for the future course of our national life. Stanley Reed was conscious of an obligation to help in rationalizing the law, apart from particular outcomes. He, as others in this high office, was careful never to seek victory for its own sake and he avoided making arguments which he considered deleterious to the law.

Solicitor General Reed served nearly three years in that office. In January 1938, the retirement of Justice Sutherland offered President Roosevelt his second appointment to the Court. It was fitting that he chose the chief advocate for his Administration. Stanley Reed was nominated and, after only

10 days, then confirmed. The Congressional Record for January 25 reports the debate in full: "Without objection, the nomination is confirmed." He took his seat on the bench on January 31, 1938. A few days earlier, Justice Stone had written to Professor Felix Frankfurter:

"I am quite happy about Reed's appointment. He is honest, straightforward, and a hard worker, and I think a good lawyer. The Court ought to get many years of good service from him when he settles into the new job."

Justice Reed was in active service on this Court for more than 19 years, from his 54th to his 73rd years. At his retirement he had served for one-ninth of the history of this Court. He wrote a total of 339 opinions, which will be found in the 303rd to the 352nd of the United States Reports. Of this total there were 231 (a little over two-thirds) written for the Court, and 20 concurring opinions and 88 dissenting opinions. Their subject matter touches upon virtually everything that arises within the wide range of the Court's business. Assessed as a whole, and even when read again a quarter of a century later, their quality is high. The style tends to be steady and clear; the flow of the argument usually is carefully developed; the scholarly and legislative materials are skillfully used, without being allowed to become smothering; and there is sufficient brevity to help assure that the opinions will be read by a wide audience and readily understood.

The issues to which Justice Reed directed his opinions came in all shapes and all sizes. They could be as simple as his first opinion, holding that a bankruptcy commissioner was not personally liable because he paid for the cost of growing and harvesting crops given as security (*Adair v. Bank of America Assn.*, 303 U. S. 350), or as complex as the milk orders issued by the Secretary of Agriculture under the Marketing Agreement Act of 1937 (*United States v. Rock Royal Co-Op.*, 307 U. S. 533). They could address issues as elusive as the close question of statutory construction whereby, for a 4-3 majority, he held that the Texas City disaster fell outside the scope of

the liability which the Congress had imposed on the Government by the provisions of the Federal Tort Claims Act (*Dalehite v. United States*, 346 U. S. 15), or as precise as, in his final opinion for the Court, whether the Federal Black Bass Act, forbidding transportation contrary to state law, reached to violations of state administrative regulations (*United States v. Howard*, 352 U. S. 212). They could seem, at least by hindsight, to reach a result as inevitable as the decisions sustaining the Federal Communications Commission's rules adopted for the purpose of avoiding overconcentration in the broadcasting industry (*United States v. Storer Broadcasting Co.*, 351 U. S. 192), or outlawing the white primary in Texas (*Smith v. Allwright*, 321 U. S. 649); or they might involve as hard a call as the cellophane antitrust case (*United States v. E. I. du Pont de Nemours & Co.*, 351 U. S. 377). What is constant in the diversity of his opinions is the care of the exposition, and the patient organization of his march from initial premise to final conclusion.

*United States v. American Trucking Assns.*, 310 U. S. 534, was one of Justice Reed's unusual departures from the conventions of the law. There the Court felt obliged to force the contrary words of a carelessly drafted floor amendment into the result intended by the Congress, as plainly shown by the legislative history. Justice Reed was clear that, in departing from the plain words of the statute, he had entered upon treacherous ground and gave explicit recognition to the "danger that the court's conclusion as to the legislative purpose will be unconsciously influenced by the judges' own views . . . . A lively appreciation of the danger is the best assurance of escape from its threat."

In his relations with his colleagues, with his law clerks and with the members of the Bar, Justice Reed displayed unusual degrees of friendliness, serenity and generosity. Great issues might be at stake; deeply held opposing views might be in stark confrontation—but no matter what the temptation or the provocation, he behaved with unfailing civility and sought always to nurture a spirit of mutual respect.

These qualities in no way meant that he was lacking in abiding convictions on fundamental issues—such as issues involving the distribution of powers between the Federal Government and the States, or the balancing of the interests of the Government and the individual under the Bill of Rights, or the development of limits on the scope of judicial review. He was willing to listen, to consider the views of others, and sometimes to be persuaded by them. But when all the discussion was finished, he had a sense of independent self-assurance which gave him a quiet though firm confidence in the correctness of his own judgments.

Toward the latter part of Justice Reed's tenure the school desegregation cases presented the Court with issues of almost unparalleled importance. The unanimity of all the Justices which found expression in the opinion finally issued in *Brown v. Board of Education*, 347 U. S. 483, constitutes perhaps the most dramatic triumph of collegial persuasion in the history of the Court. It is known from historical accounts already published, based on documents and other data available to scholars, that Justice Reed initially felt that the segregated school systems there in controversy were not unconstitutional and that he contemplated the possibility of issuing a separate opinion so stating. But over the Court's long internal consideration of the case he came to acquiesce in the contrary conclusion reached by his brethren and he decided it would be better for the Nation's future if he joined in what would thus become a unanimous opinion.

Justice Reed was throughout his service on the Court its quintessential moderate. His moderation reflected not an indifference to principle, but an aversion to rigid doctrine, and especially to the doctrinaire. His pragmatic recognition that even first principles cannot be pushed to their logical extreme is well shown by *Breard v. Alexandria*, 341 U. S. 622. The Court there sustained the "Green River" ordinances, requiring the prior consent of the resident before allowing door-to-door commercial solicitation. Justices Black and Douglas considered application of the ordinances to the sale of peri-

odicals a violation of the First Amendment. Justice Reed replied that it would seem "a misuse of the great guarantees of free speech and free press to use those guarantees to force a community to admit the solicitors of publications to the home premises of its residents."

So, too, what seems to be a high-water mark during the last half-century for the antitrust rule of reason is found in his opinion for the Court in *United States v. Columbia Steel Co.*, 334 U. S. 495. There the Court by a 5-4 vote held vertical integration of a large steel producer with a large fabricator was not *per se* unlawful, but permissible if major competition remained; Justice Reed was not persuaded by the insistence of the dissent that United States Steel Corp. "is big enough."

Stanley Reed had, however, no attachment to moderation in the dispatch of the business for which he was responsible. He was insistent as Solicitor General that his Office should not ask for extensions of time—both as a matter of pride and in recognition that this only served to compress the time available for succeeding matters. He thus inaugurated a tradition that endured in that Office for at least a decade or two.

Justice Reed brought with him to the Court this aversion to delay, and nourished it throughout his service. His first opinion for the Court was delivered 26 days after argument, his last only 39 days after argument. In all, he maintained this expedition as a result of steady and determined workmanship throughout his service on the Court.

Justice Reed had not served out his first year on the Court when he accepted an extracurricular chore of the first importance. On January 31, 1939, President Roosevelt made him Chairman of the President's Committee on Civil Service Improvement. This was a small group of distinguished judges, officials and citizens who were asked to recommend ways to achieve professional excellence in a career civil service. Justice Reed in accepting the assignment was able to crystallize his enduring concern for the excellence of the fed-

eral personnel. The Committee's report, two years later, led to some improvement in respect to most of the professions studied. Its recommendation as to lawyers was the most far-reaching. There, for the two years during which it had the support of the Congress, it produced a spectacular improvement in the systems for recruiting and selecting attorneys. The Reed Committee, as it was then known, was able to combine the energies and wisdom of a strikingly diverse group only because of the consistently gracious leadership of its chairman, experienced both in the professional needs of the Government and in the patient skill required to bring together the widely separated views of strong-willed men.

When he retired from the Court in 1957 Justice Reed was in good health, with the expectation of continuing his activity though on a reduced scale. He wrote to his law clerks:

"My plans look forward to opportunities for aiding in improvements in the law, its administration, and its adaption to new conditions. After more than fifty years in its study and practice, our Lady of the Law retains my deepest affection."

During the years that followed he delivered some occasional addresses on subjects close to his heart. He performed a constructive role as Special Master in an original action brought in this Court between two States seeking a resolution of their dispute concerning oystering and other fishing in the Potomac (*Virginia v. Maryland*, 355 U. S. 946 and 371 U. S. 943). But he found the greatest opportunity for service by sitting from time to time, pursuant to the designations permitted by statute, on panels of judges adjudicating cases in the United States Court of Claims and in the United States Court of Appeals for the District of Columbia Circuit. There his fellow judges had the benefit of his wisdom and his experience; and he took his turn at the writing of opinions. One which should be especially noted deals with the complex subject of the scope of the Government's executive privilege to withhold documents from disclosure in litigation (*Kaiser Aluminum & Chemical Corp. v. United*

*States*, 141 Ct. Cl. 38). He continued to sit until the early part of 1970, though with decreasing frequency, after which he concluded that advancing age made it desirable to retire more definitively.

Throughout his life Stanley Reed kept his intimate ties with his beloved Kentucky. Year after year he and his wife Winifred returned there during the summer to renew old friendships and to make new ones. For many years he retained an interest in a family working farm property in Maysville, and even in the midst of a busy Court term he would seem to find relaxation and pleasure in going over its operating records and books of account. The pride which his fellow Kentuckians took in his accomplishments never ruffled his modesty; he reciprocated with an expansive warmth of feeling toward them.

Wherefore, it is accordingly

RESOLVED, that we, the Bar of the Supreme Court of the United States, express our lasting and grateful appreciation for the exemplary service rendered by Stanley Forman Reed during his long public career, first in the Legislature of Kentucky, then in the Executive Branch of the United States Government, then as a distinguished Associate Justice of this Court, and later as a retired Associate Justice; that we record our high affection and esteem for him, and our admiration for the qualities of wise judgment, of diligent and perceptive craftsmanship, and of personal generosity and gentlemanliness, which enabled him to be so effective in contributing to the progress of the law and to the betterment of our Nation; 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.

Submitted by the Committee on Resolutions: Bennett Boskey, Chairman, A. B. Chandler, Clark M. Clifford, Bert T. Combs, John Sherman Cooper, Thomas G. Corcoran, George Clifton Edwards, Jr., Paul A. Freund, Warner W. Gardner,

Bayless Manning, Carl D. Perkins, William D. Rogers,  
J. Skelly Wright.

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The CHIEF JUSTICE said:

Thank you, Mr. Solicitor General. The Court now recognizes the Attorney General of the United States.

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Mr. Attorney General Civiletti 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 Stanley F. Reed, who served as an Associate Justice of the Supreme Court from 1938 to 1957.

Mr. Justice Reed was the second Justice appointed to the Court by President Franklin Roosevelt. Like Mr. Justice Black, who immediately preceded him to the Bench, Stanley Reed brought to the Court the perspective of one who helped shape national policy in the service of a coordinate Branch of Government during the New Deal period, an era that transformed American politics, government, and, ultimately, constitutional doctrine. The Reconstruction Finance Corporation, of which he was General Counsel from 1932 to 1935, participated in numerous governmental efforts to revitalize the economy, furnishing loans and equity capital to banks and businesses and providing the essential financial underpinning for New Deal initiatives in such areas as agricultural price supports, rural electrification, housing, and export trade. As General Counsel, Stanley Reed overcame misgivings on the part of the Secretary of the Treasury and rendered a decisive legal opinion supporting the RFC's authority to purchase newly mined gold in furtherance of the Roosevelt Administration's monetary policy.<sup>1</sup> And also while General Counsel, Stanley Reed argued on behalf of the

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<sup>1</sup> A. Schlesinger, Jr., *The Age of Roosevelt: The Coming of the New Deal* 239 (1958); W. McCune, *The Nine Young Men* 60 (1947).

RFC in the *Gold Clause Cases*,<sup>2</sup> in which the Court upheld the power of Congress to provide that contracts purporting to require payment in gold or particular coin or currency could be satisfied upon payment of any legal tender. His success in the *Gold Clause Cases* no doubt was a significant factor in his being selected, one month later, to be Solicitor General of the United States.

Stanley Reed's tenure as Solicitor General came at the turning point of the most severe testing of congressional power since the days of Chief Justice Marshall, a testing occasioned by Congress' and the Executive's pursuit of extraordinary measures to master the conditions of the Great Depression. In less than three years, he presented the Government's cause, or superintended its presentation, in a series of cases whose very names have come to symbolize the tension that then existed between the political and judicial branches of Government. His argument in support of the National Industrial Recovery Act was rejected by the Court in *Schechter Poultry Corp. v. United States*,<sup>3</sup> less than three months after he became Solicitor General. The Guffey Coal Act and the Agricultural Adjustment Act met a similar fate in *Carter v. Carter Coal Co.*,<sup>4</sup> and *United States v. Butler*,<sup>5</sup> although in the latter case the Court did accept the broad Hamiltonian view, urged by Solicitor General Reed,<sup>6</sup> of Congress' power to tax and spend for the general welfare.

But there were important successes as well, especially toward the end of his tenure. Solicitor General Reed successfully defended the constitutionality of the sale of power by the Tennessee Valley Authority in *Ashwander v. TVA*,<sup>7</sup> and, at his urging, the Court unanimously rejected a challenge to the federal financing of municipal powerplants in *Alabama*

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<sup>2</sup> *Norman v. Baltimore & Ohio R. Co.*, 294 U. S. 240 (1935).

<sup>3</sup> 295 U. S. 495 (1935).

<sup>4</sup> 298 U. S. 238 (1936).

<sup>5</sup> 297 U. S. 1 (1936).

<sup>6</sup> 297 U. S., at 16-19, 49-50, 65-67.

<sup>7</sup> 297 U. S. 288 (1936).

*Power Co. v. Ickes*.<sup>8</sup> In *Carmichael v. Southern Coal Co.*<sup>9</sup> and *Steward Machine Co. v. Davis*,<sup>10</sup> both decided in 1937, the Court sustained the cooperative state and federal unemployment compensation system and, of equal importance, the power of Congress to offer financial inducements to the States to encourage them to participate in federal programs. The congressional policy favoring collective bargaining was broadly affirmed for the first time by the unanimous decision in *Virginian Railway Co. v. System Federation No. 40*,<sup>11</sup> also argued by Solicitor General Reed. But perhaps the most significant of his successes was in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*,<sup>12</sup> in which the Court upheld the Wagner Act and, in the process, adopted a more expansive view of Congress' power to regulate interstate commerce than had been reflected in the Court's prior opinions during this period.

Thus, when Stanley Reed was appointed an Associate Justice of this Court in 1938, he of course possessed an intimate knowledge of its procedures, gained through his meticulous attention to the Government's business before the Court. But he also brought to the Court a special sensitivity to the role of the Court under the Constitution and a unique understanding of the processes of government and the great issues of his time.

Consistent with his experience, Mr. Justice Reed generally exhibited a broad view of the power of Congress to address the economic and social needs of the Nation. In his first few years on the bench, he joined in the Court's affirmation of the constitutional principles respecting Congress' authority to regulate interstate commerce that only had begun to emerge in his years as Solicitor General. In *United States v. Darby*,<sup>13</sup> for example, Mr. Justice Reed joined the unani-

<sup>8</sup> 302 U. S. 464 (1938).

<sup>9</sup> 301 U. S. 495 (1937).

<sup>10</sup> 301 U. S. 549 (1937).

<sup>11</sup> 300 U. S. 515 (1937).

<sup>12</sup> 301 U. S. 1 (1937).

<sup>13</sup> 312 U. S. 100 (1941).

mous opinion of the Court overruling its decision two decades earlier in *Hammer v. Dagenhart*<sup>14</sup> and sustaining the power of Congress to regulate the working conditions of persons who produce goods destined for interstate commerce. In this same area, it was particularly fitting that Mr. Justice Reed should write the opinion for the Court in *United States v. Rock Royal Co-Operative, Inc.*,<sup>15</sup> which sustained the authority of Congress to regulate the price and conditions of marketing of agricultural commodities in interstate commerce. The Court held that Congress could regulate local sales of products where those sales are drawn into a plan to protect interstate commerce from the effects of agricultural surpluses<sup>16</sup>—a marked departure from the pronouncement in *United States v. Butler* that any regulation of agricultural production was a local matter reserved exclusively to the States.<sup>17</sup> And the Court in *Rock Royal Co-Operative, Inc.*, approved the delegation of authority to the Secretary of Agriculture to maintain orderly marketing conditions, finding that the inclusion of identifiable standards to guide the Secretary sufficiently distinguished the case from *Schechter Poultry*. In another landmark decision under the Commerce Clause, Mr. Justice Reed delivered the opinion of the Court in *United States v. Appalachian Power Co.*,<sup>18</sup> which established Congress' authority to regulate the use of navigable waters in all their aspects.<sup>19</sup>

Mr. Justice Reed similarly believed that substantial deference should be given to the judgment of the Executive or of federal agencies where Congress had chosen to rely on their expertise and discretion to implement statutory policy. "It is not the province of a court," he observed in *Gray v. Powell*,<sup>20</sup> "to absorb the administrative functions to such an

<sup>14</sup> 247 U. S. 251 (1918).

<sup>15</sup> 307 U. S. 533 (1939).

<sup>16</sup> 307 U. S., at 568-571.

<sup>17</sup> 297 U. S., at 68.

<sup>18</sup> 311 U. S. 377 (1940).

<sup>19</sup> See *Kaiser Aetna v. United States*, 444 U. S. 164, 171-174 (1979).

<sup>20</sup> 314 U. S. 402, 412 (1941).

extent that the executive or legislative agencies become mere fact-finding bodies deprived of the advantages of prompt and definite action." But he was equally plain in *Stark v. Wickard*,<sup>21</sup> decided several terms later in 1944, that "the responsibility of determining the limits of statutory grants of authority in such instances is a judicial function entrusted to the courts by Congress."

As Mr. Justice Reed's service on the Court proceeded, issues of race and civil liberties began to overshadow those of the distribution of powers in our federal system. He uniformly voted with the majority in cases involving racial discrimination, including a series of decisions requiring admission of blacks to graduate schools,<sup>22</sup> and, of course, the court's decision in *Brown v. Board of Education*.<sup>23</sup> And he wrote the opinion of the Court in *Smith v. Allwright*,<sup>24</sup> one of the "white primary" cases, and in *Morgan v. Virginia*,<sup>25</sup> finding a state statute requiring racial segregation of passengers traveling interstate to be an unconstitutional burden on interstate commerce.

Mr. Justice Reed's judicial philosophy was more multifaceted in cases involving an accommodation of First Amendment rights and the interests of society. He generally voted to uphold statutes or programs designed to identify or protect against perceived threats to national security.<sup>26</sup> But in other areas, he agreed with Mr. Justice Black and Mr. Justice

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<sup>21</sup> 321 U. S. 288, 310 (1944).

<sup>22</sup> *McLaurin v. Oklahoma State Regents*, 339 U. S. 637 (1950); *Sweatt v. Painter*, 339 U. S. 629 (1950); *Missouri ex rel. Gaines v. Canada*, 305 U. S. 337 (1938).

<sup>23</sup> 347 U. S. 483 (1954).

<sup>24</sup> 321 U. S. 649 (1944).

<sup>25</sup> 328 U. S. 373 (1946).

<sup>26</sup> See, e. g., *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, 125-130 (1956) (Clark, J., dissenting); *Pennsylvania v. Nelson*, 350 U. S. 497, 512-520 (1956) (Reed, J., dissenting); *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U. S. 123, 187-213 (1951) (Reed, J., dissenting); *Dennis v. United States*, 341 U. S. 494 (1951); *American Communications Assn. v. Douds*, 339 U. S. 382 (1950).

Douglas that freedom of expression enjoys a preferred status under the Constitution and he insisted on broad protections for the exercise of that freedom. He delivered the opinion of the Court in *Pennekamp v. Florida*,<sup>27</sup> which, building upon the decision in *Bridges v. California*,<sup>28</sup> concluded that the press criticism of judicial conduct there at issue did not present such a clear and immediate threat to the administration of justice as to justify "clos[ing] the door of permissible public comment." "When that door is closed," he observed, "it closes all doors behind it."<sup>29</sup>

Mr. Justice Reed would have given broader protection to labor picketing than did the Court,<sup>30</sup> and he cast the crucial fifth vote in *Terminiello v. Chicago*,<sup>31</sup> which reversed the conviction of an individual whose speech had created a disturbance. But his decision for the Court in *United Public Workers v. Mitchell*<sup>32</sup> demonstrates perhaps as well as any his conviction that due respect for the rights of the individual must take into account the broader interests of society and the proper working of our public institutions. For as important as the First Amendment rights of Government employees were recognized to be, Mr. Justice Reed upheld the legitimacy of Congress' judgment that the cumulative effect of partisan political activity by many public employees would threaten the very democratic system that the First Amendment was intended to serve.

Upon the occasion of his appointment to the bench, the editors of the American Bar Association Journal observed that a key to part of Mr. Justice Reed's legal philosophy

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<sup>27</sup> 328 U. S. 331 (1946).

<sup>28</sup> 314 U. S. 252 (1941).

<sup>29</sup> 328 U. S., at 350.

<sup>30</sup> See, e. g., *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 317-321 (1941) (Reed, J., dissenting); *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 732-739 (1942) (Reed, J., dissenting); *Teamsters v. Hanke*, 339 U. S. 470, 481-484 (1950) (Minton, J., dissenting).

<sup>31</sup> 337 U. S. 1 (1949).

<sup>32</sup> 330 U. S. 75 (1947).

could be found in a quotation from an address he had given several years earlier:

[E]xperience of the last half century has driven us to the realization that, after all, we live in a factual world where organized groups, whether for production, commerce or propaganda, are too powerful to permit the feeble forces of the individual to survive. . . . Regretfully but inevitably we must adjust our lives and our Government to modern needs and find, in a Constitution written for a simpler era, guidance for the problems of our present age.<sup>33</sup>

Mr. Justice Reed believed in the value of organization to counterbalance the forces he perceived to be threatening to the individual—whether it be the organization of farmers in the tobacco cooperative he represented in Kentucky; of working people in the labor unions whose rights he defended before and as a member of this Court; or of the people generally, through their Government, to further the common good. Others, on this Court and elsewhere, may have disagreed with some of his views. But whatever the passions surrounding a particular cause, Stanley Reed brought to the occasion a civility, kindness, fairness, and care that commanded the affection and respect of all who knew him.

MR. CHIEF JUSTICE, in the name of the lawyers of this nation and, in particular, of the Bar of this Court, I respectfully request that the Resolution presented to you in honor and celebration of the memory of the late Mr. Justice Reed be accepted by this Court.

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THE CHIEF JUSTICE said:

Mr. Attorney General and Mr. Solicitor General, the Court thanks you for your presentations here today in memory of our late colleague Justice Reed.

We ask that you convey to the members of the Committee

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<sup>33</sup> 24 A. B. A. J. 94 (1938), quoting 22 A. B. A. J. 602 (1936).

of the Bar and the Committee on Resolutions, our appreciation for their very appropriate presentation. Your motion that these resolutions be made part of the permanent records of the Court is granted.

Stanley Reed's career as a lawyer, as a Government official, and as a jurist, was a life of consistent, sustained excellence. In his own quiet, unobtrusive, imperturbable, and conscientious manner he rendered most distinguished service to our country in a period of great political and social turbulence.

After he had completed his education at the various universities described in the resolutions, Stanley Reed returned to his hometown of Maysville and both studied and practiced law, and it did not take long for his professional reputation to spread. And although he was a leading Kentucky Democrat, he became Counsel for the Federal Farm Board and then General Counsel of the Reconstruction Finance Corporation in the administration of President Hoover.

By the time President Roosevelt took office in 1933, Stanley Reed's reputation was so firmly established in Washington that he was continued in office. He could, as has been suggested, accurately be described as a moderate, one who believed that much good could be done when Government power is wielded firmly and discerningly in the public interest. As the Attorney General has said, when he became Solicitor General he had already argued one of the Gold Clause cases before this Court, and during the dynamic period that followed 1935 he argued most of the important cases involving the constitutionality of President Roosevelt's New Deal legislation. And in that process, in this Court, at this lectern, he was opposed by some of the finest, ablest lawyers in America.

As Solicitor General his performance was always marked by thoroughness of preparation and his arguments were characterized by clear, down-to-earth presentations, and his tenure embraced, as has been stated, many of the great landmarks of our constitutional law. The pressures on an advocate responsible for so many highly charged cases with one coming on the heels of another finally took their toll,

and on one occasion, in the course of his argument at this lectern, he collapsed. But happily it was from sheer exhaustion, and he swiftly recovered.

Homer Cummings, the Attorney General in Roosevelt's first two terms, once said that Stanley Reed was qualified to fill any post in the Government. And so it came as no surprise, soon after that, that President Roosevelt selected him to succeed Justice Sutherland on this Court. By that time his reputation in the bar of this country was such that the appointment was widely acclaimed. There were those who were quick to predict that Reed, the jurist, would act based upon the work of Reed, the advocate. But when Stanley Reed came to this Bench his conduct fulfilled the great traditions of the Judiciary and his positions as an advocate were set aside, and he was all judge.

As one born and bred a Southern Democrat, he believed with Jefferson that a Court entrusted with the great power of judicial review should not confuse its role with the role and function of the political branches of the Government. It is told that once one of his law clerks suggested to him that he ought to decide cases more often by looking to the desirable solution. But that was not the case for Stanley Reed. The proper function of a Justice, he said, was not to do that. He was not a result-oriented, or a problem-solving judge. And so he sent the errant law clerk to look up the word "kritarchy." The law clerk, on going to several dictionaries, had some difficulty, but finally he tracked down the word in the unabridged Oxford Dictionary and discovered, and I think, perhaps, never forgot the word means "government by judges," which Stanley Reed rejected.

Throughout his judicial career he sought always to restrain himself from reaching desirable results because they harmonized with a particular social philosophy or a personal belief of his own. As one reared in a border State, he made a major contribution in helping this Nation to move toward racial equality and, as has been said already, wrote the opinion in cases where the all-white primary elections and segregation in interstate transportation were held unconstitutional.

He approached the Court's opinion in *Brown v. Board of Education* cautiously, because he weighed whether the decision might impede rather than assist race relations in the country, and in his thoughtful and careful way he later called *Brown* the most important decision of this Court in the 19 years he served here.

During that period he authored 231 opinions for the Court, 20 concurring opinions, and 88 dissents. He was a superb colleague, and I can say that from personal experience, as I will indicate. He was devoted to his office, a prodigious, conscientious, painstaking workman.

There was nothing in him of the prima donna. Serious and modest and retiring, he was always courtly. He went about his daily tasks quietly and always serenely. His unflinching courtesy to counsel from this Bench and with his colleagues, his even temper, his dry sense of humor, endeared him to everyone. He was a moderate in all things, and he exemplified the virtues of the true 18th-century gentleman, the epitome of civility.

When he retired from the Court he was in good health, and 72 years of age. And as the Attorney General and Solicitor General have said, it was his lot to live longer after his retirement than any Justice in the history of the Court. And he enjoyed those years, more than two decades, fully. He maintained chambers here in this Court, and like Tom Clark continued to render very important service to other federal courts, and as a Special Master appointed by this Court.

He sat by designation on more than 250 cases in the United States Court of Appeals for the District of Columbia Circuit while I was a member of that court, and he sat on the United States Court of Claims. I had argued cases before him when he was on this Court, but I really came to know him when he sat with us on the Court of Appeals, where he was a regular member of panels for about four years. He maintained chambers at the Court of Appeals, and joined us at the judges' lunch table and often regaled us with stories of Kentucky and of the New Deal days when he was Solicitor General.

He not only lived longer after his retirement than any other Justice but surely no other Justice lived a fuller life than Stanley Reed. It was rich in satisfactions and in the kind of rewards that endure. In our time when the stability of family life has been eroded, we who knew him well know of the joy of his marriage to his hometown sweetheart, Winifred Elgin, and of the pride he took in his two lawyer sons. He often said: "All the success I have had in my life I owe to my wife, the beautiful Winifred." They were married 71 years, and Mrs. Reed survives him.

Kentucky has contributed mightily to the history of this Court. Ten of the 101 Justices who have served, and including those who now serve, were either native or adopted Kentuckians, and that included Stanley Reed's lifelong friend, Chief Justice Vinson. As a Kentuckian he never lost his great affection for his native State. He used to speak of his forebears who, as he once wrote, "[b]efore we were a Nation . . . traversed the wilderness road to the bluegrass country."

He was proud of his Kentucky roots, of his membership in the Kentucky Bar for more than 70 years, of his service in the Kentucky General Assembly. He loved his farm in Kentucky, and he would tell us with a smile that he had worked for 56 years in order to maintain his dairy cows on his farm in the manner to which they had become accustomed.

Stanley Reed smiled often, and in the two decades that I knew him well he and Winifred dined at our home and we dined in theirs. His delights in small, gentle banter is revealed in an exchange in our home when I served him some predinner refreshment that was laced with mint. He asked in that courtly way of his: "Where did this come from, if I may inquire?" And I responded: "Why, of course, the only place where real bourbon is made."

Beginning in the first year when I came to this Court, he came to my chambers about this time or a little later, each year, bearing a package of Kentucky's famous produce, and I in turn would send him a bottle of Bordeaux or Burgundy each Christmas. And with a smile again, as he was wont

to do, he would say, sometimes: "This is tolerable if there is no Kentucky wine available."

As Stanley Reed never forgot Kentucky, Kentucky never forgot him, and he was invited back frequently to speak on a great many occasions. In 1957 his hometown of Maysville observed "Stanley Reed Day" in his honor. The street where he had maintained his law office was named for him.

At his death the Maysville newspaper wrote that "[w]e here as fellow townsmen feel that the Nation was the richer for his shining integrity, and the depth of his wisdom." And surely we here today can share that.

It is appropriate, I think, to conclude our tributes to our colleague with words from a poem written by Alice Roberts on Stanley Reed Day. She wrote this:

"He will go back to quiet lanes  
Where cities' hum shall cease,  
To walk again the gentle ways,  
The paths of rest and peace."