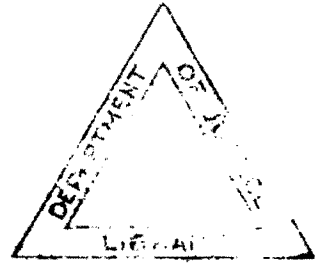


FOR RELEASE AT 12 NOON, EST.
MONDAY, APRIL 4, 1955



ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.
ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

Before

THE SUPREME COURT
AT THE MEMORIAL SERVICES

In Honor of
THE LATE JUSTICE ROBERT H. JACKSON

April 4, 1955

12:00 NOON

As we assemble today to honor the memory of Justice Robert Houghwout Jackson, our sadness is lightened somewhat when we recall the warmth of his personality, the depth of his scholarship, and his great contributions to the science of the law and to the nation.

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

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

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

His service for the State of New York in the early 1930's in the investigation of the administration of justice in that State and in directing the handling of the State's negotiable scrip program so commended him for attention that he was called to Washington in 1934 to serve as General Counsel of the Bureau of Internal Revenue, Treasury Department. He thus began a seven-year career in public administration. In retrospect, it is easy to understand why high achievement inevitably was to come. Strong, straight-forward, clear-thinking, well-informed, and loyal, his outstanding talents were successively pressed into the service of the nation through appointment as Solicitor General of the United States in 1938, and as Attorney General of the United States in 1940. As a well-seasoned trial lawyer, with experience and soundness of judgment, his service in those positions reflected great credit upon the offices and earned for him eminent standing at the bar.

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

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

^{1/} Currin v. Wallace, 306 U.S. 1.
^{2/} Mulford v. Smith, 307 U.S. 38.
^{3/} United States v. Rock Royal Co-op., 307 U.S. 533.

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

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

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

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

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

"* * * hold squarely that it is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the Union, either for temporary sojourn or for the establishment

^{4/} Edwards v. California, 314 U.S. 160 (decided November 24, 1941)

of permanent residence therein and for gaining resultant citizenship thereof. If national citizenship means less than this, it means nothing."^{5/}

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

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

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

His opinions are models of clarity. In the instance of each of these, there was never the slightest doubt as to where Justice Jackson stood and why. In agreement or in disagreement his position was abundantly clear. In economic regulations, civil liberties, taxation, commerce, and in the many and varied constitutional problems before the Court, Justice Jackson gave the same measure of directness and forceful expression.

Easy to memory, for example, is his opinion for the court in the West Virginia compulsory flag salute case, Board of Education v. Barnette.^{7/} As he there said:

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

^{5/} At p. 183.

^{6/} At p. 186.

^{7/} 319 U.S. 624, 642.

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

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

Action by the Government in proper areas of regulation, and through proper means, found Justice Jackson ready to strike down ill-founded attacks. But he was equally outspoken and determined when legally offensive methods were used in the administration of the law. Perhaps typical both of his directness and artistry in laying bare the heart of a matter, is his statement in the Di Re^{10/} opinion condemning an unlawful search and seizure:

"* * * a search is not to be made legal by what it turns up.

In law it is good or bad when it starts and does not change character from its success."

In other public expressions we also see the many facets of his interests and personality. Justice Jackson's address at the American Bar Center cornerstone Ceremony on November 2, 1953, reflects his life-long interest in the rules of law and the role of the lawyer and judge in their administration. On that occasion, in discussing the responsibility of the bar in the administration of justice, he remarked: "Cornerstones are commonplace unless they

^{8/} 330 U.S. 631, 640.

^{9/} Communications Assn. v. Douds, 339 U.S. 382.

^{10/} United States v. Di Re, 332 U.S. 581, 595.

gain distinction from the vision and faith of those who lay them." He then set forth a standard of moral accountability for the legal profession:

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

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

Even the briefest biographical reference of Robert Jackson must underscore the warmth of his personality. Friendship was natural to one of his capacity for understanding personal values and the large margin for human error. Justice Jackson was always within reach of people--the high and the small. He was not above the commonplace in life. Indeed, his entire philosophy was related to the simple, but inviolate rights of the little man. Here was dignity, but not coldness. Compassion without mawkish sentimentality. Scholarship, but not snobbery. Mention of the name of Robert Houghwout Jackson stimulates an immediate feeling of affectionate regard.

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

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