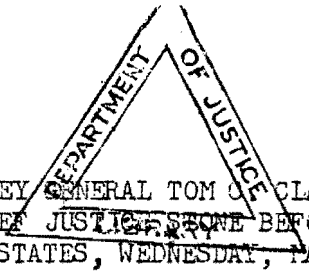

ADDRESS BY ATTORNEY GENERAL TOM C. CLARK AT THE MEMORIAL CEREMONIES FOR CHIEF JUSTICE STONE BEFORE THE SUPREME COURT OF THE UNITED STATES, WEDNESDAY, MARCH 31st, 1948.

May it please this Honorable Court:

We are gathered here today to pay tribute to the memory of Chief Justice Harlan Fiske Stone a man whose life and works exemplified the highest traditions of our profession. Truly, the law, in actuality, was to this great American and distinguished jurist "a human institution for human needs." He did much to make it so.

Born on October 11, 1872, when Ulysses S. Grant was President of the United States and Salmon P. Chase was Chief Justice presiding over this Court, Harlan Stone rose from the humble surroundings of his birthplace at Chesterfield, New Hampshire, to the highest judicial post in the Nation. Seventy-three years later, on April 22, 1946, he died in the service of his Nation as Chief Justice of the United States. Those three-score and thirteen years were measured by a continuous devotion to the best interest of his fellow man.

From his birthplace in New Hampshire, young Stone moved early with his parents to northern Massachusetts, and it was there that he grew to manhood. His early interest seemed to be farming, and for a while he attended Massachusetts Agricultural College. It is reported—authoritatively--that he was asked to depart from that college for some boisterous pranks. Soon thereafter he entered Amherst College. The change was a fortuitous one—at least insofar as the law has become the beneficiary of his talents. After completing his studies at Amherst, he enrolled at the School of Law of Columbia University. In 1898 he was awarded the degree of Bachelor of Laws, with very high honors, notwithstanding that throughout his law studies he supported himself by teaching and by tutoring. For him, characteristically, it was no more than normal routine to carry responsibilities that would ordinarily require the full time of two men.

He stayed on to teach at the law school. The maturing influence of study in a great diversity of legal subjects marked this important period of his life. For five years subsequent to 1905, he gave up teaching and occupied himself entirely in private practice in New York City. He returned on the call to become Dean of the Columbia University Law School. There he became recognized as one of the great legal educators of his day.

He left the Deanship on the call of the President of the United States to enter Government Service as the Attorney General of the United States. In the next year, on March 2, 1925, President Coolidge elevated him to Associate Justice of this Court, succeeding to the vacancy left by the retirement of Mr. Justice Joseph McKenna. To this post he brought a wealth of knowledge both in the law and in the affairs of man.

On June 12, 1941, on the retirement of Chief Justice Charles Evans Hughes, President Franklin D. Roosevelt appointed him Chief Justice of the United States -- an appointment which was received with universal acclaim. And foremost among those who praised his elevation was the late Senator Norris who had opposed his nomination in 1925 as Associate Justice. "In the years that have passed I became convinced, and am now convinced, that in my opposition to the confirmation of his nomination I was entirely in error," the late Senator confessed in a speech on the floor of the Senate, and added, "I am now about to perform one of the most pleasant duties that has ever come to me in my official life when I cast a vote in favor of his elevation to the highest judicial office in our land."

Harlan Stone had served as Associate Justice for sixteen years, and was to serve as Chief Justice for five more; these twenty-one eventful years of service on this bench covered fully one-eighth of the history of the Court itself. He met the many problems brought to the Court with a judicial tact and fairness that won him universal acclaim as one of the outstanding champions of the dignity of man. This Court was faced again and again with the task of re-defining the power of the Government in its relation to persons and property. Crisis after crisis was met giving this nation the necessary strength to surmount economic chaos and to defeat the armed might of totalitarianism. And all this while fully preserving and enlarging the individual liberties of our people. Harlan Stone played a leading part in the development of this continuous growth of the law. He would have felt, and we know he did feel, that his effort was only a part of that of a team. He performed his job as did every other good American citizen.

This common touch, this feeling of friendship and brotherhood with every human being, regardless of his station in life, was perhaps the most noteworthy facet of the character of the late Chief Justice. His ability was indeed superb and outstanding, but it was by no means overweening; his character was in truth righteous and determined, but it was not domineering. His was an outlook fundamentally healthy, for throughout his life he had maintained himself in trim, — physically, mentally and spiritually. He was a man who encompassed a wide and diversified field of interests and who was capable of mastering and appreciating each one. Though partisan of all that he considered right and good, yet when he sat in judgment he held himself strictly to a lofty concept of the nature of the judicial function. A judge by the nature of his calling must needs be thus impartial, but the well-nigh perfect detachment of Harlan Stone may serve as a model to all who may follow him.

I shall not attempt a full evaluation of the contribution made by Harlan Fiske Stone to the law, nor can I here do adequate justice to his character or personality. Such an effort, indeed, would be as injudicious here as it would be impossible of attainment, for the progress which the law has made through his efforts is immeasurable in its vast extent. It touches the full field of legal development. The six hundred opinions of which he was the author are milestones along the pathway of legal advancement. With outstanding independence of thought they have enriched the product of a court always justly renowned for its independence.

Basically, I think one may say that the feeling that moved him most in his judicial life was one of humility, accompanied by a clear understanding of what he conceived his task to be and a faith in his ability to accomplish it. The law to him was not an absolute; he was not one of those who felt that the work of a Judge consisted, like that of a tailor, simply in taking the measure of legislative enactment to constitutional provision and determining whether the size of the one was too large to fit the other. On the contrary, the law had a direct relationship to changing economic and social needs. It was not a rigid bar or straitjacket to bind the limbs of man in his development; its function was to assist and not to hinder man's progress.

He did not feel that it was the function of a Judge or of the Court, as he put it, "to sit as a super-legislature, or as triers of the facts on which a legislature is to say what shall or shall not" be done. In dealing, for example, with the complicated question of what instrumentalities of state or federal government might be taxed by the other, he insisted that "the limitation upon the taxing power of each, so far as it affects the other, must receive a practical construction which permits both to function with the minimum of interference each with the other."

His own approach to the judicial function in construing the validity of legislation was stated simply: "Some presumption should be indulged that the [state] legislature had an adequate knowledge of . . . local conditions ... On this deserved respect for the judgment of the local lawmaker depends, of course, the presumption in favor of constitutionality, for the validity of a regulation turns 'upon the existence of conditions, peculiar to the business under consideration.' . . . Moreover, we should not, when the matter is not clear, oppose our notion of the seriousness of the problem or the necessity of the legislation to that of local tribunals . . . But even if the presumption is not to be indulged, and the burden no longer to be cast on him who attacks the constitutionality of a law, we need not close our eyes to available data throwing light on the problem with which the legislature had to deal."

Often, indeed, during his incumbency on this Bench, it must have given him satisfaction to see that the passing years had proved his point, that many of his dissenting opinions had come to express the law in the eyes of the majority of the Court. But his feeling was not merely pride because views which he had stated contrary to the majority had finally been proclaimed to be right; it was rather a sense of gratification that the Court had functioned in accordance with what he considered to be a judiciousness necessary and appropriate to it.

His last words from this Bench were, as we all know, fully characteristic of his judicial philosophy. Fifteen years earlier, the Court had decided that admission to citizenship had to be denied an alien who because of religious scruples was unwilling to bear arms in this country's

defense. He had dissented from this view, for he felt that the alien's willingness to take the oath of allegiance and to serve the nation as a noncombatant was sufficient to satisfy the statutory requirements for naturalization. The cases were much discussed, and legislation effecting Stone's views of the matter was several times proposed in the Congress, but was never enacted. Finally, in 1940 and 1942, new statutes on naturalization were passed, but they retained unchanged the language which had been earlier construed by the Court. Stone felt that this amounted to an acceptance by Congress of the Court's previous interpretation, and for him in this field that determination was conclusive. When, in 1946, the question was once more presented to the Supreme Court, although the views of the majority had come to accord with those which Stone had held in his earlier dissent, he felt his former position no longer tenable. In his dissent he said:

> With three other Justices of the Court I dissented in the Macintosh and Bland cases, for reasons which the Court now adopts as ground for overruling them. Since the Court in three considered earlier opinions has rejected the construction of the statute for which the dissenting Justices contended, the question, which for me is decisive of the present case, is whether Congress has likewise rejected that construction by its subsequent legislative action, and has adopted and confirmed the Court's earlier construction of the statutes in question. A study of Congressional action taken with respect to proposals for amendment of the naturalization laws since the decision in the Schwimmer case, leads me to conclude that Congress has adopted and confirmed this Court's earlier construction of the naturalization laws. For that reason alone I think that the judgment should be affirmed.

This was his last pronouncement as Chief Justice of the United States. It was dramatically characteristic that this last act was consistent with all the others of his life, that he died as he had lived—courageously and honestly, with the dignity and humility of a man who is at peace with himself and whose philosophy embraces all men in the scheme of government and of life.

Words are inadequate in my effort to express the high esteem and affection in which the late Chief Justice was held as a man, and the very real respect with which his accomplishments as a Judge and his contribution to justice and law must be regarded. The courts, he felt, "are concerned only with the power to enact statutes, and not with their wisdom" and, "while unconstitutional exercise of power by the executive and legislative branches of the Government is subject to judicial restraint, we should remember that the only check upon our exercise of power is our own sense of self-restraint." His abiding faith in the people was expressed in his statement that "For the removal of unwise laws from the statute books appeal lies not to the courts but to the ballot and to the processes of democratic government."

Mr. Chief Justice of the United States and Associate Justices of this 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 this morning memorializing the life of the late Chief Justice Harlan Fiske Stone be accepted by you, and that it, together with the chronicle of these proceedings, be ordered to be kept for all time to come in the records of this Court.