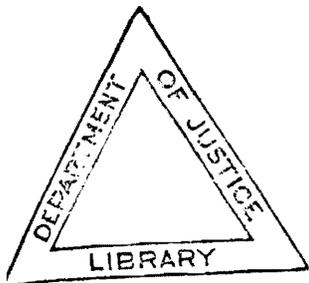


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REMARKS
of
HONORABLE J. HOWARD McGRATH
ATTORNEY GENERAL OF THE UNITED STATES

Before
THE SUPREME COURT OF THE UNITED STATES

In Presenting To the Court
The Minute and Resolutions
Adopted by the Supreme Court Bar

In Memory Of
The Late Chief Justice
CHARLES EVANS HUGHES

Washington, D.C.
Monday, May 8, 1950
12:00 Noon

May it please the Court:

Five times within the last forty years, within the personal experience of some now present here today, this Court has met to receive the Minute and Resolutions of its Bar to mark the passing of a Chief Justice of the United States.

Today your Honors meet to mourn Charles Evans Hughes, the eleventh Chief Justice, and to commemorate, in fitting and reverent fashion, his life and his judicial services.

This would be, in any event, a solemn occasion. But it is additionally marked with sadness by reason of the untimely death, since the meeting of the Bar of this Court in November last, of the late Chief Justice's only son, Charles Evans Hughes the younger, onetime able Solicitor General of the United States.

The Minute and the Resolutions of the Bar which have been read, and the addresses which were made in November, outlined Chief Justice Hughes' career, at the bar, in public office, and on this Bench. I shall not attempt even to summarize what was there so eloquently and so gracefully said, and, since I did not have the privilege of acquaintance with the late Chief Justice, there are no personal touches which I could add to what was said by those who knew him. But I venture to think that it would not be inappropriate if I were to suggest, however briefly, an appraisal of those qualities which contributed to his eminence among those very eminent men who preceded him in the Chief Justiceship.

First of all, Charles Evans Hughes came to this Court the second time with a wide and varied experience in public life. He had been Governor of his State. He had been a candidate for President -- and the nomination came to him unsought. He had been Secretary of State, directing the

foreign relations of this country during the critical years that followed the end of the First World War. He had been counsel for investigatory bodies of his state legislature, and had conducted the wartime investigation of the aircraft industry. He had been for six years a Justice of this Court, and had been a member of the Permanent Court of International Justice as well. He was thus superbly equipped to preside over a tribunal which is, necessarily and inescapably, the final arbiter between the claims of the individual and those of government, as well as between the powers of the states and those of the nation. It is precisely because the resolution of those fundamental questions involves judgments that are political in the larger sense that judges with first-hand experience in legislative and executive and administrative tasks have been in the forefront of those who have left a lasting impress on our constitutional law.

Second, Chief Justice Hughes was a consummate lawyer. As one of his associates has said, he "could tear the heart out of books because all his life he had been a student." With the exception of two years of law teaching as a young man, all of his life when not in public office was devoted to the practice -- the very active practice -- of the law. His handling of cases was characterized by a complete mastery of the facts and of the law, and by powerful and persuasive advocacy. The same qualities characterized his opinions in this Court. A Hughes opinion stands up under the most searching analysis and after-scrutiny, and its style is, very literally, the man himself: well-organized, thoroughly logical, rolling onward in powerful sentences to an irresistible conclusion.

Finally, Chief Justice Hughes had the indispensable quality of integrity. A man of principles and quite without fear, he never chose the path that was merely easy. He knew that the greatest evils follow a compromise with or an appeasement of evil. And so he espoused and defended causes because of their merits wholly irrespective of public acclaim. Hughes' career throughout exemplifies what Mr. O'Brian has so well expressed, a "disdain for considerations of expediency."

When, therefore, some dozen or so years ago, the country was in the throes of a grave constitutional crisis, it was fortunate indeed, from whatever point of vantage that crisis is viewed, that Charles Evans Hughes was Chief Justice. I have no wish, least of all in this chamber, to revive the emotions which it evoked, or even to recall the broad outlines of the struggle. But viewing the matter in retrospect, realizing that the conflict was either one that both sides would lose or that both sides would win, I think it both fair and accurate to say that to Chief Justice Hughes must go much of the credit for the ultimate outcome, which not only preserved our most cherished institutions but yet adapted them to the manifold needs of an increasingly complex society. Like the common law worthies of old, Hughes summed up the law, restated it, adapted it, and passed it on, making it serve the demands of the present, yet preserving its continuity with the past and its capacity for growth in the future. And, like Marshall, Hughes was ever mindful that "it is a constitution we are expounding." (4 Wheaton 407).

For Hughes himself the process involved very little back-tracking. He had written eloquent dissents in the Railroad Retirement Act case

(Retirement Board v. Alton R. Co., 295 U.S. 330) and in the New York minimum wage case (Morehead v. New York ex rel. Tipaldo, 298 U.S. 587); the views he expressed there did not later need to be changed. He had similarly, in the first Guffey Coal Act case (Carter v. Carter Coal Co., 298 U.S. 238), set forth a basis for sustaining the statute which the majority struck down. Possibly his most questionable utterance, in the light of later decisions, was the commerce clause portion of his opinion in the Schecter case (Schecter Corp. v. United States, 295 U.S. 495); as to that, it is probably sufficient to say that no member of the Court expressed any contemporaneous disagreement with what was there said. And of course his views on civil liberties were consistently liberal, from the days of Bailey v. Alabama (219 U.S. 219) during his first service on the bench, through a whole series of landmark cases, whose mere listing is a temptation which I must resist, though with regret, down to Mitchell v. United States, (313 U.S. 80), decided in his last Term of Court.

It would be tempting, too, to dwell upon Chief Justice Hughes' work as presiding officer of the Court, of his contribution to the formulation and promulgation of the Rules of Procedure, and of his relation to the functioning of the entire federal judicial system through the Conference of Senior Circuit Judges and the Administrative Office of the United States Courts. But my time is fleeting, and I must leave untouched this and many other fields in which the late Chief Justice labored and left his mark.

Few men, in our or any other age, have packed so much and such superlative accomplishment into a single lifetime as did Charles Evans Hughes. Today, on this occasion, we are perhaps more immediately concerned with his accomplishments as Chief Justice. We know now -- indeed, we knew during his lifetime -- that he was a great Chief Justice. And as the years pass, as the immediate past recedes to a point where it can be viewed with more perspective, so that the constitutional problems of the 1930's can be examined with at least some of the detachment with which we examine those of, let us say the 1850's, then, I venture to predict, the name of Charles Evans Hughes will be linked with those of Marshall and Taney on the list of the greatest expounders of our fundamental law.

May it please the Court: On behalf of the Bar of this Court, who in this matter speak for all the lawyers in the land, I move that the Minute and Resolutions heretofore presented in memory of Chief Justice Hughes be accepted, and that, together with the chronicle of these proceedings, they be spread upon the permanent records of this Court.