

THE DAILY RECORD

LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Robert H. Jackson, the man from Jamestown

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Daily Record Columnist

In view of the controversy surrounding the tenure of Attorney General Alberto Gonzales and his recent resignation, it is appropriate for us to look back to when this powerful position was held by an attorney from Western New York, Robert H. Jackson.

Jackson grew up in Jamestown, N.Y. and in 1911 went directly from high school to Albany Law School — where he completed a two-year program in one year — before returning to home to complete his clerkship. While in law school, he became acquainted with a first term state senator who showed great promise and who, ultimately, would have an enormous impact on his career: Franklin Delano Roosevelt.

Jackson applied for admission to the bar and, after passing the required exam, took the lawyer's oath in Rochester on Nov. 24, 1913.

For the next 21 years, Jackson was engaged in a very successful practice in Jamestown and Upstate, representing a number of clients including Jamestown Telephone Corp. for which he successfully fought the Bell Telephone System. He handled every type of case, from personal injury to criminal defense, and even successfully handled a medical malpractice case for a plaintiff.

Jackson not only tried numerous cases, but also handled appeals before the Appellate Division, Fourth Department, and the Court of Appeals.

While he was a lifelong Democrat in a sea of Republicanism, his reputation and trial skills were such that Jamestown's Republican mayor and city council appointed him to the post of corporation counsel.

A recent newsletter of the Historical Society of the Courts of the State of New York includes an article dealing with his arguments before the state's highest court. During his 21 years of private practice he argued seven cases before the COA.

Among the most famous is a case he lost — *Allegheny College v. National Chautauqua County Bank of Jamestown* —

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which dealt with a charitable bequest to establish a scholarship pledged to Allegheny College, then repudiated by the benefactor. Today it is a standard for first year contract courses. Judge Cardozo wrote the decision, holding the commitment to publicize the scholarship once it was fully funded was sufficient consideration to support and create a binding contract, therefore the defendant's attempted repudiation was ineffective.

In reviewing the cases and clients Jackson represented during this period, it is evident he was far from a small town country lawyer. His reputation spread quickly throughout Upstate and he was in constant demand.

Robert Jackson goes to Washington

On Feb. 1, 1934, Jackson accepted an invitation from U.S. Treasury Secretary Henry Morgenthau to come to Washington on a part-time basis to assume the position of general counsel of the Bureau of Internal Revenue. He agreed to the work only on a part-time basis since he wanted to maintain his private practice in Jamestown. After a few months, it became evident he could not continue with both and he closed his private practice, permanently settling in Washington.

In his new position he tried a famous case against multimillionaire Andrew Mellon who had been secretary of the Treasury under President Herbert Hoover. Mellon was represented by one of the most distinguished criminal lawyers in the country (and later president of the American Bar Association), Frank Hogan. The case dealt with a number of questionable transactions in which Mellon was engaged, and the case concluded in favor of the government, resulting in a judgment against Mellon for \$750,000 in unpaid taxes.

Following his successful handling of the Mellon case, Roosevelt asked Morgenthau to grant Jackson a leave of absence to act as special counsel for the Securities and Exchange Commission. He tried a number of cases arising out of the Public Utility Holding Company Act of 1935.

It was evident Jackson was valued in Washington as a

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superb trial lawyer, not simply as an administrator. In 1936, he assumed the position of Assistant Attorney General in charge of the Tax Division, and a year later took over as head of the Anti-trust Division.

During his tenure there, the government's case against Alcoa was revived as well as the case against General Motors Acceptance Corp., which was based on the requirement that any car purchased through GM be handled through GMAC.

Jackson attempted to resign in 1938 and return to his private law practice, but Roosevelt was adamant in his opposition. He was persuaded to remain in Washington, and was nominated to the post of Solicitor General of the United States. He took the oath of office on March 5, 1938.

Chief Justice Hughes was reported to have said that Jackson was the ablest solicitor general in his experience. Justice Brandeis told Justice Frankfurter one day that "Jackson should be Solicitor General for life."

On Jan. 18, 1940, Jackson became the U.S. Attorney General. He was 47 years old.

Justice Jackson

Jackson became an associate justice on the Supreme Court bench in July 1941. He sat until 1954. During that time he wrote more than 300 opinions. Although he was a true believer in the "New Deal," his writings reflected a conservative view toward construing legislation.

Two of his most significant decisions are his 1943 majority opinion in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, which overturned a public school regulation making it mandatory to salute the flag; and his concurring opinion in the 1952 case of *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579. *Youngstown* dealt with President Harry Truman's attempt to place most of the nation's steel mills under federal control to avert a strike that would adversely impact the country's Korean War efforts. The court ruled that Truman lacked Constitutional authority to issue such an order. Justice Jackson's concurring opinion, which formulated a three-tier test for evaluating claims of presidential power, remains one of the most widely cited opinions in the court's history. It was referred to repeatedly in the confirmation hearings of both Chief Justice John Roberts Jr. and Justice Samuel Alito, and during the Senate Judiciary Com-

mittee's hearings dealing with the National Security Agency's warrantless surveillance program.

Although Jackson was admired by many for his writings and contributions to the high court, he became world famous with his appointment and service as the chief prosecutor at Nuremberg.

In April 1945, Jackson received a call from Truman to serve at the first international criminal trial in the world's history and in May 1945, he was appointed as Chief Prosecutor of the United States.

Although the majority of the public supported the prosecution, there also was criticism on the grounds that the judges were not impartial. Some felt the trials violated a fundamental principle of American law that a man cannot be tried under an *ex post facto* statute. Others disapproved of Jackson's role in the trial. In 1947 the Judiciary Committee declared the "practice of using federal judges for non-judicial activities is undesirable."

Nonetheless, Jackson's role was praised by many others, and his opening and closing statements were lauded as the work of a master.

Upon his return to the United States, Truman awarded him the Medal of Merit.

Jackson resumed his work on the Supreme Court and participated in the unanimous and epic decision in *Brown v. Board of Education of Topeka*. Earlier, he suffered a heart attack and was sidelined for a number of weeks, but on May 17 he left the hospital and went directly to the court in order to be present when Chief Justice Earl Warren announced the *Brown* decision.

A few months later, while driving his car from his McClean, Va. home to the Supreme Court, Jackson suffered another heart attack, this one fatal. He was 62 years old. He is buried in Maplegrove Cemetery near Jamestown, under a simple headstone that reads: "He kept the ancient landmarks and built the new."

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