

ROBERT H. JACKSON, PUBLIC SERVANT

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In the case of Robert H. Jackson, the words “public servant” describes a man devoted to the best interests of his profession, his community, and his Nation. Throughout his career, Jackson demonstrated the highest standards of the legal profession. As a successful lawyer in private practice, as a government official, as a Justice of the Supreme Court, and as an international prosecutor, he distinguished himself by his outstanding legal skills, his powerful advocacy, and his dedication to his work. These aspects of his professionalism were complemented by the highest qualities of character and integrity.

Most writings about Justice Jackson have emphasized his service on the United States Supreme Court or his performance as United States Chief Counsel for the war crimes trials at Nuremberg. Much less is generally known about his twenty years as a general practitioner or his several appointments to important posts in the Executive Branch of the federal government.

Robert Jackson practiced law in Jamestown, New York, where he gained a reputation as a highly effective trial lawyer. In a tribute to him by Judge Michael Keasler of the Texas Court of Criminal Appeals, Jackson was described as:

[T]he advocate at his best. He possessed the rare combination of a good jury personality and the qualities of a profound lawyer. He knew how to talk persuasively to a jury of Chautauqua County farmers, yet he could argue the points of law involved in the case with great learning and with unanswerable logic, either before the trial judge or an appellate court. He had high standards of craftsmanship as a lawyer; he was thorough and painstaking in preparation.¹

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¹ See Michael E. Keasler, *Robert H. Jackson: The Consummate Professional*, available at <http://www.judgekeasler.com/j.html> (quoting Philip Halpern, *Robert H. Jackson, 1892-1954*, 8 STAN. L. REV. 3, 5 (1955)).

During his early practice, Jackson represented many corporations and businesses, which provided him with the knowledge and experience he would later use as a top regulatory official in the federal government. But he always remembered that our justice system was not merely a dry collection of laws and judicial decisions, but that lawyers and judges had to consider the effect their actions would have on the lives of real people. This understanding was particularly significant in his later role as Attorney General and in his views as a Justice on the Supreme Court.

Jackson was active in bar association affairs, both locally within New York State and nationally in the American Bar Association and the American Law Institute. He was also influential in Democratic Party politics, where he came to the attention of then-Governor Franklin D. Roosevelt. Impressed by this increasingly prominent lawyer, Roosevelt appointed him in 1931 as a member of the Commission to Investigate the Administration of Justice in New York State.

That began a series of appointments by FDR. In 1934, now-President Roosevelt named Jackson as General Counsel of the Bureau of Revenue. In 1936, he became an Assistant Attorney General in charge of the Antitrust Division. Two years later, in 1938, Roosevelt appointed Jackson as Solicitor General of the United States. At that time the Solicitor General was the second-ranking official in the Department of Justice, who supervised all government cases before the Supreme Court and served as acting Attorney General whenever that official was out of Washington, D.C.

Jackson thoroughly enjoyed this role, which fully utilized his considerable ability as a legal scholar. He personally argued over thirty cases before the Supreme Court and was so masterful as a courtroom advocate that Justice Louis D. Brandeis once proclaimed that he "should be Solicitor General for life."

Roosevelt again recognized Jackson's leadership in the law in January 1940, when the number-two man in the United States Department of Justice was elevated and sworn in as the 57th Attorney General. In this capacity, Jackson demonstrated not only his excellence in legal matters, but his commitment to the civil liberties of individual citizens.

In 1940, the Nation's Capital was preoccupied with matters of national defense. This was true also of the Justice Department, where the Federal Bureau of Investigation and the Criminal

Division were involved in protecting defense installations, thwarting foreign espionage, and investigating violations of neutrality laws and other national security regulations.

As the federal government was being reoriented to cope with its responsibilities for national defense, the new Attorney General not only revised the Department of Justice, but also provided regular advice to President Roosevelt and legal assistance to the other departments. Jackson wrote in the Attorney General's Annual Report for Fiscal Year 1940 that the Department of Justice had the "task of making the national defense of the United States as nearly impregnable as possible." At the same time, he stated the Department must not "overlook the fact that this purpose must be achieved with due regard to the civil liberties of the individual as guaranteed by the Bill of Rights and embraced in our American traditions." He wrote that his guiding principle was that "in the process of upholding democratic ideals, we must not unwittingly destroy or impair what we are cherishing and endeavoring to preserve."

Perhaps Jackson's greatest contribution to the Department of Justice and to American law enforcement was his inspirational leadership in promoting fairness in the administration of justice and in protecting constitutional rights. His strong views on this subject are reflected in the speech he gave to all the United States Attorneys, the chief prosecutors in the federal judicial districts throughout the country, at their second annual conference, on April 1, 1940.

In his remarks, Jackson recognized the power of the government lawyers sitting before him: "The prosecutor," he said, "has more control over life, liberty, and reputation than any other person in America."² He pointed out the tremendous discretion that is held by the prosecutor in the ability to decide whether to investigate, order arrests, seek an indictment by a grand jury, present a case for trial or dismiss it, and even to make recommendations on sentencing and parole. He went on to say that: "While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst."³

The Attorney General also explained that it was "[b]ecause of this immense power to strike at citizens, not with mere individual strength, but with all the force of government itself," that U.S.

² Robert H. Jackson, *The Federal Prosecutor*, J. AM. JUDICATURE SOC'Y 18, 18 (1940).

³ *Id.*

Attorneys were “required to win an expression of confidence in [their] character by both the legislative and executive branches of the government before assuming the responsibilities of a federal prosecutor.”⁴

Jackson charged his audience to have “a rededication to the spirit of fair play and decency that should animate the federal prosecutor,”⁵ and that their greatest professional asset was to have other lawyers and judges recognize that their attitude “toward those who feel [their] power has been dispassionate, reasonable and just.”⁶

He closed his speech with an expression of his own personal philosophy on the administration of justice:

A sensitiveness to fair play and sportsmanship is perhaps the best protection against the abuse of power, and the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches his task with humility.⁷

Jackson served just less than a year and a half as Attorney General before being appointed, again by Roosevelt, to the U.S. Supreme Court. But in that relatively brief time he left his mark on the Department of Justice as a leader who demonstrated excellence, humanity, and decency to those who worked with him and to the Nation he served.

Robert Jackson’s subsequent career is well-chronicled elsewhere. But what is significant about his performance in the high offices he later held—on the Supreme Court and at the Nuremberg trials—is his continued belief in the need for fairness and restraint in the exercise of governmental power. Although a firm believer in Roosevelt’s “New Deal,” and an active participant in its implementation, Jackson was an advocate of federalism as a bulwark against the unwise centralization of power in the federal government. Philip Kurland, in an article on Jackson, quotes him on this subject:

I...have been highly desirous of preserving the federalist form and keeping vitality in it. Perhaps I’m more inclined to do that since the Second World War than I was before. Because of the post-mortem examination of the Hitler regime, which took place at Nuremberg, it became apparent

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 19.

⁷ *Id.* at 20.

that until Hitler had broken down the powers of the separate German states and established a completely centralized police administration, he wasn't able to bring about the dictatorship. I think that the philosophy of the Tenth Amendment reserving the undelegated powers to the people or the states ought to be regarded as an essential part of our Bill of Rights, in the sense that our rights are secured and made safe not merely by a separation of powers in the federal government, but by a division of powers between state and federal government.

The decided drift is in favor of a strengthened federal government. I think we should draw a line between the necessity for central regulation of commerce, in the sense of finance and trade, and the necessity for diffused control of such things as affect civil liberties. Because while the federal government occasionally may make a great advance in the direction of civil liberties that the state governments would not make—at least in some states—for many years to come, they can also make a very disastrous reversal to do more harm to civil liberties in one administration than a state government could do in a generation....I think the potentialities of a federal, centralized police system for ultimate subversion of our system of free government is very great.⁸

At the close of his career, as at the start, Robert Jackson was true to the principles of democratic government and the rule of law. He was a great lawyer and a great public servant.

⁸ Philip B. Kurland, *Robert H. Jackson*, in 4 THE JUSTICES OF THE UNITED STATES SUPREME COURT: THEIR LIVES AND MAJOR OPINIONS 1282, 1304–05 (Leon Friedman & Fred L. Israel eds., 1995).