

James M. Marsh (1913-2006), Jackson Law Clerk

*John Q. Barrett**

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James Milton Marsh, who was Justice Robert H. Jackson's sole law clerk during the Supreme Court's October Terms 1947 and 1948, died last month, at age 92, at his home outside Philadelphia.

In the 1940s, Jim Marsh was unlike most of the young lawyers who became Supreme Court law clerks: he came from a small town (in western Pennsylvania), he never attended college, he was a fervent Democrat who had worked in a local New Deal agency, and he had received his legal training not in the Ivy League but from key mentors and, in the classroom, at a non-elite law school. In each of these respects, you may be noting, Jim Marsh's background closely resembled Justice Jackson's own personal history. Jackson quite plainly saw a lot of himself in young Marsh as he corresponded with him, interviewed him and considered his clerkship application in fall 1946 and early 1947.¹ That reflected image, as much as Jim Marsh's talents, energy and strong recommendations, led Jackson to take a chance on hiring this unconventional law clerk.

As Justice Jackson's law clerk, Jim Marsh was a great success. Jackson liked Jim immensely—the Justice admired the speed and quality of his law clerk's work, the sparkle of his writing, his sharp editorial pen and his ever-present wit. During Jim's 1947-48 clerkship year, Jackson asked Jim to stay on for a second year and Jim promptly accepted. After Jim's two clerkship years, they remained close, through visits and regular correspondence, during Jackson's six remaining years.²

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). I posted this text to my Jackson email list on July 17, 2006.

¹ The Jackson Center website, www.roberthjackson.org, includes a two minute video clip of Jim Marsh's 2002 recollections of his two meetings/clerkship interviews with Justice Jackson.

² For some of Jim Marsh's recollections of Justice Jackson, and for a taste of Jim's writing, see James M. Marsh, *The Genial Justice: Robert H. Jackson*, 60 A.B.A. J. 306-09 (Mar. 1974), republished in 68 ALBANY L. REV. 41-49 (2004) (available as a PDF file on the Jackson Center website).

Jim Marsh also was, more significantly, a great success throughout his life, including in his loving, devoted family and his impressive legal career. Some of the details can be found below in stories from the Philadelphia Daily News and Philadelphia's Legal Intelligencer.

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James M. Marsh, 92, retired lawyer

By John F. Morrison
Philadelphia Daily News, June 29, 2006

JIM MARSH called them "incredible circumstances."

There he was, a small-town kid from western Pennsylvania with no expectation of even going to college and certainly not in his wildest dreams could he see himself as a lawyer.

And a Philadelphia lawyer at that.

But those "incredible circumstances" unfolded, and in the span of a little more than a decade, from small town to big city, his life's course was set.

James M. Marsh, a highly respected member of the Philadelphia Bar who continued to practice well into his 80s, and a devoted family man, died Saturday. He was 92 and lived in Rosemont.

He was born to Harry T. and Cecilia Marsh in the small town of Brookville, Pa. Although he got an early taste of the law as a legal assistant in the firm of his cousin, Harold Shannon, the Depression had begun and the future for young folk, however bright and talented they might have been, was sorely limited.

A staunch Democrat, Marsh became manager of the Jefferson County office of the Homeowners Loan Corp., part of President Franklin D. Roosevelt's New Deal program. The agency was able to avert bank foreclosures on more than 150 local residences.

As war seemed inevitable in 1940, he enlisted in the Army and eventually became a chief warrant officer in the Signal Corps.

It was while he was in the Army that the first "incredible experience" occurred. He was stationed in Philadelphia in 1942, when he met

prominent Philadelphia lawyer J. Harry LaBrum, a Signal Corps officer who eventually would become a general.

It was LaBrum who discerned that Marsh would make a good lawyer. Through LaBrum's influence, the young soldier, without an undergraduate degree, began studying law at Temple Law School's Evening Division.

He was still in the Army, and his studies were interrupted by service-related duties, including a tour in Italy.

After the war, he returned to Temple, where he became editor in chief of the *Temple Law Quarterly* and received his law degree in 1947.

Another "incredible experience" happened during the Nuremburg war-crimes trials when he contacted U.S. Supreme Court Justice Robert H. Jackson, chief prosecutor at the trials, about what he perceived as a lack of coverage of the proceedings by legal journals.

Not only did Marsh succeed in getting more such coverage, but Justice Jackson brought him to Washington as his clerk. A one-year clerkship turned into two and, at its conclusion, Jackson offered to introduce Marsh to some of the major law firms in Philadelphia.

But Marsh felt a sense of loyalty to LaBrum, and decided to join his smaller firm. He eventually became managing partner and oversaw its growth into a major defense litigation firm, LaBrum & Doak.

In 1992, he joined the firm of Hecker, Brown, Sherry & Johnson, where he remained until his retirement.

Marsh's expertise was largely in the realm of appellate practice and litigation and in public-contract matters.

During his career, he served as deputy chief counsel to the Pennsylvania state treasurer, was a member of the Pennsylvania Bar Association House of Delegates and of the Villanova University Development Council.

He was chairman of the Pennsylvania Legislative Task Force on the Commonwealth Procurement Code, which was signed into law by then-Gov. Tom Ridge in 1998.

He also served on a number of committees of the Philadelphia Bar Association and published articles on legal topics.

Marsh's son, James M. Jr., also a lawyer, said his father had been cherished by his colleagues for his "warmth, integrity, humility and acumen."

Although his father attributed his successes to those "incredible circumstances," his son said they "would not have been possible without his incredible talent, industriousness and humanity, which was obvious to all he met."

"He was a gifted storyteller and humorist, with an anecdote for every occasion," his son said.

Marsh had held season tickets to the Eagles since 1961 and was a big Phillies fan.

He also is survived by his wife of 64 years, the former Antoinette "Toni" Ferraro; two daughters, Frances M. Teti and Michele M. Marsh; a sister, Sister Mary Franceline Marsh, R.S.M.; a brother, Leo H. Marsh, and two grandchildren.

He was preceded in death by two children, Michael Joseph and Paula Marie; a sister, Bernadette Marsh, and a grandson, Christopher Marsh-Lawrence.

Services: Funeral Mass 11 a.m. tomorrow at St. Thomas of Villanova Church, Villanova University campus, Lancaster Avenue, Villanova. Friends may call at 7 tonight at the McConaghy Funeral Home, 328 W. Lancaster Ave., Ardmore, and at 10 tomorrow at the church. Burial will be in Ss. Peter & Paul Cemetery, Marple.

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James M. Marsh, a Gentleman and Scholar, Dies at 92 Phila. Attorney's Career Spanned Over 50 Years

By Gina Passarella

Legal Intelligencer, June 29, 2006, page 1

Getting accepted into law school without first obtaining an undergraduate degree is no easy task, but James M. Marsh took it one step further and became the first Temple University Law School

graduate to land a U.S. Supreme Court clerkship.

Mr. Marsh never had an expectation of going to college, let alone law school, but when he met attorney J. Harry LaBrum in 1942, two years after joining the U.S. Army, things changed.

LaBrum saw promise in Mr. Marsh as a potential lawyer and sent letters of recommendation to Temple Law on his behalf. After appearing before the County Board of Law Examiners for an oral exam, Mr. Marsh was admitted to the school.

His studies were interrupted by an overseas stint in Italy with the Army. Upon his return, however, he became the editor-in-chief of the *Temple Law Quarterly*.

It was through that work that the staunch Democrat spawned a legal and political career that spanned over 50 years. Mr. Marsh died at 92 on June 25 after a long illness.

In his early career, Mr. Marsh was deeply affected by the Nazi war crimes and felt that the Nuremburg trials were not receiving sufficient press coverage in the legal community.

He contacted Justice Robert H. Jackson, the lead prosecutor for the United States in those trials, and asked whether he could print some of the essential papers in the *Temple Law Quarterly*. Jackson sent Mr. Marsh some of those papers, which he ultimately printed.

Upon his return, Jackson interviewed and hired Mr. Marsh for the 1947 clerkship at the U.S. Supreme Court. It was there that he started a long friendship with Jackson and two other clerks who are now prominent in the legal community, Supreme Court Justice John Paul Stevens and U.S. Senior District Judge for the Eastern District of Pennsylvania, Louis H. Pollak.

Mr. Marsh clerked for Jackson for two years, and became friends with Stevens and Pollak while they clerked for Justice Wiley Rutledge in 1947 and 1948 respectively.

At that time, it was unusual for a Supreme Court justice to take a law clerk from Temple. Pollak said that story has it that Jackson

was all set to pick a Harvard Law grad as a clerk. When the time came to choose, however, Pollak said that after meeting Mr. Marsh, Jackson's secretary told him to go with the Temple grad.

"Jim was one of those that was so eminently likeable and admirable to all," Pollak said, adding that it was clear that Mr. Marsh and Jackson quickly became "good pals."

Stevens said that over his and Mr. Marsh's 60-year friendship, the two would keep in touch often through letters and by phone. While he said that Mr. Marsh was a "wonderful lawyer," it was a personal note that stuck out in Stevens' mind.

Apparently, Mr. Marsh was an avid baseball fan and years ago he would listen to the games over the radio. He would always keep a scorecard for each of the games as he listened, Stevens said.

In October 1932, before Stevens and Mr. Marsh had ever met, Mr. Marsh was keeping the scorecard for the World Series game between the Cubs and the Yankees. That was the game in which Babe Ruth called his shot over the centerfield wall and hit a home run, Stevens said.

As Mr. Marsh was keeping score, Stevens was sitting in the ballpark watching the game. Years later, when Mr. Marsh heard that Stevens was at the game, he gave Stevens the scorecard, which has been kept in his chambers ever since.

Marvin Comisky, former name partner in what is now Blank Rome, met Mr. Marsh when Comisky was a private under his command in the Army, and has been a close friend ever since.

He said that while Mr. Marsh came from humble beginnings, he became quite a success in his professional and personal life.

"He was an individual who was very, very loyal to a friend," Comisky said. "He was a fast-talking, fast-thinking individual with high moral character."

Comisky said Mr. Marsh taught him how to write and get directly to the point. Mr. Marsh wrote with a sense of humor and did so in a

way that people could understand, Comisky said.

It was just a month ago that Comisky last saw Mr. Marsh at a wedding for one of Mr. Marsh's grandchildren. Comisky said that Mr. Marsh was beginning to fail a bit physically but was still as sharp as ever.

Comisky is the chairman of the Pennsylvania Bar Association's legends of the bar committee, and he said he plans on nominating Mr. Marsh to be named a legend in the community.

After clerking, Mr. Marsh came back to work for his mentor LaBrum at the now-defunct LaBrum & Doak in Philadelphia, where he eventually became managing partner and spent the majority of his legal career.

In 1977, Leslie Anne Miller, former general counsel to the commonwealth of Pennsylvania, began her legal career at the firm. She said that in a time where there were few women in the profession and few mentors to help them along the way, Mr. Marsh was a mentor to her.

"He was Mr. Marsh to me for the longest time," she said. "I overcame great difficulty in calling him Jim."

Miller said that while Mr. Marsh was a "diminutive man in stature," the one adjective that came to mind when she thought of him was "great." She said he was a great storyteller, a wonderful writer and a great teacher.

He was a gentleman, Miller said, but was not afraid to fight the fight to the finish.

She said that Mr. Marsh was one of the finest appellate lawyers in the commonwealth and was a very important member of the Pennsylvania Democratic Party.

"He was the great, stalwart Democrat," Pollak said. "One always knew that was a prism with which he viewed the world."

In 1992, Mr. Marsh joined the firm Hecker Brown Sherry &

Johnson in Philadelphia, where he spent the rest of his career until retiring in 1998. His career focused on appellate litigation and public contracts matters.

Each person who spoke to *The Legal* about Mr. Marsh said that above all else, he was the patriarch of a very close-knit family, and loving husband to his wife, Antoinette, or Toni.

"He maintained such wonderful balance in his life," Miller said. "He was a hard worker, but Toni and his family were a top priority."

Judge Phyllis Beck, now at Pepper Hamilton, said she got to know Mr. Marsh when they were on the Pennsylvania appellate rules committee of the commonwealth's bar association. She said he and Toni were also very active in the Andrew Hamilton Ball.

Beck later saw Mr. Marsh argue before her when she became a Superior Court judge. She said that Mr. Marsh was always a gentleman and a learned scholar of the law.

"If Jim said something, you went back to your books and he was always right," she said. "He was outstanding as a human being, outstanding as a lawyer, outstanding as a family man."

Mr. Marsh also served as deputy chief counsel to the state treasurer of the commonwealth of Pennsylvania. He was a member of the Pennsylvania Bar Association House of Delegates and of the Villanova University Development Council.

He was also chairman of the Pennsylvania Legislative Task Force on the Commonwealth Procurement Code, which was signed into law by then-Gov. Tom Ridge in 1998. Mr. Marsh was also active in a number of other bar association committees, and published many articles on legal topics. He left the Army with the rank of chief warrant officer.

He is survived by his wife of 64 years, Toni, daughters Frances M. Teti of Wayne, Pa., and Michele M. Marsh of Havertown, Pa., and son James M. Marsh Jr., Esq., of Philadelphia; sons-in-law Thomas G. Teti and Michael A. Graziano; one sister, Sister Mary Franceline Marsh, (RSM) of Merion, Pa., one brother, Leo H. Marsh of Dubois,

JAMES M. MARSH, JACKSON LAW CLERK

Pa., and two grandchildren, Michael Teti and Daniel Teti, of Wayne, Pa., as well as numerous nieces and nephews.

Two children, Michael Joseph and Paula Marie, one sister Bernadette Marsh, and a grandson, Christopher Marsh-Lawrence, died before Mr. Marsh.

Funeral Mass will be held on Friday, June 30, 11 a.m., at Saint Thomas of Villanova Church, Villanova University Campus, Lancaster Avenue, Villanova, Pa., followed by interment at Sts. Peter & Paul Cemetery, 1600 Sproul Road, Springfield, Pa. Relatives and friends are invited to his viewing this evening from 7 to 9 p.m., at McConaghy Funeral Home, 328 W. Lancaster Ave., Ardmore, Pa., or Friday, from 10 to 11 a.m. at the church immediately prior to the Funeral Mass. In lieu of flowers, memorial donations may be made to Project H.O.M.E., 1515 Fairmount Ave., Philadelphia, PA 19130, or to Saint John's Hospice, 1221 Race St., Philadelphia, PA 19107.