

# Arthur M. Schlesinger, Jr.— in Action, in Archives, in History

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In his long, engaged and very consequential life, Arthur M. Schlesinger, Jr. (1917-2007) covered a lot of ground and knew, it seemed, everyone. In his youth, one of his many acquaintances was Justice Robert H. Jackson.

Their paths almost crossed for the first time in London in August 1945. Jackson was there as President Truman's appointee, negotiating with British, Soviet and French counterparts to establish an international tribunal for the defeated Nazis who were in Allied custody. Schlesinger, who was with the Office of Strategic Services (OSS) while also serving in the Army, was assigned to London after working for the previous year in France. Jackson's staff included OSS personnel, but not Schlesinger—he was trying to head westward toward home and family, not seeking to join what would become the Nuremberg effort. Jackson and his team worked out of OSS office space in London, but not the building where Schlesinger worked. On August 15, 1945, a day that began with the official announcement of Japan's surrender, Jackson and Schlesinger ended up in the massive evening crowds that celebrated in the streets of Piccadilly and in front of Buckingham Palace, but they did not run into each other.<sup>1</sup>

Arthur Schlesinger met Justice Jackson a year later. Jackson was just back at the Supreme Court after a year's absence at Nuremberg. Schlesinger, working for FORTUNE magazine, was writing an article about the fractious Justices on a Court that had a new Chief Justice, Fred M. Vinson. Schlesinger arranged to interview each of the Justices. On Friday, October 18, 1946, three days after his twenty-ninth birthday, Schlesinger interviewed Jackson in his Court chambers. Schlesinger found Jackson to be personable, helpful, witty and, even though their conversation was off the record, properly discreet (as each Justice was).<sup>2</sup>

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For a selected archive of Jackson List postings, see my homepage at [www.law.stjohns.edu](http://www.law.stjohns.edu). To subscribe to the Jackson List, send a note to [barrettj@stjohns.edu](mailto:barrettj@stjohns.edu).

<sup>1</sup> See generally ARTHUR M. SCHLESINGER, JR., *A LIFE IN THE 20<sup>TH</sup> CENTURY: INNOCENT BEGINNINGS, 1917-1950*, at 352 (New York: Houghton Mifflin Co., 2000).

<sup>2</sup> See *id.* at 419.

Schlesinger's article, *The Supreme Court: 1947*, was published in FORTUNE that January.<sup>3</sup> It was widely read and controversial, including among the Justices. Many years later, Schlesinger wrote this summary of his article and the reactions:

My thesis was that the argument dividing the New Deal justices—[Hugo L.] Black and [William O.] Douglas versus [Felix] Frankfurter and Jackson—was at bottom an argument between two theories of the way judges should decide cases. Black and Douglas, I said, stood for “judicial activism,” Frankfurter and Jackson for “judicial self-restraint.” ...I believe that the FORTUNE piece first put the terms into general circulation.

The salient distinction was the activists' addiction to results ... and the self-restrainers' more traditional addiction to process. The Black-Douglas group, I wrote, saw the Court as an instrument to achieve social justice, especially for the otherwise unprotected in society; the Frankfurter-Jackson group saw it as an instrument to permit legislatures to achieve the results, for better or worse, that a majority might wish (except when statutes blocked the channels of self-correction). ...

A half century later the article seems to me analytical, measured and quite well written. I tried to state each side as fairly as I could, though I came out in the end for judicial self-restraint. The memory of the judicial activism practiced in favor of business by the Nine Old Men only a decade before was still vivid in mind, and one did not want to make activism the routine philosophy of the Court.

I was surprised by the ferocity of the ensuing controversy. Part of it came from my personal characterizations of the justices.  
....

When I first saw him after the publication, Felix [Frankfurter] was entirely friendly.... A few weeks later he invited me to lunch at the Court. His remarks about the article, I wrote to my father, “indicated that he will be upset by anything which suggests that he and Jackson are not perfect; but he got the bile out of his system and became very genial.”

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<sup>3</sup> See Arthur M. Schlesinger, Jr., *The Supreme Court: 1947*, XXXV Fortune 73 (Jan. 1947).

....“I feel badly about the Supreme Court repercussions,” I wrote to my parents. “Everyone is apparently mad at me—Douglas very hurt and very mad, because he thought I was on his side; Black, resigned; [Frank] Murphy furious and wanting to sue me for libel; Jackson, mad; Frankfurter, annoyed because he is credited with having inspired the piece; [Stanley] Reed, annoyed because of the way he was brushed off; etc. It is much simpler to write about dead people.”<sup>4</sup>

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October 15, 2007, would have been Arthur Schlesinger’s 90<sup>th</sup> birthday. His death last winter prevents him from attending special celebrations, but his historical life and historian’s work indeed deserve celebration. The work includes many brilliant books, including one on the only Jackson who became president,<sup>5</sup> three volumes on Franklin D. Roosevelt and the New Deal,<sup>6</sup> an insider’s account of the Kennedy presidency,<sup>7</sup> a biography of Robert F. Kennedy,<sup>8</sup> and an autobiography covering his first thirty-three years.<sup>9</sup>

Arthur Schlesinger’s work also now includes, thanks to the editorial efforts of two of his sons, published excerpts from over 6,000 pages of private notes that he made throughout his lifetime.<sup>10</sup> This new book, *JOURNALS, 1952-2000*, is extremely smart, literary, wide-ranging, historically significant, topical, powerful and simply a pleasure. It includes

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<sup>4</sup> SCHLESINGER, *A LIFE IN THE 20<sup>TH</sup> CENTURY*, *supra* note 1, at 421-22 & 424-25.

<sup>5</sup> See ARTHUR M. SCHLESINGER, JR., *THE AGE OF JACKSON* (1945).

<sup>6</sup> See ARTHUR M. SCHLESINGER, JR., *THE AGE OF ROOSEVELT: THE CRISIS OF THE OLD ORDER, 1919-1933* (Boston: Houghton Mifflin Co., 1957); ARTHUR M. SCHLESINGER, JR., *THE AGE OF ROOSEVELT: THE COMING OF THE NEW DEAL* (Boston: Houghton Mifflin Co., 1959); ARTHUR M. SCHLESINGER, JR., *THE AGE OF ROOSEVELT: THE POLITICS OF UPHEAVAL* (Boston: Houghton Mifflin Co., 1960).

<sup>7</sup> See ARTHUR M. SCHLESINGER, JR., *A THOUSAND DAYS: JOHN F. KENNEDY IN THE WHITE HOUSE* (Boston: Houghton Mifflin Co., 1965).

<sup>8</sup> See ARTHUR M. SCHLESINGER, JR., *ROBERT KENNEDY & HIS TIMES* (Boston: Houghton Mifflin Co., 1978).

<sup>9</sup> See SCHLESINGER, *A LIFE IN THE 20<sup>TH</sup> CENTURY*, *supra* note 1.

<sup>10</sup> See ARTHUR M. SCHLESINGER, JR., *JOURNALS, 1952-2000* (New York: The Penguin Press, 2007).

this nugget that Arthur wrote on June 15, 1990, when he was seventy-two years old:

On Monday the 11<sup>th</sup> [of June, 1990,] we went to Washington. I spent the day and the next in the Library of Congress, completing research in the papers of Robert H. Jackson. What a perpetual delight manuscript research is! The hours glide by, as I turn over papers from nine to five without a pause for luncheon.<sup>11</sup>

I was, like many, a lucky beneficiary of Arthur Schlesinger's wisdom and generous friendship. I also work regularly with Justice Jackson's papers in the Library of Congress, and because time there is precious I tend not to take lunch breaks. In addition to Jackson's words, I now have, thanks to Arthur Schlesinger's special JOURNALS, an image of him working there that will sustain me, until dinner and much longer.

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<sup>11</sup> *Id.* at 693.