

# **Bennett Boskey's Book, SOME JOYS OF LAWYERING**

*John Q. Barrett\**

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When Attorney General Robert H. Jackson was appointed to the Supreme Court in July 1941, he brought with him his own valuable experiences and other significant assets from the United States Department of Justice. Justice Jackson arranged for the Supreme Court to employ his longtime secretary, Ruth Sternberg. He also hired John F. Costelloe, a junior attorney in the Department's Claims Division (today's Civil Division), to serve as his first law clerk.

Justice Jackson also brought with him the complications of having served in the Department of Justice for the previous five-plus years, including the last eighteen months as Attorney General. The Department was—and of course it still is—a frequent litigant before the Supreme Court. Justice Jackson's prior work as a DOJ lawyer and supervisor meant that he might have been involved in Department cases and matters that now would be coming before the Court, and that he accordingly would need to sort out his prior involvements and determine whether they amounted to grounds to disqualify himself from judging.

During summer 1941, Justice Jackson's chambers began to sort out these questions by working closely with the chambers of the new Chief Justice of the United States, Harlan Fiske Stone. The Jackson chambers' point of contact in Stone's chambers was Bennett Boskey, who the Chief Justice had hired from within the Court to serve as his senior law clerk.

Bennett Boskey was sharp and experienced. After graduating from Williams College in 1935, he had spent a year studying economics at The University of Chicago and then had attended Harvard Law School, graduating in 1939 as one of its top students. During 1939-40, Boskey served as a law clerk to Judge Learned Hand at the United States Court of

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For a selected archive of Jackson List posts, see my homepage at [www.law.stjohns.edu](http://www.law.stjohns.edu). To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to [barrettj@stjohns.edu](mailto:barrettj@stjohns.edu).

Appeals for the Second Circuit. During the Supreme Court's October Term 1940, Boskey served as a law clerk to Justice Stanley Reed. Compared to Costelloe, Sternberg and, frankly, Justice Jackson, Boskey in 1941 was, at least on matters of Supreme Court procedure, the one who knew best what he was doing.<sup>1</sup>

The paper trail shows how Bennett Boskey worked with Justice Jackson and his staff during his first months on the Court. Boskey regularly and routinely would send over to Jackson's chambers lists of pending cases that involved the Department of Justice and, for Jackson, a possible disqualification issue. Sternberg would give each Boskey list to Costelloe, who then would review the relevant case files for evidence of previous Jackson involvement. Costelloe then would give the Boskey list and Costelloe's own findings to Justice Jackson, who would decide whether he was disqualified. And Jackson then would send word back to Boskey, sometimes through memoranda prepared by Costelloe and sometimes by Jackson calling Boskey himself. Jackson's paperwork shows a conscientious review process and, implicitly, the high regard that he and his staff had for the Chief Justice's senior law clerk—Jackson in scrawled notes called him "Bos".<sup>2</sup>

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In 2008, Bennett Boskey is 91 years old, ever more experienced, practicing law and philanthropy and writing in Washington, D.C. I am delighted to announce and recommend enthusiastically his new book, *SOME JOYS OF LAWYERING: SELECTED WRITINGS, 1946-2007*, published in handsome and affordable paperback by Green Bag Press ([www.greenbag.org](http://www.greenbag.org)).

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<sup>1</sup> For two of Chief Justice Stone's later testimonials to Boskey, in the form of letters during World War II recommending then Private Boskey's admission to the Judge Advocate General's School at the University of Michigan Law School, see Harlan F. Stone to Brig. Gen. John M. Weir, Jan. 10, 1944, and Harlan F. Stone to Major Randolph Karr, Mar. 7, 1944, in the Harlan F. Stone Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 6. Both Stone letters are reproduced at the end of this file.

<sup>2</sup> See documents in the Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 119, including the handwritten "RHJ" [Jackson] to "J.F.C." [Costelloe], undated: "Here are the cases in which I think disqualification should be noted. Please advise Bos". This Jackson note is reproduced below.

The Boskey book, which compiles and introduces some of his previously published articles and some of his private correspondence, covers the ground of his long, varied and substantive life and career:

- Part I contains memories of Justice Reed;
- Part II recalls Chief Justice Stone;
- Part III, on the Supreme Court, includes Boskey's 2004 essay, *Bob Jackson Remembered*,<sup>3</sup> plus three other essays (on a visit to the apartment of Justice Louis Brandeis, on fast-track cases in the Court, and on persons who have declined appointments to the Court, respectively) and a range of fascinating letters (for example, a Boskey exchange with Justice John Paul Stevens);
- Part IV is devoted to some of the giant lawyers of Bennett Boskey's acquaintance and friendship, including Edward Levi, Warner Gardner and Boskey's father, New York City lawyer Meyer Boskey; and
- Part V contains "Miscellaneous" treasures, including wise advice *On Entering The Profession Of The Law* that Bennett Boskey delivered to law students at The University of Chicago Law School in October 1967.

Bennett Boskey's *SOME JOYS OF LAWYERING: SELECTED WRITINGS, 1946-2007*, is a paper version of the author himself: smart, charming, challenging, interesting and truly great. To order copies, fill out the order form on the next page and mail it with your check to The Green Bag.

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<sup>3</sup> See Bennett Boskey, *Bob Jackson Remembered*, 68 ALBANY L. REV. 5-7 (2004), available at [www.roberthjackson.org/documents/Boskey%20\(final\).pdf](http://www.roberthjackson.org/documents/Boskey%20(final).pdf).

For a two-minute video excerpt of Bennett Boskey in 2006 discussing Justice Jackson, go to [www.roberthjackson.org/Center/videlist/](http://www.roberthjackson.org/Center/videlist/) and then click on Boskey's photograph under "Supreme Court Notables."

For former law clerk Boskey's discussion of the Supreme Court's landmark 1943 "flag salute" decision, see Gregory L. Peterson, et al., *Recollections of West Virginia State Board of Education v. Barnette*, 81 ST. JOHN'S L. REV. 755-96 (2007), available at [www.stjohns.edu/media/3/ba6c47f96b5142de9ac88a8bc8d43a26.pdf](http://www.stjohns.edu/media/3/ba6c47f96b5142de9ac88a8bc8d43a26.pdf).

# SOME JOYS OF LAWYERING

BENNETT BOSKEY



SELECTED WRITINGS  
1946 – 2007

## From the Preface:

When I embarked on this curious project I thought I might find it a dreary preoccupation indeed. To go back through decades of quasi-extracurricular writings in the effort to select a sample that might still be of interest to other people was to risk encountering views of mine that had been, or ought to be, substantially modified or discarded entirely. Time often breeds not only second thoughts but rapid obsolescence. A little to my surprise I found, notwithstanding, the exercise was fun, and I really enjoyed it.”

## From the Introduction:

“Bennett Boskey has earned an enviable reputation as lawyer, practicing primarily in Washington, DC for more than 60 years. From time to time he has converted portions of that long experience into written guidance and commentary for his fellow lawyers. We at the *Green Bag* think our readers will benefit from a compact and well-organized collection of some pieces of that work that Boskey has distributed across numerous law journals and correspondents over the years. Others—notably West Publishing—have already put much of Boskey’s writing in permanently accessible form, but there has been enough left uncollected for at least one good book, as the pages that follow show.”

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Thank you.



January 10, 1944.

Brig. General John M. Weir  
Judge Advocate General's Office  
Washington, D. C.

Dear General Weir:

I am informed that Private Bennett Boskey has made application for admission to the Judge Advocate General's School as an officer cadet, and I take pleasure in advising you of his very exceptional qualifications for such training.

Private Boskey became my chief law clerk two years ago last June and served with me in that capacity until he entered the Army last summer. He is a graduate of Williams College, took one year of graduate work at the University of Chicago, after which he entered the Harvard Law School. He was an honor student at the Harvard Law School and a member of the Board of Editors of the Harvard Law Review, which indicates his standing in point of scholarship. After graduation from the Law School he became clerk to the Honorable Learned Hand, United States Circuit Judge in New York City. After a year's service with Judge Hand he became clerk for Justice Stanley Reed of the United States Supreme Court, serving him for one year in that capacity, after which he began his work with me. His duties with me included the preparation of memoranda with respect to current applications and cases pending in court; the preparation of memoranda of law; the correction of opinions and, in general, assisting in the preparation of all the work of the court for my examination and disposition.

For his work with me I can speak only words of the highest commendation. He is a thoroughly trained lawyer with wide knowledge of the law, which comes only from unusual aptitude, supplemented by diligent study. He has great capacity for work, great zeal for doing his work, and I found the association with him most agreeable. There are few young men whom I have known in my wide experience with young lawyers who are as able, resourceful and as well trained in the law. I greatly regretted the necessity of his leaving me.

I have no doubt Private Boskey will repay richly any training which the Army may provide for him.

Respectfully yours,

Harlan F. Stone.



March 7, 1944

SPJGO

Major Randolph Karr  
Office of the Judge Advocate General  
Washington, 25, D.C.

My dear Major Karr:

In reply to your letter of March 4th asking for my opinion of Private Bennett Boskey for admission to the Judge Advocate General Officer Candidate School, I take pleasure in advising you of his very exceptional qualifications for such training.

Mr. Boskey became my chief law clerk two years ago last June and served with me in that capacity until he entered the Army last summer. He is a graduate of Williams College, took one year of graduate work at the University of Chicago, after which he entered the Harvard Law School. He was an honor student at the Harvard Law School and a member of the Board of Editors of the Harvard Law Review, which indicates his standing in point of scholarship. After graduation from the Law School he became clerk to the Honorable Learned Hand, United States Circuit Judge in New York City. After a year's service with Judge Hand he became clerk for Justice Stanley Reed of the United States Supreme Court, serving him for one year in that capacity, after which he began his work with me. His duties with me included the preparation of memoranda with respect to current applications and cases pending in court; the preparation of memoranda of law; the correction of opinions and, in general, assisting in the preparation of all the work of the court for my examination and disposition.

For his work with me I can speak only words of the highest commendation. He is a thoroughly trained lawyer with wide knowledge of the law, which comes only from unusual aptitude, supplemented by diligent study. He has great capacity for work, great zeal for doing his work, and I found the association with him most agreeable. There are few young men whom I have known in my wide experience with young lawyers who are as able, resourceful and as well trained in the law. I greatly regretted the necessity of his leaving me. I may add that he gets on well with his associates and is a man of undoubted loyalties.

I have no doubt Mr. Boskey will repay richly any training which the Army may provide for him.

Respectfully yours

Harlan F. Stone

P.S. On January 10th I wrote the substance of the foregoing to Brig. General John M. Weir in triplicate.



J.F.C.

Here are the cases  
in which I think  
disqualification should be  
noted. Please advise

Bob

R.H.J.