

## Howard C. Buschman, Jr. (1917-2009) Jackson Law Clerk

*John Q. Barrett\**

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Howard Charles Buschman, Jr., who was one of Justice Robert H. Jackson's two law clerks at the Supreme Court during its October Term 1949, died on March 5, 2009, at age 91.

Like each of Justice Jackson's eleven law clerks during his thirteen Terms on the Court,<sup>1</sup> Howard Buschman came to that special experience by a unique, somewhat idiosyncratic—to him, and to Jackson—route. Buschman, a native of Brooklyn, was a superb student. He attended the Albany (New York) Academy for Boys and then Williams College, earning a *Phi Beta Kappa* key and graduating with honors in 1939. He then, like most men of his generation, performed military service—he spent six years in the United States Army, becoming a marksmanship instructor and rising to rank of Captain.

Albany Law School, Jackson's own *alma mater*, was Buschman's direct path to his Jackson clerkship. After military service, he attended ALS on an accelerated schedule, becoming an editor of the ALBANY LAW REVIEW and a top student in his class.

In spring 1949, the Albany Law School dean wrote a letter to Justice Jackson. The school by then had awarded Jackson, belatedly, the degree that it had refused to give him in 1912 because he was only twenty years old.<sup>2</sup> The dean recommended Buschman for a clerkship. Jackson invited him to interview at the Court, liked him and offered him a job starting only weeks later.

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\* 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](http://www.roberthjackson.org)). An earlier version of this text was posted to my Jackson Email List on March 13, 2009. I thank Andrew W. Dodd for excellent research assistance.

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).

<sup>1</sup> For the roster of Justice Jackson's Supreme Court law clerks, see [www.roberthjackson.org/documents/clerks/](http://www.roberthjackson.org/documents/clerks/).

<sup>2</sup> See John Q. Barrett, *Albany in the Life Trajectory of Robert H. Jackson*, 68 ALBANY L. REV. 513, 528-29 & 535 (2005).

Howard Buschman's clerkship with Justice Jackson ran from June 1949 until June 1950. At the start, Buschman worked in Washington. After the Court began its summer recess in late June 1949, however, Jackson left town on various trips, including to Jamestown, New York, and to the Bohemian Grove in northern California. With Jackson's permission, Buschman also vacated Washington. He took his summer work—a stack of petitions seeking writs of *certiorari* (Supreme Court review) that he was to summarize and analyze in short memoranda to Jackson—to more pleasant surroundings: Keene Valley in the Adirondack Mountains.

During Buschman's clerkship year (which he shared with co-clerk Alan Y. Cole), Justice Jackson and his Supreme Court brethren handled and decided some momentous matters. The notable decisions included:

- *United States ex rel. Knauff v. Shaughnessy* (upholding the Attorney General's denial of admission to a U.S. soldier's German war bride);<sup>3</sup>
- *American Communications Association v. Douds* (upholding a statute requiring union officials to sign affidavits disavowing Communism);<sup>4</sup>
- *Johnson v. Eisentrager* (denying habeas corpus review to German war criminals held by the U.S. military in the new Federal Republic of Germany);<sup>5</sup>
- *Kingsland v. Dorsey* (affirming the federal disbarment of an attorney who deceived the Patent Office about an article's authorship);<sup>6</sup>
- *Mullane v. Central Hanover Bank & Trust Co.* (requiring banks to give effective notice to account holders before closing them out);<sup>7</sup>

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<sup>3</sup> 338 U.S. 537 (Jan. 16, 1950).

<sup>4</sup> 339 U.S. 382 (May 8, 1950).

<sup>5</sup> 339 U.S. 763 (June 5, 1950).

<sup>6</sup> 338 U.S. 318 (Nov. 21, 1949).

<sup>7</sup> 339 U.S. 306 (Apr. 24, 1950).

- *Cassell v. Texas* (reversing a murder conviction because Negroes were excluded from the indicting grand jury);<sup>8</sup> and
- *Sweatt v. Painter*,<sup>9</sup> *McLaurin v. Oklahoma State Regents*<sup>10</sup> and *Henderson v. United States*,<sup>11</sup> the trilogy of unanimous desegregation decisions that paved the way for, four years later, *Brown v. Board of Education*.<sup>12</sup>

Justice Jackson's opinions during the Court's 1949-1950 Term included his dissenting opinion in *Knauff*,<sup>13</sup> his opinion concurring and dissenting in parts in *Doubs*,<sup>14</sup> his opinions for the Court in *Eisenstrager* and in *Mullane*, and his dissenting opinion in *Cassell*.<sup>15</sup>

Jackson also dissented in *Kingsland*.<sup>16</sup> In that case, he supported the lawyer facing disbarment but went out of his way to blast the practice of ghostwriting, which then was a growing and, to Jackson, deplorable phenomenon at the Supreme Court:

I should not like to be second to anyone on this Court in condemning the custom of putting up decoy authors to impress the guileless, a custom which as the court below cruelly pointed out flourishes even in official circles in Washington. ... Ghost-writing has debased the intellectual currency in circulation here and is a type of counterfeiting which invites no defense. Perhaps this Court renders a public service in treating phantom authors and ghost-writers as legal frauds and disguised authorship as a deception.<sup>17</sup>

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<sup>8</sup> 339 U.S. 282 (Apr. 24, 1950).

<sup>9</sup> 339 U.S. 629 (June 5, 1950).

<sup>10</sup> 339 U.S. 637 (June 5, 1950).

<sup>11</sup> 339 U.S. 816 (June 5, 1950).

<sup>12</sup> 347 U.S. 483 (1954).

<sup>13</sup> 338 U.S. at 550 (Jackson, J., joined by Black and Frankfurter, JJ., dissenting).

<sup>14</sup> 339 U.S. at 422 (Jackson, J., concurring and dissenting, each in part).

<sup>15</sup> 339 U.S. at 298 (Jackson, J., dissenting).

<sup>16</sup> 338 U.S. at 320 (Jackson, J., joined by Frankfurter, J., dissenting).

<sup>17</sup> *Id.* at 324.

(A video excerpt of Howard Buschman in 2003 reading from Justice Jackson's *Kingsland* dissenting opinion is available on the Jackson Center website.<sup>18</sup>)

In light of Jackson's strong statements in *Kingsland* against ghost-writing, it is somewhat ironic that his *Mullane* opinion actually was authored by ... Howard Buschman. Jackson had the practice of giving each of his law clerks, after some months of seasoning, the chance to draft an opinion that had been assigned to Jackson, and if he liked the draft, to edit it only lightly before circulating it and, if the other Justices agreed to join it, handing it down as an opinion of the Court. In this instance, Buschman recalled, Jackson was able to, and did, circulate, and the Court did issue, law clerk Buschman's opinion in Jackson's name almost without editing.

Buschman's work on *Mullane* also resulted in one of his most memorable observations of Jackson's temperament and talent. In February 1950, while immersed in drafting *Mullane*, Buschman failed to write the *cert.* memoranda that Jackson was expecting. On his "due date," the day before the Court's next conference, Buschman had to confess this failure to his boss. Jackson, who did have a temper, did not get angry. He simply took Buschman's cartload of unread *cert.* petitions, about thirty-five of them, to his (the Justice's) office and, very shortly thereafter, returned to discuss each of them with Buschman, expertly, from memory.

At the end of Buschman's clerkship year, Justice Jackson asked him to stay on at the Court for a second Term. Buschman, with regret, declined. He explained that he, at age 32, already was six or more years older than other law school graduates who were starting their careers, and that he had to get started on his. Jackson, a pragmatic man who remembered well his own ambitions and successes as a lawyer who began to practice law at age 21, understood.

Howard Buschman had a long and successful legal career based in New York City. After a few years in practice at the Milbank, Tweed law firm, he became counsel for the American Brake Shoe Company and, when it later became the global Abex Corporation, its counsel and vice president.

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<sup>18</sup> See [www.roberthjackson.org/Center/videolist/](http://www.roberthjackson.org/Center/videolist/).

In retirement, he lived happily and also practiced some law in the mountains of northwestern New Jersey, not far from the Delaware Water Gap.<sup>19</sup>

In his later years, I got to meet and speak with, and once to go for a swim with, Howard Buschman. He was smart and helpful, very proud to have been a Jackson law clerk, and filled with warm recollections of the Justice and that year at the Supreme Court.

Two additional vignettes reveal, in my view, some of the commendable core qualities that Howard Buschman had and, as part of their bond, that he shared with Robert Jackson. The first goes back to Buschman's clerkship year. He had, at that time, two young sons, ages three and five. On occasion, Buschman brought his sons to Justice Jackson's chambers, where they ran around and acted their ages. Howard recalled that Jackson (whose offspring at that time, age 58, were his two adult children, their spouses and three young grandchildren) liked very much to talk to the Buschman boys, almost playing with them as he enjoyed their *not* behaving like grownups.

The second episode, captured on paper, occurred in the spring of 1954. Then-New York City lawyer Buschman, learning from newspapers that Justice Jackson had suffered a serious heart attack and was hospitalized, wrote this letter to Jackson's secretary. It expresses the fact of Howard's concern and the gentle humanity that was part of his character:

Dear Mrs. Douglas:

Can you let me know how the Boss is feeling now? I have been terribly worried about him since I read of his attack last week, and am not ashamed to say that I have been praying for him.

Please do not show him this. There is no need to alarm him by letting him know that others are concerned about him.

Sincerely,  
/s/ Howard<sup>20</sup>

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<sup>19</sup> See generally Howard Charles Buschman, Jr., NEWARK STAR-LEDGER, Mar. 8, 2009, at 20, available at <http://obits.nj.com/StarLedger/DeathNotices.asp?Page=LifeStory&PersonId=124954955>.

<sup>20</sup> H.C. Buschman, Jr., to Mrs. Elsie L. Douglas, Apr. 8, 1954, in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 236, Folder 3. An image of this letter follows on the next page.

TWENTIETH FLOOR  
230 PARK AVENUE  
NEW YORK 17, N. Y.

4/9

April 8, 1954

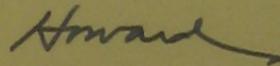
Mrs. Elsie L. Douglas  
Chambers of Justice Jackson  
Supreme Court of the United States  
Washington 13, D. C.

Dear Mrs. Douglas:

Can you let me know how the Boss is feeling now? I have been terribly worried about him since I read of his attack last week, and am not ashamed to say that I have been praying for him.

Please do not show him this. There is no need to alarm him by letting him know that others are concerned about him.

Sincerely,



H. C. Buschman, Jr.

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