

Justice Jackson on Chief Justice Stone, April 23, 1946

*John Q. Barrett**

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Saturday, April 22, 2006, marked the 60th anniversary of the death of the Chief Justice of the United States, Harlan Fiske Stone. Chief Justice Stone, age 74, was stricken that Monday afternoon while announcing an opinion from the Supreme Court bench and died that evening. He had served as Chief Justice since July 1941 and had been, prior to his elevation, an Associate Justice since 1925. Earlier in his career, Stone had been a Columbia Law School professor (1898-1905), a lawyer in private practice in New York City (1905-10), the dean of Columbia Law School (1906 & 1910-23) and Attorney General of the United States (1924).

As an Associate Justice, Stone witnessed Robert Jackson's many Supreme Court oral arguments during the 1930s and into the early 1940s and was part of the Courts that decided those cases. In time, Stone and Jackson thus came to know each other quite well. When Jackson was appointed to the Court in July 1941, the newly-elevated Stone became his Chief Justice and colleague. Their relationship was close and cordial, and their votes and similar approaches to legal issues often put Jackson with Stone in cases and on judicial opinions. In many instances, including famous ones such as Wickard v. Filburn¹ and West Virginia State Board of Education v. Barnette,² Chief Justice Stone assigned Justice Jackson to write opinions for the Court that became some of his defining judicial writings.

When Stone died in April 1946, Jackson was in Nuremberg. He had been away from the Court since the previous June, serving by President Truman's appointment as the United States chief of counsel for the prosecution of Nazi war criminals. The news of Stone's death in Washington did not reach Jackson in Nuremberg until the following day, April 23. That afternoon, International Military Tribunal chief judge

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¹ 317 U.S. 111 (1942).

² 319 U.S. 624 (1943).

Geoffrey Lawrence of the United Kingdom announced Chief Justice Stone's death. Lawrence then asked Jackson if he would like to speak, and he extemporaneously paid this tribute to his late colleague:

May it please the Tribunal:

It is not only because he was the head of the judicial system of the United States that the news of the passing of Chief Justice Stone brings sadness to every American heart in Nuremberg, but because he was the personal friend of so many of us. He had a rare capacity for personal friendship. No one was more kind to, and thoughtful of, the younger men who from time to time came to Washington, and they found in him a guide, philosopher, and friend.

Now, I know that not only do I feel the loss of a personal friend but that the American representatives on the Tribunal, Mr. [Francis] Biddle and Judge [John J.] Parker, feel the same way, and many of the younger men on the staff had intimate contact with the Chief Justice which you might not expect if you had not known Harlan Stone.

As Attorney General he took over the Department of Justice at one of its most difficult periods and imparted to it the impress of his integrity, an impress which stayed with it and was traditional in the Department, as we well know.

As a Justice of the Court he was a forward-looking man, open-minded, always patient to hear the arguments of both sides and to arrive at his decision with that complete disinterestedness and detachment which is characteristic of the just judge. He presided with great fairness and with kindness to his associates and to those who appeared before him.

It is the passing of a man who exemplified in public life those sturdy qualities which we have come to associate with the New Englander.

The consolation of his friends lies in this: He died exactly as he would have chosen to die, in full possession of his faculties and in the discharge of his duties.

JUSTICE JACKSON ON CHIEF JUSTICE STONE, APRIL 23, 1946

I express great appreciation that this Tribunal has seen fit to take note of his passing and to allow us to record on behalf of the American Bar our appreciation of his talents and character.³

³ XII TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL, NUREMBERG, 14 NOVEMBER 1945 - 1 OCTOBER 1946 (“The Blue Set”) at 97-98.