

A Letter About Good Cheese, Fine Wine, “High-Grade Lynching,” Etc. (1945)

*John Q. Barrett**

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Sterling Douglas Carr (1876-1963) was born on a ranch near Salinas, California. When he was a boy, he moved with his parents to San Francisco, where he attended public schools. He later attended the Belmont School south of San Francisco, graduating in 1895, and then he attended the University of California for two years.¹

In 1897, Carr moved to New York City and began to study law at Columbia University. One of the first Columbia students Carr met was Harlan Fiske Stone, a New Hampshire native four years his senior, a graduate of Amherst College, and a law student in his final year. Stone offered to show Carr a good boarding house. They became roommates there, and friends for life.²

Sterling Carr earned his law degree from Columbia in 1900. He moved back to California, was admitted to its bar, and began to practice law in San Francisco. Over the next two decades, he became a successful litigator with, according to one publication, “a clientele of eminent class.”³

Harlan Stone remained in New York City. He practiced law and became a Columbia Law School lecturer. In 1910, he became the School’s dean, serving until he returned to private practice in 1923. In April 1924, in the wake of the Teapot Dome scandal, criminal charges against high United

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¹ See *Biography of Sterling D. Carr*, in THE HISTORY OF SAN FRANCISCO, CALIFORNIA (1931), available at www.onlinebiographies.info/ca/sf/carr-sd.htm.

² See *College Pal of U.S. Chief Gets S.F. Job*, SAN FRANCISCO EXAMINER, July 12, 1924, at 1; Death Notice regarding Sterling Douglas Carr, SAN FRANCISCO EXAMINER, Nov. 13, 1963, at 30, reprinted at www.findagrave.com/memorial/171830080/sterling-carr.

³ *Biography of Sterling D. Carr*, in THE HISTORY OF SAN FRANCISCO, CALIFORNIA, *supra* note 1.

States government officials and others, and the revelation of corruption in the U.S. Department of Justice, President Calvin Coolidge appointed Stone to serve as U.S. Attorney General. Stone was a well-regarded national legal figure and an outsider to Washington. He also had been Coolidge's friend since they had been students together at Amherst.

That summer, Sterling Carr appeared in Federal Court in San Francisco. Attorney General Stone had requested and received the resignation of the U.S. Attorney for the Northern District of California. In court, Stone's special representative from Washington announced Carr's appointment as Interim U.S. Attorney. The Judge then administered Carr's oath.⁴ He served in this position for a little more than a year, and then he returned to private practice.

Harlan Fiske Stone had changed jobs months earlier. In January 1925, President Coolidge had nominated Attorney General Stone to serve as an associate justice of the U.S. Supreme Court. Justice Stone was confirmed and commissioned the next month. He served as an associate justice for sixteen years.

In 1941, President Franklin D. Roosevelt appointed Justice Stone to serve as chief justice of the U.S.

To fill the associate justice vacancy created by Stone's elevation, Roosevelt appointed his attorney general, Robert H. Jackson.

* * *

In early December 1945, Chief Justice Stone, in Washington, dictated or drafted by hand a letter to his longtime friend Sterling Carr. Stone did this regularly—letter-writing was how they stayed in contact. The letter was typed on Tuesday, December 4, signed by Stone, and mailed to Carr in San Francisco.

Stone's letter rambled through a range of topics, including:

- good news about incoming cheese: Stone's preferred cheesemaker was still in business, and Stone had arranged for him to send some to Carr—in effect, look for a coming holiday gift;

⁴ See *College Pal of U.S. Chief Gets S.F. Job*, *supra* note 2.

- a work report: things were busy at the Supreme Court;
- a household management report: Stone (and his wife) had the assistance of a former butler and a part-time cook;
- a social circuit report: the Stones were not going out to Washington events more than twice a week;
- a social host report: the Stones recently had served a fine wine at a small dinner party, and soon they would be hosting the associate justices and their wives for dinner; and
- in the midst of describing that impending dinner, a shot at his colleague Justice Jackson:

This week we are asking the members of the Court and their wives to come for dinner. Of course Jackson is over conducting his high-grade lynching party in Nuernberg, but I think his wife will come.

I don't mind what he does to the Nazis, but I hate to see the pretense that he is running a court or proceeding according to common law. That is a little too sanctimonious a fraud to meet my old-fashioned ideas.⁵

* * *

Justice Jackson then was, as Stone wrote, in Nuremberg, serving by appointment of President Truman as U.S. chief prosecutor of Nazi war criminals before the International Military Tribunal (IMT).

The Nuremberg trial had begun two weeks earlier. Jackson's day-two opening statement had been lauded on newspaper front pages, in daily stories and columns thereafter, and in radio and newsreel reports. At

⁵ Letter from Harlan F. Stone to Sterling Carr, Dec. 4, 1945 (typed, unsigned carbon copy), in Harlan Fiske Stone Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 9. An image of this document is at the end of this file.

Nuremberg, the U.S. was, each day, presenting powerful, headline-grabbing evidence, through documents, witnesses, and film, of Nazi Germany's military aggression and its horrific atrocities against the people of Europe, especially Jews.

Chief Justice Stone's letter to Sterling Carr is not a major or a very thoughtful critique of the just-begun Nuremberg trial. The letter is Stone spouting off, in passing and colorfully, to an old roommate and lifelong friend. It shows style in its expression. It shows that Stone was somewhat irked by Jackson's absence from the Court. It shows that Stone was impatient to see the Nazis punished. It shows that Stone was legally dubious that the Nuremberg defendants were being prosecuted for violating established laws. And it shows, perhaps, that Stone was jealous that Jackson had become the world's leading legal figure.

Justice Jackson was, it must be emphasized, not on leave from the Supreme Court. He was absent. Jackson had not consulted with Stone, his chief justice, before accepting Truman's assignment. Indeed, Jackson had not even alerted Stone before the appointment was announced. Jackson had, beginning in May 1945 and then full time starting in June, ditched the Court for the world stage. He had offered Truman his Court seat so that he could appoint a replacement, but the president declined. So Stone was running a high-workload Court with only eight justices. And one, Justice Harold H. Burton, was a brand-new appointee—he was decent and diligent, but he was very inexperienced in the Court's work and not carrying his share of its opinion-writing.

Chief Justice Stone had, in sum, reasons to be upset.

* * *

Chief Justice Stone, age seventy-three, died suddenly in April 1946, while Justice Jackson was still prosecuting Nazis at Nuremberg.

Jackson did not return to the U.S. until August.

Jackson then returned to Nuremberg in late September. The Nuremberg trial concluded on October 1, with the IMT rendering its judgments—an explanation of the legality of the charges, many convictions of defendants, some acquittals, most of the convicted sentenced to death, and some sentenced to imprisonment for terms ranging from ten years to life.

After Chief Justice Stone’s death, his family provided all of his files, including carbon copies of outgoing letters that had been typed, to Professor Alpheus Thomas Mason of Princeton University. He used them to write numerous articles about Stone, and ultimately his biography. In 1953, in a draft book chapter that he circulated and in a *Harvard Law Review* article,⁶ Mason quoted Chief Justice Stone’s December 4, 1945, “intemperate comments” about Justice Jackson’s endeavors at Nuremberg.⁷

Justice Jackson, reading Mason’s article, was surprised to read Stone’s comments. They did not square, of course, with Jackson’s own thinking that Nuremberg had been legally legitimate and fair to the defendants. They also did not square with Jackson’s own exchanges, directly and through emissaries, with Chief Justice Stone during the course of Jackson’s time at Nuremberg. Jackson knew that he had left Stone and the Court short-handed, and that that had been a problem and resented. He also thought that he knew, from Stone’s direct statements, that ultimately Stone had been supportive of Jackson’s work at Nuremberg for as long as it took to complete. Jackson was saddened to read irritated words from a Court colleague with whom he had gotten along and, indeed, been quite close.

Justice Felix Frankfurter, Jackson’s closest friend on the Court and a justice who had grown less fond of Stone over time, also read Mason’s quotation from Stone’s letter to Carr. In a private letter to a confidante, Frankfurter called these Stone words about Jackson at Nuremberg “perfectly outrageous.”⁸

* * *

In the decades since Mason published Chief Justice Stone’s words, “high-grade lynching party” has floated. These Stone words are quoted often in books, other writings, and commentary on the Nuremberg trial.

⁶ See Alpheus Thomas Mason, *Extra-Judicial Work for Judges: The Views of Chief Justice Stone*, 67 HARVARD LAW REVIEW 193 (Dec. 1953).

⁷ *Id.* at 212 (mis-citing the quotation to a Stone letter to Charles Fairman—who was Jackson’s colleague in Nuremberg!).

⁸ Letter from Felix Frankfurter to Charles C. Burlingham, Sept. 30, 1953 (unsigned, typed carbon copy, pen-marked by Frankfurter to replicate how he had pen-marked the copy he signed and sent to “CCB”), in Felix Frankfurter Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 37.

GOOD CHEESE, FINE WINE, & "HIGH-GRADE LYNCHING" (1945)

Many who read, write, or repeat this phrase do not know the timing or context of Stone's utterance. Here is his letter to Sterling Carr, for whatever you think that it is worth in thinking about Nuremberg:

December 4, 1945

Dear Carr:

On inquiry I learn that my old cheese maker Crowley is able to supply his old customers, and I have today written him a note asking him to send a cheese to you. Of course it may not prove up to his usual standard because of the difficulties under which every one labors who tries to get anything done involving skill. But at any rate Crowley's poor cheese is better than none, and a mighty sight better than any that I can obtain anywhere else, so I hope you receive it in due course.

We are now well under way with our term's work and there is going to be plenty to do.

Lawrence, our old butler, has settled down to being handy man about the house and one of our former cooks deigns to come in and cook a meal for us occasionally. Social life is reviving in Washington, but we limit ourselves to two nights out a week and occasionally escape one of them. We occasionally give a small dinner party. The other evening we produced some Romany Conti, 1926, which would warm the cockles of your heart. This week we are asking the members of the Court and their wives to come in for dinner. Of course Jackson is over conducting his high-grade lynching party in Nuernberg, but I think his wife will come.

I don't mind what he does to the Nazis, but I hate to see the pretense that he is running a court or proceeding according to common law. That is a little too sanctimonious a fraud to meet my old-fashioned ideas.

I dined recently with Prime Minister Atlee at the British Embassy and had a very pleasant talk with him. I had known him before. He and his Party cohorts are organizing a sort of modified New Deal for Britain. I don't believe the Britishers will like it very much when they have a chance to look at it, but it is likely to be a good deal more sensibly done than the New Deal business was done over here.

I hope this finds you and Mrs. Carr well and that life is becoming a little easier for you. I don't think it will become easier for me until I quit, and then it won't be so very easy to sit around with nothing in particular to do. Best regards to you both, in which Mrs. Stone joins.

Yours sincerely

Harlan F. Stone