

# Sir Knight Robert H. Jackson: Supreme Court Judge and Prosecutor at Nuremberg

by Dr. Ivan M. Tribe, KYCH, KCT, 33°

In 2003 William E. Leuchtenberg, a well-known historian of the New Deal era, wrote: “Robert Houghwout Jackson is the most important public figure of the twentieth century no one has ever heard of.” This may be something of an exaggeration as he is a familiar name to legal scholars and mid-century historians, yet he is forgotten among the general populace.

In his day Sir Knight Jackson served in a Presidential Cabinet, on the US Supreme Court, and perhaps most significant of all, as United States Chief Prosecutor of Nazi war criminals.

Robert Jackson was born in Spring Creek, Pennsylvania, on February 13, 1892, to William E. And Angelina Jackson. When he was a child, the family moved to Frewsburg, New York.

After high school the youth went to work as a clerk for an attorney cousin and prominent Democrat in nearby Jamestown. Although he later attended law school in Albany for a year, Robert was essentially a product of a vanishing system whereby one studied law as an apprentice for another lawyer. During his time in Albany, he made the acquaintance of a young state senator and Mason named Franklin D. Roosevelt.

After passing his bar exams in 1913, Jackson began to practice law, and within a few years, he became one of Jamestown’s (and indeed far western New York’s) leading barristers. He also became somewhat active in Democratic politics and bar association activities.

Throughout his law career, he kept a caption on his wall with a quote from Brother Rudyard Kipling that read: “He

travels fastest who travels alone,” a phrase he exemplified in the progress of his own life.

In 1916 Robert married Irene Gerhardt, and the couple subsequently had a son and a daughter.

During his years in Jamestown, Robert H. Jackson became a member of Mount Moriah Lodge No. 145. He received his degrees on September 17, October 1, and October 22, 1929. In November 1930 Jackson took the Scottish Rite degrees in the Valley of Jamestown, New York. He also joined the York Rite bodies in Jamestown including Jamestown Commandery No. 61. In 2001 his framed Knight Templar sword had an honored spot in the Jamestown Masonic Temple. To the outside world he ranks with cartoonist Brad



1930: Brother Jackson speaks for FDR as governor in Jamestown.

Anderson, creator of the Great Dane with a human mind set, Marmaduke, as Jamestown's most famous Mason.

Brother Bob Jackson began his political life when Franklin Delano Roosevelt was elected governor of the Empire State in November 1928, becoming a key advisor to FDR. Nonetheless, he remained in western New York until FDR entered the White House.

In February 1934 he took a position as general counsel in the Treasury Department, a job that concerned litigation in tax collecting. It was in this circumstance that he led in a civil suit against Brother Andrew Mellon, a super-wealthy former Republican Secretary of the Treasury, on charges of underpayment of taxes. This high-profile case led to his March 1936 promotion and transfer to the Justice Department as an assistant attorney general in the Tax Division, and



1938: Cartoon views Jackson public appointments as stepping stones to the White House. It never happened!

still later he was in charge of the Antitrust Division. In these jobs Jackson argued cases before the Supreme Court.

In March 1938 Jackson was appointed Solicitor General. From that point on, he was often seen as on the fast track for higher rewards within the administration. Associate Justice Louis D. Brandeis observed that he should have been made Solicitor General for life. Meanwhile, for a time pundits began to see the New Yorker as a possible future governor of New York and even as a potential President. The chief's top political advisor, Jim Farley, argued that Jackson was insufficiently known.

Roosevelt himself eventually concluded that Jackson was too much of a "gentleman" to be a successful candidate, but he still remained in serious contention for higher appointments.

Three times Robert Jackson was rated as a serious candidate for Supreme Court consideration. Three times he was passed over, first for Felix Frankfurter, second for Brother William O. Douglas, and then for Attorney General Frank Murphy. The latter appointment, however, led to Jackson being named to the



THE MOST POPULAR RADIO FEATURE FOR 1937!

1937: Cartoon portrays Jackson as a Roosevelt puppet.



FDR congratulates Sir Knight Jackson as his new Supreme Court Judge while his family looks on.

cabinet in January 1940 as a replacement for Murphy. A little over a year later, Chief Justice Hughes retired, and the President subsequently elevated Justice Harlan F. Stone as his replacement and then named Jackson as the new Associate Justice.

In his early years on the High Court, Jackson found himself having to make some challenging decisions balancing the needs of national security and civil liberties. When the national interest was not at stake as in the famous case of *West Virginia State Board of Education v. Barnette* (1943), he came down forcefully on the side of liberty. For those who may have forgotten, this was the famous case that held one could not be required to salute the flag if it conflicted with his/her religious views. Yet it said free speech should also have its limits. In a case that might be worth revisiting in more recent times, Jackson held in a dissenting opinion in the case of *Terminiello v. Chicago* (1949) that "if the court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact."

Although a staunch New Dealer, some court observers began to think that Judges Jackson and Felix Frankfurter had moved toward the center of the legal philosophical spectrum, while Hugo Black, William O. Douglas, and Franklin Murphy remained committed liberals. In fact, Black and Jackson had an uneasy relationship for a few years in the later forties although they remained outwardly civil.

Perhaps, it was because of this differ-

ence that Jackson jumped at the opportunity to take a leave of absence from the high court to serve as chief prosecutor at the Nuremberg trials. He subsequently described this duty as "infinitely more important than my work on the Supreme Court."

In his closing speech in July 1946, Jackson made the eloquent conclusion that if "you were to say of these men that they are not guilty, it would be as true to say that there has been no war, there are no slain, there has been no crime." While his overall performance was not without criticism, it did result in nineteen convictions and three acquittals.

Chief Justice Stone had died in April 1946. Jackson apparently felt disappointment that the President named his Treasury Secretary, Brother Fred Vinson of Louisa, Kentucky, to lead the Court and probably thought that his quarrel with Black might have been responsible. Nonetheless, he returned to the fall term of the Court in October and generally maintained a discreet silence in his public pronouncements concerning his views on the Alabama judge.



One might add that there were other Masons on the Court in those years besides Jackson and Vinson, including Hugo Black, William O. Douglas, Sherman Minton, Harold Burton, Tom Clark, and after Vinson's death, Sir Knight Earl Warren.

Jackson's significant judicial decisions in those latter years included his upholding the 1949 conviction of Communist Party leaders in "Dennis v. United States" in 1951, coupled with his dissent in government efforts to inquire about private thoughts of suspected Communists in 1950 in "American Communications Ass'n v. Douds." Put simply, Jackson upheld the right of Communists (or anyone else) to think as they wished, but not to actually "advocate the overthrow of the government."

In another important 1952 decision, he concurred with a court majority in its invalidation of government seizure of private steel mills during the Korean War in "Youngstown Sheet & Tube Co. v. Sawyer."

In what may have been the most significant case of the mid-century, "Brown v. Board of Education" (1954), Jackson had some doubts but ultimately joined in the unanimous verdict. He had been hospitalized but was present when the court reached the monumental decision on May 17 to overturn the old decision rendered in "Plessey v. Ferguson" (1896) and to outlaw segregated public schools. Ironically, by that time Jackson had increasingly leaned toward what became termed the doctrine of "judicial restraint." Jackson himself realized that this may have seemed at variance with his earlier endorsement of FDR's 1937 court reform plan, but nearly two decades of experience had tested and altered his philosophy.

These later theories were exercised in practice by Jackson's law clerk in the

early fifties, William H. Rehnquist, who as a protégé spent some thirty years on the Federal Bench including nearly two decades as Chief Justice.

Sir Knight and Justice Jackson died a few months later on October 9, 1954, after suffering a second heart attack. While his fame may not be as great as many of his fellow judges, his significance is no less a celebrated one. His court opinions have been cited as among the most eloquent and well-reasoned in court history. This alone would lend strong support to William Leuchtenberg's view expressed at the beginning of this article.

Note: A full-length biography of the judge is found in Eugene C. Gerhardt's *America's Advocate: Robert H. Jackson* (1958). More useful for this brief article is the sketch by Douglas P. Woodlock in *American National Biography* (2000) and the introduction by William Leuchtenberg to Jackson's *That Man: An Insider's View of Franklin Roosevelt* (2003), published nearly a half-century after his death. Jackson's Blue Lodge, Scottish Rite, and Shrine record is found in William R. Denslow, *10,000 Famous Freemasons* (1958), II, p. 286. Jerome Erickson, Nicholas Andin, and Robert Cave have been helpful in their search for his still incomplete York Rite records.

\* \* \* \*

Sir Knight Ivan M. Tribe, KCT, KYCH, 33°, and a professor emeritus of history at the University of Rio Grande, Rio Grande, Ohio, is a Past Commander of Athens Commandery No. 15, Athens, Ohio. He resides at 111 East High Street, McArthur, OH 45651-1111.