

MR. JUSTICE BUTLER.

SUPREME COURT OF THE UNITED STATES.

MONDAY, MAY 20, 1940.

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Present: THE CHIEF JUSTICE, MR. JUSTICE McREYNOLDS, MR. JUSTICE STONE, MR. JUSTICE ROBERTS, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, and MR. JUSTICE MURPHY.

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Mr. Attorney General Jackson addressed the Court as follows:

*“Mr. Chief Justice and Associate Justices: The Bar of the Supreme Court has delegated me to lodge in your keeping its proceedings in memory of Mr. Justice Butler. By resolution it has expressed its high estimate of his life and services.”*

[Mr. Jackson read the Resolutions, which are set forth *ante*, p. vii *et seq.*, and proceeded:]

“Men eminent in the legal profession, former associates in the practice of the law, and public leaders have paid him eloquent and affectionate tribute. All of these tributes I offer for your records.

“I should not presume to add words of my own, except that the proceedings are lacking in one viewpoint which I should be qualified to supply.

“I knew Pierce Butler only as a Justice of this Court. He had reached the full maturity of his great intellectual powers. He was too earnest and forthright to wish me even on such an occasion to deny or minimize the conflict which your reports witness between the general philosophy I have advocated here and much of that to which he was so consistently devoted. But across that gulf, which always exists between two men who regard each other as representing ominous trends, I felt the

strength, the warmth, and the sincerity of a great character—one of the most firm and steady men I have known.

“His character was shaped by a hard way of life that left lasting convictions and attitudes in men who experienced it. Existence in a pioneer country, where nature is often hard and hostile and the competition of the elements is relentless, presents the choice between courage and self-discipline—or extinction. It offers a simple and rugged society in which place is won and held only by will and work and worth. It develops intense love of liberty and hatred of restraint and a self-reliance that does not know how to dodge, and never fears to stand firmly and, if need be, alone. These were the primary characteristics of Mr. Justice Butler.

“To them he added an accumulation of learning and experience and legal abilities which won for him the respect of all shades of opinion at the Bar. In many cases here I feared his interrogations more than the argument of my adversary. He knew his way among the intricate procedures of the law. He knew from long experience the arts of advocacy. He could sense the point in an argument where the most candid advocate is tempted to stop a little short of a complete revelation, and he knew where there was an urge to overemphasis. His questions from the bench cut to the heart of our cases. He could use his ready wit, his humor, his sarcasm or his learning with equal ease and skill. He was relentless in bringing the lawyer face to face with the issues as he saw them. I think I never knew a man who could more quickly orient a statement of facts with his own philosophy. When the facts were stated the argument was about over with him—he could relate the case to his conceptions of legal principles without aid of counsel.

“Even if it were otherwise appropriate, I have neither the perspective nor the detachment necessary to appraise

the place that his work as a Justice will take in the annals of this Court. Time only will write the verdict on its permanence and its significance. He has left a body of deliberate comment and seasoned judgment on the problems that have vexed this Court, as well as government and society, during his judicial life. The future will have no difficulty in learning what he meant and what he stood for. A man of no subtlety or sham, he pronounced his judgments without finesse, indirection, or obscurity. He has recorded the measure of his disagreement with the currents, and his deep anxiety about the drifts of our time.

"If only time can judge the verity of his work, it is equally true that only contemporaries can appraise the verity of his character. While the future will find that his work will speak for itself, it will turn to the testimony of contemporaries to learn the elusive qualities of the man.

"For those who shall ask 'What of the man?' we may record that in the memory of those who sought to win him in argument he will stand out as an impressive and formidable figure even among associates in whom those qualities were by no means rare. His judicial attitude was not one of frosty neutrality, but one of intensity and certitude of conviction on basic philosophies of life and society and law and government. He had no merely negative standard of goodness; experience and conviction committed him to profound affirmations, and he exemplified them unceasingly and with power. Among the public men of my time, I have known no one of more affirmative and immovable and masterful character than Mr. Justice Butler."