

## ALBANY IN THE LIFE TRAJECTORY OF ROBERT H. JACKSON

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We recall Supreme Court Justice and Nuremberg prosecutor Robert Houghwout Jackson (1892-1954) for many reasons, but certainly a leading one is the striking contrast between his humble origins and his exalted destinations. Jackson's life began literally in the deep woods, on a family farm in the gorgeous rural isolation of Spring Creek Township in northwestern Pennsylvania's Warren County. He spent his boyhood and obtained his basic public school education in Frewsburg, a small town in southwestern New York State. While still a teenager, Jackson spent one additional year as a high school student in nearby Jamestown, New York, but he never received a day of college education. He prepared to become a lawyer principally by working as an apprentice for two years in a Jamestown law office.

From that background, Robert Jackson rose to make big marks—very big marks—on the biggest stages of his time, and in history. As a young lawyer, he became a great success in twenty years of private practice while also developing an identity, and some

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This article grows out of my November 15, 2004, keynote lecture at Albany Law School's evening program paying tribute to its alumnus Robert H. Jackson fifty years after the end of his momentous life. I am very grateful to Allen J. Vickey and Noelle Lagueux-Alvarez, whose vision and enormous energy made that event a great success and who are responsible for this year's series of *Albany Law Review* publications dedicated to Justice Jackson; to Albany Law School President and Dean Thomas F. Guernsey and his faculty colleagues for their interest and support, and for their appreciative custody of their school's Jackson legacy; to my fellow lecturers Judge Victoria A. Graffeo and Phil C. Neal for their inspiring perspectives on Robert H. Jackson; to Harold Jackson Adams, Gail S. Bensen, Howard C. Buschman, Jr., Stanley R. Conrad, Adrian H. Cubberley, Eleanor Gerhardt Cubberley, Robert A. Emery, Eugene C. Gerhart, Nancy R. Jackson, Mark W. Lambert, Thomas A. Loftus III, Jordan D. Luttrell, Phil Neal and Lorraine S. Wagner for their friendship and generous responses to various inquiries; to Eugene Gerhart and the late Harlan Buddington Phillips for their scholarship, which I rely on throughout this article; to Nancy Jackson for permission to quote from copyrighted Jackson material; and to St. John's law students Ann Carroll, Jessica Duffy and especially Lauren DiFilippo for excellent research assistance.

important connections, in Democratic Party politics in New York State. Jackson moved to Washington in 1934, joining the New Deal and becoming a true Roosevelt administration insider and a personal confidant and favorite of the President.<sup>1</sup> In ensuing years, Jackson became a leading government lawyer of national renown, a great and very successful Supreme Court advocate during his years as Assistant Attorney General and Solicitor General and, for eighteen months beginning in January 1940, Attorney General of the United States.

In July 1941, Robert Jackson was appointed an Associate Justice of the Supreme Court of the United States, where he served for thirteen years and created a permanent legacy of independent thinking, judicial principle and restraint, and simply gorgeous writing that was authentically his own product.

By presidential appointment that took him away from the Supreme Court for the full 1945-1946 year, Justice Jackson also served, and he succeeded, in a legal position of unprecedented complexity and permanent historical importance: he was chief United States prosecutor of the major Nazi war criminals, and truly the principal architect of the legal proceedings that gave birth to modern international law, at Nuremberg, Germany.

That summary of Robert H. Jackson's amazing life journey covers a lot of ground, but it skips Albany. In Jackson's biography, "Albany" means the Albany Law School, where he was a student during the academic year 1911-1912. Jackson's "Albany" also encompasses, more broadly, his personal and professional ties to New York State's capital city during most of the first half of the twentieth century, when Albany was a leading site of American political and economic power and legal development.

In the study and appreciation of Robert H. Jackson's life and his enormous accomplishments, to skip Albany is to make a big mistake. As this article describes, Albany connected with who Jackson already was when he arrived in the capital city as an eighteen- or nineteen-year-old law apprentice, and Albany over the ensuing years contributed directly to the experiences and values that played major roles in all that he ultimately did and became. As young Robert Jackson observed closely and absorbed deeply, Albany's constituents, including its private law school, its governmental institutions and its people, especially its courts,

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<sup>1</sup> See generally ROBERT H. JACKSON, THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT (John Q. Barrett ed., 2003).

judges and lawyers, employed rational capacities in practical efforts to address and improve individual and collective circumstances. They embodied the human reasoning process that Jackson came to see as the content of law itself, and that process became for him the hallmark of the justice-seeking, self-interest restraining work to which he dedicated his life in the legal profession.<sup>2</sup> Jackson's personal foundation, in other words, rested on the law as he came to understand it and began to work with it on Albany's soil, at its law school and in the legal environment of its state.

### I. JACKSON COMES TO THE LAW

Robert Jackson knew from his early youth that he wanted to be a lawyer. Although his family was far from wealthy, it was self-sufficient, literate and interested in ideas. The Jacksons and their extended family had books, including the Bible, some classics, poetry, histories, biographies and general information. His mother and other relatives read to young Robert, and he soon became a voracious reader on his own. Indeed, because his rural childhood included immersion in words, ideas, writing, reading and public speaking—in other words, the materials and methods that came to define his professional life—and because he took to it all quite naturally, he was on his career path long before he understood that he was being drawn to “the law.”

Jackson's direct interest in law was shaped in part by his father's side of the family.<sup>3</sup> One important influence was his great uncle William Miles Jackson, who was a bachelor and lived with Jackson's parents and him on the Spring Creek farm during Robert's early years at the end of the nineteenth century. Indeed, “Uncle William,” who was in his high seventies, babysat the boy while his parents were busy with farm work. The old man and young boy walked together all over the sizable farm, with Uncle William pointing out sights, teaching Robert about different kinds of trees and telling him stories about animals and people. William M. Jackson was knowledgeable about many topics, in part because he was a great reader. He also had served since 1863 as Spring Creek's commissioned justice of the peace, and thus he was familiar

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<sup>2</sup> See Phil C. Neal, *Justice Jackson: A Law Clerk's Recollections*, 68 ALB. L. REV. 549 (2005); see also John Q. Barrett, *A Commander's Power, A Civilian's Reason: Justice Jackson's Korematsu Dissent*, 68 L. & CONTEMP. PROBS. (forthcoming 2005).

<sup>3</sup> For detailed information on Jackson's ancestry and upbringing, see EUGENE C. GERHART, *AMERICA'S ADVOCATE: ROBERT H. JACKSON* 25–35 (1958).

with the way the law worked in that rural community. Years later, Justice Jackson identified his great uncle as probably the source of “the first vague ideas I ever got about law.”<sup>4</sup> Young Robert also spent lots of time, during his boyhood and as a teenager, with his grandfather Robert Rutherford Jackson. The old man, who lived on farms in Warren County and then just two houses from his son’s family in Frewsburg, always subscribed to a New York City newspaper, and he engaged his grandson in regular discussions of politics and current affairs.

Jackson also learned, as a boy, that he had deep ancestral ties to the law through his paternal grandmother and her English family, the Eldreds. Jackson’s great-grandfather George F. Eldred, who emigrated to the United States from London and settled in Spring Creek in 1819, had been born literally in London’s Middle Temple, one of the Inns of Court to which lawyers have been called to practice since at least the fourteenth century; George’s father William Eldred was an English lawyer and Middle Temple’s under treasurer.

In Frewsburg, Robert Jackson excelled in his school work. He also was involved in debating and in a literary society, and he participated in public recitations of poems, orations, dialogues and little plays. Jackson also attended a Baptist Sunday school that he later described as “something of a debating group which took up various scriptural lessons and free speech was allowed to everybody. Matters were questioned and answered. Considering the strictness of the denomination it was an exceedingly liberal thinking group.”<sup>5</sup> He also attended public lectures and went to hear political candidates speak—he could hear local candidates (most of whom were lawyers) speak in Frewsburg, but he had to, and did, travel north to Jamestown to hear candidates who were running for statewide office. Political loyalties in the Jackson family ran to the Democratic Party, and Robert Jackson in boyhood heard William Jennings Bryan, for example, speak in southwestern New York on two or three occasions. Jackson enjoyed all of these experiences, and he recognized that they were pointing him toward the working life of a lawyer.

After Jackson graduated from Frewsburg High School in 1909, he spent the next year commuting by trolley to Jamestown and

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<sup>4</sup> THE REMINISCENCES OF ROBERT H. JACKSON 4 (Columbia U., Oral History Research Office, Harlan B. Phillips ed., 1955) [hereinafter Phillips-Jackson Interviews]. I thank Nancy Jackson for permission to quote from this oral history.

<sup>5</sup> *Id.* at 44–45.

attending its high school as a post-graduate student. At Jamestown High School, he became a protégé of an elderly maiden teacher, Mary R. Willard.<sup>6</sup> Jackson took Miss Willard's courses in English and English History, and he spent many evenings with her and her sister in their home, sharing dinner, listening to opera and other fine music on their victrola, and reading Shakespeare, Shaw and other writers. Mary Willard encouraged Jackson to study the law. His other key Jamestown High School mentor was the principal, Milton J. Fletcher.<sup>7</sup> Jackson took his American history course and, when no economics class was being offered, he persuaded Mr. Fletcher to give him a private tutorial in that subject. Fletcher also encouraged Robert Jackson to become a lawyer. Many years later, Jackson remembered that on one occasion he found himself with Mr. Fletcher on a street car, and that during the ride they discussed the previous evening's performance by a violin artist who had earned quite a large fee. Fletcher then told his pupil, "Bob, you study law and tend to your business, do as you can with it, and you'll get a \$500 fee some day."<sup>8</sup>

With all of that as environmental background and encouragement, the influential lawyer who actually started Jackson on his career path was Frank Henry Mott of Jamestown. Mott was a step-cousin of Jackson's mother—her maternal step-grandmother, whom she had known from her very young girlhood, was Mott's paternal grandmother.<sup>9</sup> Mott was someone who Jackson knew well as he grew up, and his year at Jamestown High School led him to

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<sup>6</sup> For more detail on Miss Willard, see Jackson's June 10, 1931, speech in her memory, [www.roberthjackson.org/theman2-7-1-1.asp](http://www.roberthjackson.org/theman2-7-1-1.asp).

<sup>7</sup> For more detail on Mr. Fletcher, see Jackson's speech of June 30, 1932, [www.roberthjackson.org/theman2-7-1-2.asp](http://www.roberthjackson.org/theman2-7-1-2.asp).

<sup>8</sup> Phillips-Jackson Interviews, *supra* note 4, at 67.

<sup>9</sup> In 1871, two years before Frank Mott's birth, his widowed paternal grandmother Lydia Carr Mott married widower Ezra Gregory. By that date, one of Mr. Gregory's nine children from his first marriage, a daughter named Parthena (Perthena?) Mariah, was married to Daniel Houghwot (whose Dutch surname got spelled in various ways down through the generations of his family), and they were the parents of a four-year-old daughter, Angelina (known as Lina). Thirteen years later, Lina Houghwot married William Eldred Jackson, and in 1892 she gave birth to their first child, Robert Houghwout Jackson. Lydia Mott Gregory thus was Robert Jackson's step-great-grandmother on his maternal grandmother's side of the family, and Frank Mott, who Jackson knew as his mother's "cousin"—they actually were "step-cousins," because Mott's father (Isaac Mott) and Lina Jackson's mother (Parthena Gregory Houghwot) were step-siblings—was one of Robert's relatives through his great-grandfather's remarriage. During Robert Jackson's early years, Lydia Mott Gregory lived in Russell, Pennsylvania, northeast of Jackson's Spring Creek birthplace and south of his Frewsburg boyhood home. She became a widow for the second time in 1895 and died in 1918, shortly after her eighty-ninth birthday. Lydia Gregory was Jackson's only great-grandparent who lived past his very early childhood.

spend even more time with him, for Mott lived and practiced law in Jamestown.

Following Jackson's second high school graduation, Frank Mott invited him to become an apprentice in his law office, and Jackson accepted. He took this step notwithstanding his father William Eldred (Will) Jackson's very low opinion of lawyers. Will Jackson's friends included one or two lawyers, and he did think well of them, but his anti-lawyer comments to Robert always focused on lawyers who were bad examples of how to live your life. One was a young man in Frewsburg who had studied law and then, apparently as a result, become a drunkard.

Another lawyer whom Will Jackson particularly disliked was Frank Mott. Mr. Jackson disapproved of how Mott lived—his fancy lifestyle was well beyond his means, he borrowed money and he did not repay his debts. Mr. Jackson knew that Mott was fond of Robert and wanted to take him into his office, and he feared that his son would follow Mott into the law, and into a life of disreputable conduct. Will Jackson thus made it clear to Robert that if he wanted to study law (as opposed to medicine, which was the career path that Will was encouraging his son to pursue), Robert would pursue it without financial help from his father. (Robert's mother Angelina, who of course was related to Mott by her grandfather's remarriage, had a softer perspective on all of this. For one thing, she liked Mott—as she put it, “maybe Frank did owe people, but he was very nice to his mother.”<sup>10</sup> She also had a more hands off attitude about Robert's career path. If her son wanted to study law, that was alright with her.)

Robert H. Jackson thus became, in the fall of 1910, an apprentice in Frank Mott's Jamestown law office. Mott was less dedicated to his law practice than he might have been, but he had many clients with many problems and he involved Jackson in his work. Mott's law partner Benjamin Simeon Dean actually took the lead in teaching Jackson the law. Dean was, unlike Mott, very industrious and scholarly. He also was a disciplined, extremely gifted writer. Dean directed Jackson's reading of James Kent's *Commentaries*, Blackstone and other fundamental legal writings, and then he discussed with him at length the young man's questions and his developing ideas of what law really is. Dean also taught Jackson legal research skills, including how to classify legal problems and look them up in various digests, encyclopedias and texts. Jackson

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<sup>10</sup> Phillips-Jackson Interviews, *supra* note 4, at 67.

began to handle some of Mott's and Dean's clients' matters, and Jackson got to try some cases in "justice court" before magistrates who themselves often were not lawyers. He also spent many evenings with Mott in his book-filled house, reading, discussing politics and preparing cases for trial.

## II. JACKSON COMES TO ALBANY

Robert Jackson, who grew up in western New York State hundreds of miles away from its capital city, seems to have visited Albany before his year as an Albany law student. In the first half of 1911, six to eight months before Jackson enrolled at Albany Law School, Frank Mott brought apprentice Jackson along on a trip to Albany. Mott at that time was both a prominent New York State lawyer and a statewide political figure—he was Republican Party-dominated Chautauqua County's Democratic Party leader although, as Jackson noted years later, it would have been fair to ask "if you could say that a man was a leader who had so few followers."<sup>11</sup> Mott's stops in Albany included the state legislature, and there he made a point of introducing his legal and political protégé Robert Jackson to various figures. One was Dutchess County's new state senator, Frank Roosevelt.

In 1911, Frank Roosevelt turned twenty-nine years old. He was ten years older than Jackson. This young Democrat Roosevelt had run the previous fall, and just barely won, a race to represent a historically Republican district in the state senate—Roosevelt made it to the senate on personal money, good looks, a genial personality and the politically powerful surname of his distant cousin the former president. In early 1911, young Jackson met Roosevelt in Albany and watched him battle the machine politicians of their party over the selection of a United States senator.<sup>12</sup> Over the next thirty years, this early introduction—an event that occurred when they truly were just "Frank" and "Robert," and long before all that came later was foreseeable for either of them—developed, in part because it went so far back, into an important personal friendship and a momentous political relationship.

That Albany visit and the political attraction of the capital were

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<sup>11</sup> *Id.* at 65.

<sup>12</sup> JACKSON, *supra* note 1, at 3. Jackson recalled watching Roosevelt "in action" during this legislative battle, which lasted from mid-January until the end of March 1911 and featured FDR and his fellow insurgent senators voting in the Capitol at 10:00 a.m. each day. See FRANK FREIDEL, FRANKLIN D. ROOSEVELT: THE APPRENTICESHIP 102–14 (1952).

part of what interested Jackson in the city, but his specific choice in September 1911 was to attend Albany Law School. Why Albany Law School? Jackson explained his school choice in the oral history that he finished editing just days before he died in 1954:

After a year in Mott's office, I decided I ought to go to a law school, not having had any college. I considered various law schools in New York State. I decided against New York City because I didn't like the city to live in. I considered Buffalo and Syracuse, but I decided on the Albany Law School for two reasons: some of the leading lawyers of [Jamestown] had been Albany Law School men and it was the seat of government. The Court of Appeals sat there, the Appellate Division sat there, the Supreme Court, the legislature and the whole state government. I thought I would learn more that was not in the books at Albany than in any other place, and that it would be useful to me in the practice of law in my community. I borrowed the money to go through Albany Law School from John Houghwot, my mother's brother, who was a rather eccentric bachelor and a firm friend.<sup>13</sup>

Jackson needed to borrow his tuition money from his uncle because his father Will Jackson was still opposed to his law studies.

Jackson's plan to attend Albany Law School encountered other family opposition. His maternal grandmother Parthena Gregory Houghwot, who then was in her late 60s, had spent her whole life within twenty-five miles of the northwestern Pennsylvania farmland of her birth and, in Jackson's words, she "liked it that way."<sup>14</sup> When he told her in 1911 that he was considering going to Albany to study law, she asked him where Albany was and how far it was from her farm in Warren County. Jackson explained that Albany was in eastern New York State and more than 300 miles away, which led Mrs. Houghwot to opine that she had never known any good "to come to them as go roving around."<sup>15</sup>

In September 1911, Robert Jackson moved to Albany. He and a couple of friends from Jamestown<sup>16</sup> rented an apartment at 267 Lark Street, a three-story building at the corner of Hudson Street that still stands today in the city's now-historic Center Square

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<sup>13</sup> Phillips-Jackson Interviews, *supra* note 4, at 70-71 (with some punctuation and capitalization corrected).

<sup>14</sup> *Id.* at 27.

<sup>15</sup> *Id.*

<sup>16</sup> It seems likely that Jackson's apartment mates during this year were Auguste Bartholdi (Bart) Peterson and Adolf F. Johnson, two Albany Law School classmates who came from the Jamestown area and later returned to practice law in that city.

neighborhood;<sup>17</sup> the building today has apartments on its upper floors and, on the ground floor, a Chinese restaurant.

Although Albany Law School had, since 1898, offered a two-year course of study culminating in the degree of LL.B.,<sup>18</sup> it admitted Jackson to its one-year course for “law office men.” These were the students who came to law school, as Jackson did, with the experience of having worked as clerks to practicing lawyers for one year or two years.<sup>19</sup> Albany in effect gave each of these students a year of classroom credit for his apprenticeship work. The School then provided, both to these students and to their classmates who had spent the previous year (their first year, which was called the “junior” year) in law school rather than working in a law office, a senior year curriculum that emphasized procedure and evidence courses and thus prepared them for the New York State bar examinations.<sup>20</sup>

As Jackson and fellow law office men began law school that fall, they knew that they were joining—in effect, they were transferring into—a senior class that would be, nine months hence, the final Albany Law School senior class whose members would earn law degrees based on only two years of law study (whether that time was spent all in the classroom or split between classroom and law office experience). The School’s Trustees had decided, just two months earlier, to require new students as of that September to complete *three* years of study to earn law degrees<sup>21</sup> and, as of the following year, to require anyone seeking to transfer into Albany with apprenticeship experience to pass a first-year competency examination and then to spend *two* years in law school.<sup>22</sup> In other words, the students who entered Albany Law School in 1911 as *new* students (they were called sophomores, and they by definition had no experience clerking in law offices—in modern parlance, they

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<sup>17</sup> The 1912 Albany city directory that lists Jackson’s home as 267 Lark Street also seems to indicate that he was affiliated with something known as “Geological Hall.” See DIRECTORY FOR THE YEAR 1912 OF THE CITIES OF ALBANY AND RENSSELAER 346 (1912) (containing the listing “JACKSON . . . Robert H, Geological Hall h 267 Lark”).

<sup>18</sup> See ALBANY LAW SCHOOL, ANNUAL CIRCULAR OF INFORMATION 16–17 (1912) [hereinafter 1912 ALBANY LAW CIRCULAR].

<sup>19</sup> See *id.* at 45.

<sup>20</sup> See Letter from Andrew V. Clements to Charles Fairman, Dec. 3, 1954, at 1, in Charles Fairman Papers, South Texas College of Law Library, Houston, Texas.

<sup>21</sup> See 1912 ALBANY LAW CIRCULAR, *supra* note 18, at 16–17. The Trustees were responding to the New York Court of Appeals’ new rules governing admission to the bar. The Court decreed that as of July 1, 1911, no one could be admitted to the New York bar without four years of law study (including law office work), except for college or university graduates, who could be admitted after three years of study. See *id.* at 16.

<sup>22</sup> See *id.* at 45.

were pure “1Ls”) were starting the new three-year program, and any “law office men” who did not enroll then but waited until the next year would have to spend two full years in school.<sup>23</sup>

Jackson never identified Albany’s available-now-for-the-last-time one-year course for former law apprentices as a reason why he chose to enroll there in September 1911, but it seems reasonable to suspect that this factor might have influenced a young man who was in a hurry to become a lawyer. This factor seems to have influenced his classmates. Decades later, an Albany Law School Dean who knew Justice Jackson well noted that he had been one of “an unusually large number” of students who took “the one year course” during 1911-1912, and the Dean presumed that the longer course of study that would have been required if these students had delayed starting law school was the explanation for the 1911 enrollment surge.<sup>24</sup>

When Jackson started classes at Albany Law School, it was located at 239 to 243 State Street, across from the New York State Capitol. Its building, which the School purchased from the Universalist society in 1879, originally was the Church of the Redeemer,<sup>25</sup> and with its peak and an ecclesiastical front it still looked like a church.<sup>26</sup> But according to Jackson, at least by his law

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<sup>23</sup> The results of these new policies, stated in contemporary terms, were that Albany Law School awarded degrees to 2Ls (including those who had transferred in as 2Ls in 1911) in 1912, to a very small class of unclear provenance in 1913, and to 3Ls (including any former apprentice who had transferred into the School in 1912) in 1914.

<sup>24</sup> Letter from Andrew V. Clements to Charles Fairman, *supra* note 20, at 1. See generally *Seven Young Women at Albany Law School*, ALBANY EV. JRNL., Sept. 19, 1911, at 1 (reporting that total registration of juniors and seniors numbered 140); *Big Class to Be Graduated*, TIMES-UNION (Albany, NY), June 4, 1912, at 10 (listing sixty-eight students, including Jackson, who Albany Law School announced had passed their examinations and would be receiving diplomas two nights hence).

<sup>25</sup> See *Albany Law School Keeps High Place in World of Learning*, KNICKERBOCKER PRESS, June 9, 1912, at 2.

<sup>26</sup> See ELIZABETH K. ALLEN & DIANA S. WAITE, ALBANY LAW SCHOOL 1851-2001: A TRADITION OF CHANGE 40 (2000) (reproducing a photograph of the building). That building is long gone; its site and much of the surrounding land is occupied today by the Alfred E. Smith state office building at the north end of Albany’s distinctive Empire State Plaza.

Interestingly, when Jackson arrived at Albany Law School in September 1911, State Senator Frank Roosevelt, his wife Eleanor and their young children were living nearby, in a three-story house at 248 State Street that Roosevelt had rented for the year. See Franklin D. Roosevelt diary entry, Jan. 1, 1911, in State Senator Papers, Box 1, Franklin D. Roosevelt Presidential Library, Hyde Park, New York [hereinafter FDRL]; see also Letter from DeLancey Palmer to Franklin D. Roosevelt, Nov. 29, 1910 (reporting that a Mr. Sturdee has accepted FDR’s offer to rent the house), in State Senator Papers, Box 1, File 6: FDR’s Albany Residences, FDRL. As of January 1, 1912, the Roosevelts apparently moved to another Albany house, located at 4 Elk Street, which they leased for that calendar year. See Letter from Worthington Palmer to Franklin D. Roosevelt, Dec. 19, 1911 (enclosing a lease signed by a Mrs. Douglas), in State Senator Papers, Box 1, File 6: FDR’s Albany Residences, FDRL.

student days, “[i]ts façade suggested a piety that was not fully sustained by the student body.”<sup>27</sup>

Jackson spent only a single academic year, September 1911 through May 1912, completing Albany Law School’s requirements for its two-year law degree. Years later, when Jackson had become a famous figure, the fact that he had completed a two-year academic program in half that time led some profile writers to state, quite hagiographically, that Jackson had carried and completed a double load of courses during his student year at Albany Law School. The truth is less dramatic: Jackson carried a regular course load during his Albany Law School year. In the fall 1911 semester, for instance, he took and passed five courses, which seems a standard course load for a senior. Because Albany Law School credited Jackson’s work as Mott’s apprentice, Jackson formally, in the sense of getting academic credit, completed two years of law school courses in his one year at Albany—and from that ambiguous fact developed, over time, the misunderstanding that he had taken two years’ worth of classes in his single academic year. (Having walked the six or seven blocks between 267 Lark Street and the former site of Albany Law School on State Street, I also can attest that Jackson did not have to walk uphill both to and from his law school classes.)

Robert Jackson did very well in law school. His first semester transcript shows these strong grades:

Procedure	96
Real Property	90
Bills & Notes	93
Guarantee & Suretyship	98
Equity	88

His overall average that fall was 93 and his school attendance—thirty-three years before he missed an entire Supreme Court Term while serving as chief United States prosecutor at Nuremberg—was perfect.<sup>28</sup> We know less about Jackson’s spring 1912 grades because neither he nor Albany Law School seems to have saved them. Justice Jackson did state many years later that one of his Albany Law School grades was a perfect 100 from Corporations’ Professor Frank White.<sup>29</sup> Overall, according to the later Albany Law School

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<sup>27</sup> Robert H. Jackson, *An Address Delivered at the Ninetieth Commencement of the Albany Law School* 1 (June 5, 1941) (pamphlet) [hereinafter Jackson 1941 Commencement Address], in Robert H. Jackson Papers, Library of Congress, Manuscript Division [hereinafter Jackson Papers], Box 41.

<sup>28</sup> See Jackson’s first semester Albany Law School report card, in Jackson Papers, *supra* note 27, Box 244.

<sup>29</sup> See Phillips-Jackson Interviews, *supra* note 4, at 72; see also Frank White, *Noted*

dean who knew Justice Jackson personally and admired him greatly, his grades were “what would be expected”—“he was in the top 5% of his class.”<sup>30</sup> When Jackson thought back on this law school success years later, he seemed to give more credit to himself than to his teachers: “There were no figures in the Albany Law School that stand out particularly or that were too inspiring to me. What you studied and what progress you made depended pretty much on yourself.”<sup>31</sup>

In addition to doing his course work, Jackson filled his law student days in Albany by actually taking advantage of some of the legal attractions that had drawn him to the city in the first place. Forty years later, Jackson recalled that he:

watched the calendar of the New York Court of Appeals and as I had no classes in the afternoon—my classes were all in the morning—I went to the court of appeals every afternoon when there was a particularly good argument. I heard the very best of the New York state bar in their appearances before the Court of Appeals. It was a great court, and that opportunity was really one of the most important assets of the school. I did enjoy appellate work and later came to do a great deal of it. But there was not much appellate work from our city. The trial work was the thing that was important. I had hopes of someday doing appellate work, of course, and was interested in how good lawyers did it, their technique, their style of arguing cases, but I didn’t expect a very large appellate practice. I did not foresee that I would one day be Solicitor General of the United States.<sup>32</sup>

Jackson’s academic year at Albany Law School also included extracurricular events that he and most students presumably attended. At the start of the school year, Amasa J. Parker, the President of the School’s Board of Trustees, described in his opening address the tradition of legal education that began at Connecticut’s Litchfield Law School in 1784, lasted there for fifty years and

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*Lawyer, Dies at 69*, N.Y. TIMES, Nov. 29, 1927, at 27 (reporting that White was a “lecturer on corporation law” at Albany Law School for twenty years, and that he was author of “White on Corporations,” a standard work).

<sup>30</sup> Letter from Andrew V. Clements to Charles Fairman, *supra* note 20, at 2. The academic star of Jackson’s law school class was twenty-one-year-old Isadore Bookstein of Albany, who on graduation night “nearly cleaned up everything in sight by winning four first prizes and one second prize.” *Prize Winners at Albany Law School*, TIMES-UNION (Albany, NY), June 7, 1912, at 7. Bookstein later served for many years as a Justice of the New York State Supreme Court.

<sup>31</sup> Phillips-Jackson Interviews, *supra* note 4, at 72.

<sup>32</sup> *Id.* at 71–72.

continued when Albany Law School opened only seventeen years later, in 1851<sup>33</sup>—and Robert Jackson, as he listened in the audience, perhaps thought of his pioneer forebear who was growing up in the Litchfield area as that first law school began.<sup>34</sup>

In late January 1912, Albany Law School honored its 1867 alumnus, the recently assassinated President William McKinley (1843-1901), by hosting on his birth date a lecture by his law school roommate, Judge George F. Arrel of Youngstown, Ohio.<sup>35</sup> The School also hosted legal ethics lectures that year, including one by the dean of the Cornell Law School<sup>36</sup> and another by a former justice of the New York State Supreme Court,<sup>37</sup> as part of a notable series named for another alumnus who had endowed Albany Law School's legal ethics chair.<sup>38</sup>

But Robert Jackson the law student was not concerned only with studies. During the winter of 1912, he frequently went ice skating, often in the evening for an hour or so as a break from his law reading. Jackson's home ice in Albany was frozen Washington Park Lake, which is located about two blocks from his Lark Street apartment.<sup>39</sup> On one occasion that winter, his classmate Albert A.

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<sup>33</sup> See 1912 ALBANY LAW CIRCULAR, *supra* note 18, at 3.

<sup>34</sup> Jackson's great-grandfather Elijah Jackson was born in Litchfield in 1772 and lived there until he moved west with his father in 1788. In 1797, Elijah Jackson and another pioneer made the first white settlement in Spring Creek, Pennsylvania.

<sup>35</sup> See *Praises M'Kinley on 69th Birthday*, KNICKERBOCKER PRESS, Jan. 30, 1912, at 3 (reporting that "[n]early the full membership of the class attended" this evening event "at the Albany Institute and Historical and Art Society building"); see also *Albany Law School Keeps High Place in World of Learning*, KNICKERBOCKER PRESS, June 9, 1912, at 2 (describing Arrel's address and reporting that he and McKinley had lived during academic year 1866-1867 in a boarding house at 36 Jay Street).

<sup>36</sup> See *Notes and Personals*, 3 AM. L. SCH. REV. 313 (West 1913). The Cornell dean, Frank Irvine, served in that position for nine years. See generally *Frank Irvine Dies: Ex Nebraska Judge*, N.Y. TIMES, June 24, 1931, at 20.

<sup>37</sup> The former judge, Matthew Linn Bruce, who had served as Lieutenant Governor of New York during 1905-1906 and then become a judge of the State Supreme Court, First Department, in 1907, delivered a lecture, "The Lawyer An Officer of the Court," at Albany Law School on May 22, 1912. See *Good Lawyers Too Few, Bruce Says*, KNICKERBOCKER PRESS, May 23, 1912. A printed version of his speech is held by the Albany Law School library.

<sup>38</sup> This alumnus, retired Union Army General Thomas Hamlin Hubbard (1838-1915) of New York, graduated from Albany Law School in 1857 and, forty-five years later, sent it a \$10,000 check "to found a chair of Legal Ethics. . . ." *Gift by Gen. T.H. Hubbard*, N.Y. TIMES, May 30, 1902, at 1; see generally *Gen. T.H. Hubbard, Financier, Dead*, N.Y. TIMES, May 20, 1915, at 11.

<sup>39</sup> Washington Park is located within a mile of the New York State Capitol. In 1911-1912, two streetcar lines ran near the Park, which begins one block west of the location of Jackson's then-apartment. On Monday, January 8, 1912, a horse named "Old Bob" cleared Washington Park Lake (which actually was two lakes, an upper and a lower) by hauling a snow plow across its surface until "the ice glistened in the frosty air like a sheet of glass," and "the first good skating of the season" then commenced. *Hundreds Enjoy Skating at Park*,

(Bert) Arnold of Kingston, New York, invited Jackson to go skating with him on the lake. Arnold knew that his cousin Irene Alice Gerhardt, also of Kingston, was going to be there, and he wanted her and Jackson to meet. Miss Gerhardt then was a twenty-one year old secretarial school graduate who was working for New York's Commissioner of Excise in the State Capitol building.<sup>40</sup> She was bright and independent and, if I may say so, a beauty—photographs from the time show her pretty face, striking dark hair, bright eyes, lively smile, slim figure and stylish dress. On this occasion, Jackson and Miss Gerhardt skated together and seemed to get along pretty well.

According to Jackson family lore, there came another day when Irene Gerhardt was taking her lunch break on an outdoor park bench, probably right behind the Capitol, directly across the street from Albany Law School. On this occasion, she tried to entice a squirrel to approach her and nibble the food she was offering by calling to it, more than once, in lingo of the day: "Come here, Bobby." Within earshot was law student Jackson, who previously had met Miss Gerhardt. Beckoned by name, Bob Jackson approached her and more conversation ensued.<sup>41</sup> In time, these conversations led to an invitation to a dance, other dates, romance, courtship and, in time, their marriage.

The ice skating dating of Bob Jackson and Irene Gerhardt is notable for its intrinsic charm, and because it is connected to some lessons about individual freedom and government restraint. Ice skating in 1912 on Albany's frozen Washington Park Lake sounds like wholesome, simple fun to twenty-first century ears, but in Albany almost one hundred years ago it became a topic of great public controversy. During that first month of 1912, there was no law in Albany that affirmatively authorized Sunday ice skating on the lake and so, absent such explicit legal permission and in

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KNICKERBOCKER PRESS, Jan. 9, 1912, at 1.

<sup>40</sup> Albany's 1912 city directory lists Irene A. Gerhardt as a "steno" working in the Capitol, room 245, and boarding at 8 Chestnut Street. See *DIRECTORY FOR THE YEAR 1912 OF THE CITIES OF ALBANY AND RENSSELAER* 277 (1912). In spring 1912, Jackson mailed to Miss Gerhardt at 8 Chestnut Street an invitation to attend Albany Law School's June 6, 1912, commencement exercises as his guest. See Irene Gerhardt's invitation, in Jackson Papers, *supra* note 27, Box 244.

<sup>41</sup> I thank Tom Loftus for sharing this story with me. He heard it from his grandmother Irene Gerhardt Jackson (1890-1986); Mrs. Jackson was in her eighties and perhaps suffering from some dementia when she told this story to Tom, but he believes that this description of "how she met Grampa" in Albany came from her firm long-term memories. See generally Thomas A. Loftus III, *That Baby: Justice Jackson's Writings About a Grandchild, and Vice Versa*, 68 ALB. L. REV. 37 (2004).

deference to the Christian Sabbath, Sunday ice skating there did not occur.<sup>42</sup> (Sunday skaters instead used Albany's frozen, and more dangerous, river, canal and other locations,<sup>43</sup> and Sunday visitors to Washington Park were limited to "skateless sliding" on its frozen Lake.<sup>44</sup>)

In February 1912, however, Albany's corporation counsel informed ice skaters that although there was a general State law against "disturbing the peace" on the first day of the week, no Albany ordinance specifically proscribed Sunday skating.<sup>45</sup> The would-be Sabbath skaters—many of whom could not skate on weekdays because they were workers—also came to understand that neither the public safety commissioner nor the parks superintendent would interfere with them if on Sundays they took to the ice on skates. And so, despite the fervent opposition of religious institutions and believers,<sup>46</sup> they did skate—on the evening of Sunday, February 4th, more than one thousand people skated on Washington Park Lake,<sup>47</sup> and from then on, Sunday ice skating on the lake apparently flourished. The skaters were, as the corporation counsel put it, "the minority" whose beliefs were out of line with those of the religious majority,<sup>48</sup> but Albany's political officials never acted to criminalize this minority's preferred Sunday pursuit. And although Justice Jackson never stated the connection explicitly, it is hard not to hear his 1912 skate blades scraping faintly in the background of his 1943 Supreme Court opinion invalidating West Virginia's law compelling public school children

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<sup>42</sup> See *Sunday Skating in Park Is Urged*, KNICKERBOCKER PRESS, Jan. 26, 1912, at 10. Six year's earlier, in December 1905, Albany's common council had voted eleven to seven against a proposed ordinance that would have permitted Sunday skating. See *id.*

<sup>43</sup> See *id.*

<sup>44</sup> *Skaters Say They Will Skate Today*, KNICKERBOCKER PRESS, Feb. 4, 1912, at 11.

<sup>45</sup> See *No Law Prohibits Skating on Sunday*, KNICKERBOCKER PRESS, Feb. 1, 1912, at 1 (quoting the corporation counsel quoting "Section 2145 of the [New York] penal code").

<sup>46</sup> See, e.g., *Sunday Schools Object to Skating on Sundays*, KNICKERBOCKER PRESS, Feb. 20, 1912, at 11 (describing protest resolutions that five Sunday schools filed with Albany's common council); [The Rev.] James N. Knipe, *Opposes Sunday Skating*, KNICKERBOCKER PRESS, Feb. 3, 1912, at 11 (decrying, in this letter to the newspaper editor from the pastor of Albany's United Presbyterian church, "the sin of Sabbath desecration").

<sup>47</sup> See *Sunday Skaters at Park Unmolested*, KNICKERBOCKER PRESS, Feb. 5, 1912, at 1. On this Sunday, many people came to the Park "without skates, skeptical of the report that they would not be interfered with. But when they saw the enjoyment others were having they remained and looked on. Some who did not live too far away went home and returned prepared to skate." *Id.*

<sup>48</sup> The corporation counsel, Arthur L. Andrews, told a local reporter that, "[i]n matters of necessity, I believe that the minority should submit to the will of the majority, but it cannot be claimed that this [Sunday ice skating ban] is a matter of necessity and the rights of these people, who are taxpayers and who have helped to pay for and maintain the lake[,] should be respected." *No Law Prohibits Skating on Sunday*, *supra* note 45, at 1.

to salute the American flag: "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion. . . ."<sup>49</sup>

In May 1912, Albany Law School's commencement was only a month off when a distressing situation developed. The School noticed that two of the students who were "[w]ell toward the top" of the senior class, twins Clara B. Pritchard and Clarissa Pritchard of Tivoli, New York, were only nineteen years old.<sup>50</sup> Confronted with this information, Dean J. Newton Fiero decided that he would enforce against the Pritchards the "rule" that no law student could receive the LL.B. degree before he or she was twenty-one years old.<sup>51</sup> Fiero also decided that the sisters would be permitted to take part in graduation exercises (except that they would receive no law degrees!). In despair, the sisters told their story to the newspapers, resulting in significant coverage in Albany and even a story in the *New York Times*.<sup>52</sup> But Albany Law School did not budge—Dean Fiero refused to exempt the Pritchards from the minimum age eligibility required to receive the law degrees that they had earned in the classroom.

It turned out that Clara and Clarissa Pritchard were not the only successful students in that Albany Law School senior class who were too young to receive law degrees. And to the Law School's marginal credit, it at least applied its age rule uniformly, and without regard to gender. This fact received no newspaper coverage

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<sup>49</sup> *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624, 642 (1943).

<sup>50</sup> *Too Young for Law Degree*, N.Y. TIMES, May 10, 1912, at 10. The Pritchard sisters had been born in August 1892. See *Girl Law Students Lose Degree; Not 21*, KNICKERBOCKER PRESS, May 10, 1912, at 2. A third female student in the senior class, Daisy L. Snook of Amsterdam, New York (later Mrs. Henry V. Borst), was already twenty-one years old and thus was eligible to receive her degree in 1912, but for unexplained reasons she later was listed as graduating with the Class of 1913. See ALBANY LAW SCHOOL ALUMNI DIRECTORY 90 (1927).

<sup>51</sup> See *id.* This Albany Law School rule seems to have been promulgated based on, or at least in solidarity with, the requirement that applicants had to be twenty-one years old to take the New York State bar examination.

<sup>52</sup> See *id.* (quoting Clarissa Pritchard's "depairing[]" remark to a reporter on May 9, 1912: "Isn't it awful? . . . Here's all this time going to waste. I suppose it wouldn't pay in the long run, but I wish we had thought ahead a little when we began."); *Girl Graduates of Law School, Two of Whom Are Too Young To Be Trusted With Diplomas*, KNICKERBOCKER PRESS, May 11, 1912, at 1 (publishing a front-page group photograph of the Pritchards with their classmate Daisy Snook); *Too Young for Law Degree*, *supra* note 50; *Young Women Who Complete Course in Albany Law School*, TIMES-UNION (Albany, NY), June 6, 1912, at 5 (publishing individual photographs of the Pritchards and Miss Snook and reporting that the former "must await diploma[s] until [they] reach[] the legal age"); *One Lone Girl to Get Law Diploma*, KNICKERBOCKER PRESS, June 6, 1912, at 12.

at the time, but at Albany Law School's commencement on June 6, 1912, the third successful law student who was not awarded the LL.B. degree was the male baby of the class, twenty-year-old Robert H. Jackson of Frewsburg. He, like the Pritchard sisters, received a diploma of graduation rather than an actual law degree.<sup>53</sup>

### III. JACKSON'S RETURNS, AND HIS NEAR-RETURNS, TO ALBANY

After he completed his Albany Law School studies, Robert Jackson returned to his family in Frewsburg and soon was residing in Jamestown. During an additional year (1912-1913) as Frank Mott's apprentice, Jackson turned twenty-one years old, which—finally—made him old enough to take the New York State bar examination. He did, and he passed, and on November 24, 1913, in Rochester, New York, he was admitted to practice law by New York's Supreme Court, Appellate Division, Fourth Department. For the next twenty years, Jackson's home and his law practice base were in western New York State (mostly in Jamestown). He thought, in early years, of running for the New York State Assembly or some other elective office, but his Democratic Party was such a minority in that region—as Jackson himself put it later, “in that day a Democrat was like a vegetarian, a little queer but not dangerous”<sup>54</sup>—that he believed he had no prospects as a political candidate.

Non-candidacy pulls and opportunities first brought Jackson back to Albany. Most importantly, he returned to Albany to close the Gerhardt deal. Irene Gerhardt had continued to live and work in Albany during Jackson's first few years as a lawyer on the other side of the state. While he was working to establish himself in law practice and financially, they courted by mail and occasional, thoroughly chaperoned, visits. By early 1916 they were engaged, and on April 24, 1916, they were married in Albany's St. Peter's Protestant Episcopal Church. They then settled in Jamestown, where they raised their children—son William Eldred Jackson, born in 1919, and daughter Mary Margaret Jackson, born in 1921. Their continuing family tie to Albany was Irene's mother Margaret, who resided there from about the time Jackson was in law school until her death in 1932.

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<sup>53</sup> See ALBANY LAW SCHOOL ALUMNI DIRECTORY, *supra* note 50, at 89. Albany Law School awarded Clara Pritchard and Clarissa Pritchard (later Clarissa L'opez Acosta) their law degrees with the class of 1914. See *id.* at 91.

<sup>54</sup> Phillips-Jackson Interviews, *supra* note 4, at 53.

Beginning in 1918, young attorney Robert Jackson also began to travel back to Albany to argue cases before the New York Court of Appeals. Jackson's appearances before the Court were intermittent but regular: he argued seven cases between 1918 and 1931.<sup>55</sup> His record before the Court of Appeals was a mere two wins and five losses, but his oral arguments were early glimpses of the advocacy skills that eventually brought him world acclaim.

Jackson's career path ultimately led him beyond Albany and Court of Appeals advocacy, but he remained connected, politically and professionally, to his state capital. During Franklin Roosevelt's two two-year terms as governor of New York (1929-1933), Jackson became an increasingly significant gubernatorial advisor, political supporter and appointee, and those roles, in addition to private legal work, brought Jackson to Albany quite regularly. His most important official task was service beginning in 1931 on the commission to investigate the administration of justice in New York State. Its members—some appointed by Governor Roosevelt, others by the legislature and four, including Jackson, by the New York State Bar Association—worked with academic colleagues to study and make recommendations to improve the state court system.<sup>56</sup>

In Jackson's later public life, Albany cropped up regularly as a potential professional and personal destination. As early as 1934, Jackson was discussed publicly and encouraged privately as a leading Democratic prospect for election to the New York Court of Appeals.<sup>57</sup> Jackson by that date had joined the New Deal—he had been appointed by President Roosevelt, confirmed by the Senate and was serving as assistant general counsel in the Treasury Department's Bureau of Revenue—and never made the New York court race. Indeed, by staying in Washington and never seeking election to the Court of Appeals, Jackson disregarded the advice of the Court of Appeals's most famous alumnus, former Chief Judge

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<sup>55</sup> See John Q. Barrett, *Robert H. Jackson's Oral Arguments before the New York Court of Appeals*, HISTORICAL SOCIETY OF THE STATE OF NEW YORK NEWSLETTER (forthcoming 2005) (draft available on the Social Science Research Network, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=673681](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=673681)).

<sup>56</sup> See *Roosevelt Signs Court Inquiry Bill*, N.Y. TIMES, Apr. 1, 1931, at 18; see also JACKSON, *supra* note 1, at 8.

<sup>57</sup> See *Lehman Assures Bray's Nomination*, N.Y. TIMES, Sept. 26, 1934, at 1 (reporting that if the Democratic Party convention is to nominate a Democrat to run for the third and final open seat on the Court of Appeals, "Robert H. Jackson of Chautauqua County is mentioned as a probable selection"); *Finch Not to Quit Judicial Contest*, N.Y. TIMES, Oct. 1, 1934, at 4 (reporting that if Justice Edward R. Finch had declined the Democratic convention nomination to run for the Court of Appeals, the party's committee to fill vacancies on the convention ticket "would have picked . . . either Robert H. Jackson of Jamestown or Harlan W. Rippey of Rochester").

(and then U.S. Supreme Court Associate Justice) Benjamin N. Cardozo, who encouraged Jackson privately to seek election to that state court bench.

In spring 1936, New York Governor Herbert H. Lehman, who was completing his second term as FDR's successor, announced that family and business reasons had convinced him not to seek reelection.<sup>58</sup> The *New York Times* put that news on page one, and its banner headline, at a point that was just two years into Jackson's New Deal service in Washington, demonstrated Jackson's political stature: *Lehman Not to Run Again; Blow to Party in State; Jackson Likely Candidate*.<sup>59</sup> That Jackson political candidacy also did not come to pass. President Roosevelt persuaded Lehman to change his mind,<sup>60</sup> which immediately raised the new prospect of Jackson running with him as the Democratic candidate for lieutenant governor.<sup>61</sup> Jackson did not seek that fall 1936 nomination either, however, and Lehman and running mate M. William Bray were reelected overwhelmingly that November.

By 1938, President Roosevelt's Lehman/Jackson/New York gubernatorial calculations were very different. One factor was his diminished regard for Lehman, who had broken with the President over his Court-packing plan.<sup>62</sup> Another was his very high regard for Jackson, whose powerful testimony defending the Court proposal most recently had demonstrated his loyalty, brilliance and political skill. And Roosevelt, finally, was planning to follow tradition and retire after two terms in the White House, which had him thinking about who should succeed him as the leading Democratic candidate and, he hoped, president. In late 1937, President Roosevelt felt strongly that Jackson should succeed him as president, and that the

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<sup>58</sup> See ALLAN NEVINS, *HERBERT H. LEHMAN & HIS ERA* 187 (1963).

<sup>59</sup> N.Y. TIMES, May 21, 1936, at 1. The *Washington Post* also gave the story front page treatment, but it relegated Jackson's name to its fourth-tier headline. See *Candidacy of Landon Is Assailed by Farley; Gov. Lehman to Quit*, WASH. POST, May 21, 1936, at 1 (reporting, in the third sub headline, that "[New York Attorney General John J.] Bennett and Jackson Head Discussion of Likely Candidates").

<sup>60</sup> See *Lehman Yields to Pressure, Will Run for Third Term; Roosevelt Hails Decision*, N.Y. TIMES, July 1, 1936, at 1. Accord NEVINS, *supra* note 58, at 188.

<sup>61</sup> See *Jackson Favored on Lehman Ticket*, N.Y. TIMES, July 2, 1936, at 8.

<sup>62</sup> In a private letter to the President, Lehman condemned the plan as "meet[ing] an immediate situation"—"narrow and unconvincing" Supreme Court decisions invalidating New Deal measures—"at the expense of orderly and deliberate processes of government." Letter from Herbert H. Lehman to Franklin D. Roosevelt, Feb. 26, 1937 (quoted in NEVINS, *supra* note 58, at 190). Although this letter was not released publicly, United States Senator Robert Wagner (D.-NY) released that summer a similar letter in which Lehman urged him to vote against Roosevelt's proposal. See *id.* at 192; see also JACKSON, *supra* note 1, at 32, 229–30 n.26.

position from which he should run in 1940 was, as it had been for FDR himself eight years earlier, the most important and powerful state government office in the country: governor of New York. Roosevelt thus tried to orchestrate a 1938 boom to send Jackson to Albany as governor.<sup>63</sup> It went nowhere—Democratic Party chairman James Farley objected and obstructed, as did New York machine Democrats including Tammany Hall; Jackson tested the waters but never really ran, preferring instead the law path that led to his March 1938 appointment as Solicitor General and all that followed in his legal career; and Governor Lehman, who again planned not to seek reelection, ultimately accepted a convention draft that fall and defeated the Republican nominee, prosecutor Thomas E. Dewey. And in 1940, of course, no White House vacancy opened up—which led Jackson to remark years later that he was relieved not to have been elected governor in 1938 because it turned out to be “a dead-end street with the situation as it developed in 1940 and 1944.”<sup>64</sup>

Following Jackson’s work at Nuremberg during 1945 and 1946, Albany again was a potential next home—he had not been happy on the Supreme Court in spring 1945 and he had been, in accepting President Truman’s appointment to prosecute the Nazi war criminals, experimenting with the experience of being a former justice. Jackson’s possible alternatives were numerous, ranging from private law practice in Washington or New York City or even Jamestown to candidacies for the U.S. Senate or governor of New York or the New York Court of Appeals or, as Truman recognized during his first White House year, for the Democratic presidential nomination in 1948.<sup>65</sup>

In the end, Jackson’s decision was to stay his course. From Nuremberg itself, he responded to public speculation by disclaiming any interest in seeking political office.<sup>66</sup> He returned to the Supreme Court in fall 1946 and served there with distinction for his

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<sup>63</sup> See *id.* at 31–38.

<sup>64</sup> *Id.* at 38.

<sup>65</sup> See GERALD T. DUNNE, HUGO BLACK AND THE JUDICIAL REVOLUTION 225–26 & 453 n.3 (1977) (describing President Truman’s spring 1946 comment to his aide Clark Clifford that Justice Jackson, who then was serving as chief U.S. prosecutor at Nuremberg, was the “one man . . . whose experience and talents seemed to make him presidential timber.”).

<sup>66</sup> See Letter from Robert H. Jackson to Harry S. Truman, Apr. 24, 1946, at 3 (“ . . . I think you should know that under no circumstances would I consider leaving the bench to run for Governor of New York or any other political office”), in President’s Secretary’s File, Truman Papers, Harry S. Truman Presidential Museum & Library, Independence, MO (published on [www.trumanlibrary.org/whistlestop/study\\_collections/nuremberg/documents/index.php?documentdate=1946-04-24&documentid=6-2&studycollectionid=&pagenumber=1](http://www.trumanlibrary.org/whistlestop/study_collections/nuremberg/documents/index.php?documentdate=1946-04-24&documentid=6-2&studycollectionid=&pagenumber=1)).

remaining eight years.

But Albany—and especially Albany Law School—continued to be for Jackson a very significant place in his memories, loyalties and activities.

#### IV. JACKSON'S RETURNS TO ALBANY LAW SCHOOL

Justice Jackson returned to Albany Law School for a final visit just short of forty years after he had enrolled there as a student in 1911. On June 1, 1951, in his tenth year as an Associate Justice of the Supreme Court, Jackson was Albany Law School's celebrity guest, and it awarded him an honorary doctorate, at the School's centennial commencement exercises.<sup>67</sup> Jackson then attended a special, prearranged private luncheon with fourteen or so members of his own law school class. They told old stories, enjoyed each other's company and lamented that about twenty-seven other members of their Class of 1912 now were deceased.<sup>68</sup> In those last years of Jackson's own life, his contacts with Albany Law School and its more recent students had been highlighted by his employment of Howard C. Buschman, Jr., Class of 1949 and a former editor-in-chief of this Law Review, as one of his two law clerks during the Supreme Court's October Term 1949.

More notable, perhaps because it was more of an inaugural event than a valedictory occasion, was Robert H. Jackson's visit to Albany Law School and his speech at its June 5, 1941, commencement exercises. When Jackson came to Albany on that date, he was following by seventy-two hours the news that Chief Justice Charles Evans Hughes had announced his decision to resign as of July 1, 1941. The subsequent headline speculation identified Jackson—who by then had been the Attorney General of the United States for seventeen months—as President Roosevelt's likely nominee to be the next Chief Justice of the United States.<sup>69</sup> Jackson also was deeply immersed in war-related and war-preparatory issues, including providing the legal justification for the President's impending use of federal troops to seize and run the North

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<sup>67</sup> See *Justice Jackson Honored*, N.Y. TIMES, June 2, 1951, at 17. Shortly thereafter, Jackson was elected to Albany Law School's Board of Trustees. See *U.S. Justice Becomes Trustee*, N.Y. TIMES, Sept. 27, 1951, at 31.

<sup>68</sup> Letter from Robert H. Jackson to A. Bartholdi Peterson, June 13, 1951, in Jackson Papers, *supra* note 27, Box 48.

<sup>69</sup> See, e.g., William V. Nessly, *Chief Justice Hughes Retires July 1; Jackson Most Likely Successor*, WASH. POST, June 3, 1941, at 1; *Jackson Rumored as Possibility*, N.Y. TIMES, June 3, 1941, at 1.

American Aviation production plant in Inglewood, California.<sup>70</sup> Yet Jackson had said yes to his *alma mater's* invitation, and he kept his date to deliver its commencement address.

Attorney General Jackson understandably had some trouble getting out of Washington early on the morning of Thursday, June 5, 1941, but he made it to Albany by the middle of that afternoon, in time to check into the Fort Orange Club before dinner and the evening commencement. Reporters in Albany promptly tracked him down at the Club. Jackson welcomed them into his room with his typical informality—they arrived and were invited in in time to watch Jackson pull up his suspenders, tie his tie, and don his coat and vest. Jackson then waived the reporters to the chairs while he sat on the bed. Not surprisingly, he brushed aside queries about government matters, including the rumors that President Roosevelt was about to appoint Jackson chief justice. But Jackson spoke freely and happily about his time as a law student in Albany, when he had “lived with some Jamestown friends in Lark Street,” and about his many returns as a lawyer to argue before Albany courts and various state commissions.<sup>71</sup> Jackson's classmate Judge Edward N. Scheiberling, who was president of the Albany Law School alumni association, also was present in the room, and they both—addressing each other as “Ed” and “Bob”—shared law school memories with the reporters.

Jackson did address one substantive national policy matter. When “the floundering reporters” asked about the Federal Bureau of Investigation, the Attorney General finally gave them a job-related statement—he responded by offering a strong defense of the Bureau:

J. Edgar Hoover, the head of the FBI, . . . insists that the caliber of the men be kept at the same standards as always, despite the fact that it has been necessary to increase the staff greatly. We have about 3,000 men now, and nearly all of them are law school graduates, accountants or both.<sup>72</sup>

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<sup>70</sup> See EDWARD S. GREENBAUM, *A LAWYER'S JOB: IN COURT—IN THE ARMY—IN THE OFFICE* 137–41 (1967) (describing his role as War Department representative on the scene of the Army's June 8, 1941, takeover of the North American Aviation bomber production plant in Inglewood); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 648–49 & n.17 (1952) (Jackson, J., concurring) (discussing President Roosevelt's and the United States Army's seizure of the North American Aviation plant and Jackson's involvement in those events as attorney general).

<sup>71</sup> See *Reporters Unanswered: Jackson Silent on U.S. Court Post; Attorney General Recalls Years at Albany Law School*, *TIMES-UNION* (Albany, NY), June 6, 1941, at 3.

<sup>72</sup> *Id.*

With regard to law school graduates, Albany Law School took the occasion of that June 1941 commencement to rectify a situation that had grown, for the School, ever more unfortunate in the years since 1912. Albany knew that what had been the Clara and Clarissa Pritchard, too-young-to-receive-law-degrees issue in the public eye that year also had been a Robert Jackson issue. Now, twenty-nine years later, Jackson was the Albany Law School alumnus who had achieved prominence in both private practice and public service, who was a Cabinet officer, and who might very soon be appointed to the Supreme Court of the United States—and Albany had never awarded him his law degree! For that constellation of reasons, the School decided at its 1941 commencement to make matters right. Albany Law School that evening conferred on Robert H. Jackson, belatedly, his law degree as of the Class of 1912. (Ten years later, after he had become an Associate Justice, Jackson suggested that the *Cornell Law Quarterly* describe him in the typical author-identifying footnote on the first page of an article that he was publishing there as “Albany Law School, 1912, LL.B. June 5, 1941, as of Class of 1912.” He then explained: “The peculiar entry about Albany Law School, for your information and not for print, is that I graduated in 1912 while under 21 years of age, for which reason I was not entitled to a degree. As time cured that, the degree was awarded later on a sort of *nunc pro tunc* basis.”<sup>73</sup>)

In his Albany Law School commencement address that evening—the date was June 5, 1941, six months before Pearl Harbor, before direct American military involvement in European affairs, in a United States where many millions were still hoping that the developing world war would not be ours to fight—Attorney General Jackson spoke about the end of isolationism. America’s hope of pursuing its democratic ideals, Jackson stated, was inseparably dependent on Germany being defeated in the battle of the Atlantic.<sup>74</sup>

Jackson then turned to a legal topic that he could not yet capture in the shorthand of a single word. (Five more years, and direct personal responsibility for an unprecedented legal undertaking, would give Jackson that word: Nuremberg.) This is part of what he said:

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<sup>73</sup> Letter from Robert H. Jackson to Lorene Joergensen, Dec. 3, 1951, in Jackson Papers, *supra* note 27, Box 48. At that time, Joergensen was a Cornell law student and Managing Editor of the *Cornell Law Quarterly*.

<sup>74</sup> See Jackson 1941 Commencement Address, *supra* note 27; *Albany Law School; Commencement Address of United States Attorney-General Jackson*, N.Y.L.J., June 10, 1941, at 1, 2.

[T]he reconstruction of a peace-time society, both within our country and the world, will be the test and the opportunity of the legal profession. . . . Beginning with the early struggle for liberty, continuing in the Constitutional Convention and the contest for ratification, and exemplified in a century and a half of interpretation and application to problems of increasing range and complexity, the legal profession has supplied much of the leadership that has made our American system what it is.

In no single field is this more evident than in the field of international relations. I do not know by what technique the world will try to re-establish working relationships between nations. But it is difficult to conceive of any escape from the rule of force, or any method of adjusting international grievances that would not basically be a mere extension and adaptation of techniques familiar to lawyers. It may proceed by contractual method, and negotiate treaties and agreements that re-establish a basis of peace. Or it may follow more legislative procedures through setting up some representative body to work out, by political methods, a reconciliation of interests. Or it may proceed through some adjudicative method to take up points of controversy—some perhaps never before thought to be justiciable—and arbitrate them according to legal principles. Or it may invoke a combination of some or all of these. But however the world tackles its great unfinished task of world organization to substitute reason for force, it will take up some device in which competent men [and women] of our profession will have had experiences, learning and skill.<sup>75</sup>

Less than five years later, as the chief United States lawyer who prosecuted captured Nazi leaders in Nuremberg, Germany, for committing crimes against the peace, war crimes, crimes against humanity and conspiracy, Justice Jackson personified the legal project he had anticipated and described preliminarily at Albany Law School in 1941. Indeed, as Jackson stood at the podium in room 600 in Nuremberg's Palace of Justice in November 1945 and began his opening statement to the International Military Tribunal, he in some sense merely repeated—as he thereby lived—that Albany idea of a lawyer's work:

May it please Your Honors:

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<sup>75</sup> Jackson 1941 Commencement Address, *supra* note 27, at 8–9.

The privilege of opening the first trial in history for crimes against the peace of the world imposes a grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is one of the most significant tributes that Power has ever paid to Reason.<sup>76</sup>

Robert H. Jackson spent almost fifty years of his too-short life studying, mastering, representing, articulating and advancing the law. Fifty years after his departure, as that legacy continues to grow and develop, it also traces back, and connects deeply, to his own roots in Albany.

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<sup>76</sup> ROBERT H. JACKSON, *THE NÜRNBERG CASE* 30–31 (1947).

