

IN THE SUPREME COURT OF PENNSYLVANIA

In Memory of

HONORABLE HORACE STERN

Justice of the Supreme Court

January 2, 1936—November 1, 1952

Chief Justice of the Supreme Court

November 1, 1952—December 29, 1956

A memorial service in honor of Chief Justice Horace Stern was held in Room 456, City Hall, on April 30, 1969, at 10 A.M.

There were present Chief Justice BELL and Justices JONES, COHEN, EAGEN, O'BRIEN, ROBERTS and POMEROY, and a representation of the Bar and members of Chief Justice Stern's family and friends.

Chief Justice JOHN C. BELL, JR. presided.

CHIEF JUSTICE BELL: The Court will hold this morning a memorial service for the late Chief Justice Horace Stern.

Horace Stern was not only a scholarly Judge, a Justice and a Chief Justice, but also a friendly humanitarian whom every Judge, every lawyer, and every person who ever met him, esteemed and greatly admired. His traits of character were many and outstanding. He combined his deep affection for his fellow-man and his humanitarian and charitable spirit with humility, integrity and tremendous legal and Judicial ability. His family life was affectionate and inspiring, and he served his fellow-man in numerous charitable and philanthropic works, and also in the field of education, and in each and all of these, he rendered remarkable services. He was an inspiration to all who knew him.

He was born in Philadelphia on August 7, 1878, was educated in the public schools of our City, graduated from the University of Pennsylvania and its Law School, and practiced Law for approximately 18 years as the senior partner in the leading firm of Stern and Wolf. Commencing in 1920, he served as a Judge of the Court of Common Pleas No. 2 for a period of 15 years, becoming President Judge of that Court in 1924.

He was elected to the Supreme Court of Pennsylvania in November, 1935, and became Chief Justice in November, 1952, in which office he served until the expiration of his term on the first Monday of January, 1957. He was, without any doubt, one of the greatest Justices in the history of Pennsylvania.

Every member of this Court, and indeed every member of every Court on which he served, held him in affection, esteem and admiration. We, on this Court, will never forget Horace Stern, our beloved Chief Justice.

The Court recognizes Mr. Marvin Comisky, an outstanding lawyer and former Chancellor of the Philadelphia Bar Association.

MARVIN COMISKY, ESQ.: May it please the Court: It is fitting that this Solemn occasion, a special session of this Honorable Court in memory of the late, beloved Chief Justice Horace Stern, be held in this courtroom. It was here in this courtroom in large measure that he gave so much of his vital energy. It was here that his brilliant intellect was shared by his judicial brethren and welcomed by the advocates before this Bar, who marvelled at his pin-pointed acumen.

It is what we commonly refer to as fate that I, referred to by the Chief Justice in his life-time "as a former law associate", actually a law clerk, now almost 23 years to the day my personal life had the good fortune to cross his, should be in official position of

the Pennsylvania Bar Association. This gives me the opportunity to say publicly in memoriam what before was only my privilege to say privately.

And so, on this occasion, I would speak briefly in two capacities. One on behalf of the Pennsylvania Bar Association as President-elect of approximately 9,000 practicing lawyers and as a former Chancellor of the Philadelphia Bar Association and, two, in a personal capacity acknowledging the tribute on behalf of my entire family, for he knew us all, having attended my wedding and having kept abreast of the progress of my children through affectionate discussions that we had from time to time.

Who is it among the Bar that does not acclaim the stature of Horace Stern created by twenty-one years of devoted effort on this Supreme Court supplemented by his effort in the trial court of Philadelphia County. As Cardozo established a standard in New York and Brandeis for the United States, so did Horace Stern for Pennsylvania! The full measure of his contribution recognized by his contemporaries will become even more appreciated with the perspective of our successors.

Through the years, he authored significant opinions. I mention only a few to illustrate the contribution to the Bench, the Bar and our citizenry:

The Dornan case in 1938, holding the Housing Authorities Law constitutional [*Dornan vs. Philadelphia Housing Authority*, 331 Pa. 209 (1938)]; the Belovsky case in 1947, holding the Urban Redevelopment Law constitutional [*Belovsky vs. Redevelopment Authority of Philadelphia*, 357 Pa. 329 (1947)]; the McSorley case in 1948, holding the Parking Authority Law constitutional [*McSorley vs. Fitzgerald*, 359 Pa. 264 (1948)]; one of the major cases in Pennsylvania law, which I relied upon as General Counsel to the Consti-

tutional Convention of 1968 to help tailor provisions of the new Judiciary Article, namely, the *Smith Case* in 1955, holding compulsory arbitration constitutional [*Smith Case*, 381 Pa. 223 (1955)]; the *Wilcox* case in 1947 declaring the Community Property Law invalid [*Wilcox vs. Penn Mutual Life Insurance Co.*, 357 Pa. 581 (1947)]; the basic decision involving an interpretation of Philadelphia's Home Rule Charter, *Lennox vs. Clark* in 1953 [*Lennox vs. Clark*, 372 Pa. 355 (1953)]; *Margiotti's Appeal* in 1950 which reviewed and affirmed the common law power of the Attorney General to supercede a District Attorney [*Margiotti Appeal*, 365 Pa. 330 (1950)]; and a major opinion in corporate law, namely, *Janney vs. PTC* in 1956, holding staggered election of Directors constitutional [*Janney vs. PTC*, 387 Pa. 282 (1956)].

While much, much more can be recited, these are indicative of how his opinions spread-eagled the substantive law.

The second phase of these remarks—some personal observations—start with an event just 30 days after I began as his law clerk, I learned what he meant by scope and concentration. He called me in to discuss a case which had been argued before the Court and inquired of me concerning a citation which appeared in the brief. I went to the shelf, reached for the book, opened it and started to read the context out loud. The Judge said to me, "I have read it, Marvin, I have read all the briefs and all the cases cited in those briefs, I want to know what you think about the case and how it affects our decision?" From that gentle prodding, I learned to grasp an entire issue as he did, not as a series of individual arguments, but as a presentation of a single matter with a continuity of facts and thread.

I remember his measured comments upon oral advocacy before the Court. He would say, "I wish that

more lawyers would realize the supreme importance of the oral argument. Briefs are to it merely as footnotes to a text." I always listened with special attention to a presentation by his life-long friend and his scintillating example of foremost advocacy, Morris Wolf, Esq., present here today.

I remember fondly our walks from City Hall up Walnut Street through Rittenhouse Square to his residence, during which I was the beneficiary of many casual comments which I have since had the occasion to recite almost *pro hoc verba* to younger lawyers.

I remember his series of articles, "Letters from a Judge to His Lawyer Son", printed in the Philadelphia Bar Association Shingle in 1946 and 1947, in which words of wisdom were candy-coated, which I read and reread and which I hope my son, if he practices law, will read with interest and reward.

I remember that his first draft of an opinion was "mental" and I marvelled at the meticulous way he dictated an opinion in final form, replacing the official volume of reports on the shelf one by one after he had finished with them, and carefully treasuring in a desk drawer for future use the scrap paper which served as bookmarks from one opinion to another.

I remember on each occasion of an address by him the startled reaction of the audience to his comments which always commenced with an appropriate humorous story, even more welcome because so unexpected to those who had not previously been exposed to his wit.

I remember, and have read and reread, his speeches delivered on significant occasions and embodied in a text, the title of which reflects his feeling on what should truly concern us, namely, "The Spiritual Values of Life".

Finally, I remember the acclaim he received from his law clerks—20 in number covering the 21 year term

of his office in this Honorable Court, from January 2, 1936 to December 29, 1956, during which he served as Chief Justice from November 1, 1952, spanning almost 70 volumes of official reports. There were three banquets attended by his law clerks. The first occasion was in 1946, the second was on the occasion of his retirement and the last one was in 1968. On the last occasion others of his law associates, more eloquent than I, orally recited our fond regard.

I conclude these comments by paraphrasing the eloquent language of the Chief Justice himself and I quote from one of his own speeches in memoriam which I think equally appropriate as his epitaph, "The smile now is gone and the great heart is stilled forever. But for years to come those of the Bench and the Bar of Philadelphia who knew Horace Stern will continue to see him in their minds' eye upon the bench of the court in which he presided, and they will tell anecdotes of his wisdom, his humor and the whimsicalities that gave him so much of his charm. And to the lawyers of future generations there will descend the traditions of his just administration of the law and his high standards of duty, and they will find in his career an ever-quickenning inspiration to pursue those finer ideals of private conduct and public service which through centuries of Anglo-Saxon life have made of the law a great and noble profession—a profession well worthy of Horace Stern, as he was well worthy of it."

CHIEF JUSTICE BELL: Thank you, Mr. Comisky. The Court recognizes Judge Harold D. Saylor, Judge of the Orphans' Court Division of the Court of Common Pleas of Philadelphia and a close friend of Chief Justice Stern.

HONORABLE HAROLD D. SAYLOR: When I came to the bar fifty years ago I first heard of an able and brilliant lawyer named Horace Stern. In observing the efficient and judicious manner in which he conducted the work

of Common Pleas Court No. 2 of Philadelphia County I admired and respected him. On his becoming a Justice of this great appellate court and in time its Chief Justice my admiration and respect for him constantly grew.

It was after his retirement as Chief Justice a decade or more ago that it was my good fortune to become much better acquainted with Horace Stern. I became a member of a small group of judges and lawyers headed by him and his good friend Charles Alvin Jones, his successor as Chief Justice, who took lunch together nearly every week day at the Colonnade Restaurant. The broad experience in the law and literature of men like Horace Stern and Charley Jones brought to our group conversation of high order. The exceptionally fine memories of these distinguished jurists and their vast knowledge of historical events and of the men and women associated with them made the table talk most interesting and remarkable. It was a joy to me to be thus associated with that group day after day and ever since I have treasured the memories of those happy times now ended.

Horace Stern loved America, his state and his city. During his many travels throughout the nation he visited the capitol building in every state capital. In Pennsylvania he visited every county seat and every courthouse so that he was familiar with the scene of the many contests in the courts that came to him as a member of this tribunal.

Horace Stern the student, the lawyer, the jurist was a man of exceptional quality. He was judicious, humane, patient, fair-minded, kind, courteous and gentle. He had personal charm and dignity and good taste and absolute integrity. In addition to all these evidences of estimable character he had a delightful sense of humor. I remember many occasions when after lunch,

on his way back to the offices of the firm he and Morris Wolf founded in 1903, he would stop to buy the evening newspaper so that he could read the Daily Chuckle and be amused by what he read.

He was truly a great man. He had an inquiring mind and an abiding interest in the world's affairs. He gave of his time, substance and energy to the organizations that had as a purpose the betterment of mankind. Above all as a lawyer he lent dignity and probity to the noble profession of the law. As a judge, by his decisions and by the very nature of his conduct on the bench of two courts, he exalted the majesty of the law.

It was my great, good fortune to know Horace Stern and to be close to him in his later years. It was an honor indeed and a privilege to have him as a friend. This nation, this state, this city needs men like Horace Stern. If only we could have today more Horace Sterns to live among us and to inspire and serve us. Philadelphia would be blest if it had a few, even one.

I shall never forget him.

CHIEF JUSTICE BELL: Thank you, Judge Saylor. The Court recognizes Mr. Morris Wolf, who was Horace Stern's oldest and closest friend, as well as his law partner for 18 years. (Mr. Wolf yielded his right to speak.)

CHIEF JUSTICE BELL: The Court recognizes Judge Henry J. Friendly, a distinguished Judge of the United States Court of Appeals for the Second Circuit.

HONORABLE HENRY J. FRIENDLY: It is peculiarly hard for me to differentiate, as I must try to do today, between Horace Stern, the judge, and Horace Stern, the man. The warmth engendered by nearly two score years of family ties tends to prevent a cool appraisal of professional performance. I think of him as a husband and father, giving unparalleled devotion and receiving it in the fullest measure in return. I remem-

ber the welcome he extended to me, despite his obvious regret at having his beloved daughter leave Philadelphia for that wicked place ninety miles to the north. Our children loved him as a grandfather, as they sensed his love for them. He delighted in playing games with them when they were young, descending easily to their level—although he always played to win, and he permitted no generation gap when they became adolescents and adults. But I must turn from such memories and dwell on today's proper theme.

Horace Stern was proud not simply of being a lawyer but of being a Philadelphia lawyer. While in his mind he had to recognize that there were other law schools than the University of Pennsylvania's and that courts and lawyers did exist in other parts of the land, in his heart he did not regard them as of quite the same breed. Crowded calendars, slothful judges, and lawyers who broke their word might be encountered elsewhere, especially in New York, but never in Philadelphia! Each of you can decide how far this idyll conformed to the facts; the important thing is that he truly felt that way about the bench and bar of his city and state. The names of John G. Johnson, of William Draper Lewis, of Owen J. Roberts, and of George Wharton Pepper were frequently on his lips. Beside them even such men as Holmes, Brandeis, and Hand were of small account. How could it be otherwise when they were not Philadelphians? Of outlanders only Cardozo was permitted to enter the Pennsylvania Pantheon.

When I first knew him, he was still a trial judge and, tactless though it be to mention in this courtroom, he often claimed he had been happier in that role. He had liked to see the parties, to hear the witnesses, to instruct the jurors. He had enjoyed the roomful of importunate attorneys who would be awaiting him when he descended from the bench and to whom he would

listen with courtesy and concern. All this gave scope for his deep compassion, for his thorough understanding of human nature, and for his remarkable ability to persuade men to act reasonably with one another.

Yet it was good for the Commonwealth and for him when he was elected to the Supreme Court. I have the impression, although he never would have admitted it, that in 1935 the common law of Pennsylvania left something to be desired. I remember that when I was in law school a short while before that—not, to be sure, at the University of Pennsylvania—it was quite common for our teachers to say, “This rule prevails almost everywhere—except in Pennsylvania.” Whether consciously or not, he set out to remove these barnacles with which the good ship of the common law had become encrusted in this state. His technique was characteristic of the man. Rarely would he hurl the thunderbolt of an outright overruling. Rather he would find some obscure case embodying the principle he thought sound and would then explain, carefully and unpretentiously, how that case rather than better known decisions of more recent vintage represented the true rule. Karl Llewellyn, a severe critic of most appellate judges but a great admirer of Justice Stern, told how in a single opinion, on the one year section of the Statute of Frauds, he “offered to Pennsylvania the new light Cardozo had spent ten years acclimatizing in New York.” Professor Llewellyn spoke also of his desire not simply to decide the case in hand but to make his opinions a guide for the future. To that end he used what the author called “a form of rule-making which that great craftsman made into a personal habit that ought to bloom into a general institution.”

He was not a judge who worried overmuch about legal philosophies. Perhaps, like Lord Bowen, he regarded what is ponderously called a “jurist” as “a per-

son who knows a little about the laws of every country except his own." He was concerned with rightly deciding the case before him. But if he had been required to opt between St. Augustine's famous dictum, "An unjust law is not a law," and Austin's, "The existence of law is one thing; its merit or demerit another," no one can doubt where his choice would have lain. In an era when talk of justice was unpopular, at least in academic circles, he did not shrink from it. He believed that the "ought" of law went far to determine the "is," and he had an unerring sense where justice lay. To be sure he never fancied himself a St. Louis dispensing justice on an individual basis under the oak tree at Vincennes; the just result had to be worked out within the contours of our legal system and in the time-honored fashion of appellate judges. But the impetus and the desire were always there, and he left the law of Pennsylvania a juster, fairer and cleaner law than when he joined this court. That is a sufficient achievement for any appellate judge.

And so after seventeen years of practice, thirty-six of judicial work, twenty-one of which were in this Court, and twelve years of retirement in the companionship of his early partner and lifelong friend, this great but humble man, valiant for both truth and justice, has "passed over, and all the trumpets sounded for him on the other side."

CHIEF JUSTICE BELL: Thank you, Judge Friendly.

In accordance with our custom, the fine addresses and eulogies we have heard in memory of our departed friend and colleague will be entered on the records of this Court and printed in the State Reports.

In respect for Chief Justice Stern, the Court will now adjourn.