

IN THE SUPREME COURT OF PENNSYLVANIA

In Memory of

HONORABLE MICHAEL A. MUSMANNO

JUSTICE OF THE SUPREME COURT

January 7, 1952—October 12, 1968

A memorial service in honor of Honorable Michael A. Musmanno was held in Room 801 City-County Building, Pittsburgh, Pennsylvania, on Monday, March 24, 1969, at 10 o'clock A.M.

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

Chief Justice JOHN C. BELL, JR. presided.

CHIEF JUSTICE BELL: The Court will hold this morning a memorial service for former Justice Michael Angelo Musmanno.

Justice Musmanno was born, as we all know, in Stowe Township, Allegheny County. From humble circumstances he rose to the stars. He was a scholar, a fighter, an author and a Judge. He received degrees from five colleges. He took post-graduate courses at Harvard, Oxford and Notre Dame and lectured at all three.

In the First World War he served as a Captain in the United States Army, and in the Second World War he served in the United States Navy and attained the rank of Rear Admiral. In each war, he served with

great distinction and received many medals and many honors. He was a born fighter, not only in war but in any and every cause in which he believed.

He was elected and served twice as a member of the House of Representatives in Pennsylvania, during which period he will probably be best remembered by his having headed a legislative campaign which resulted in the abolition of the coal and iron police; and later on, he was the author of a bill which outlawed the Communist Party in Pennsylvania. And speaking of authors, Justice Musmanno was the author of 12 popular books and of numerous articles.

Justice Musmanno had been a Judge since 1931, and was elected to the Supreme Court of Pennsylvania in 1951.

He was both a romanticist and a realist,—a vivacious, dynamic and eloquent man who made and left his mark wherever he went. He was very fond and very proud of his family,—his native Country, our Country,—and the Country of his ancestors, Italy. He took special delight in proclaiming the feats of Columbus and other great Italian navigators and explorers, their discoveries, their military conquests during the time when Rome ruled most of the civilized world and the fact that their sons and daughters have led and charmed the world in painting, sculpture, music and art. In the world of newspapers, mass media and television, he was eulogized times without number.

I believe that his greatest interest was in his fellow-man. He was always a friend of the poor, the underdog, the forgotten, and the exploited working man. These had his sympathy, his affection and his unswerving support throughout his entire life, and earned for him the admiration, the affection and indeed the adulation of thousands of his fellow-citizens.

I believe that the subject of negligence was the field of the law in which he was most interested. His opinions in negligence cases were picturesque and often poetic. He was so humanistic, and frequently was so carried away in the cases in which a person was injured, that one sometimes felt, while reading his opinions, as though one were on a voyage up the Nile with Cleopatra, or down the Nile with one of Hollywood's modern beauties.

He will be long remembered and greatly missed by his countless friends and admirers.

The Court recognizes Mr. William H. Eckert, President of the Pennsylvania Bar Association.

HONORABLE WILLIAM H. ECKERT: If the Court please: Mr. Justice Michael Angelo Musmanno, in respect for whose memory the Court is holding this Memorial Service, had so many attainments and such a polymorphous life that only a compendium of them can be mentioned on this occasion. Of his many talents, the most outstanding and enviable to a lawyer were his prodigious vocabulary and the effectiveness with which he could deliver a speech. He was generally acknowledged to possess the largest vocabulary and to be able to deliver the most expressive oration of any man of his generation in Pittsburgh, and probably in a much larger area. His opinions, both when speaking for this Court and when dissenting, will constitute a permanent record for all posterity of his extraordinary command of the English language, his genius for graphic description, his forte in employing apt similes and metaphors, and his consummate eloquence. But his talents for making an oral speech died with him.

With his masterful command of the English language, he combined an innate ability of expressive and effective oral delivery reminiscent of orators of an ear-

lier era but a rarity today. He was a born actor which enabled him to deliver a speech with appropriately dramatic gesticulations. He was also adept at modulating his voice to impart just the right inflection to help convey his meaning.

In addition, he was endowed with a remarkable memory which enabled him to recall just what he wanted to say next, without any hesitation whatever. For example, he had memorized the oath of office of a Common Pleas Court Judge. This enabled him to administer the oath with striking impressiveness.

He gave a remarkable demonstration of his forensic talents at Gettysburg when he was asked at the last moment to substitute for some dignitary who became disabled from filling his part of a celebration there. Mr. Justice Musmanno delivered Abraham Lincoln's Gettysburg Address on that occasion with such emotion, expression, pathos and perfection that he stole the show, notwithstanding that the principal speaker was an Ex-President of the United States.

He also had a good sense of humor which he injected on appropriate occasions into his public speaking. An instance of this occurred in the last December of his life when he was presiding at an induction ceremony in the Court of Common Pleas of this County. In the presentation of a Judge's commission, tribute had been paid to the Judge's wife by recalling the old adage that behind every successful man there is a great woman. In responding, Mr. Justice Musmanno quipped "Think where I might have gone if I had had a great woman behind me." On the contrary, it may be questioned whether if he had been married, he would have had time to do all that he in fact did.

He was also noted for the humor which he could weave into his judicial opinions. This made them fas-

cinating reading as well as forceful expositions of legal principles. A sparkling illustration of this penchant of his was his majority opinion for this Court in *Schwartz v. Warwick-Philadelphia Corporation*, 424 Pa. 185, the case in which a dancing guest at a wedding banquet slipped and fell on asparagus which a waiter had dropped on the dance floor. He had such an inimitable genre of literary composition that his opinions can be recognized without looking to see the name of the writer.

Mr. Justice Musmanno achieved his greatest fame as an Associate Justice of this Court for nearly 17 years, during the last 7 years of which he was the Senior Associate Justice. He was a veteran jurist, however, before ascending this Court, for he had previously served for approximately 20 years on the County Court and the Common Pleas Court of Allegheny County. His judicial career also included service on the International War Crimes Tribunal at Nuremberg—a unique experience in international law.

Perhaps because of the latter experience he was appointed a member of the Commission on International Judicial Procedure by President Kennedy. He also served as President of the United States Forcible Repatriation Commission in Austria, passing on the demands of Soviet Russia for the return of refugees. In doing so, he is credited with having saved the lives of thousands of Russian refugees from Siberian exile or the firing squad.

Justice Musmanno's accomplishments were not confined to the judicial field. Before going on the Bench, as the Chief Justice has stated, he had served two terms in the Pennsylvania Legislature. He was the sponsor there of much social legislation. As long ago as April 26, 1931, *The Philadelphia Inquirer* described Mike Musmanno in our Legislature as follows:

“By all odds the most picturesque member of the House of Representatives and perhaps its most fiery and eloquent speaker. A child of the common people he never hesitates to lift his voice in support of humanitarian legislation.”

Also characteristic of Mr. Justice Musmanno was a propensity for championing various celebrated causes. Thus he took a prominent part in the Sacco-Vanzetti case, the abolition of the Coal and Iron Police, a crusade against drunken driving, the controversy over who discovered America, and the suppression of Communism in the United States. He was the prosecutor and principal witness in the celebrated case against Steve Nelson, the reputed head of the Communists in America, which took approximately 9 months to try before Mr. Justice O'Brien of this Court. He was also co-author of the Federal Communist Control Act of 1954.

His accomplishments already outlined would have consumed all the time of an ordinary man. But not so with Mr. Justice Musmanno. He was such an indefatigable worker and had such a fertile brain that he also found time to write at least 12 books, as well as numerous articles that have been published in law reviews and other periodicals. Two of his books have been converted into motion pictures.

No biographical sketch of Mr. Justice Musmanno would be complete without some mention of his military record, as has been done to some extent by the Chief Justice. Mr. Justice Musmanno served in the military forces of our Country in both World Wars, which in itself is rare. Consistent with his versatility, he served in the Army in World War I and in the Navy in World War II. In the latter, he attained the rank of Rear Admiral. He had an active role in the success-

ful Allied offensive in Northern Italy. He was twice wounded in action. He was awarded the Purple Heart with Oak Leaf Cluster, the Bronze Star for Meritorious Service in Combat and more than 10 other military decorations. He is buried in Arlington National Cemetery, which in itself denotes the fame which this man achieved solely by his own efforts from a humble beginning.

The best summary of Mr. Justice Musmanno with which to conclude is what Chief Justice John C. Bell, Jr., of this Court once said of him, as follows:

"Justice Musmanno is an outstanding patriot, a brilliant scholar and a renowned author of many great books. He is dedicated to our beloved country for which he twice shed his blood and as a jurist he is devoted heart and soul to the ideals of justice and true Americanism."

CHIEF JUSTICE BELL: Thank you, Mr. Eckert. The Court recognizes Mr. Louis H. Artuso, President of the Allegheny County Bar Association.

HONORABLE LOUIS H. ARTUSO: If it please the Court: I should like to add a few personal remarks to the eloquent eulogy just delivered by Mr. Eckert.

I doubt very much that I would be standing here today, as a member of the Bar of this distinguished Court, had it not been for the impact of the life and career of your late colleague, Mr. Justice Michael A. Musmanno.

We boys in the neighborhood affectionately called him Uncle Mike.

He was our hero. And how fortunate we were that the object of our hero-worship, which comes naturally to all boys, was this kind and gentle soul.

We were mostly children of humble and hard-working immigrants, who sailed across the Atlantic to this Country to make a better life for themselves, and to give their children an opportunity to obtain an education and grow into manhood and womanhood as responsible citizens of this great Country of ours.

It seems like only yesterday that young Michael left his beloved Stowe Township, and boarded the train for the Nation's Capital, where he continued his education in college and law school, at night, while working as a clerk during the day in the United States Patent Office.

The example of his ambition and determination to get ahead, I am sure, inspired me and many of my companions.

We were encouraged to believe that if he could succeed, so could we.

How many young lives were so inspired?

We may never know the exact number.

But let me cite only three outstanding examples, all members of Justice Musmanno's family and faithful servants of the Commonwealth of Pennsylvania.

First, his nephew, the Honorable William F. Cerrone, who, after over a decade of service on the Court of Common Pleas of this County that won a special commendation from you, sir, Mr. Chief Justice, now graces the Bench of the Superior Court.

Next, his nephew, Dr. Neal V. Musmanno, who has dedicated his life to the education of our youth, and now holds the position of Assistant Superintendent of Public Instruction of the Commonwealth of Pennsylvania.

And finally, Dr. Musmanno's son-in-law, Max H. Homer, Jr. of Stowe Township, also an educator, who, as Chairman of the House Sub-Committee on Basic Education, has in the short time he has served in the General Assembly distinguished himself with a solid record of accomplishment.

And so does the life of a good and decent man persist beyond the grave, to influence directly his own generation, and indirectly generations yet unborn.

Well, dear Michael, your restless soul has at last found peace and tranquility.

And as you gaze down the slopes of Arlington National Cemetery, across the historic waters of the Potomac River, and beyond to the Capitol dome, pray for the Country that was so good to you and to many, in its hour of deep crisis, for humanity, and for all of us, whom you loved so dearly, please pray.

CHIEF JUSTICE BELL: Thank you, Mr. Artuso. The Court recognizes Mr. Joseph G. Feldman, an outstanding Philadelphia attorney and a life-long friend of Justice Musmanno.

JOSEPH G. FELDMAN, ESQ.: May it please Your Honorable Court: The man who was to be Grand Marshal in Pittsburgh's Columbus Day Parade was not there. He was the great and articulate champion of Christopher Columbus as the true discoverer of America—and as fate decreed, it was on Columbus Day that he died.

All of us who knew Justice Musmanno knew him to be fastidious, astute and intensely human in his warmth of heart. He had a love of pleasure, a keen sense of humor and he was extremely loyal to his friends. He was gregarious, tolerant and a real cosmopolitan citizen of the world.

He believed that chance, fortune, luck, destiny, fate and providence were only different ways of expressing the same thing, to wit, that a man's own contribution to his life story is continually dominated by an external superior power.

He felt that the image of one's future depended on how one shaped it himself. He knew that the image of illusion was quickly shattered by the hammer of reality.

Plato once wrote "Each of us is born not for himself alone. We are born partly for our country, partly for our friends. The various contingencies that overtake our lives also make many demands upon us. When our country herself calls us to public life, it would perhaps be strange not to respond, since one must otherwise at the same time give place to worthless men who do not enter public life for the best motives." This exemplified the life of Justice Michael A. Musmanno.

What spectacle can be more edifying or more reasonable than that of liberty and learning, each leaning on the other for their mutual and surest support.

Abraham Lincoln in his Cooper Union Speech which has become a part of our American Heritage, and remained as Lincoln's guiding principle through the dark years of the Civil War, said:

"Let us have faith that right makes might, and in that faith let us to the end dare to do our duty as we understand it." This was Justice Musmanno.

He served the law with the passion of a lover and the dedication of a friar. He had an abiding will "to do justice under the law." Those who appeared before him as lawyer or litigant entered his courtroom with confidence and remained in it with faith.

He sought to incorporate in his opinions the best of the emerging legal trends and developments and at the same time inculcate a deep appreciation of our American Heritage.

He always strived to develop a moral and spiritual value that would lead to personal integrity and to instill an abiding devotion to those qualities that stand for greatness that is the heart of America.

He felt that if the true spark of democracy be kindled it would burn and no human agency could extinguish it.

It was his hope that the law like an edifice, rising toward heaven, among the pointed spires of so many temples dedicated to God, might concentrate also to produce in all minds the pious feeling of dependence and gratitude.

Justice Musmanno's family must have the solace that proceeds from the consciousness of duty faithfully performed by him.

Justice Musmanno certainly in his lifetime had many tribulations but it has been said that tribulations worketh patience, patience experience and experience hope. No one can deny that hope sprang eternal in his heart.

There are those who might say the Justice was not prudent at times, but this is because prudence has often been described as "an ugly old maid courted by incapacity."

It seems to me that when Justice Holmes said: "To rest upon a formula is a slumber that, prolonged, means death" that he anticipated the life of Justice Musmanno.

Justice Musmanno was not like a prism which collects light and distorts it and is most brilliant if the light comes from many quarters at once. He was not a reflective or receptive prism, he generated his own light.

Justice Musmanno wrote many books as though he were an architectural genius. The foundations of these books had to be laid, the data assembled and the premises had to bear the weight of their conclusions. Color was always splashed about their pages with the brush of a master painter, the writing is in itself a kind of action. Those who read these books are swept forward on their surge and tide like a ship before a following wind. There is never a moment when we are becalmed in his theme. As words, thoughts, images poured from his pen we felt the impulse of a torrent whose source is inexhaustible. As I read his books I was reminded of Blake's proverb: "The cistern contains, the fountain overflows." The Justice was never a cistern, he was always the fountain.

In his last few years I dreaded that the day might come when that last door that connected him to the avenue of life would be closed. I did not want to believe and did not realize that one day God would close it with a bang.

Because of his untimely death and our grief, we think of his book "Justice Musmanno Dissents". When the will of God touched Justice Musmanno he was in no position to dissent.

I am reminded of a poem by Henry W. Longfellow:

"How beautiful is youth! How bright it gleams
With its illusions, aspirations, dreams!
Book of Beginnings, story without end,
Each maid a heroine, and each man a friend.

But age is opportunity no less than youth itself, though in another dress,

And as evening twilight fades away the sky is filled with stars, invisible by day.”

CHIEF JUSTICE BELL: Thank you, Mr. Feldman.

CHIEF JUSTICE BELL: 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 Justice Musmanno the Court will now adjourn for the day.