

IN THE SUPREME COURT OF PENNSYLVANIA

In Memory of

HONORABLE HERBERT B. COHEN

JUSTICE OF THE SUPREME COURT

January 7, 1957 — December 3, 1970

A memorial service in honor of Honorable Herbert B. Cohen was held in the courtroom of the Supreme Court in Harrisburg on May 26, 1971, at 3:00 p.m.

There were present Chief Justice BELL and Justices JONES, EAGEN, O'BRIEN, ROBERTS, POMEROY and BARBIERI, and a representation of the Bar and members of Justice COHEN's family and friends. In addition there to there were present the Governor of the Commonwealth, Milton Shapp, Senator Martin Murray, President Pro Tem of the State Senate and Israel Packel, Counsel to the Governor.

Chief Justice John C. BELL, JR., presided.

Chief Justice BELL: The Court will hold this afternoon a memorial service for our former colleague, Justice Herbert B. Cohen.

The Court recognizes Judge George W. Atkins, President Judge of the Court of Common Pleas of York County.

HONORABLE GEORGE W. ATKINS: I feel signally honored by being requested to address your Honorable Court as a mark of respect in memory of your brother and my friend, Honorable Herbert B. Cohen.

It is my hope to express an impression of him as a person rather than to recount his many and impressive accomplishments. That will be done by my colleague.

One of the chief characteristics that readily became apparent to anyone who spent more than a brief time in his company was his deep affection and love for his family. Even when the duties of his work demanded his absence from the home, he never failed to, as we say, keep in touch, and to assure himself that all was well with his wife and children.

He indulged his children. That is not to say that he gave them every bauble that they might have desired. Rather he indulged them by being for them an example of gentility, industry, integrity and compassion. He thus by his life gave to them a sense of values that has enabled them to grow into manhood and womanhood with a strong feeling of security which is so lacking in so many of our people today. Thus I think it has been demonstrated that he was a gentle man.

As in the case of nearly all gentle people, he was a compassionate man. He had a strong feeling of concern and sympathy for those who suffered pain or misfortune. Like many people who possess this high trait, he did not advertise much of the help he afforded others. In fact, he seemed to feel embarrassment if his benefactions were disclosed or discovered.

This aspect of his character was manifested in many more ways than merely by the giving of financial aid.

In his days as an active practicing attorney, such things as legal aid, public defender, legal services for the poor financed by the Office of Economic Opportunity funds, and similar programs were unknown. Yet I can say without fear of contradiction that no one with a just cause was ever denied his services as an attorney because of their inability to pay a fee.

This concern for the welfare of his fellow man was apparent not only in his activities as a private individ-

ual and as an attorney. It was also demonstrated in his public life. I do not propose to try to enumerate specific examples of what I am now suggesting. I do, however, suggest that, if one examines the record of his actions as Majority Leader in the House of Representatives during the 1935 and 1937 sessions of the General Assembly, the impact of his concern along these lines will be clear.

It may seem that legislative consciousness of the need to meet the social requirements of modern society is of recent origin. But much important social legislation with lasting effect was enacted by the General Assembly of Pennsylvania during the period of the leadership of Herbert B. Cohen in the House of Representatives.

It was his philosophy of government that its services should be for the benefit of all the governed rather than for those governing. He subscribed both by thought and deed to the principle of that oft-quoted phrase of Lincoln's Gettysburg address, "Government of the people, by the people, and for the people".

This can be recognized by a brief glance at his record as Attorney General of Pennsylvania. He could scarcely be called a crusading Attorney General. On the other hand, where he saw wrongdoing he did not hesitate to act quickly and effectively to stop it. This is illustrated by his investigation of improper use of funds in the Pennsylvania Turnpike Commission. This inquiry brought about the successful prosecution of a number of people who abused their responsibility as officers in the government.

In a less glamorous area, as Attorney General he revived the active exercise of the visitorial power and duty of the Attorney General in the field of charitable trusts. He felt keenly the responsibility of that officer

will be honored and respected by those who knew him best.

Chief Justice BELL: Thank you, Judge ATKINS.

The Court recognizes Judge Richard E. Kohler, President Judge of the Orphans' Court Division.

HONORABLE RICHARD E. KOHLER: May it please the Court, his Excellency, The Governor, Family and Friends of Mr. Justice Cohen:

It is, of course, an honor and a privilege to address this Court in memorial to Mr. Justice Cohen, however melancholy it may be for me who came to know him as a friend and professional associate from the very first day I hung out my shingle as a young lawyer. It was he who encouraged and assisted me as a candidate for my first political office and, later, it was he who encouraged me to aspire for the Bench. Thus, for me, this memorial is especially sentimental. It seems such a relatively short time ago that many of us were present on that snowy January morning in 1957 when he was presented to this Court by my predecessor, President Judge Harvey A. Gross, to take his seat as a newly elected Justice of the Court.

Justice Herbert B. Cohen was born and reared in the City of York and maintained his residence there throughout his life. He was educated in its public schools and received degrees from the Wharton School of Business and Finance of the University of Pennsylvania and from its School of Law.

Upon admission to the Bar of York County in 1927, Justice Cohen embarked upon a career in law and political science that has not been equalled by anyone from our County in this century. Only a year after such admission to the Bar he became counsel in a trial that gained national prominence and about which a book has

been recently published. As a general practitioner of law he represented clients in every conceivable form of litigation.

In 1932, he was elected to the General Assembly of the Commonwealth as a representative from the City of York and was reelected for three consecutive terms thereafter. His selection as Democratic Floor Leader of that body is indicative of the esteem for him held by many of his fellow legislators. This was the period of The Great Depression and its concomitant social reforms most of which were in accord with his personal political philosophy. He was skilled in parliamentary procedure, an able debator, and was the guiding star for the very important legislation which marks this era and which was adopted by the Legislature through his leadership.

Following his career in the Legislature, Justice Cohen was appointed Director of the Legislative Reference Bureau where he ably served for two years.

He then returned to the general practice of law and in which he had the greatest variety of clientele imaginable—civil, criminal, domestic relations, decedent's estates, corporations, and before the administrative agencies of the Commonwealth. He practiced law with honor and integrity being loyal and worthy of the trust reposed in him by clients. At the height of his career he was never too busy to represent those of modest means and lowly station in life who came to him for assistance in relatively unimportant matters where he could never receive the remuneration that his skill, experience and standing at the Bar would justify. When it was once suggested to him that such activities were a strain upon his health his reply was that his conscience would not permit him to ignore a friend or former client who needed **his help**.

In 1954, Justice Cohen was appointed Attorney General of the Commonwealth in the cabinet of Governor George H. Leader, an office which he filled with the highest distinction. His administration of that office was marked by much important litigation in which he successfully represented the interests of the Commonwealth.

In 1956, he was elected a Justice of the Supreme Court of Pennsylvania where he served, as a most distinguished Jurist, for a period of fourteen years until his untimely death on December 3, 1970, at the age of 70 years, still actively engaged in his profession. His work on this Court, as exemplified by his well reasoned, well written, and learned opinions, serves as a better measure of his character and ability than mere words can characterize.

Justice Cohen was an authority on the legal career of Jeremiah Sullivan Black, a former Chief Justice of this Court and later Attorney General of the United States, and recognized to be one of the greatest legal minds of the 19th Century. After retirement from his public career, Chief Justice Black maintained his law offices in York at a location which later become law offices of Justice Cohen. It is no mere coincidence that the portraits of each hang side by side in our County Law Library.

Prior to his elevation to the Bench, Justice Cohen maintained a keen interest for the field of politics and, in the latter regard, his reputation as a leading exponent of the Democratic party endured throughout the State. He was a great admirer of the political philosophy exemplified by Franklin Delano Roosevelt. Justice Cohen and I were returning together from the trial of a case in Harrisburg that fateful Friday afternoon when word came over our car radio that President Roosevelt

had died unexpectedly. I have never seen him so visibly affected by tragedy.

Justice Cohen lived a personal life that was exemplary in every way. He was extremely devoted to Mrs. Cohen, to his children and their families.

Very few men have been able to attain the acme of success in all three branches of their state government, Legislative, Executive and Judicial, as did Justice Cohen. He attained it nobly and well, inspired by innate belief in democracy and a government of free men under law.

Chief Justice BELL: Thank you, Judge Kohler.

We have asked Justice Jones, who was especially close to Justice Cohen, to speak for the Court.

HONORABLE BENJAMIN R. JONES: Although I am honored to have been selected to speak on behalf of our Court on this occasion, I confess that I approach this task with diffidence and sorrow.

We meet here today to record the passing of Justice Herbert B. Cohen, who was not only our colleague but our dear and beloved friend. I deem it a privilege to represent this Court on this occasion.

Slightly over fourteen years ago, on the occasion of the induction of Mr. Justice Cohen to this Court, the late Chief Justice Charles Alvin Jones said: "There is none of us who have any doubt but that [he] will acquit [himself] with honor and distinction and benefit to the public so that at the end of [his] term it may be said of [him] 'well done'". That prediction has been completely fulfilled.

Although I had known of Mr. Justice Cohen for many years, my first meeting with him was fifteen years ago, technically he and I were then opponents for

election to fill the two vacancies then to be filled on our Court. Over the years he was not only my brother on this Court but one of my closest and highly cherished friends.

To the work of this Court, Herbert Cohen brought a varied and a vast experience. He was a splendid and astute practitioner of the law with a large and extensive practice which encompassed many branches of the law. He was a general practitioner of the law in the truest sense of that phrase. His practice, like that of all lawyers in the smaller cities of our Commonwealth, brought him in close and intimate relation with his clients and his clients learned that he was one to whom they could give their trust and confidence.

Prior to coming to our Court, Herbert Cohen had also had the unique experience of having served in important capacities both in the legislative and executive branches of our government. Even though he was a very young man at the time of his election to the House of Representatives, nevertheless, he soon became the leader of his party in the House of Representatives and, for almost a decade, was one of a few persons who directed and ran the legislative processes in this Commonwealth. To Herbert Cohen is due much of the credit for the formulation and passage of humanitarian legislation rendered so necessary and vital by the economic depression of the 1930's and the solution of the novel and distressing economic problems. So humane was Herbert Cohen, it was only to be expected that he would lead in the attempt to alleviate by state service the sad and serious problems of that day and age.

When Governor Leader assumed the governship, he named as his Attorney General, Herbert Cohen. To that office and its functions Herbert Cohen devoted himself. He made up his mind that he was going to run a model

office and to that end he assembled a staff of excellent lawyers. He retained in office many of the most experienced members of the staffs of his predecessors but he also brought new blood represented by young and brilliant lawyers. It was a source of great pride to Mr. Justice Cohen that his staff as Attorney General equalled the brilliant staff of another great Attorney General, William A. Schnader. As a member of our Court, Mr. Justice Cohen soon became recognized for his brilliance of mind, his ability to strike to the heart of the problems presented in the various appeals and his insistence on the recognition and preservation of the rights of the individuals.

We are told that Lord Bacon once said: "An ignorant man cannot, a coward dare not, be a good judge." Mr. Justice Cohen was not only a brilliant man but a very courageous man. He had the courage of his convictions and time and again he spoke out, even though alone at times, in support of what he believed to be a cause that was just and fair. Mr. Justice Cohen was not a hypocrite and he despised and condemned hypocrisy in any form. In the years to come the legal thinking and the philosophy of our late colleague will, through the medium of his printed opinions, continue to impress and inspire generations and generations of lawyers and I predict that in the years to come his status, great as it was at the time of his passing, will be enhanced and enriched.

One thing I must mention is the great humor of Mr. Justice Cohen. Many and many times tense moments in our conference sessions were relieved by display and flash of that humor. Unnoticed by most of us many things happened in our Court which were not only humorous but never failed to pass unnoticed by Herbert Cohen. His camaraderie will be sorely missed.

He was a devoted husband, father and grandfather and, in his passing his family has suffered a great loss. We, his brethren on the Court, have suffered an irreparable loss—his “blythe spirit”—will ever remain in our memories.

In conclusion, may I, in the language of a great race, say “Ya Nu Ach B’ Shalom”. “May he rest in peace.”

Chief Justice BELL: Thank you, Justice Jones.

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

In behalf of the Court, and, I am sure, also of Justice Cohen’s family, may I thank Governor Shapp and the other distinguished persons for their presence here today.

In respect for Justice Cohen, the Court will now adjourn for the day.