

In Memoriam

HONORABLE SAMUEL J. ROBERTS

Former Chief Justice of Pennsylvania
and Senior Judge
of the
Pennsylvania Superior Court,
Specially Assigned

VINCENT A. CIRILLO, President Judge, Presiding

Eulogy by

J. SYDNEY HOFFMAN, Senior Judge

JAMES STRAZZELLA, Dean, Temple Law School

Erie County Courthouse
Erie, Pennsylvania
Tuesday, August 25, 1987
11:45 a.m.

CEREMONY

PRESIDING

The Honorable Vincent A. Cirillo,
President Judge, Superior Court of Pennsylvania

GUEST SPEAKER

James A. Strazzella, Esquire
Dean, Temple Law School

REMARKS and READING OF COURT RESOLUTION

The Honorable J. Sydney Hoffman,
Senior Judge, Superior Court of Pennsylvania

ACCEPTANCE OF BOUND RESOLUTION

Marian Zurn Roberts, wife
Barbara Roberts Pollock, daughter

ADJOURNMENT OF COURT

United States District Court Judge in Attendance:

HONORABLE GERALD J. WEBER

United States Bankruptcy Court Judge in Attendance:

HONORABLE WARREN W. BENTZ

Superior Court Judges in Attendance:

HONORABLE VINCENT A. CIRILLO,

President Judge

HONORABLE JAMES R. CAVANAUGH

HONORABLE JOHN G. BROSKY

HONORABLE JAMES E. ROWLEY

HONORABLE DONALD E. WIEAND

HONORABLE PETER PAUL OLSZEWSKI

HONORABLE JOSEPH A. DEL SOLE

HONORABLE FRANK J. MONTEMURO, JR.

HONORABLE PATRICK R. TAMILIA

HONORABLE JUSTIN M. JOHNSON

HONORABLE HARRY M. MONTGOMERY

HONORABLE J. SYDNEY HOFFMAN

HONORABLE JOHN P. HESTER

Common Pleas Court Judges in Attendance:

HONORABLE WILLIAM E. PFADT,

President Judge

HONORABLE FRED P. ANTHONY

HONORABLE RICHARD L. NYGAARD

HONORABLE JESSAMINE S. JIULIANTE

HONORABLE ROGER M. FISCHER

HONORABLE SHAD A. CONNELLY

HONORABLE MICHAEL T. JOYCE

HONORABLE GEORGE LEVIN

Former Supreme Court Justice in Attendance:

HONORABLE ROY WILKINSON, JR.



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PRESIDENT JUDGE CIRILLO: Good morning, ladies and gentlemen. We are gathered here on a most solemn occasion.

But it is not a sad occasion, because we memorialize Samuel J. Roberts, late Chief Justice and Justice of the Pennsylvania Supreme Court, who later descended from that court to serve as a Senior Judge, specially assigned, to the Superior Court of Pennsylvania from 1984 to 1987, the year of his untimely death.

It is most fitting that we, the Judges of the Pennsylvania Superior Court, thank Sam Roberts for his lasting contributions, not only to the law of Pennsylvania during his 21 years as a Justice, but also in his tenure as a Senior Judge with our Court, during which time we benefitted tremendously from his wisdom, his experience, his scholarship, his compassion, and his hard work and dedication to public service that allowed our Court to fulfill its commitment to being a current court of the highest quality.

May I introduce you to my colleagues on the Pennsylvania Superior Court, who have come here today to acknowledge the enormous debt we owe Sam Roberts as judges, as believers in the rule of law and the American legal system, and as Pennsylvanians. Beginning to my far left, Judge Donald E. Wieand; Senior Judge J. Sydney Hoffman, who will later deliver a memorial resolution on behalf of the Court; and Judge John G. Brosky. To my far right Judge Peter Paul Olszewski; Judge James E. Rowley; and Judge James R. Cavanaugh.

In the second row, beginning to my left, Senior Judge John P. Hester; Judge Justin M. Johnson; Judge Joseph A. Del Sole; Judge Frank J. Montemuro, Jr.; and Judge Patrick Tamilia; and Senior Judge Harry M. Montgomery.

Now let me introduce the judges of the Erie County Court of Common Pleas who have also come to pay tribute to this native son of Erie: From my left, we have Judge Michael T. Joyce; Judge Roger M. Fischer; Judge Richard L. Nygaard; President Judge William E. Pfadt; Judge Fred P. Anthony; Judge Jess S. Jiuliente; Judge Shad A. Connelly; Judge George Levin. And also from the Federal Court, Judges Gerald J. Weber and Warren W. Bentz.

As I look around this magnificent courtroom here in the Erie County Courthouse and Justice Roberts's hometown of Erie, I see former Justice Roy Wilkinson, who had the great fortune to serve

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with Justice Roberts on the Pennsylvania Supreme Court; I see Justice Wilkinson's wife; and also this morning I notice Louis Tullio, Mayor of Erie, in the audience; I see the President of the Erie County Bar Association, John M. McLaughlin, who, together with President Judge Pfadt, helped make this event possible; I see numerous former law clerks of the great Justice Roberts, including Dennis Haines, legal counsel to Zurn Industries, who contributed his time and effort to this ceremony; I see the wives of the Pennsylvania Superior Court judges, and the several staff members both of our court and the Erie County Court of Common Pleas. Also in the audience is County Executive Judy Lynch; City Councilman Pat Cappabianca; and the Bishop of Erie, Pennsylvania, Michael J. Murphy. I am sure there are others here of great distinction whom I have failed to mention, including personal friends of the Roberts family who have come from far and wide to attend this convocation.

Most importantly, though, I want to mention the mourning members of Justice Roberts's loving and devoted family, in whose honor we have dedicated this ceremony. They are Marian Zurn Roberts, his wife; Barbara Roberts Pollock, his daughter; and her husband, Louis Pollock; Jodi R. Pollock and Howard R. Pollock, his grandchildren; Mrs. Madeline Marks and Mrs. Ruth Strauss, Justice Roberts's sisters; Mrs. Randy Emch, his niece; Mr. Marc Marks, his nephew; and Mrs. Arnold Malkin, his niece.

The Superior Court extends its deepest sympathy to the family of Justice Roberts.

Justice Roberts, among his considerable and far-reaching accomplishments in life, was a mentor and father figure to many lawyers of ability, his law clerks, who over the years became almost an extension of the Roberts family. I now turn the floor over to one of his most talented former clerks, James Strazzella, who is now Dean of the School of Law at Temple University, and who will speak some words in remembrance of Justice Roberts on behalf of all Pennsylvanians, but especially on behalf of those whom Justice Roberts touched personally. Dean Strazzella.

DEAN JAMES A. STRAZZELLA: Marian, Bobbi, family and friends of the Judge, Members of the Bench and Bar, may it please the Court.

The Court does me a great honor in affording me the opportunity to speak in praise of an uncommon man.

I knew Samuel Roberts as a law clerk would know him. I knew him later as a member of the Bar. I knew him as a member of the teaching profession would know him. He was an exceptional judge, an exceptional man. I knew him as a close friend and as a mentor.

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I cherished his friendship and, like so many others, I admired him. He was a man worthy of admiration.

This was a man who had a pervasive impact upon the law, upon those with whom he worked, and upon the legal profession which he so fiercely embraced. Samuel Roberts had a lasting, beneficial impact on all of us. He made a difference.

As a judge, he respected facts and was careful with them. He understood the law's deepest subtleties, and he understood how to move the law forward. He was vigilant of the need for fair and uncorrupt judicial administration. He was aware of the dangers of unchecked power, alert to subtle (sometimes hidden) intrusions on important rights, so he guarded against them zealously.

This was a jurist who recognized the difficulty that the unpowerful might have in being heard, so he listened compassionately and carefully.

Sam Roberts was a judge receptive to new ideas, to challenging unreasoned rules. Yet he also understood the messages of history and the delicate need for a continuity with the valuable sign-posts of the past. He knew that the truth is seldom pure and not often simple, so he never stopped learning; he valued growth.

He loved the law, cherished it, delighted in teaching it. And he most loved to teach it to his law clerks. With many other young graduates, I had the good fortune of being one of The Judge's law clerks. The Judge educated us. We were uniformly amazed by his zest, his ability to grasp ideas, to assimilate facts. He was the common law judge incarnate. He was a wonderful bridge for us into the legal profession.

The Judge never just settled for anything; he tried for the best in everything he took on. He instilled that same sense in his clerks. A clerkship with The Judge was post-graduate education at its best. He tested our mettle. He spurred our growth. He demanded the best of us. And most importantly, he taught by example.

He shared our excitement as young lawyers; it renewed him with the law. He cared about our personal worlds. He encouraged us to move on, and he savored our later accomplishments, both professionally and personally.

No matter what Justice Roberts' formal title—Justice or Chief Justice—to his law clerks he was always "The Judge." The title suited him. He is a worthy model for judges. He brought honor to the title. He was respected because he earned respect. He was the epitome of what a judge should be.

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We needn't indulge in hyperbole or construct a respectful figment of a great man in order to do The Judge honor. He was, in reality, a great man. He fulfilled his promise.

I admired him, and of all the qualities I admired most, I was constantly refreshed by his dogged pursuit of justice.

The ancient Book's command, "*Justice, Justice shalt thou pursue*," carries with it the warning of the wearying nature of the ceaseless, long pursuit of justice. Some tire of the pursuit. This judge never did. He persisted. And in his persistence and in his excellence, he etched a place in the judicial history of Pennsylvania, and in the process he etched a place in our hearts.

In the hearts of his law clerks and others, The Judge left behind that irreplaceable, gapping space which is reserved for a unique friend who is no longer here. But at the same time, for those of us who he taught one way or another, there is a satisfying warmth in the notion that "a teacher's influence is eternal."

PRESIDENT JUDGE CIRILLO: Thank you, Dean, for those kind words. Dean Strazzella had to charter a plane to come from Philadelphia this morning, then to fly back immediately following this ceremony. He wanted to be here. He wanted to deliver those kind words about his relationship with and his knowledge of Justice Roberts. He has a very important meeting back at Temple University School of Law as soon as he leaves this nice community called Erie, Pennsylvania.

Wise men have said that the work one does for oneself dies with him, but the work one does for others lives on long after his passing. Sam Roberts lived his whole life in public service, and his lifetime of accomplishments will surely have an effect far beyond this century.

As I sit here pondering the life and works of Justice Roberts, I feel a profound sense of awe that when he was in our midst we were in the presence of one of the greatest jurists, not only in the proud history of Pennsylvania, but of all time. Justice Roberts served on the Pennsylvania Supreme Court during decades of deep and sometimes wrenching change for our nation, and he was always equal to the task of expounding and expanding the law in an era when sometimes it seemed the law could never grow fast enough to keep up with the changes going on around us. Justice Roberts, however, succeeded in keeping up with change while staying true to his oath to uphold the law, and nothing truer can be said of Justice Roberts than that he was a progressive judge, and the law made lasting progress with virtually every opinion he signed and every task of public service he undertook.

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Here to deliver the Court's official Resolution honoring Justice Roberts is J. Sydney Hoffman, another progressive judge, and a great personal friend of Justice Roberts as well.

JUDGE HOFFMAN: President Judge Cirillo, members of the Superior Court, jurists, and members of the family, and friends all. I hope that you will forgive me if at times I falter. I have a degree of emotionalism that I will try to control as much as possible. Of course I—I remember so vividly that it was in June of this year I received a call from the President Judge of our Court, Judge Cirillo, and he said, "Are you standing up? If you are, you'd better sit down. Have somebody hold you." And he was right. He said, "Sam Roberts just died."

I returned to the table where I was sitting with some members of the—of the local Court, and I sat there in a stupor and a daze, stupefaction I guess is the right word, and I started to review my life with Sam. And to this day I cannot accept the fact that he is not with us.

I knew Sam for more than 50 years, 54, 55. I was—I was at the ceremony when he married the beloved, and revered Helene. We both came from Reading, Pennsylvania. After a period of deep mourning, when he was married the second time, to the elegant and lovely Marian, I performed the ceremony. And when I married my darling wife, Vivian, Sam performed the ceremony. And incongruous as it may sound, and I—probably without consulting our wives, we went on our respective honeymoons together. And they were really—such happy, happy, beautiful occasions.

We had so many of the same foibles, same peculiarities. If you went to Sam and asked him a specific question, his answers were usually identical to mine, and vice versa. We had some of the same crazy idiosyncrasies. We didn't smoke, we didn't drink. We didn't drink coffee. We—we must have consumed, between the two of us, 4,000 gallons of cranberry juice. When we were in Penn State giving an indoctrination course to the Commonwealth Court, we were there about two weeks. I can honestly say that every one of the 50 or 60 flavors of Baskin Robbins ice cream there we sampled, and when we fulfilled our duty there we went over to the creamery of Penn State and we did justice there.

Even with our—our driving an automobile I can honestly say the same. We were probably the worst drivers in the United States. I remember—and I think I said this before—we had no sense of direction at all. On one occasion, we—we came back from Reading—understand this was on two different occasions—Sam was in one car, I was in another car, a week apart. It is a straight line between Reading and Philadelphia. It is impossible to become

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confused or get lost. Sam made the same wrong turn as I did. For two and a half hours he—he—he struggled to find his way. And believe it or not, I made the same turn, and I—and I did exactly the same as he did.

So what we did, we—we thought alike, we acted alike, we behaved alike, and we had a tremendous relationship. To this day I am tempted to say to my secretary, "Get Sam on the phone," because there wasn't a day, no matter where we were, that we didn't talk. When he came to Philadelphia, I was with him. Wherever we went, whenever we weren't together, we—we never lost track of each other, or lost sight of the fact of our tremendous feeling of love and affection for each other.

Law was his—next to his family, the most significant and important part of his life. When he and I would go to social affairs, our hostesses, if they were sagacious enough, always put us far apart, because we put everybody to sleep as we did nothing but talk law, and to the rest of the group there we must have been a terrific bore. But this was such an important and significant part of his life. Next to his family, the law indeed came first.

Sam—and I don't say this lightly because you've heard this before about other people—but I tell you that Sam lived by the Golden Rule, by the Commandments, by the Torah. He lived by what was decent and kind. He had a sensitivity for people, a love for people. He was a remarkable man. How he cherished his family, and how he loved the kids, and how he loved his daughter, and his wife, and his sisters, and his friends. I knew him for 55 years. I never knew Sam to tell a lie, to do a malicious thing, or to deliberately hurt somebody. He was so aware of people's feelings, and he was so aware of what it meant to give status and dignity to people. And he did it with a courtesy, a consideration, that I have never seen in anyone besides Sam.

I guess I thought he was invulnerable and imperishable. I never expected Sam to die. He was so vital, he was so young, and he was so handsome. He just never seemed his age, and he never acted it. He was modern, and he thought as a youngster, and he did it with verve and with style, as he did everything in his life.

This has been a difficult moment for me. You must forgive me if I rambled. I copied something from one of the local papers which pretty well described Sam. "Sam Roberts was an Erie legend," he could have said that he was a—a Philadelphia legend, a Pennsylvania legend, a legend to the whole United States, "who went very far indeed through his own efforts, through energy, and a keen intelligence. But more than that, he was a nice guy and a friend." And that pretty well sums up Sam's life.

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Judge Cirillo and the Superior Court have asked me to read a Resolution. This Resolution has been excerpted from a much more expanded Resolution which will be presented to Bobbi and to Marian. Let me read it:

"WHEREFORE, it is RESOLVED that we, the Judges of the Superior Court of Pennsylvania, sitting in special session, express our profound sympathy to the family of the late Chief Justice, Samuel J. Roberts. We recognize his abiding devotion to his family; his unparalleled achievement as an architect of modern American law; his genuine love for humanity and dedication to public service; and his lasting influence as a teacher to his colleagues, his clerks, and his students.

WE ACKNOWLEDGE the encouragement, the patience, and affection that he received from his family throughout his life; and that he, in turn, was a devoted husband, a loving and attentive father, a caring brother, and an adoring and proud grandfather.

WE FURTHER ACKNOWLEDGE that, as a jurist, he presided during a period when virtually every area of Pennsylvania law underwent an intense reexamination. He was a bold and a fearless pioneer, always ready to face new challenges, a gifted legal scholar dedicated to the evolution of social justice in Pennsylvania and the nation. He was a forward-looking jurist, committed to the development and preservation of the civil liberties of all people. His progressive, compassionate vision dominated his opinions in all areas of the law. He had an abiding belief in the necessity for a vigilant defense of political and civil freedoms. In civil practice, he made sweeping changes that resulted in extending greater relief to injured parties. Finally, he was at the forefront of a revolution that redefined the rights of criminal defendants, that sought to make the promise of due process meaningful. He recognized that, in a free society, the rights of all people, including those charged with crime, must be zealously protected.

WE FURTHER ACKNOWLEDGE Chief Justice Samuel Roberts' deep and abiding love for his fellow man and his concern for his country. He served his nation with distinction as a Lieutenant Commander in the Navy during World War II. Later he served countless community organizations, cutting across all religious, racial, political, and social concerns. He was an active, dedicated humanitarian who, in all of these causes, displayed the courage and strength to champion the rights and liberties of all people.

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WE FINALLY ACKNOWLEDGE Chief Justice Samuel J. Roberts' lasting influence as a teacher, mentor, and counsellor. He had a unique ability to communicate directly, openly, and honestly. He leaves behind him a legacy of judges, of clerks, of students, and friends who were deeply affected by this progressive philosophy, his courage, and his commitment to excellence.

WE THEREFORE express our deep gratitude for his unmatched achievement as a jurist and his steadfast service to this Commonwealth and this nation. While acknowledging our profound sorrow at his passing, we console ourselves with the knowledge that his indomitable spirit will live on, not only in the enduring and progressive opinions he wrote, but more importantly, in the hearts of his family, friends, and colleagues.

AND ACCORDINGLY, we now present to Marian Roberts, his devoted wife, and Barbara, his loving daughter, bound copies of these resolutions prepared in memoriam to Samuel J. Roberts.

WE FURTHER RESOLVE that the court reporter be instructed to transcribe these resolutions in their entirety upon the court's permanent record.

This resolution was given under the hand and the seal of the Superior Court of the Commonwealth of Pennsylvania, on this 25th day of August, 1987, signed by our President Judge, Vincent A. Cirillo."

PRESIDENT JUDGE CIRILLO: Marian and Bobbi.

(Whereupon, the Resolutions were presented.)

PRESIDENT JUDGE CIRILLO: Thank you, Judge Hoffman. Immediately following this ceremony we will resume next door in the law library, which will be later, at another time, dedicated as the Samuel J. Roberts Memorial Law Library. We hope to see all of you there. We thank all of you for being here today to honor our friend, our great teacher. That concludes our ceremony, and I thank you for all being here. Mr. Crier, will you adjourn court?

COURT CRIER: Court is adjourned.

Resolutions

We meet today to honor the memory of Samuel J. Roberts. For thirty-five years, Samuel J. Roberts served the Commonwealth of Pennsylvania as a member of the judiciary: first as a trial judge in the Orphans' Court of Erie County, then as an Associate Justice and ultimately Chief Justice of the Pennsylvania Supreme Court. By special designation he served as a Senior Judge on the Superior Court of Pennsylvania. This service continued until his death on June 5, 1987, at the age of 80. In these resolutions, we wish to memorialize his career and the countless contributions he made to the law and jurisprudence both of this Commonwealth and of the nation. More importantly, we seek to highlight some of the immeasurable ways in which Justice Roberts touched us personally.

I

Samuel Roberts was born on February 18, 1907, the son of Jacob and Anna Wexler Roberts. Though born in Brooklyn, he spent his formative years in Erie, Pennsylvania, attending its public schools, and developing early what became a lifelong devotion to his adopted city.

His post-high school years were spent in Philadelphia, where he attended the University of Pennsylvania. In 1928, he received his Bachelor of Science degree from the Wharton School of Finance and Commerce. Later, at the University of Pennsylvania Law School, he distinguished himself in his studies, as a member of the Order of the Coif, and as an editor of the Law Review. He received his L.L.B. in 1931.

On December 12, 1934, he married Helene G. Blumberg of Reading, Pennsylvania, and settled in Erie. It did not take long for Justice Roberts to distinguish himself as an outstanding lawyer, and as a leader in the community. His practice of law reflected his lifetime commitment to the public interest. He served as an Assistant District Attorney; as an unemployment compensation referee; and as a special Deputy Attorney General for the Commonwealth of Pennsylvania. In addition, he was the chairman of the Erie County Republican Party.

During World War II, Justice Roberts served with distinction as a Lieutenant Commander in the United States Navy.

In 1952, he was appointed Judge of the Orphans' Court of Erie County. One year later, he was elected to a full term as President.

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Judge of that court. His notable service on the Orphans' Court was later summarized by William Knox, President of the Erie County Bar Association:

His work as President Judge of the Orphans' Court of Erie County since 1952 has truly astounded us. We have seen him frame a modern set of workable rules integrated completely with the rules of [the Supreme Court of Pennsylvania] regulating practice in orphans' court. We have seen adoptions expeditiously and kindly handled. We have seen the orphans' court judge taking his fair share of the work of common pleas and quarter sessions, not only in civil and criminal trials, but also in the day-to-day work of sentencing, juveniles, arguments, and all the other tedious details of a nisi prius court. He has presided in other courts throughout the state. He has taken an unusually active part in civic and welfare activities.

After an outstanding record as a Judge of the Orphans' Court, he became the third Justice elected from Erie County to the Supreme Court of Pennsylvania. He was sworn in on January 7, 1963. Later, in July of that year, in Paris, France, his dear wife Helene died of a heart attack. It was many years before Marian entered his life and added a new and important dimension to his world.

For twenty years, Justice Roberts served with the greatest distinction as an Associate Justice of the Supreme Court. On January 3, 1983, he was elevated to the position of Chief Justice, becoming the fifty-third Chief Justice of the Pennsylvania Supreme Court, and the fourth Chief Justice under the Constitution of 1968. Justice Roberts served one year as Chief Justice, concluding his twenty-one years of elected service. By his own count, Justice Roberts authored approximately 1,200 majority and plurality opinions, 500 concurring opinions, and 700 dissenting opinions.

His service did not cease with his retirement: from 1984 through 1987, Justice Roberts sat by special assignment as a Senior Judge on the Superior Court of Pennsylvania. During his service on that Court, he authored fifty-five majority, concurring, and dissenting opinions.

II

Samuel Roberts' years as a jurist can be seen now, in retrospect, as a time of great intellectual excitement and advancement. His tenure on the Supreme Court, both as Associate Justice and Chief Justice, saw him lead the Court toward a much-needed modernization of the jurisprudence of this Commonwealth. His opinions touch every area of the law and exhibit an intrinsic understanding

of the fragile balance between respect for the past and the compelling need for progressive justice. Justice Roberts summed up his judicial philosophy in his landmark opinion, *Griffith v. United Airlines*:

We acknowledge that in adopting a new approach . . . of necessity, we overrule our earlier cases. But we must not perpetuate an obsolete rule by blind adherence to the principle of stare decisis. Although adherence to that principle is generally a wise course of judicial action, it does not rigidly command that we follow without deviation earlier pronouncements which are unsuited to modern experience and which no longer serve the interests of justice. Surely, the orderly development of the law must be responsive to new conditions and to the persuasion of superior reason.

Justice Roberts perceived that law is, by its very nature, dynamic. He understood that because law exists to serve the people, it must adapt to their changing needs and views. The signpost to that adaptation was, always, superior reason and compassion for the practical effect of legal decisions.

During his time on the Supreme Court, Justice Roberts authored opinions that display his progressive philosophy and commitment to the power of reason. In civil cases, Justice Roberts dedicated himself to expanding the opportunities for plaintiffs to recover damages. In *Griffith*, writing in a comprehensive and scholarly way, he introduced modern choice of law in the Commonwealth, and held that a Pennsylvania resident injured during an airplane flight which originated in Pennsylvania had a right to recover under Pennsylvania law. Under the old rule, plaintiffs were limited to recovery under the law of the place of the accident, a practice which often caused great inconvenience and injustice to injured parties.

Similarly, in *Ayala v. Philadelphia Board of Education*, and *Mayle v. Department of Highways*, Justice Roberts authored opinions abolishing the doctrines of governmental and sovereign immunity. In *Mayle*, after tracing the history of federal and Commonwealth law on the subject, Justice Roberts concluded:

Once the errors of history, logic and policy which underlie . . . sovereign immunity . . . have been laid bare, we see no reason to perpetuate them.

The decisions brought Pennsylvania law into conformity with the majority of other states, and eradicated common law doctrines which had shielded the government from the consequences of its own acts.

Justice Roberts' other major opinions in the area of civil practice were equally distinguished. In *Niederman v. Brodsky*, he held

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that a plaintiff may recover damages for emotional distress caused by the negligence of another. Beginning his masterly opinion with the observation that:

The gravity of appellant's injury and the inherent humanitarianism of our judicial process dictate that appellant be afforded a *chance* to present his case. . . .

Justice Roberts went on to review all of the conflicting arguments. He concluded that the threat of increased litigation and court workload was not sufficient to deny recovery to an emotionally scarred plaintiff because:

We obviously do not accept the 'too much work to do' rationale. We place the responsibility exactly where it should be: not in denying relief to those who have been injured, *but* on the judicial machinery of the Commonwealth to fulfill its obligation to make itself available to litigants. Who is to say which class of aggrieved plaintiffs should be denied access to our courts because of speculation that the workload will be a burden?

In *Kassab v. Central Soya* and *Salvador v. Atlantic Steel Boiler*, Justice Roberts authored opinions that also had the effect of allowing individuals a greater potential to recover damages for injuries suffered as a result of defective products. Both opinions recognized the right of the consumer to expect that products be reasonably safe, and abolished the antiquated doctrines of horizontal and vertical privity that had barred so many meritorious suits.

Justice Roberts' influence was profound in other areas of the law. His belief in the crucial importance of the rights of criminal defendants in a free society had a strong impact on the development of criminal law in the Commonwealth. In *Commonwealth v. Riggins*, he held that a judge must advise a defendant of the reasons for the particular sentence imposed, thereby introducing a measure of humanity and reason to a difficult area of the law. In *Commonwealth v. Archambault*, Justice Roberts held that a trial judge's expression of opinion as to the guilt or innocence of the defendant before the jury had reached a verdict constituted impermissible prejudice to the defendant because:

an expression by the judge that in his opinion the accused is guilty is going to leave an indelible imprint in the minds of the jury.

Justice Roberts held in *Commonwealth v. Alvarado*, that where a District Attorney violated the terms of a plea bargain, the court must enforce the original agreement and give the defendant the "benefit of his bargain" in exchange for his guilty plea. Additionally, he showed a keen sensitivity to the delicate balance between the

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freedom of the press and the rights of the criminal defendant when he held in *Philadelphia Newspapers v. Jerome*, that a trial judge could in some instances limit press access to pretrial hearings when it is necessary to ensure the defendant a fair trial.

In *Commonwealth ex rel. Washington v. Maroney*, Justice Roberts set the standard of minimal competence a criminal defendant can expect from his or her attorney. The case, a landmark of its type, is believed to be the most-often cited in the history of the Supreme Court of Pennsylvania. In *Commonwealth v. McCusker*, he helped to introduce modern concepts of psychiatric knowledge into the law of the Commonwealth in place of outdated notions of insanity. He understood that a just society punishes only those truly responsible for their acts. In *Commonwealth v. Story*, Justice Roberts again displayed his awareness of another fundamental principle of the rule of law: all laws must be prospective. In *Story*, he overturned the death sentence of a defendant where the crime had been committed prior to the enactment of Pennsylvania's death penalty.

In dissent, Justice Roberts was often prophetic. In *Commonwealth ex rel. Hartage v. Hendrick*, decrying the system of bail in place in the Commonwealth, he wrote:

Literally thousands of indigents, many of them innocent of any wrongdoing, are today languishing behind bars because they cannot afford money bail. Every day these thousands must undergo confinement which has been imposed upon them without any determination of their guilt or innocence and without any finding that jailing them is necessary to assure their future presence in the courtroom . . . these numbers represent human beings, men who will continue to suffer the rigors of arbitrary imprisonment. . . . I have every hope that this practice of wholesale indiscriminate pretrial imprisonment will one day cease to exist, but that hope is of little comfort to those who this day remain in our prisons because they cannot purchase their release. . . .

Many of Justice Roberts' suggestions in the *Hartage* dissent prefigured the Federal Bail Reform Act of 1984 by nearly two decades.

Justice Roberts' approach to the constitutional rights of criminal defendants brought him both praise and criticism. Ultimately, the test of a judge is his or her willingness to act knowing that public wrath may follow. Samuel Roberts consistently met this challenge. Revolted though he was by violence and lawlessness, he had the courage to reverse criminal convictions when he saw that a fundamental principle had been violated. In this way he performed the

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highest function of the judge: to go beyond the facts of the individual case and see the far-reaching consequences of judicial decisions.

Justice Roberts also made significant contributions to the improvement of procedure in Pennsylvania. In this regard he was guided by his belief that:

The judicial process includes not only judges, administrative staff, and lawyers, but also the citizens who pass through our courtrooms as litigants, witnesses and jurors . . . although courts cannot hope to please all parties with the results of their decisions, litigants, witnesses and jurors who have been treated with dignity and courtesy will know that they are indeed in a house of justice.

These words, spoken at his investiture as Chief Justice, reflect a philosophy concretely displayed in cases such as *Commonwealth v. Dilliplaine*. There, Justice Roberts abolished the fundamental error rule that had allowed trial errors to be challenged on appeal despite the absence of an objection at trial, thereby eradicating the wasteful practice of retrials due to carelessness or incompetence.

In the area of family law, Justice Roberts again showed the way with a progressive approach which included equal treatment to men and women. In *Bachetta v. Bachetta*, his opinion sustained the constitutionality of the new Pennsylvania Divorce Code and the application of the equitable distribution of marital property. In *Hack v. Hack*, he wrote the Court's opinion abolishing the archaic rule of inter-spousal immunity. Enforcing the Pennsylvania Equal Rights Amendment, Justice Roberts showed an even hand in *In re Adoption of Walker*, when he held a statute unconstitutional that required only the mother's consent to the adoption of a child born outside of marriage.

Samuel Roberts' commitment to a full and robust interpretation of the first amendment was legendary. As he pointed out in *Commonwealth v. Tate*, freedom of speech:

has a special meaning for this Commonwealth, whose founder, William Penn, was prosecuted in England for the "crime of preaching to an unlawful assembly" and persecuted by the court for daring to proclaim his right to a trial by an uncoerced jury. It is small wonder, then, that the rights of freedom of speech, assembly, and petition have been guaranteed since the first Pennsylvania Constitution, not simply as restrictions on the power of government, as found in the federal constitution, but as inherent and invaluable rights of man.

Tate overturned as unconstitutional a trespass conviction of citizens who distributed political pamphlets on the campus of a private university. In *Commonwealth v. Dell Publishing, Inc.*, Justice Roberts tackled the difficult area of obscenity. In perhaps his most scholarly opinion, tracing the myriad approaches the United States Supreme Court had taken to the subject, he concluded by holding that the City of Philadelphia could not constitutionally ban a book which several lower court judges had subjectively determined to be obscene. After a typically sophisticated analysis, he noted:

As the law of obscenity now stands the judge's subjective analysis is of course relevant to the ultimate issue, but the mere donning of judicial robes does not make us the embodiment of the 'average person' nor do our tastes necessarily parallel those of the 'contemporary community.'

His conclusion, succinctly put, went to the heart of all such questions:

While we respect the views of those who believe this book to be 'obscene', we hold that it does not fall within the class of 'legal obscenity' so that, in a free society, its circulation may be indiscriminately prohibited.

Justice Roberts also led the Pennsylvania response to the "one-man, one-vote" revolution announced by the United States Supreme Court in *Baker v. Carr*. Justice Roberts authored three major decisions in the reapportionment area, beginning with the finely detailed *Butcher v. Bloom*, a twenty-page opinion overturning the Pennsylvania Reapportionment Act as unconstitutionally over-representing under-populated areas. Justice Roberts' approach to these matters illustrates his commitment to the importance of state courts resolving questions of state and federal constitutional law. As he noted in *In re Reapportionment Plan for General Assembly*, his last such opinion:

As a matter of both state and federal law, equality of population must be the controlling consideration in the apportionment of legislative seats.

As with all great judges, much work is done behind the scenes. This was particularly true of Samuel Roberts. His skill in the conference room was unrivalled. He had an innate ability to forge consensus from disparate views. In this regard, his keen legal skills were aided by a winning personality and a quick wit.

After 21 years of service on the Supreme Court, Justice Roberts, still vital and eager to serve, began his all too short tenure on the Superior Court. His contribution of over 50 majority, dissenting and concurring opinions helped to ease this Court's backlog. As always, he added an air of intellectual honesty and vigor to every

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case he wrote. We are all privileged to have had the opportunity to serve with him.

Samuel Roberts' contributions to the jurisprudence of this Commonwealth are a major part of his legacy. The decisions he wrote, and the way in which he wrote them, will remain the standard by which future judges are measured. His commitment to modernity and reason helped make Pennsylvania a model for the nation. We are all, now, left to continue the job he so brilliantly started. In this task, we are guided by his own words:

Justice is still the highest interest of a free society. The rule of law remains our greatest hope for peace and social progress. Thus, when our court system is confronted with seemingly insurmountable problems, we must not be content to respond with excuses and temporary solutions designed simply to keep the situation from becoming worse. Rather, we owe it to society and the cause of justice which we serve daily to search for ways to improve our judicial system and to meet all our challenges with an uncompromising commitment to excellence.¹

III

Despite his enormous achievement and influence as a jurist, Justice Roberts' contributions can never be measured by merely reading through the Pennsylvania State and Superior Court reports. He was equally respected and loved as a teacher, humanitarian, and most importantly, as a devoted husband, father, grandfather, brother, friend, and colleague.

Justice Roberts' influence as a teacher was widespread. From the first, he exhibited an abiding interest in improving the quality of work throughout the legal profession. To this end, he served with distinction as a member of the Judges' Advisory Committee on Professional Ethics, and as vice chairman of the Council of the American Bar Association's Section on Legal Education and Admission to the Bar. He also sat on the ABA's Law School Accreditation Committee, the Committee on Appellate Advocacy, and as the Chairman of the Fellows Advisory Research Committee. In this work, Justice Roberts demanded a higher level of performance by the participants in the judicial process and always adhered to the same basic theme: the success of the judicial process and judicial administration is a function of increasing effort for higher levels of performance by all participants—lawyers, judges, and administrators. This held true whether it was a lawyer who was expected to know and assert his or her procedural rights and would be held to a

1 Excerpted from Roberts' address at his investiture as Chief Justice, 1983.

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waiver for failure to assert them, or the judge who must be held to a high standard of performance.

Although Justice Roberts was committed to improving and modernizing the judicial process, he realized also that "change for its own sake does not contribute to the administration of justice." In his speech given upon his investiture as Chief Justice, he cautioned that:

Each new idea must be examined carefully and accepted only if it is determined that it will serve to advance the quality of justice, facilitate access to the courts, or increase the efficiency and effectiveness of our court system. The costs of any new proposal—in terms of both money and professional resources—must be examined with care. And, of course, it goes without saying that increased speed and productivity must never be achieved at the expense of the quality of our adjudications.

Justice Roberts' views and influence extended far beyond the Pennsylvania court system and the legal profession. In addition to his legal associations, he served on the boards of many community and regional health, welfare, and educational agencies. Moreover, his talents as a teacher were recognized and employed by many institutions of higher learning. For example, for twenty years he shared his wisdom and experience with colleagues as a member of New York University's Appellate Judges' Seminar. More than 400 judges, from all fifty states and from all eleven circuits of the United States' Courts of Appeal, attended these seminars. In a 1983 letter commemorating Justice Roberts' elevation to Chief Justice, Justice William J. Brennan, Jr. of the Supreme Court of the United States, praised Justice Roberts' special contributions at these seminars:

Few judges of any court, state or federal, have made more significant contributions to jurisprudence. When we served together at the Appellate Judges Seminar, the respect and admiration in which you were held by every judge present was so obvious.

Justice Roberts found an even broader audience for his progressive views through publication of numerous essays and articles. A mere sampling of the titles of some of these extra-judicial writings reflect Justice Roberts' broad legal interests:

- * "Adequate and Independent State Grounds: Some Practical Considerations," 19 *Land & Water L.Rev.* 647 (1984)
- * "What Makes a Good Appellate Judge? Four Views," *Judges' Journal*, Vol. 22, No. 2, p. 14 (Spring 1983)

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- * "The Quality of Justice in Pennsylvania: The Roles of Bench and Bar," 52 Pa. B.A.Q. 164 (1981)
- * "The Supreme Court of Pennsylvania: Constitutional Government in Action," 54 Temple L.Q. 403 (1981)
- * "Environment for Justice: The Law, The Courts, The Bar and The Public," 52 Temple L.Q. 1 (1979)
- * "Social Crisis and the Lawyer and Law Student: An Essential Meeting," 14 Vill. L.Rev. 377 (1969)
- * "A State Judge Looks at the Federal Courts," 116 U. Pa.L.Rev. 468 (1968)
- * "Expanding Professional Responsibilities in the Field of Criminal Law," 37 Pa. B.A.Q. 222 (1966)

It should also be noted that Justice Roberts served various colleges and universities in many capacities. For example, he was appointed Distinguished Professor of Constitutional Democracy at Gannon University in 1984. In addition, he served many of Pennsylvania's finest educational institutions in an administrative capacity: he was a member of the Board of Overseers at the University of Pennsylvania School of Law, of the Board of Visitors at the University of Pittsburgh School of Law, of the Boards of Trustees at both Gannon University and the Philadelphia College of Osteopathic Medicine, and of the President's Council at Villa Maria College. The institutions that Justice Roberts served reciprocated his devotion. Thus, he received honorary Doctor of Law degrees from Allegheny College (1983), Philadelphia College of Osteopathic Medicine (1972), Villa Maria College (1968), Dickinson School of Law (1966), and Gannon University (1963).

Justice Roberts' dedication to public service and to his chosen profession continued beyond his retirement from the Supreme Court. In addition to hearing cases as a Senior Judge on the Superior Court until his death, he was appointed Special Master by the Supreme Court of the United States in *State of South Carolina v. Baker, et al.* In this capacity, he heard argument over a three-week period in November, 1985 and January, 1986. He then prepared a 193 page report which was submitted to the Supreme Court of the United States on January 22, 1987. Justice Roberts also served the Commonwealth of Pennsylvania in a special role in his last year, serving as Chairman of the Commonwealth of Pennsylvania Commission on the Bicentennial of the United States Constitution. Justice Roberts undertook these duties with characteristic enthusiasm, and was present in Philadelphia just two weeks before his death to help usher in the summer-long celebration of the Constitution.

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As Justice Roberts, in his retirement, refused to abandon his sense of social responsibility, so too have the citizens of Pennsylvania refused to allow his continuing influence to go unrecognized. For example, on December 13, 1986, the Pennsylvania Society presented its Distinguished Citizen of the Commonwealth award to Justice Roberts. The Citation noted that:

His tenure [on the Supreme Court] would be marked by the courage to follow reason and to adhere to principle. Like William Penn before him, he would be dedicated to the vigilant defense of political and religious freedom. His always sound judgment, expressed clearly and yet with discretion, would at times encounter disagreement but would never engender disrespect.

Reflecting on Justice Roberts' continual work since his retirement, the Society continued:

When most men of similar accomplishment would be content to bask in the glory of past successes, Chief Justice Roberts has continued to contribute to the Commonwealth and to the legal profession he so dearly loves.

The Society then concluded that:

The Pennsylvania Society, founded in 1899 to perpetuate the ideals of William Penn, tonight recognizes Samuel J. Roberts, an individual whose personal humility, love of liberty, and respect for law give twentieth century substance to Penn's seventeenth century hope for "good men" to govern our Commonwealth.

The Pennsylvania Society was not the only group to remember and thank Samuel Roberts for his achievement and devotion to public service. At the time of his death, the Pennsylvania and Erie County Bar Associations, along with the Erie County Bicentennial Committee, had been planning a reception in honor of Justice Roberts, to be held on June 23, 1987.

No survey of Justice Roberts' achievement and legacy could be complete without mentioning the tremendous influence he had on his law clerks. These men and women, who number more than fifty, have been the beneficiaries not only of a demanding and rigorous legal training but also of Justice Roberts' paternal interest in molding their characters. They, in turn, have added luster to Justice Roberts' already shining status in the legal profession. They have assumed positions of honor and trust at law firms and universities throughout the country. All the while, they have exemplified the standards of scholarship, integrity, and civic involvement which were the hallmarks of Samuel Roberts' career.

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In a 1983 dinner honoring Justice Roberts upon his investiture as Chief Justice, his clerks spoke of his lasting influence both on the law and upon them personally. One former clerk remarked:

We are here to honor you Judge, in no small measure, because you taught us that a man could achieve renown without renouncing common decency—you calmed our fears and made us feel part of a great and grand intellectual adventure. You were warm and kind and considerate to us all.

And while that would be sufficient to warrant this gathering, our purpose goes beyond the acknowledgement of personal debt, for we are present in recognition as well of your public role as one of the most distinguished jurists in the long history of this Commonwealth, a judge regarded by legal scholars and lawyers alike as one of the outstanding jurists of our times.

You have, by the depth of your intellect, the force of your personality, your wisdom, compassion and practical judgment, established yourself as a jurist who understands the complex and subtle process by which cases are soundly decided and public policy wisely pronounced. In so doing, Judge, you have helped to enhance the role of the law as an instrument of effective and decent social policy.

. . . [Y]ou have been a vital force in the advancement of the most progressive developments in the law. Indeed, while we are dutifully respectful of the other distinguished jurists who have shared your tenure on the court, we are openly and avowedly partisan, and say that you were *the* vital force in the battle to bring the court into the mainstream of American law.

A second clerk characterized a clerkship with Justice Roberts as:

an extraordinarily special time in our lives and professional development. There was the hard work, the excitement of the conferences, the satisfaction when one of the Judge's opinions turned from a rigorous dissent into a persuasive majority but, most of all, there was the friendship that developed out of becoming a member of the Roberts' family. It was this aspect of the clerkship that we will all treasure most. So tonight is, first and foremost, a family reunion, and it is that special sense of family which we all carried away with us.

The dinner ended with the former clerks presenting Justice Roberts with a first edition of Chief Justice John Marshall's book *History of the American Colonies*. Along with the book was a scroll bearing

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the names of the clerks and the inscription "A teacher affects eternity; he can never tell where his influence stops."

Despite Justice Roberts' foremost place in his chosen profession, and despite the incredible demands that his profession and his humanitarian instincts made on his time, the first and most important priority in his life remained his family. Samuel Roberts was a devoted husband, first to Helene until her untimely death in 1963, and then to Marian, who graced and made joyful the last years of his life. He was a loving father to Barbara, as well as an attentive parent to the four Zurn children following his marriage to Marian. Throughout his life, he remained a caring brother to Madeline and Ruth. Finally, he was a proud and adoring grandfather of Barbara and Louis' two children, Jodi and Howard Pollock.

Although we all grieve at the passing of Samuel Roberts, we can never know the depth of the sadness that his dearest ones must now be feeling. We urge them all, however, to take some solace in the recognition that his was an ever active life, a productive life, a caring life. His work will be remembered. His kindnesses remain, for untold years to come, a living monument, through the memory of his loved ones, his friends, his colleagues, his students: the people he touched, and helped to mold. We are his legacy!

The family has already received testimony to Justice Roberts' lasting memory in the form of letters expressing grief at his passing:

- * from both the present and two former Governors of Pennsylvania
- * from Justices of the Supreme Court of the United States
- * from other federal judges
- * from United States Senators and State Senators, as well as local representatives
- * from Justices of Supreme Courts of other states
- * from deans of law schools
- * from bar associations
- * and in the form of resolutions passed by committees and groups that he served so faithfully.

In the words of Ed Wellejus of the *Erie Times-News*:

Sam Roberts was an Erie legend—a native son who went very far indeed through his own efforts, through energy and a keen intelligence. But, more than that, he was a nice guy and a friend.

WHEREFORE, it is RESOLVED that we, the Judges of the Superior Court of Pennsylvania, sitting in special session, express

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our profound sympathy to the family of the late Chief Justice, Samuel J. Roberts. We recognize his abiding devotion to his family; his unparalleled achievement as an architect of modern American law; his genuine love for humanity and dedication to public service; and his lasting influence as a teacher to his colleagues, clerks, and students.

WE ACKNOWLEDGE the encouragement, patience, and affection that he received from his family throughout his life; and that he, in turn, was a devoted husband, loving and attentive father, caring brother, and adoring and proud grandfather.

WE FURTHER ACKNOWLEDGE that, as a jurist, he presided during a period when virtually every area of Pennsylvania law underwent an intense re-examination. He was a bold and fearless pioneer, always ready to face new challenges, a gifted legal scholar dedicated to the evolution of social justice in Pennsylvania and the nation. He was a forward-looking jurist, committed to the development and preservation of the civil liberties of all people. His progressive, compassionate vision dominated his opinions in all areas of the law. He had an abiding belief in the necessity for a vigilant defense of political and civil freedoms. In civil practice, he made sweeping changes that resulted in extending greater relief to injured parties. Finally, he was at the forefront of a revolution that redefined the rights of criminal defendants, that sought to make the promise of due process meaningful. He recognized that, in a free society, the rights of all people, including those charged with crime, must be zealously protected.

WE FURTHER ACKNOWLEDGE Chief Justice Samuel J. Roberts' deep and abiding love for his fellow man and his concern for his country. He served his nation with distinction as a Lieutenant Commander in the Navy during World War II. Later, he served countless community organizations, cutting across all religious, racial, political, and social concerns. He was an active, dedicated humanitarian who, in all of these causes, displayed the courage and strength to champion the rights and liberties of all people.

WE FINALLY ACKNOWLEDGE Chief Justice Samuel J. Roberts' lasting influence as teacher, mentor, and counsellor. He had a unique ability to communicate directly, openly, and honestly. He leaves behind a legacy of judges, clerks, students, and friends who were deeply affected by his progressive philosophy, his courage, and his commitment to excellence.

WE THEREFORE express our deep gratitude for his unmatched achievement as a jurist and his steadfast service to this Commonwealth and this nation. While acknowledging our profound sorrow at his passing, we console ourselves with the

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knowledge that his indomitable spirit will live on, not only in the enduring and progressive opinions he wrote, but, more importantly, in the hearts of his family, friends, and colleagues.

AND ACCORDINGLY, we now present to Marian Roberts, his devoted wife, and Barbara, his loving daughter, bound copies of these resolutions prepared in memoriam to Samuel J. Roberts.

WE FURTHER RESOLVE that the Court Reporter be instructed to transcribe these resolutions in their entirety upon the Court's permanent record.

GIVEN:

under my hand and the Seal of the Superior Court of Pennsylvania, at the City of Erie, on this, the twenty-fifth day of August, in the year One Thousand Nine Hundred and Eighty-Seven.

Vincent A. Cirillo
President Judge

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