



## REFLECTION

**On Lawyers and  
Leadership in Government:  
Lessons from “America’s Advocate,”  
Robert H. Jackson**

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Lawyers serve in critical positions across the federal government. But lawyers play a special role at the Department of Justice, which is foremost charged with enforcing the laws on behalf of the President and representing the government in court. Naturally, it is lawyers who assume leadership roles at the Department.<sup>1</sup>

This can present a challenge. After all, there is no West Point for lawyers. They do not teach leadership in law school, or at least they did not when I attended. And, as many who have worked in a law firm can attest, lawyers are not necessarily born leaders. Fortunately, however, the Department of Justice has been blessed at all levels with many effective, and even some great, leaders.

Few stand out like Robert H. Jackson. Jackson came to Washington, D.C. in 1934 at the age of forty-one to serve in the Roosevelt Administration after making his mark as a country lawyer in western New York.<sup>2</sup> His rise was

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1. As it turns out, only one official in the Justice Department is actually required by statute to be “learned in the law”—the Solicitor General. *See* 28 U.S.C. § 505 (2015). Anyone who has been privileged to serve as Solicitor General is relieved to learn that he or she has passed the test.
2. EUGENE C. GERHART, ROBERT H. JACKSON: COUNTRY LAWYER; SUPREME COURT JUSTICE; AMERICA’S ADVOCATE 66 (2003). Gerhart’s thorough biography of Jackson remains a leading source on Jackson’s fascinating life and career as a lawyer—from Jamestown, New York to Nuremberg, Germany, and stops in between.

meteoric. After two years as general counsel to the Bureau of Internal Revenue, Jackson moved to the Department of Justice.<sup>3</sup> There, he served as an Assistant Attorney General, Solicitor General, and Attorney General before the President put him on the Supreme Court—where, of course, he distinguished himself again.<sup>4</sup>

I served in the Department of Justice more than sixty years after Jackson’s departure, but his presence was still palpable. From the Attorney General down, the confirmed heads of the various components within the Department are allowed to pick a portrait of a former Department official to hang in their office. Jackson’s portrait was invariably a top draft pick and so typically hung prominently in the offices of the Attorney General and other top Department officials.<sup>5</sup> In the Solicitor General’s Office, in particular, Jackson was still a model of excellence to which all lawyers aspired.

Respect and admiration for Jackson transcended party politics. Jackson was a liberal Democrat—an ardent New Dealer, no less (though, as will be seen, Jackson’s legacy is far more complex). Yet even in the Republican administration in which I served decades after Jackson’s death, he was regarded as an exemplary leader. That is a rare feat in these days of hyperpartisanship.

In thinking about lawyers and leadership in government, it seems fitting to look to Jackson for guidance.

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First, a bit more on Jackson’s remarkable story. Born in 1892, Jackson grew up in Frewsburg, New York, a small town in the southwestern corner of the state. Apart from one year of law school—at Albany, not Harvard—his formal education ended with high school. He learned law by “reading it” while working as an apprentice in his cousin’s law office.<sup>6</sup> He was one of the last Justices appointed to the Supreme Court without a law degree.<sup>7</sup>

After he passed the bar in 1913, Jackson practiced in Jamestown, New York for twenty years, during which time he developed a reputation as a gifted advocate and maintained a robust country law practice that he relished.<sup>8</sup>

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3. *Id.* at 83.

4. *Id.* at ix, 83.

5. In Jackson’s official Justice Department portrait, he is standing at his desk, hand on hip, looking up from his papers, as if someone has just come into his office to ask him a question. His gaze is intense, though inviting. No matter where the portrait hangs, it commands attention.

6. GERHART, *supra* note 2, at 33-35.

7. See *Frequently Asked Questions (FAQ)*, SUP. CT. U.S., <https://www.supremecourt.gov/faq.aspx#faqg1> (last visited June 6, 2017).

8. GERHART, *supra* note 2, at 35-44.

In 1934, Henry Morgenthau, the Secretary of the Treasury and a fellow New Yorker, lured Jackson to Washington to serve as general counsel to the Bureau of Internal Revenue. In one of his first meetings with his new staff, Jackson confessed that he thought “government service was a place where all matters met with interminable delay” and “where the character of the service . . . was of doubtful competency and indifferent character.”<sup>9</sup>

This is hardly the conventional way to win over the hearts and minds of one’s new government colleagues. Yet Jackson quickly added that, after just a few weeks on the job, he had learned he was wrong. And he was “fully conscious,” as Jackson put it, that he could not succeed without “the cordial support of the entire staff”<sup>10</sup>—which he promptly earned.

Jackson’s natural disposition no doubt helped break the ice. Those who knew him described him as “a friendly-looking man,” with a “broad” face and an “incipient twinkle” in his eye.<sup>11</sup> True to his country roots, he was also a “reserved man,” “modest in manner.”<sup>12</sup> Yet he was no pushover. He was “supremely confident of himself and his judgment” and “had a calm which no crisis could disturb.”<sup>13</sup>

After two years at the Bureau of Internal Revenue, Jackson moved to the Justice Department, where he became the Assistant Attorney General for the Tax Division.<sup>14</sup> About a year later, he took charge of the Antitrust Division, where he served for another year and a half.<sup>15</sup>

It is here where Jackson began to distinguish himself as a Supreme Court advocate. Even before becoming Solicitor General, he argued fourteen cases, including some of the early constitutional challenges to New Deal regulations.<sup>16</sup> This was back in the day when the Supreme Court was taking upwards

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9. Robert H. Jackson, Assistant Gen. Counsel, Bureau of Internal Revenue, U.S. Treasury Dep’t, Introductory Address to the Bureau of Internal Revenue Legal Office 1 (Mar. 15, 1934), [https://www.roberthjackson.org/wp-content/uploads/2015/01/Introductory\\_Address\\_to\\_the\\_Bureau\\_of\\_Internal\\_Revenue\\_Legal\\_Office.pdf](https://www.roberthjackson.org/wp-content/uploads/2015/01/Introductory_Address_to_the_Bureau_of_Internal_Revenue_Legal_Office.pdf).

10. *Id.* at 3.

11. WILLIAM H. REHNQUIST, *THE SUPREME COURT: HOW IT WAS, HOW IT IS* 7 (new ed. 2001). Future-Chief Justice Rehnquist served as a law clerk to Justice Jackson during the October Term, 1952. As fate would have it, the future Chief Justice first met Justice Jackson at Stanford Law School, where he interviewed for a clerkship with Justice Jackson in the summer of 1951. Rehnquist was a student at Stanford, and Justice Jackson had traveled cross-country to dedicate the new law school building. Rehnquist, to his delight (and surprise), got the job. *Id.* at 4-5.

12. Warner W. Gardner, *Government Attorney*, 55 COLUM. L. REV. 438, 438-39 (1955).

13. *Id.* at 439.

14. GERHART, *supra* note 2, at 83-84.

15. *Id.* at 88.

16. E. Barrett Prettyman, Jr., *Robert H. Jackson: “Solicitor General for Life,”* 1992 J. SUP. CT. HIST. 75, 76.

of 150 cases per term, more than twice its current caseload, so there were plenty of arguments to go around.<sup>17</sup>

In 1938, the Solicitor General’s job opened up. Jackson, who had already earned his stripes as an advocate, was not only a natural choice but was also eager to fill the spot. As he remarked shortly after his nomination, it was “probably the only office every lawyer happy in the work of his profession covets.”<sup>18</sup> He later explained that the job was “one of the few in government where one’s energies may be devoted to the philosophy of the law, and to court room advocacy, without having [one’s] mind constantly littered with administrative detail.”<sup>19</sup>

Many lawyers, including those who have been fortunate enough to serve as Solicitor General, still view Jackson as a prototypical “SG.” And yet he held the position for only a year and ten months before he was promoted again.

Colleagues described Jackson’s presentation as the government’s top advocate as “quiet, secure, confident, and disarmingly straightforward”; “dramatic ‘only in spots’”; and “dignified but not high-hat.”<sup>20</sup> Though he had a “gift of phrase,” his style was to get “straight to the point” of a matter.<sup>21</sup> Even as his stature rose, Jackson was ever cognizant that “what impresses the Court is a lawyer’s argument, not his eminence.”<sup>22</sup> Jackson earned the Court’s trust with his candor, not flair.<sup>23</sup>

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17. *Compare Caseloads: Supreme Court of the United States, Method of Disposition, 1932-1969*, FED. JUD. CTR., <https://www.fjc.gov/history/courts/caseloads-supreme-court-united-states-method-disposition-1932-1969> (last visited June 6, 2017) (noting that the Supreme Court disposed of 180 cases by signed opinions and 102 cases by per curiam opinions in 1937), *with Caseloads: Supreme Court of the United States, Method of Disposition, 1970-2015*, FED. JUD. CTR., <https://www.fjc.gov/history/courts/caseloads-supreme-court-united-states-method-disposition-1970-2015> (last visited June 6, 2017) (noting that, in 2015, the Court heard 82 cases, of which 70 were disposed of by signed opinions and 12 disposed of by per curiam opinions).
  18. GERHART, *supra* note 2, at 136 (quoting Robert H. Jackson, Assistant Att’y Gen., U.S. Dep’t of Justice, *Democracy’s Race Against Time*, Address at the Annual Dinner of the Young Democratic Club of New York (Feb. 24, 1938)).
  19. Robert H. Jackson, Att’y Gen., U.S. Dep’t of Justice, *Government Counsel and Their Opportunity*, Address at the Twentieth Anniversary Dinner of the Federal Bar Association (Jan. 20, 1940), *in* 26 A.B.A.J. 411, 411 (1940).
  20. Prettyman, *supra* note 16, at 78-79 (first quoting Telephone Interview with Edward J. Ennis (July 13, 1983); and then quoting Interview with Benjamin V. Cohen, *in* Washington, D.C. (July 7, 1983)).
  21. *Id.* at 78, 82 (quoting Telephone Interviews with Robert L. Stern (Aug. 11-12, 1992)).
  22. Justice Robert H. Jackson, *Advocacy Before the United States Supreme Court*, Address Delivered upon the Morrison Lecture Foundation Before the California State Bar (Aug. 23, 1951), *in* 37 CORNELL L.Q. 1, 4 (1951).
  23. Prettyman, *supra* note 16, at 78.

Jackson loved his craft. That was clear to those who worked with him in the Solicitor General’s Office and saw him argue before the Court. And it comes through in his writing. As a Justice, Jackson once observed:

As I view the procession of lawyers who pass before the Supreme Court, I often am reminded of an old parable. Once upon a time three stone masons were asked, one after the other, what they were doing. The first, without looking up, answered, “Earning my living.” The second replied, “I am shaping this stone to pattern.” The third lifted his eyes and said, “I am building a Cathedral.” So it is with the men of the law at labor before the Court.<sup>24</sup>

Jackson, by all accounts, built cathedrals.<sup>25</sup>

Jackson described his tenure as Solicitor General as “the most enjoyable period of [his] whole official life” and said that the job offered the “greatest professional opportunity and intellectual satisfaction of any in all the Government.”<sup>26</sup> It was there that Jackson could be a lawyer. As he put it, “[t]he work was purely professional. The office was removed from political activity by tradition and from the fact that it was regarded as an adjunct of the Supreme Court.”<sup>27</sup>

He was a natural—so good that Justice Louis Brandeis proclaimed that Jackson should be “Solicitor General for life.”<sup>28</sup> But Jackson could not stay put. In 1940, President Roosevelt elevated Jackson—then forty-seven years old—to Attorney General, a position he held for a year and a half. Yet that did not stop

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24. Jackson, *supra* note 22, at 16.

25. Jackson was nevertheless a humble mason. He once confided that he “made three arguments of every case. First came the one that [he] planned—as [he] thought, logical, coherent, complete. Second was the one actually presented—interrupted, incoherent, disjointed, disappointing. The third was the utterly devastating argument that [he] thought of after going to bed that night.” *Id.* at 6. Anyone who has endured the rough-and-tumble of arguing before the Supreme Court knows well the pleasure of making that last argument as he or she nods off.

26. Prettyman, *supra* note 16, at 83 (first quoting Philip B. Kurland, *Robert H. Jackson, in 4 THE JUSTICES OF THE UNITED STATES SUPREME COURT, 1789-1969: THEIR LIVES AND MAJOR OPINIONS* 2543, 2557 (Leon Friedman & Fred L. Israel eds., 1969); and then quoting Jackson, *supra* note 19, at 411). Jackson is by no means alone in that assessment. Other Solicitors General have consistently regarded their time as Solicitor General as “the best job I’ve ever had, bar none,” as Justice Thurgood Marshall once remarked. H.W. Perry, Jr., *Solicitors General in the United States, in PUBLIC SENTINELS: A COMPARATIVE STUDY OF AUSTRALIAN SOLICITORS-GENERAL* 227, 228 (Gabrielle Appleby et al. eds., 2014) (quoting LINCOLN CAPLAN, *THE TENTH JUSTICE: THE SOLICITOR GENERAL AND THE RULE OF LAW* 261 (1987)); see also Patricia Manson, *Country’s Top Lawyers Swap ‘War’ Stories*, CHI. DAILY L. BULL. (Aug. 3, 2015, 3:18 PM), <http://www.chicagolawbulletin.com/Archives/2015/08/03/ABA-meeting-8-3-15.aspx>.

27. GERHART, *supra* note 2, at 191.

28. *Id.* (quoting Letter from Justice Felix Frankfurter to Eugene C. Gerhart (Sept. 27, 1955)).

him from visiting One First Street. As Attorney General, Jackson argued three cases before the Court.<sup>29</sup>

In 1941, with nowhere else to rise at the Justice Department, Jackson was appointed to the Supreme Court. There he served with great distinction as an Associate Justice for more than a decade, authoring opinions<sup>30</sup> and phrases<sup>31</sup> that to this day rank among the Court’s most memorable and important.

As Chief Justice Roberts has observed, many of Justice Jackson’s decisions “are, and will continue to be, lodestars of American jurisprudence.”<sup>32</sup> His predecessor likewise described Justice Jackson’s concurrence in the *Steel Seizure* case as close to being a “state paper’ of the same order as the best of the Federalist Papers, or of John Marshall’s opinions for the Court in the early part of the nineteenth century.”<sup>33</sup> That is rarified air.<sup>34</sup>

Yet Jackson was not done. In 1945, he took a leave of absence from the Court to serve as the United States’ prosecutor at the Nuremberg war crimes trial—a post that earned him the moniker “America’s advocate.”<sup>35</sup> Jackson

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29. Prettyman, *supra* note 16, at 76.

30. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer (Steel Seizure)*, 343 U.S. 579, 634-55 (1952) (Jackson, J., concurring in the judgment and opinion of the Court); *Morissette v. United States*, 342 U.S. 246 (1952); *Korematsu v. United States*, 323 U.S. 214, 242-48 (1944) (Jackson, J., dissenting); *W. Va. State Bd. of Ed. v. Barnette*, 319 U.S. 624 (1943).

31. *See, e.g.*, *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in the result (“We are not final because we are infallible, but we are infallible only because we are final.”)); *Terminiello v. Chicago*, 337 U.S. 1, 37 (1949) (Jackson, J., dissenting) (“There is danger that, if the Court does not temper its doctrinaire logic with a little practical wisdom, it will convert the constitutional Bill of Rights into a suicide pact.”).

32. Robert H. Jackson Ctr., *Chief Justice John G. Roberts Jr. (2013): Robert H. Jackson* 3:53, YOUTUBE (June 8, 2013), <https://www.youtube.com/watch?v=LIWJGrYZ6E>.

33. Justice William H. Rehnquist, Robert H. Jackson: A Perspective Twenty-Five Years Later, Justice Jackson Lecture at Albany Law School (Sept. 14, 1979), in 44 ALBANY L. REV. 533, 539 (1980). The Court has also recognized that, to this day, “Justice Jackson’s familiar tripartite scheme [from his *Steel Seizure* concurrence] provides the accepted framework for evaluating executive action.” *Medellin v. Texas*, 552 U.S. 491, 524 (2008).

34. Justice Jackson’s seat on the Court itself has had an illustrious history. Before Jackson took the seat, it was held by Justice Harlan Fiske Stone, among others. And following Justice Jackson’s death, the seat was held by his former law clerk, then-Associate Justice William Rehnquist, and then by Justice Antonin Scalia. Maybe there is something about the seat, because it would be difficult to assemble a group of finer writers to have served on the Court. This has not been lost on its occupants—including its latest occupant. Justice Scalia referred to Justice Jackson as “one of the most distinguished occupants of the seat to which I was appointed.” *Cheney v. U.S. Dist. Court*, 541 U.S. 913, 925 (2004) (Scalia, J., denying motion to recuse). And in his first public statement as a Supreme Court nominee, then-Judge Neil Gorsuch remarked that “[t]he towering judges that have served in this particular seat on the Supreme Court, including Antonin Scalia and Robert Jackson, are much in my mind at this moment.” Jessica Gresko, *Gorsuch Would Be 8th Man to Hold Justice Scalia’s Seat*, ASSOCIATED PRESS (Feb. 8, 2017), <https://apnews.com/70ac150bfd294b46a42b49ffe09b1b93>.

35. GERHART, *supra* note 2, at ix.

called the prosecution “the most important, enduring, and constructive work of [his] life.”<sup>36</sup> An advocate again, Jackson had not lost a step. His opening statement at Nuremberg is regarded as one of the “most powerful” ever made in a courtroom.<sup>37</sup>

Jackson died in 1954 at the age of sixty-two, just twenty years after he first arrived in Washington. President Eisenhower—who first met Jackson in Europe during the war crimes trials—immediately telegraphed Irene Jackson, the Justice’s widow, to say that “[a]ll America [would] mourn” his passing and to praise Jackson’s “exceptional legal talents and devotion to the public good.”<sup>38</sup>

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Jackson’s rise is the stuff of legends, for lawyers at least. He was not only an outstanding public servant—arguably, one of America’s finest—but also a great leader. Looking back at his career, a number of traits stand out. While it may be impossible to replicate Jackson’s success, steering by these guideposts almost certainly will strengthen one’s capacity for leadership in government.

*Respect for the breadth—and limits—of federal power.* Jackson appreciated not only the beneficial uses of federal power but also the potential for abuse. As the nation’s chief law enforcement officer, he did not simply encourage the Department of Justice’s lawyers to zealously prosecute the laws. Instead, he touted the importance of the “spirit of fair play and decency,” and he reminded federal prosecutors of the “immense power” they held “to strike at citizens, not with mere individual strength, but with all the force of government itself.”<sup>39</sup>

The tendency for agency officials, including Justice Department officials, is to focus on the exercise of agency power. Even as he rose to the top of the Justice Department, Jackson never lost sight of what it might be like to be on the other end of that power, particularly if it were abused. In perhaps his most

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36. Prettyman, *supra* note 16, at 83 (quoting Robert H. Jackson, *Introduction* to WHITNEY R. HARRIS, *TYRANNY ON TRIAL: THE EVIDENCE AT NUREMBERG*, at xxix, xxxvii (1954)).

37. Bryan A. Garner, *Celebrating the Powerful Eloquence of Justice Robert Jackson*, A.B.A. J. (Oct. 1, 2016, 2:50 AM CDT), [http://www.abajournal.com:80/magazine/article/powerful\\_eloquence\\_justice\\_robert\\_jackson](http://www.abajournal.com:80/magazine/article/powerful_eloquence_justice_robert_jackson); see GERHART, *supra* note 2, at 21.

38. John Q. Barrett, *President Eisenhower and Justice Jackson’s Funeral, 1954* (2016), <http://thejacksonlist.com/wp-content/uploads/2016/03/20160305-Jackson-List-Ike-RHJ-Funeral.pdf>; see also John Q. Barrett, *Meeting Ike, May 1945* (2015), <http://thejacksonlist.com/wp-content/uploads/2015/07/20150526-Jackson-List-Eisenhower.pdf>.

39. Robert H. Jackson, *Att’y Gen., U.S. Dep’t of Justice, The Federal Prosecutor, Address at the Second Annual Conference of United States Attorneys* (Apr. 1, 1940), in 24 J. AM. JUDICATURE SOC’Y 18, 18 (1940).

well-known speech as Attorney General, he told a gathering of United States Attorneys:

The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains a conviction, the prosecutor can still make recommendations as to sentence . . . and[,] after he is put away, as to whether he is a fit subject for parole. While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.<sup>40</sup>

To Jackson, the highest praise for a government lawyer upon his departure from public office was that others would say that "his attitude toward those who feel his power has been dispassionate, reasonable[,] and just."<sup>41</sup>

Jackson practiced what he preached. Shortly after becoming Attorney General, for example, he ordered the end of the Antitrust Division's practice of fingerprinting labor union defendants, but not corporate officers or other defendants, in criminal cases and established a uniform rule for all antitrust defendants.<sup>42</sup> Likewise, Jackson reconsidered—and dropped—high-profile charges that his predecessor had filed against individuals who had recruited American volunteers to fight against Francisco Franco's forces in the Spanish Civil War, in violation of a U.S. neutrality law. Jackson saw the prosecution as an unjust, and unnecessary, effort to penalize individuals for their opinions regarding a foreign conflict that had ended.<sup>43</sup>

Jackson also appreciated the line between federal and state power—a respect forged by his rural roots. As Justice Rehnquist remarked, "Robert Jackson never forgot that there was, indeed, life west of the Appalachian Mountains."<sup>44</sup> So it was that Jackson emphasized that "outside of federal law each locality has the right under our system of government to fix its own standards of law enforcement and of morals."<sup>45</sup> And, he continued, "[j]ust as there should be no permitting of local considerations to stop federal

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40. *Id.*

41. *Id.* at 19.

42. William R. Casto, "A Post of Great Legal Power and Even Greater Moral Influence," 19 GREEN BAG 2d 27, 28 (2015).

43. *Id.*; see also GERHART, *supra* note 2, at 197-98.

44. Rehnquist, *supra* note 33, at 536.

45. Jackson, *supra* note 39, at 20.



enforcement, so there should be no striving to enlarge our power over local affairs and no use of federal prosecutions to exert an indirect influence that would be unlawful if exerted directly.”<sup>46</sup>

Jackson’s advice to government counsel was to remember that “[w]e are citizens as well as lawyers” and that the “ideals that we, as Americans, hold most dear are much a trust in the hands of government counsel.”<sup>47</sup> That is a healthy reminder for any lawyer entering the Department of Justice for another day’s work.

*Independence of thought.* Although he was mindful of his responsibilities as an inferior executive officer, Jackson was an independent thinker by nature and he was unafraid to cultivate that independence on his own staff.

What Justice Rehnquist called Jackson’s “sturdy independence of view,” taking “nothing on someone else’s say-so,” was one of his defining traits as a person and lawyer-leader.<sup>48</sup> Throughout his career and even while serving on the Supreme Court, Jackson kept on the wall near his desk a framed drawing of a young man surrounded by books and studying by lamplight, with a line from Rudyard Kipling’s poem “The Winners”: “He travels fastest who travels alone.”<sup>49</sup>

Jackson always strove to maintain a “professional disinterestedness” so he could fairly, and rigorously, analyze the legal problems he needed to solve.<sup>50</sup> His rigor in maintaining a professional and intellectual independence was admired by fellow members of the Jamestown bar.<sup>51</sup> He brought that independent streak with him to Washington when he became a government lawyer.

As Solicitor General, Jackson was quick to spot and disavow bad cases and bad arguments, even those that would advance the immediate interests of the government. As one colleague observed, “few, if any, Solicitors General have been more ready to confess error when the criminal prosecutions of the Government overstepped the very wide boundaries allowed the United States Attorney” and few have been “more politely resolute in resisting the pleas of

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46. *Id.*

47. Jackson, *supra* note 19, at 412.

48. Rehnquist, *supra* note 33, at 536.

49. See GERHART, *supra* note 2, at 48; Gardner, *supra* note 12, at 439; see also RUDYARD KIPLING, *The Winners*, in RUDYARD KIPLING’S VERSE: INCLUSIVE EDITION, 1885-1918, at 595, 595 (1921).

50. Robert H. Jackson, Assistant Att’y Gen., U.S. Dep’t of Justice, *The Call for a Liberal Bar*, Address at the Second Annual Convention of the National Lawyers Guild (Feb. 20, 1938), in 1 NAT’L LAW. GUILD Q. 88, 89 (1938).

51. Gardner, *supra* note 12, at 438-39.

individual agencies to advance weak cases on the off-chance that they might produce valuable results.”<sup>52</sup>

Jackson’s innate independence manifested itself in ways small and large. Early in his Washington career at the Tax Division, for example, Jackson received a call from President Roosevelt’s assistant, asking whether he could join the President on his boat the following Saturday. Quite the invitation. But much to the horror of his secretary, who was listening in, Jackson declined without hesitation, explaining that his son’s high school graduation was that Saturday. Jackson’s secretary, an old Washington hand, gasped, “You can’t do that! . . . It isn’t done!”<sup>53</sup> Disaster was averted, though. Shortly thereafter, President Roosevelt’s office called back to reschedule the trip so Jackson could attend his son’s graduation ceremony first.<sup>54</sup>

Once he was aboard the President’s yacht, Jackson was presented with another test. Toward the end of the trip, the President raised the subject of an investigation into the tax-avoidance practices of certain taxpayers, possibly (if not likely) the reason Jackson had been invited for a presidential boat ride in the first place. Jackson, who opposed the investigation, did not blink in advising the President that he thought it was a bad idea. President Roosevelt dropped the subject.<sup>55</sup>

At the same time, however, Jackson was not defiant. He was not afraid to speak up when his internal compass pointed in a different direction. But he sought to persuade, not defy, authority. As one cabinet member observed, when Jackson “was not in full agreement with the President it was interesting to observe the finesse and polished courtesy in his discussions. He was usually able to avoid doing what he thought should not be done. I liked him very much.”<sup>56</sup>

Jackson’s colleagues recognized and appreciated what one Justice Department lawyer called his “quiet courage, which never led to a bellow of defiance but which permitted him to take in every instance the action he thought best without discernable thought of criticism or personal injury.”<sup>57</sup> That courage, in turn, inspired the confidence of superiors and subordinates alike. Indeed, Jackson’s rise was attributable in large part to the President’s own trust in him.

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52. *Id.* at 443.

53. GERHART, *supra* note 2, at 93.

54. *Id.* at 94.

55. As it turned out, Jackson’s counsel was wise. The Treasury Department later launched an investigation, which ultimately backfired for the Roosevelt Administration. *See id.* at 95; Arthur Sears Henning, *Inquiry Faces Dilemma over Roosevelt Tax: Fish Demands Publicity for Income Return*, CHI. DAILY TRIB., July 6, 1937, at 7.

56. GERHART, *supra* note 2, at 222 (quoting JESSE H. JONES WITH EDWARD ANGLY, FIFTY BILLION DOLLARS: MY THIRTEEN YEARS WITH THE RFC (1932-1945), at 307 (1951)).

57. Gardner, *supra* note 12, at 439.

But as an inferior executive officer, Jackson’s independence also had its limits. Though he had strong personal misgivings about President Roosevelt’s infamous Court-packing plan, for example, Jackson ultimately felt obliged to defend the plan.<sup>58</sup> And defend it he did. His testimony before the Senate Judiciary Committee was so effective that Walter Lippmann, a fierce critic of the plan, wrote that Jackson “came off better than almost any other Administration witness.”<sup>59</sup> While never shy about making his own views known, Jackson understood his role as a subordinate officer.<sup>60</sup>

*Leading by example.* As one who lived by the motto of “traveling fast and alone,”<sup>61</sup> Jackson naturally led by example, not dictate. The lawyers who worked in the trenches with him on the Nuremberg prosecution, for example, described Jackson as “a sustaining inspiration,” a “tower of strength.”<sup>62</sup>

That is because Jackson did not just swoop in to take the credit for the work of others. Rather, Jackson himself dove into matters and invariably was the “architect” of the cases he handled.<sup>63</sup> In Nuremberg, it was said that “[t]he imprint of his character and of his intellect is on every page of the record.”<sup>64</sup>

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58. GERHART, *supra* note 2, at 105-08.

59. *Id.* at 111 (quoting Marquis W. Childs, *Robert H. Jackson: The Man Who Has Always Been a New Dealer*, 103 F. & CENTURY 148, 153 (1940)).

60. An elemental obligation of every leader at the Department of Justice is to enforce the law and defend his or her client when a reasonable defense can be made, notwithstanding an officer’s personal views about the wisdom or ultimate legality of the matter. *Cf. Hearings Before the Subcomm. on Separation of Powers of the S. Comm. on the Judiciary*, 94th Cong. 10 (1975) (statement of Rex E. Lee, Assistant Att’y Gen., United States Department of Justice) (discussing a Justice Department official’s general duty to defend the constitutionality of a statute). Those who nevertheless believe that they cannot, in good conscience, carry out that duty may resign their posts.

61. *See supra* note 49 and accompanying text.

62. GERHART, *supra* note 2, at 454 (quoting Thomas J. Dodd, *The Nurnberg Trial, An Address Delivered Before the Criminal Law Section of the American Bar Association* (Oct. 29, 1946), in 18 B. ASS’N Q. 138, 151 (1947)). The last surviving member of the Nuremberg team, Alma Soller McLay, recently passed away at the age of ninety-seven. *See* John Q. Barrett, *Alma Soller McLay (1920-2017)*, *Nuremberger* (2017), <http://thejacksonlist.com/wp-content/uploads/2017/04/20170406-Jackson-List-Alma-Soller-McLay.pdf>; Steve Marble, *Alma McLay, Last Surviving Member of U.S. Team That Prosecuted Nazi War Criminals at Nuremberg, Dies at 97*, L.A. TIMES (Apr. 10, 2017, 3:55 PM), <http://lat.ms/2pnoB2O>. McLay, an administrative assistant, remembered Jackson “as a kind, gentle man with twinkling eyes” who “treated everyone alike, whether you were an attorney, secretary, or diplomat.” Alma Soller McLay, *That Twinkle in His Eyes*, 68 ALB. L. REV. 51, 51-52 (2005). In Europe, she recalled, Jackson used to stop by and visit her “regularly”—while warming up by the good fire she kept going in her office. *See* Robert H. Jackson Ctr., *Alma Soller McLay (2004) on London Agreement Report* 6:11, YOUTUBE (May 15, 2016), <https://www.youtube.com/watch?v=LVGtIELBzXs>.

63. GERHART, *supra* note 2, at 454 (quoting Dodd, *supra* note 62, at 151).

64. *Id.* (quoting Dodd, *supra* note 62, at 151).

Jackson refused to rely on others to do his grunt work.<sup>65</sup> That was certainly true for the cases he argued before the Supreme Court. One of his Assistants recounted that “[a]s he prepared for argument there came no requests for a digest of the record, no requests for supplementary research, no requests for consultation or advice on the presentation. It was his job and he did it—alone, thoroughly, quickly, and with superlative skill.”<sup>66</sup> (No doubt many an Assistant to subsequent Solicitors General has envied those days.)

Jackson also believed that what worked for him would work for others. He delegated broad authority to the lawyers on his staff and let them run with cases, typically withholding advice until it was sought.<sup>67</sup> But when he did step in, colleagues observed, “his judgment was clear and unequivocal.”<sup>68</sup>

Sometimes Jackson took this approach to an extreme. As Solicitor General, he did not hold moot courts or consult other lawyers about his strategy for oral argument.<sup>69</sup> That worked for a supernatural advocate like Jackson, in a day when the Court was far less active at oral argument. But dispensing with moot courts would doom virtually any mere mortal before the Supreme Court today, where it is not uncommon to get some seventy or more questions and interruptions over the course of a thirty-minute oral argument.<sup>70</sup>

One Assistant to the Solicitor General, Warner Gardner, recalled an instance where Jackson, waiting at the Court for an argument to be called in which both were scheduled to appear, turned to Gardner and mentioned offhandedly that he was glad Gardner was familiar with the record below because he had not looked at it. Gardner, having assumed that Jackson himself

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65. *Id.* at 175.

66. *Id.* (quoting Gardner, *supra* note 12, at 441). Jackson’s work ethic was likely motivated in part by his view, familiar to most Supreme Court advocates, that “[w]hen he rises to speak at the bar, the advocate stands intellectually naked and alone. . . . What an advocate gives to a case is himself; he can bring to the bar only what is within him.” *Id.* at 465 (quoting Robert H. Jackson, *Advocacy Before the Supreme Court: Suggestions for Effective Case Presentations*, 37 A.B.A. J. 801, 863 (1951)).

67. Gardner, *supra* note 12, at 441 (describing Jackson as “the ideal . . . superior who interfere[d] only upon request, and who ha[d] available a prompt and completely satisfactory solution when he [wa]s requested to advise”).

68. *Id.*; see also Prettyman, *supra* note 16, at 77-78 (noting the views of Gardner and other Assistants to the Solicitor General).

69. Prettyman, *supra* note 16, at 77-78.

70. While he did not use moot courts to prepare for his own oral arguments, Jackson nevertheless could not escape them altogether. His photograph hangs, alongside the photos of the other Solicitors General who have gone on to serve on the Supreme Court, in the conference room used by lawyers in the Solicitor General’s Office for moot courts. These days every lawyer in the office, including the Solicitor General, holds two moot courts before every Supreme Court oral argument. Suffice it to say, then, that Jackson has sat through his fair share of moots.

had mastered the record as usual, was mortified because he had not reviewed it either. Happily, none of the Justices asked about the record.<sup>71</sup>

Two days after he became Attorney General, Jackson gave a speech in which he praised Justice Harlan Stone, a former Attorney General himself, for having “inspired his staff by example,” for going to “court frequently and personally [taking] the heat of the opposition,” and for giving “generous credit to those fellow workers on whom the record of every executive must so largely depend.”<sup>72</sup> He continued that Justice Stone “regarded none of his lawyers as subordinate, but all as associates.”<sup>73</sup> The same could rightly be said of Jackson himself.

*Clarity of expression and force of reasoning.* Jackson’s success as a lawyer-leader no doubt is also attributable to the powerful force of his legal reasoning and writing. It turns out that being able to write effectively makes one not only a better lawyer but a better leader, too. Jackson’s truly exceptional strength in expressing himself can be traced back to his roots.

Jackson’s high school English teacher, Mary Willard, was a major influence over the course of his life. After her death, Jackson said, in a moving tribute, that Willard had impressed upon him that “[a] correct and full understanding of the written word is the threshold of knowledge, and ability to write simple direct English is the beginning of power.”<sup>74</sup> That is good advice for any lawyer. And Jackson was able to harness that power as well as any lawyer ever has.

Some of his opinions are regarded as among the finest writings of the Supreme Court, and “a majority of the current justices name him as their favorite writer ever to serve on the court.”<sup>75</sup> Much of the force of his opinions comes from his focus on first principles and aversion to “legalese.”<sup>76</sup> As Justice Frankfurter put it, Jackson “wrote as he talked, and he talked as he felt.”<sup>77</sup> Jackson’s direct, commonsense, and conversational writing style not only made him a better advocate for his position (whether as a lawyer or judge), it also made him a better communicator.

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71. See Prettyman, *supra* note 16, at 77.

72. Jackson, *supra* note 19, at 411.

73. *Id.*

74. Robert H. Jackson, Tribute to Mary Willard (June 10, 1931), <https://www.roberthjackson.org/speech-and-writing/tribute-to-mary-willard>.

75. Garner, *supra* note 37. Bryan Garner has called Justice Jackson’s opinion for the Court in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943)—the Pledge of Allegiance case—“a thing of beauty” that “reads like one of the most powerful essays you’ll ever see.” Garner, *supra* note 37.

76. See Garner, *supra* note 37. No one is perfect—Jackson “liked the word *therein*.” *Id.*

77. Felix Frankfurter, *Mr. Justice Jackson*, 68 HARV. L. REV. 937, 938 (1955).

As Solicitor General, he said:

When we forget that law is the science for simple and untaught people to live by, we begin to overprofessionalize our learning. This excessive refinement of legal theory is not only a weakness of the teaching but a devotion to it is the weakness most often to be found in the product of the school who fails to make good in life.<sup>78</sup>

An argument that fails to resonate with the average lawyer or citizen has “no real sway,” no matter what its legal niceties.<sup>79</sup>

Jackson’s marriage of simplicity and common sense gave him an uncommon ability to express his views, and that enhanced his ability to lead.

*Humility and respect for others.* The above traits explain a lot about why Jackson was such an outstanding public servant, but one of the things that made Jackson such an effective leader is that he was also a great colleague.

In a town filled with outsized egos, Jackson remained grounded even as he ascended (seemingly effortlessly) the rungs of power in Washington. As his former law clerk, Justice William Rehnquist, remarked, as far as he could tell, Jackson’s “ego or view of his own capacities was never unduly elevated by any of the successes which he achieved.”<sup>80</sup>

No doubt that is partly explained by his small-town roots. As Justice Rehnquist put it, there was “always ‘a good deal of Frewsburg’ in him.”<sup>81</sup> His day job at the Justice Department may have also helped. Jackson once observed that it is “good for one’s humility to engage in . . . personal advocacy,” explaining that “[e]very advocate knows within himself how inadequate is his performance compared to his opportunity.”<sup>82</sup>

One example from those days speaks volumes about Jackson’s humility. The Solicitor General’s suite in the Department of Justice is a true architectural treasure. In addition to high ceilings, ornate workings, and a view down Pennsylvania Avenue to the Supreme Court itself, it has a large working office and a smaller adjacent study. When he became Solicitor General, Jackson took the study for his office and gave his secretary—to her surprise—the enormous room that Solicitors General traditionally occupied.<sup>83</sup>

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78. Robert H. Jackson, Solicitor Gen., U.S. Dep’t of Justice, *The Product of the Present-Day Law School*, Address at the Meeting of the Legal Education Section of the American Bar Association (July 11, 1939), in 27 CALIF. L. REV. 635, 638 (1939).

79. Cf. Robert H. Jackson, *Tribute to Country Lawyers: A Review*, 30 A.B.A. J. 136, 138 (1944) (book review).

80. Rehnquist, *supra* note 33, at 539.

81. *Id.*

82. Jackson, *supra* note 19, at 441.

83. GERHART, *supra* note 2, at 142. The Solicitor General’s suite, which was built when the Solicitor General was the second-highest-ranking official at the Justice Department, also has a back room with a shower and kitchenette and even a back staircase leading to  
*footnote continued on next page*

Even as a Supreme Court Justice, Jackson maintained his humility. Consider his famous remark on the Supreme Court's relative wisdom: "We are not final because we are infallible, but we are infallible only because we are final."<sup>84</sup> One suspects that not all Justices have held such a humble view of their fallibility.

Justice Rehnquist also recalled how, when he first met Justice Jackson as a nervous, young law student interviewing for a clerkship, Justice Jackson put him "completely at ease" by telling him humorous stories about his former clients in Jamestown.<sup>85</sup> Justice Rehnquist added that when he showed up for his first day of work at the Supreme Court months later, Justice Jackson greeted him not by dumping work on him but instead by saying, "Well, I guess the best thing we can do for you right now is to make sure that you are put on the payroll as of today."<sup>86</sup>

Lawyers who worked for Jackson described him as an "ideal" boss.<sup>87</sup> That is hardly surprising. He treated everyone with "great courtesy and informality"<sup>88</sup> and was known as "one hell of a nice guy."<sup>89</sup> He was also accessible. As one Assistant to the Solicitor General observed, Jackson was "very free and democratic with his staff, often walking across the hall and sitting on the corner of some assistant's desk to chat about a change he wanted in a brief."<sup>90</sup>

All of the team-building exercises in the world are no substitute for the way Jackson treated his colleagues, no matter what their title.

*Sacrifice.* Nothing comes easy. Jackson's remarkable rise in Washington did not occur by happenstance or solely through his obvious native brilliance. (Though, as is true for most who achieve such heights, luck and extraordinary talent certainly played their parts in Jackson's rise, too.) What drove Jackson's success was hard work—work performed without any guarantee of advancement or high office.

Jackson loved the work of the law, and he gave himself to it for its own sake. "[A]t each station of his life," Jackson "devoted his full legal energies to

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a loft. Truth be told, one could live there quite comfortably, and perhaps that was what was intended for its occupants given the workload of the office.

84. *Brown v. Allen*, 344 U.S. 443, 540 (1953) (Jackson, J., concurring in the result).

85. Rehnquist, *supra* note 33, at 539.

86. *Id.*

87. Gardner, *supra* note 12, at 441; *see also* Prettyman, *supra* note 16, at 77-78; Rehnquist, *supra* note 33, at 539. I had the great fortune to clerk for Chief Justice Rehnquist in 1992, forty years after his clerkship with Justice Jackson. One could still sense the genuine affection and respect the Chief Justice held for Justice Jackson when he reminisced about his clerkship days.

88. Prettyman, *supra* note 16, at 76.

89. *Id.* at 78 (quoting Telephone Interview with Joseph A. Fanelli (July 13, 1983)).

90. *Id.* at 76.

those who had a claim upon them.”<sup>91</sup> Whether Jackson was prosecuting a small tort case in Jamestown,<sup>92</sup> defending the constitutionality of an Act of Congress before the Supreme Court,<sup>93</sup> or representing America at Nuremberg, he brought the same level of total devotion to all of his work. Even as a young lawyer in private practice, when clients were sparse, he worked well into his weekends and evenings.<sup>94</sup>

After making it at the Department of Justice, he still worked “like a nailer, 14 hours a day,” arguing some twenty-four cases as Solicitor General during the Supreme Court’s 1938 Term.<sup>95</sup> Amazingly, in one stretch as Solicitor General, he reportedly completed seven oral arguments before the Supreme Court over a fourteen-day period.<sup>96</sup> On eight other occasions, Jackson argued two or three cases within a single week.<sup>97</sup> No wonder he was such an inspiration to his staff.

Alas, Jackson’s workload had its price—another important lesson for young lawyers. Justice Jackson suffered a heart attack in 1954, after which his friends urged him to slow down. But he would have none of it. In fact, he cut his recuperation short and drove straight from the hospital to the Supreme Court so that a full Court would be on the bench when the Justices handed down their landmark decision in *Brown v. Board of Education*.<sup>98</sup> Five months later, he died after suffering another heart attack.<sup>99</sup>

One lawyer recalled that whenever Jackson was told to stop working himself to death, “he always replied with a smile that he would prefer to carry out what he conceived to be his duties, even though it meant a shorter life, than to seek release from those obligations by living an easier life.”<sup>100</sup> And so he did.

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One of the most poignant testaments to Jackson’s success as a leader came when he took his final position at the Department of Justice—Attorney General. It was a difficult time for the Department. The outgoing Attorney General had developed a reputation for putting his own interests above those

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91. Rehnquist, *supra* note 33, at 541.

92. See GERHART, *supra* note 2, at 43.

93. See *Helvering v. Davis*, 301 U.S. 619, 620, 634 (1937).

94. GERHART, *supra* note 2, at 40.

95. *Id.* at 175 (quoting *Jackson’s Term*, TIME, June 12, 1939, at 16-17).

96. Prettyman, *supra* note 16, at 75.

97. *Id.*

98. 347 U.S. 483 (1954); GERHART, *supra* note 2, at 467-68.

99. See John Fisher, *Justice Jackson Dies at 62: Heart Attack Strikes on His Way to Court*, CHI. TRIB., Oct. 10, 1954, at 1; see also GERHART, *supra* note 2, at 467-68.

100. See GERHART, *supra* note 2, at 468.



of the Department, particularly where publicity was to be had, and morale had suffered.

After his confirmation as Attorney General, one of the first things Jackson did was convene a Department-wide meeting of employees in the Great Hall, the grand, two-story auditorium at the Department. When the new Attorney General arrived, a "loud ovation" spontaneously broke out—a "sincere tribute" to a man who had earned the warmth and affection of everyone in the building—which reportedly brought tears to Jackson's eyes.<sup>101</sup>

Of course, few lawyers who come to Washington, or rise to leadership positions in the Department of Justice, can expect to enjoy Jackson's success. Jackson was truly one of a kind. But lawyers filling or aspiring to leadership positions in government can learn from Jackson's example.

None of the principles set out above is surprising, really. But together they are valuable lessons for any lawyer-leader in government. Indeed, Jackson's approach to his work, and especially his humility, decency, and respect for others, are a worthy example for us all.

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101. *Id.* at 190-91. When Jackson finally left the Department of Justice to take his place on the Supreme Court, there was a similar outpouring of support and affection; 1200 Justice Department employees attended his farewell reception. *See id.* at 234.