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# PROCEEDINGS

BEFORE THE

## Supreme Court of New Jersey

IN MEMORY OF

### JUSTICE ALBERT E. BURLING

December 5, 1960

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CHIEF JUSTICE WEINTRAUB: On October 29, 1960 death came to our friend and colleague, Justice Albert E. Burling. The great loss suffered by this court and each of its members and by the State of New Jersey moved us to appoint a committee of distinguished members of the bar to prepare and present an appropriate memorial on his life and career. The court recognizes former Governor Driscoll, the chairman of that committee.

GOVERNOR DRISCOLL: Chief Justice and Associate Justices of the Supreme Court:

According to the instructions to the committee, we present the following memorial:

We appear before this court today to commemorate the life and career of the late Justice Albert E. Burling, who passed away on October 29, 1960. In his passing, New Jersey lost a devoted, zealous and conscientious citizen. His colleagues of the bench and bar lost a talented, dedicated associate. We desire in these proceedings to memorialize and record some of the many contributions that Justice Burling made to our society and the practice of law.

As student, practitioner, teacher and judge, he was known for his integrity, tireless energy, ability and courtesy. His

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achievements as a civic leader, legal practitioner, educator, legislator and judge will long be remembered and, through the years, continue to serve the citizens of this State.

Albert E. Burling was born in Camden, New Jersey, on August 3, 1891. After graduating from Camden High School, he attended Temple University Law School. With characteristic industry, he also pursued his law studies under a preceptor, and in 1913, prior to his graduation from law school, was admitted to the bar. In 1916 he became a counsellor. He quickly acquired great skill as an advocate in trial and appellate practice. Early in his career, he became a partner in an old and established Camden firm.

In 1925 his interest in law students found expression when he became a member of the faculty of Temple University Law School. For twenty years he was an instructor of New Jersey practice. During most of these years, until his appointment to the judiciary, he continued an active practitioner. In the classroom he was a rigid, though respected, taskmaster, requiring his students to master general principles as well as the details of cases. Apart from the classroom, his kindly personal interest in his students was a continuing one. Accordingly, it is not surprising that his former students and their associates felt free to seek his advice and counsel in the early days of their legal careers. It is significant that in his last public appearance the subject of his address was advice to newly admitted attorneys in his home county.

It was Justice Burling's conviction that a lawyer's responsibility carried a duty to participate in civic and political affairs. As a man of action, he put this conviction into practice in his own life. His activities included service as Secretary to the Speaker of the State Assembly, Assistant Prosecutor of Camden County, Counsel to the Camden County Board of Freeholders and the Pennsauken Board of Education. In 1935 he was elected State Senator from Camden County. During his distinguished career as a senator, his humanitarian interests were demonstrated by

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the legislation he sponsored — for example, legislation for State aid for education for crippled children and State provision for special training for sufferers from chronic ailments. In all of these services he established a reputation for hard work, attention to detail, a high sense of duty and complete integrity. In recognition of these and other services, his *alma mater*, Temple University, conferred upon him an honorary degree of Doctor of Law.

In 1942 Justice Burling was appointed a Circuit Court judge by Governor Charles A. Edison. He successfully served in this capacity until March 1947, when he was appointed to the former Supreme Court and Court of Errors and Appeals. Upon the reorganization of the judiciary under the *Constitution of 1947*, Justice Burling was appointed associate justice of the new Supreme Court. In 1954 he was reappointed a justice of the New Jersey Supreme Court for life.

Justice Burling was conservative in his approach to the law in that he believed in the inherent stability of the common law—in evolution rather than revolution. In the more than 300 opinions that he rendered during his career as a judge, he gave continuing evidence of his scholarliness, clarity of thought, and depth of knowledge. In *Harper v. Atlantic City*,<sup>1</sup> he stated: “The policy of modern law is to strive for a pleading and decision upon the merits.” In *Terminal Construction Corp. v. Bergen County, etc., Dist. Authority*,<sup>2</sup> speaking for the court, he declared: “The philosophy of the present Rules Governing the Courts of New Jersey is to provide the vehicle whereby prompt and substantial justice may be reached.” In *Stanley Company of America v. Hercules Powder Company*,<sup>3</sup> he wrote for the court: “Our objectives are not only for just determination, but also for an elimination of expense and delay.” Justice Burling was

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<sup>1</sup> 22 *N. J. Misc.* 323, at p. 329 (*Sup. Ct.* 1944).

<sup>2</sup> 18 *N. J.* 294, 340 (1955).

<sup>3</sup> 16 *N. J.* 295, 316 (1954).

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keenly aware that justice delayed is justice denied. His opinions for the court covered a wide range of issues.

He relished the complicated case, where his sense of order and clarity of thought and studiousness were most useful. His selfless service on numerous committees, notable among them the important Supreme Court Committee on Rules which he led through the first ten years under the new judicial system, and his authorship of such works as the Petit Jury Manual, the first draft of the Jury Commissioners' Manual and the Model Charge to Grand Jurors, attest to the scope of his industry and will continue to be valuable long into the future.

In addition to his work in behalf of judicial reform, Justice Burling was an early advocate of modernization of judicial procedures. A system of voluntary pretrial practices initiated by him during his service on the Circuit Court is an antecedent of the pretrial system now universally used in this State. Throughout his entire judicial career, he maintained a perspective regarding his position, with an awareness of the limits placed upon his judicial role by the fundamental doctrine of separation of powers.

The energetic mind of Justice Burling, the teacher-lawyer who became a distinguished jurist, found expression in the authorship of law review articles in which he made his legal concepts of the law available to students and practitioners throughout the country. His article appearing in the January 1950 issue of the *Temple Law Quarterly*, entitled "Functioning under the 1947 Constitution of New Jersey," has attracted the attention of citizens interested in court reform throughout the entire United States.

Justice Burling was a gentleman in every fibre of his being. He had an ingrained courteousness, an attribute common to those generous in spirit and hence easily found in him. He was pleasant to everyone and considerate of all who passed into his life, no matter what their rank and importance.

Much of his free time he spent in the activities of the many professional, educational, and fraternal organizations

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of which he was a member. To persons close to him, his warm, human personality was revealed in its true form. Devoted to his work, he kept his social activities in tight rein. Nevertheless, he knew how to have fun. Relaxation, when it came to him, was fully enjoyed. His friends will long remember his infectious chuckle over an amusing story or witticism. His major source of satisfaction and refreshment, however, appeared to be the hours spent with his family and within his circle of friends.

An associate of Justice Burling, writing soon after his death, expressed a central theme in the Justice's life when he wrote the following words in an article appearing in the November 1960 issue of the Camden County *Barrister*:

“The truth is always the truth and telling the truth will not hurt anyone except so far as he ought to be hurt.’ These words in an opinion he wrote (*In re Vince*, 2 *N. J.* 443) outlined the philosophy of living as practiced by the late Mr. Justice Albert E. (Pete) Burling. Historians say that the late and revered John Marshall during his lifetime wore an amethyst ring with the motto *Veritas Vincit* engraved upon it. The late Mr. Justice Burling carried that theme in his heart.”

The bench, the bar, the citizens of this and other states, as well as future generations, are immeasurably indebted to Justice Burling for his life of constructive service to mankind.

Respectfully submitted,

Alfred E. Driscoll, *Chairman*

Harry Heher

William A. Wachenfeld

William F. Hyland

Edward J. O'Mara

*Members of the committee of the bar chosen by the Supreme Court to prepare and present a memorial on the life and career of the late Justice Albert E. Burling.*

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CHIEF JUSTICE WEINTRAUB: Thank you very much, Governor Driscoll. And now, Mr. Justice Proctor will speak for the court.

MR. JUSTICE PROCTOR: Governor Driscoll, what you have said about Justice Burling portrays the contribution he made to the betterment of our beloved State. You have delineated the career of a man who has few equals among the distinguished sons of New Jersey.

The esteem of the bar and the public for Justice Burling as a jurist is based upon his work while sitting on the bench and his published opinions. The members of our bar know of his gentility and kindness. He was always ready to assist younger attorneys with their problems. And I need not dwell on the learning which his opinions reflect. They speak for themselves—and are contained in over 40 volumes of our official reports. Each is a contribution to our jurisprudence, and will be cited and quoted by lawyers in the far future. But none can sense the loss of Justice Burling as a jurist so well as the members of this court with whom he was in intimate association throughout the years. We can attest to the devotion and dedicated spirit which animated the discharge of his judicial duties. We alone know the full measure of his contribution to the deliberations of this court.

He had a passion for orderliness and organization which was clearly shown in every aspect of his work. For example, when this court was organized in September 1948, he initiated the use of—it would be more appropriate to say he invented—what he called the “worksheet.” This is a schedule which he prepared each week and which regulated the internal operations of the court. It was invaluable to us; indeed, it was the matrix within which we worked. Its preparation was a chore which he performed in his characteristically eager and meticulous fashion and in addition to his regular judicial duties.

No judge came to our conferences better prepared for intelligent discussion of our judicial and administrative

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problems. The wise counsel he gave to his colleagues is reflected in all the decisions of this court. Our study of each case was invariably aided by his painstaking marshalling of the facts, his knowledge of applicable authorities, and his dispassionate analysis of the right and wrong involved in the controversy. And we shall always be indebted to him for the influence of his deep conviction that the established order should not be disturbed unless the requirements of justice demand a change.

I do not mean to give the impression that he was a somber judge. He had a buoyant sense of humor and often lightened our conferences with some quip which would dispel for the moment the solemnity of our discussions. We all recall the last conference day of each term. Justice Burling, or "Pete" as he was known to us, handed to each of us the final copy of his worksheet. On this his daughter, Mollie, had drawn caricatures portraying what each of us would be doing during the summer. Each drawing was accompanied by a humorous verse by Pete. We adjourned with the pleasant feeling that in him we each had a companion as well as a colleague.

Our awareness of loss is softened by the knowledge that Justice Burling will be survived by the influence he leaves behind. It was William James who observed, "The great use of life is to spend it for something that outlasts it." Truly, Justice Burling's life was so spent. His family will always remember his love and devotion and be thankful for the honor he brought to the name of Burling. Those who knew him will recall the warmth of a kind and gentle friend. The people will remember him for his contribution to New Jersey as an able statesman and dedicated jurist. His passing leaves a void; but the memory of his companionship and the contribution he made to the molding of the law will always be an inspiration to those privileged to have served with him.

CHIEF JUSTICE WEINTRAUB: Thank you, Justice Proctor.

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The court wishes to express its appreciation to Governor Driscoll and to the members of his committee for the preparation of the well merited eulogy of our colleague, Justice Burling. Our thanks are extended also to all of you who have joined with us in this ceremony.

These proceedings will be included in the next bound volume of the reports of this court as a permanent memorial of Justice Burling's service to the State of New Jersey.