



HONORABLE ARTHUR T. VANDERBILT

PROCEEDINGS

BEFORE THE

Supreme Court of New Jersey

IN REFERENCE TO THE

Death of Chief Justice Arthur T. Vanderbilt

September 4, 1957

CHIEF JUSTICE WEINTRAUB: On June 16 Chief Justice Arthur T. Vanderbilt passed away. We lost a great lawyer and judge, who more than any one man sparked the movement for judicial reform in this State and indeed in the Nation as well. Attorney-General Grover C. Richman, Jr. moved the appointment of a committee to prepare and present to the court a memorial on the life and career of our late Chief Justice. The court designated a committee of distinguished members of the bar consisting of the Attorney-General and, in alphabetical order: Mr. Justice Henry E. Ackerson, Jr., Mr. F. Morse Archer, Jr., Chief Justice Thomas J. Brogan, Mr. James D. Carpenter, Chief Justice Clarence E. Case, Governor Alfred E. Driscoll, Mr. David Stoffer and Mr. Josiah Stryker.

Before hearing from the committee I think it would be fitting for us to rise for a moment of silent tribute to the late Chief Justice.

ATTORNEY-GENERAL RICHMAN: According to the instructions to the committee we present the following memorial:

We assemble before this court today to commemorate the passing on June 16, 1957 of our late Chief Justice, Arthur T. Vanderbilt, and to memorialize and record, in these proceedings, some of the contributions he has made to our State, nation and society. He was an outstanding leader, whether as a legal practitioner, educator, governmental reformer, judicial administrator or judge. The keynote of his life was a wholehearted and zealous dedication to public causes which he espoused. The results of his work, some of which we already enjoy, will survive us and generations to come.

Arthur T. Vanderbilt was born at Newark, New Jersey, July 7, 1888. After completing his preliminary education in the Newark public schools, he entered Wesleyan University at Middletown, Connecticut. While working his way through college he managed to obtain in the usual four years of study not only the Bachelor of Arts degree with Phi Beta Kappa honors, but also a Master of Arts degree awarded for advanced courses satisfactorily completed. This achievement did not require of him curtailment of extra-curricular activities, for he served as a member of the Wesleyan Debating Society, editor of the college newspaper, president of his class during his senior year, president of the student body, and, for variety, manager of the football team. During the three years of his professional education at Columbia Law School he maintained himself by teaching in the Newark evening high schools. He became an attorney in 1913 and a counsellor in 1916.

His contemporaries soon recognized his high professional competency; they saw also a forceful exemplar of the concept of a lawyer's obligation to participate actively in discharging the duties of citizenship through political and other community organizations. A unique ability emerged in developing and expounding ideas and in persuading action to effectuate them, whether in the court room or in the political arena. Within ten years he enjoyed a substantial practice and founded the Essex County Republican League, the predecessor of the Clean Government Organization. For 25

years he demonstrated that a single county counsel of ability could handle the legal work of the largest county in the State. He became a highly respected political leader and at the same time earned the high compliment of becoming increasingly a "lawyer's lawyer" in the courts of our State and of the federal system. The following estimate, recorded last July before the Assembly of the American Bar Association in New York by Chief Judge John J. Parker, of the Fourth Circuit Court of Appeals, is incorporated in this memorial for its unique comparative portrayal:

"I think of Arthur Vanderbilt first of all as a practicing lawyer. It has been my privilege as a judge in my Circuit to have had many of the great lawyers of my day appear before the court of which I am a member, among others, Charles E. Hughes, John W. Davis, George Wharton Pepper, Newton D. Baker and William D. Mitchell. Vanderbilt showed, when he appeared before us, that he was the peer of any of these. For thirty-five years he enjoyed an active general practice, appearing in cases of importance, not only in his native New Jersey but also in other states, in the federal courts, in the Supreme Court of the United States and in the courts of Canada. While he counted among his clients many banks, insurance companies and large corporations, he was never too busy to render assistance where it was needed by those whose liberties were threatened. It was he, you will remember, who defended Roger Baldwin and Norman Thomas in the famous civil liberties cases in which they were involved."

A long parallel career as a legal educator opened in 1914, when he was appointed an instructor at New York University Law School. He became a professor four years later. While he taught a goodly portion of the curriculum in the intervening years and became aware of the weaknesses in the system of legal education, his major contribution to this field came with his appointment as Dean of the Law School

in 1943. In quick succession followed additions to the faculty of able teachers attracted by the vision of a major national law school, curriculum changes, faculty publication of the *Annual Survey of American Law* and establishment of the Inter-American Law Institute enabling selected United States and Latin-American lawyers to study the comparative workings of their respective systems of common and civil law. These were some of the achievements of Arthur T. Vanderbilt, the educator. They reflect a deep concern for continuing improvement of the standards of legal education to meet the needs resulting from changing conditions of life, as well as law, during his career. In 1946, under the auspices of the American Bar Association's Section of Legal Education, he edited and published *Studying Law*, a collection of papers written by outstanding English and American legal authorities, designed to introduce prospective students to historical and other background materials, including observations on pre-legal education. His crowning achievement in this area was the idea of the Law Center, a concept designed to bring law students, the bench, the bar and the public together in gaining a better understanding of mutual problems. In appreciation of his prodigious contributions, the Center at New York University was named Arthur T. Vanderbilt Hall.

As a logical supplement to his classroom teaching, he furnished clerkships to many candidates for the bar, with his characteristic conscientiousness. Reaching out for people of promise, he entrusted to them responsibilities, and gave liberally of his time and energy. It was not accidental that many of his clerks became outstanding members of the bench and bar.

By the middle Twenties the restless lawyer-teacher-political leader had begun to explore the possibilities of administering the work of the courts in a more business-like manner. Why could not the litigant obtain an earlier day in court under more efficient procedures and with less expense? It was this concept that led Arthur T. Vanderbilt to the greatest

heights of his distinguished career. From 1930, when he was appointed chairman of the Judicial Council of New Jersey, he led the fight for judicial reform that was to culminate in the Judicial Article contained in our 1947 Constitution. His qualities of leadership were in time recognized on a national basis. His efforts to reform in New Jersey led to his being appointed in 1933 as chairman of the National Conference of Judicial Councils, an office he held for four successive terms. Next, he achieved the distinction of becoming in 1937 the youngest president in the history of the American Bar Association. His forceful personality made improvement in the administration of justice the principal subject of study during his term, launched with a momentum which continues in the American Bar Association and in many state councils and similar organizations because of the fruitful studies sponsored by the Institute of Judicial Administration which he founded. In 1938 he was elected president of the American Judicature Society, and greatly enlarged its membership and influence in his term of office.

Federal officials sought his aid and advice. In 1938 he served as chairman of a committee appointed by the Attorney-General to prepare the pioneer legislation creating the Office of the Administrative Director of the Federal Courts. Next, came membership on the Committee on Administrative Procedure. In 1941 he headed an Advisory Committee chosen by the U. S. Supreme Court to revise the laws of federal criminal procedure. From its work came the *Federal Rules of Criminal Procedure*. His work on state constitutional problems and federal procedural matters did not deter extension of his vast interests by heading, in 1941, the National Committee on Traffic Law Enforcement. It was through his efforts in this organization that several years later he was able to develop the unfixable ticket in this State. In 1943 he was appointed state chairman for Legal Examining Boards to pass upon the character and fitness of lawyers to be employed in federal positions. In 1946 he

served as chairman of a committee of judges and lawyers which revised the court martial procedures of the army. Prior to his appointment to the Circuit Court in 1947 he established the Citizenship Clearing House to stimulate college men and women to participate actively in political affairs through the local, state and national organizations of their selection. Into all of these public activities went his heart and soul and a deep faith in objectives he considered right and worthy.

While a solid structure, the Law Center, serves as a monument to him, his greatest memorial is his role in the establishment of the judicial system which exists in this State today. His efforts over a decade as chairman of the Judicial Council were responsible for the creation in 1941 of a committee to prepare a draft of a new State Constitution. Although no action was taken on the report of this committee, it was the forerunner of the draft of the 1944 constitutional proposals which were rejected and, in turn, of the Constitution of 1947. While the draft of the Judicial Article prepared by the 1941 committee is commonly regarded as the model of our present court system, the basic ideas are found in the 1932 report of the Judicial Council.

The leader of the successful fight for judicial reform was regarded as the best qualified person to lead the new court system. He was appointed Chief Justice of this court in 1948. In spite of the warnings of danger to his physical health from excessive exertion, he devoted long hours to his new tasks. To gain general understanding and acceptance of the new court system, he toured the State explaining its merits to bar associations and lay groups. Procedural and administrative rules were then of the utmost urgency and importance. The assignment of judges in a manner best calculated to reduce the congested calendars which the former courts left was his special responsibility. He proceeded with an undying zeal and devotion to make the new system work. The Chief Justice had a genius for administration. As head of our judiciary, he guided the administration of justice in

New Jersey to a position of national respect and peerless standing. From stimulating the sense of civic responsibility to spawning a modern, efficient court system is a vast order for any human being. Arthur T. Vanderbilt never stopped. On the day his last illness set in, he was on his way to his office, still bent on achieving the task to which he had so completely dedicated himself.

Some 200 opinions found in 1 *N. J.* to 24 *N. J.* speak eloquently of his capacities as an appellate judge. In the search for the just result he was not deterred by procedural or technical obstacles, nor by the age of a legal doctrine which no longer comported with the requirements of a markedly different economic and social order. His opinions reflect attentiveness both to legal history and the inherent capacity of the common law "constantly to renew its vitality and usefulness by adapting itself gradually and piecemeal to meeting the demonstrated needs of the times."

Somehow, he found the time to record his basic thinking in his various fields of interest in books and law review articles. His work received recognition in the award to him of honorary degrees by twenty institutions of higher learning. He received gold medals for distinguished service from the American Bar Association, the Holland Society and the New York State Bar Association. In his estimate, however, the greatest of this series of honors came with his election as a trustee of his alma mater and in recent years as chairman of the board of trustees. He was to the very end deeply interested in young people and their general, as well as professional, education.

So extensive and outstanding a record could not have been compiled without the warm human qualities which attract and inspire people. Those of us who were privileged to know him well will remember the friendliness of his greetings, the twinkle in his eyes as he recalled an apt anecdote or witticism, the depth of his understanding of people, and his unfailing sense of courtesy. Those invited to his home soon became aware of an atmosphere of love and peace enriched

with the spice of stimulating and good-humored conversation. The gracious family life was in good measure due to his charming and devoted wife, Florence A. Vanderbilt, who was his constant helpmate throughout his career.

The bench, the bar and the citizens of this State are eternally indebted to the late Chief Justice for the imperishable results of his many years of public service. The courageous champion of governmental and judicial adaptation to the needs of this century has departed, but his ideas and achievements will live on through the institutions and governmental agencies he served so well.

Respectfully submitted,

GROVER C. RICHMAN, JR., *Chairman*

ALFRED E. DRISCOLL

CLARENCE E. CASE

THOMAS J. BROGAN

HENRY E. ACKERSON, JR.

JOSIAH STRYKER

DAVID STOFFER

JAMES D. CARPENTER

F. MORSE ARCHER, JR.

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 Chief Justice Arthur T. Vanderbilt.

CHIEF JUSTICE WEINTRAUB: Mr. Justice Heher will respond for the court.

MR. JUSTICE HEHER: Mr. Attorney-General:

We share your sense of grievous loss. Chief Justice Vanderbilt has now gone over to the silent majority, but his spirit lives on. We, his brethren of the bench, join in this tribute to his life, his character, his idealism and deep and abiding sense of duty, not that we can add to his stature by what we say here, but rather we can give grateful recognition to the richness of his service and the lustre he has shed on his profession and to his superlative qualities of heart and

mind that we may honor them and be stimulated by his example.

Arthur Vanderbilt truly dedicated his life to the law, to the pursuit of the ideal of justice under law. He came to the bench after a distinguished career at the bar, aware from long experience of the shortcomings of judicial administration under a system that had not kept pace with the complexities of modern life. He had played a major role in the constitutional revision of the judicial structure effected in 1947; and he assumed the chief justiceship by appointment of Governor Driscoll as a mission to vitalize and streamline the new judicial mechanism for the more efficient pursuit of justice. It was indeed a golden era for jurisprudence in New Jersey. For almost a decade he gave of himself in unremitting and ceaseless endeavor, by the use of the great functions that were his, to make of the law a living, breathing organism for the simplification and expedition of the course of the judicial process and the improvement of the essential quality of justice; and the consummation is an enduring memorial to his genius, unexampled in mode and manner of judicial administration.

The Chief Justice was a scholar and a professor of law whose learning had been ripened by a vast experience; and his singular talent for translating his knowledge into rational and effective action is revealed in opinions that are profound expositions of basic legal principle accommodated to the moral and social needs of our complex society, and respected as such by legal scientists beyond our borders. He sought to clarify the law and to make clear its reason, that all might know its legal and moral import and its compelling logic and authority. And this quite apart from the immediate needs of the particular case. He could strike at the heart of the case and expose the real issue and its merit in clear and simple terms. He abhorred sophistry, and he was impatient with mere form. It was an article of faith with him to hold the scale of justice even and to maintain the dignity of the law.

He was truly a luminous figure in the judicial firmament. A great lawyer, he had rare executive capacity. A scholar always, he was yet a student searching for more light that justice might the better be served. Natural justice was instinctive with him, and he had an intuitive understanding of human nature. He lived in deeds, ever faithful to the cause of justice and the highest traditions of his profession, an exemplar in the public service. He acted well his part; his was a full life to the end, as he would have it. And now his works stand as a monument for all time to his academic and legal learning and high sense of responsibility, his efficiency and his zeal for even-handed justice and fair dealing between men, his extraordinary intellectual endowment, and his administrative genius. He believed with the philosophers of old that time was the most valuable thing that a man could spend. And he agreed with Voltaire that our social system could not subsist without the sense of justice and injustice. He was a true servant of the law, imbued with a statesman-like concept of the courts as an institution vital to the fulfillment of man's true destiny in the social compact.

He was ever faithful to the creed of Chief Justice Hughes that the "fundamental conception which we especially cherish as our heritage is the right to law itself, not as the edict of arbitrary power but as the law of a free people, springing from custom, responsive to their sense of justice, modified and enlarged by their free will to meet conscious needs and sustained by authority which is itself subject to the law—the law of the land." And he knew that the right to law could not be fulfilled by an inefficient and slow-moving judicial process so often frustrative of essential justice, and that the strength of the courts depended upon public confidence in their integrity and capacity for service.

And so it was that, fired by an unwonted fervor for adequate judicial performance, he gave of his professional mastery and scholarly and perceptive leadership to the court's exercise of its newly conferred constitutional function to formulate rules of practice and procedure; and it is in this field of pro-

cedural jurisprudence that his incomparable administrative skill came into full flower.

This is not the occasion to particularize. It suffices to say that few of those who question the interpretive doctrine expounded in *Winberry v. Salisbury*, 5 N. J. 240, would deny that the rules promulgated by the court have in the main signally fulfilled their avowed design to facilitate judicial operations and to advance justice.

Rules of court are by no means new. Ours combine the procedures tested by experience elsewhere, notably in the federal jurisdiction. But with us rule-making is a continuous process with the full participation of the bar under the aegis of the Judicial Conference and the ultimate superintendence of the court; and thus the teachings of experience are utilized to rectify deficiencies and improve judicial function, by what is akin to the democratic process. Yet the rule-making process could not overcome structural failures and weaknesses; and it was here that the constitutional changes in structure opened the door to the procedural reforms and administrative supervision that have been acclaimed everywhere as marking an epoch in judicial reform.

Chief Justice Vanderbilt was a pioneer in the remaking of procedural jurisprudence. Justice is thwarted by administrative faults; the substantive may be defeated by procedural lapses and defaults; and in this field he rendered incomparable service. His labors were unceasing; there was hardly a day in all this period of growth and development when he was not in personal command, coordinating judicial manpower and facilities to meet varying and changing needs. Here, his incisive mind, his sense of wisdom from a diversified experience, and his remarkable power of application found full play and rich reward.

Dedication may become a crusade, and crusade may at times lead to extremism. But time and experience restore perspective; and in the end we look for the overall result. So measured, the Chief Justice's achievements were epochal. He was a thinker and a doer, a citizen of first rank, he had

the judicial attributes of great learning and culture and innate fidelity to duty; and he had mastered the art of administration. We commemorate his exalted standards and his works and his kindly and affectionate nature which endeared him to us. We mourn the passing of our friend and companion.

*Death comes to all
But great achievements raise a
monument
Which shall endure until the
sun grows cold.*

CHIEF JUSTICE WEINTRAUB: The court extends its thanks to the members of the committee and to all of you who have joined with us today in this memorial ceremony. The transcript of these proceedings will be spread upon the minutes of the court and will be published in the reports.