
PROCEEDINGS

BEFORE THE

Supreme Court of New Jersey

IN MEMORY OF

Justice William A. Wachenfeld

AND

Justice Henry E. Ackerson, Jr.

September 13, 1971

CHIEF JUSTICE: Ladies and gentlemen, on April 22, 1969, a former member of our Court and a dear friend of all of us, Justice William A. Wachenfeld passed away. This morning we will have a Memorial Service. I will recognize Mr. J. Raymond Berry.

MR. BERRY: Mr. Chief Justice and Associate Justices of the Supreme Court.

Our appearance before this Court today is to place on the record a memorial and tribute to former Justice William A. Wachenfeld who died April 22, 1969. He was truly a many-sided man — an outstanding lawyer, Prosecutor, Judge, teacher, student of government, patron of the arts, trustee of a great university, leader in public service and above all this a sensitive, kind, human being.

Born in Orange, he attended Orange High School where he was a three-letter man in baseball, basketball and football. He continued his education at New York University, graduating from the University's Law School in 1910. He was ad-

mitted to the New Jersey Bar the following year and joined the firm of Lum, Tamblyn & Colyer. Apart from the period when he served on the Bench, his association as partner and counsel with that firm through its various changes in name continued to the end of his life.

As a young lawyer he quickly showed that great ability in the courtroom that marked his entire legal career. In 1922 he was appointed Assistant Prosecutor of Essex County and continued in that office until 1924. In 1933 he was appointed Prosecutor by Governor Moore, reappointed by Moore in 1938 and again reappointed in 1943 by Governor Edison. In 1944 Governor Edge named him Civil Defense Director and in 1946 appointed him to the Supreme Court of New Jersey and he served in that Court as well as in the Court of Errors and Appeals until the judicial structure was reorganized under the new State Constitution. Governor Driscoll then appointed him to the new Supreme Court in 1947 and reappointed him in 1953.

Prior to his appointment to the Bench, he was not only an active, outstandingly successful lawyer but was also an able political leader and carried the Democratic Banner as candidate for the State Senate in 1927 and 1932. In 1949 and 1953 he was urged to make the run for Governor, but declined.

He gave generously of his time and talent to his Alma Mater, New York University. He became President and Director of the New York University Law School Alumni Association. In 1956 he was awarded New York University's Alumni Meritorious Service Medal and in 1969 was given the Achievement Award of the New York University Association. He was President of the New York University Law Center Foundation and a Trustee of the University. In addition, he was a Founder and Trustee of the Newark Boys' Club and a Trustee of Essex County College.

He retired from the New Jersey Supreme Court in 1959 and returned as counsel to his old firm. He continued to give much of his time to public affairs serving as a member of the

New Jersey Commission to Study Capital Punishment in 1964, and of the New Jersey Governor's Select Committee on Civil Disorders in 1967.

In the period between 1924 and 1933, he handled a variety of criminal cases for the defense. The most notable of these was *State v. Noel*, in which he was associated with the late Merritt Lane, Esq., for the defense, the State's case being presented by Prosecutor John O. Bigelow and Assistant Prosecutor J. Victor D'Aloia. The accused was a young lad charged with the murder of a taxi-driver and a small girl he had kidnapped for ransom in an academic attempt to show that he was smart enough to commit the "perfect crime", which Leopold and Loeb had failed to do. The evidence against him was overwhelming and the medical testimony of insanity was weak under the M'Naghten Rule, so the trial resulted in a conviction. But a voluminous record had been made on the collateral issue to determine why the accused stood mute when called upon to plead to the indictment, and this record played a large part in securing a reversal on appeal. It reflected Justice Wachenfeld's lifelong insistence on giving weight to what he liked to call "the human element" in the application of the law.

During his long tenure as Essex County Prosecutor, he was known to be fiercely independent as well as fearless—a man who would not compromise with principle. When he was aware of the existence of some activity that was wrong, he only had to call in a few people and tell them he wanted it stopped, and it was. No list of his achievements in that office could be attempted here, beyond mention of his successful prosecution of Charles (The Bug) Workman for the murder of Arthur Flegenheimer (Dutch Schultz). The conviction was not appealed so the case is unreported, but the trial transcript is a fascinating sample of the activities of the gangster mobs of that period, as well as of Justice Wachenfeld's outstanding courtroom skills.

His record on the Bench, from his first opinions in Vol. 134 of the old Law Reports and Vol. 139 of the old Equity

Reports, to his last in Vol. 29 of the New Jersey Reports, spans 37 Volumes, 14 years, three courts and three Chief Justices. And when he left the Bench at age 70, he continued to do what he had done through all his professional career, and that was to teach. He had taught at the former Mercer Beasley Law School, and he taught every young lawyer who ever worked for him. He claimed to be responsible for the present system of providing law clerks to the appellate judges, both to increase the judge's productivity and to train the next generation of lawyers; but whether his claim was true or not, the fact is that he did train, teach and stimulate many young men who have moved on to outstanding professional careers.

He was a great teacher. His dynamic activity and seeming gruffness told the young lawyer to work hard, but beneath that exterior there was a gentleness and compassion that cannot be described. He had a canny ability, too, for listening to a complicated set of facts and then picking out some one facet as the one on which the outcome would turn. To watch this process was to admire it, and then to try to emulate it, but it was more of an art acquired from long experience than a science that could be taught.

He possessed a great sense of humor, too, and many lawyers were grateful for it. One has written of an instance when a stifled guffaw from Justice Wachenfeld calmed and relaxed him during a difficult exchange with another Justice in the course of oral argument. Another has written to say that his many contacts with — and against — Justice Wachenfeld over decades of professional relationships had been brightened by that sense of humor.

At times he could be taciturn, and it was usually deliberate. After his retirement from the Bench he described his practice in conference, when preliminary views about an appeal would be explored. He said that while other members of the Court would indicate their general views and give reasons for it, he invariably gave no reason at that stage. He did this deliberately because he felt very strongly that while the taking

of a preliminary view was useful, the giving of reasons at that stage might interfere with the independence of thinking of the others. "Besides", he once said with a chuckle, "if I gave a lousy reason some other judge who would have voted with me might change his mind."

In a certain sense this recital of Justice Wachenfeld's professional life, abbreviated though it is, tends to obscure the true picture, for it seems to leave little time for personal relationships. Yet there can be no doubt that personal relationships were the wellspring of this man's life. Certainly he was dedicated to the law, but he was dedicated and devoted to his family, his friends and to all whose lives touched his, even remotely. As the young Assistant Prosecutor, later Prosecutor, he supplemented the inadequate relief laws of the 1920's by personal contributions to support the families of men he had been called upon to convict — and he went to great pains to avoid being credited with so doing. As the successful trial lawyer he gave without stint of his time and his wisdom to the young lawyers who were seeking to follow in his steps. He seemed aware from his earliest days that the main thread of life was not economic or political but personal. Despite his lifetime of exposure to economic and governmental machinery, he never lost that awareness and, in fact, it became an even larger part of him. This quality in the man has been mentioned in every response to inquiries by this Committee of people in all walks of life who had contact with him. It was reflected in his daily life and in his opinions. Perhaps Justice William J. Brennan of the Supreme Court of the United States said it best in the following response that he gave to this Committee:

"Compassion for human beings and human problems was the hallmark of Mr. Justice Wachenfeld. I saw many, many instances of this during a cherished friendship that spanned many years. But the outstanding instance in my memory is his self-revealing dissent in an adoption case in which he and I participated, *Lavigne v. Family and Children's Society of Elizabeth*, 11 N. J. 473, 483 (1953). It tells us much about him, and also teaches a lesson upon which I have often reflected. He said:

'Altering nature's pattern under any circumstances is usually precarious. To take away from the natural parents their own flesh and blood and donate that bit of humanity to others cannot be lightly undertaken. The natural law precedes our man-made code and should not be contravened unless the emergency is clear and unmistakable. The slightest doubt should be resolved on the side where one almost instinctively expects to find it.

'The uncertainties of life, the emotional disturbances, the mental strains and pressures, the valleys and the heights, will always remain to be encountered as long as one lives and pursues life's pathway. Their devious forms and variations are too complicated and numerous to be susceptible to tabulation. Our inability to predict or solve them anchors us closely to nature's intendment, with the fervent prayer we will find a guide to take us on our journey, thankful for and recompensed by the joys we recall while striving to forget the shadows and the sorrows we must silently endure.'"

We have all suffered a great loss in the passing of Justice Wachenfeld, but we find comfort in our conviction that his example will be a force for good long after the feeling of loss has disappeared.

J. Raymond Berry, *Chairman*
John O. Bigelow
Vincent P. Biunno
James D. Carpenter
Hon. Vincent S. Haneman
George Kesselhaut
Ralph E. Lum, Jr.
John H. Yauch

CHIEF JUSTICE: Thank you, Mr. Berry. Mr. Justice Schettino will respond for the Court.

JUSTICE SCETTINO: As one who was honored to serve on the Court of Errors and Appeals with Mr. Justice Wachenfeld in 1947 and 1948, I am pleased to join others who knew him well in paying tribute to this great man.

There is little more which can be said about him beyond what Mr. Berry has stated. I am reminded of the Biblical Story concerning King Solomon. The Lord, greatly pleased

by Solomon's actions, offered him whatever he desired. Solomon responded that he wished to have an understanding heart whenever he would sit in judgment of his fellow man. The Lord granted his request.

So too, Mr. Justice Wachenfeld had an understanding heart. It is for that and other stated attributes that his friends will continue to honor him in their memories.

CHIEF JUSTICE: Thank you, Justice Schettino. May I express on behalf of the Court our thanks to all members of the committee who participated in these proceedings. These proceedings will be recorded in the next permanent volume of the opinions of the Court as a permanent record of this memorial.

On December 9th, 1970, Mr. Justice Henry E. Ackerson, Jr. passed away. He served with distinction as a member of this Court, and for many years before that service he graced the trial bench. I suppose that every member of this Court had the pleasure of appearing before him. He was a devoted public servant, and our good friend. I will recognize Mr. Theodore Parsons, on behalf of the Committee, to present the memorial.

MR. PARSONS: Mr. Chief Justice and Associate Justices of the Supreme Court:

Henry E. Ackerson, Jr., Justice of the Supreme Court of New Jersey, died at Keyport, New Jersey on December 9, 1970. This Committee appears before the Court to honor and memorialize him.

Justice Ackerson devoted his life to improving the administration of justice in the courts of this State; to bettering legal education; to assisting the youth of New Jersey in securing a legal education and to providing legal services to those who were financially unable to secure them.

Henry Elijah Ackerson, Jr. was born October 15, 1880 on a farm in Hazlet, New Jersey. He resided there and at nearby Keyport all his life.

The Justice received his education in the public schools of Keyport. Upon graduation, he attended Packard Institute in New York with a view to pursuing a business career. His predilection for the law would not be denied. He matriculated at New York Law School in 1900 and during his four years there compiled an excellent scholastic record. Upon graduation, he was awarded a position as instructor and lecturer in pleadings and practice, a position which he held for the the next two years. Justice Ackerson was admitted to the practice of law in the State of New Jersey in 1904. He opened an office at Keyport. His practice prospered. From the inception of his practice of law, he became an integral member of the community in which he lived. His activities were many and varied. He became identified with the Boy Scout movement and finally received Scouting's high award, the "Silver Beaver".

He was very fond of duck shooting and fishing. He spent many days on Barnegat Bay and Great Bay duck shooting and maintained a camp in the Adirondack Mountains in New York State where he indulged in one of his favorite pastimes of trout and bass fishing. Throughout his long life, Justice Ackerson's love of the great outdoors was reflected in his personality, his vigor and his wholesome attitude toward life.

Early in his legal career, Justice Ackerson was recognized for his qualifications in the field of municipal and governmental law. He served as counsel for the Boroughs of Keyport and Keansburg and the Townships of Holmdel and Madison. In 1914 he was appointed counsel to the Board of Freeholders of Monmouth County — a position to which he was reappointed in 1918. He became active in the political affairs of his community. He was elected to the New Jersey Legislature in 1914 and was reelected in 1917 as Senator from Monmouth County.

Proud of his lineage and his Holland-Dutch forebears, Justice Ackerson became a member of the Holland Society and eventually served as its National President.

Justice Ackerson's judicial career began in 1919 when he was appointed to the Court of Errors and Appeals. He served on the Court of Errors and Appeals until 1924 when he was appointed Judge of the Circuit Court. He served as a Circuit Judge for twenty-four consecutive years and during the major portion of that period was the presiding judge of the Hudson County Circuit. His administration of the Circuit Court was noteworthy, productive and exemplary. He instituted a number of significant improvements in calendar control in an effort to save the time of litigants, jurors and lawyers. Among the improvements which he instituted was a calendar call held previous to the beginning of the trial week thereby eliminating cases that were not ready for trial or which for valid reasons were to be adjourned. On the trial bench, Justice Ackerson was in control of the trial at all times. He presided with a fairness, a courtesy and a knowledge of the law which left no doubt in the minds of those who appeared before him that they were receiving a fair and impartial trial. He was noted for his courtesy and help and assistance to young lawyers appearing before him.

In appraising the services of Justice Ackerson on the Circuit Court, Chief Justice Vanderbilt declared:

"Now is not the time nor is this the place for us to appraise his unusual judicial service to the State. We must content ourselves with observing that after four and one-half years on the Court of Errors and Appeals he became a Judge of the Circuit Court, and that in the entire history of that court no other judge has served so long — in all, twenty-four years and eight months. His service there was as distinguished as it was prolonged, as is demonstrated by the fact that more of his opinions below were adopted by the Court of Errors and Appeals and the former Supreme Court as their decisions than those of any other trial judge in our entire judicial history."

Following the adoption of the 1947 Constitution, Justice Ackerson served on the new Supreme Court for four and one-half years. These were the formative years when the framework of the new court system was being perfected with its problems of adaptation, interpretation, integration and en-

forcement. Justice Ackerson entered into this new task with enthusiasm and intense application. The combination of his legal knowledge and his practicality did much to make the new system workable from the beginning.

When the newly appointed Supreme Court had served for about a year, Justice Ackerson prepared and published in the Rutgers Law Review an article entitled "Pretrial Conferences And Calendar Control: The Keys To Effective Work In The Trial Courts". The article reveals Justice Ackerson's complete commitment to the utilization of the principles and innovations of the Constitution, the statutes and new rules in the operation of the new courts. The article was published in January 1950. The response to this article was widespread and elicited inquiries on pretrial practice from Judges, Bar Associations and Law Reviews.

The article culminated many years of interest and work in the problems of calendar control. While he was a Judge in Hudson County, Justice Ackerson had expedited and advanced the court calendar. The courts of Hudson County were among the busiest in the State and the trial calendars were long and congested. Prior to the adoption of the new Constitution, Justice Ackerson had put into practice in Hudson County a system of calendar control which was unique and which proved singularly effective. Under that system a list of cases from the calendar were placed in a trial call. At the calendar call lawyers advised the court of the cases in which the litigants were ready and able to proceed. These cases were then assigned trial dates. Where witnesses were ill or unavailable or lawyers were engaged in other trials, the cases were carried to a new call. Justice Ackerson endeavored in Hudson County to apply some of the principles of the pretrial conference.

During the four and one-half years that he served on the Supreme Court, Justice Ackerson wrote sixty-five opinions. The Justice's talent for marshalling facts is a highlight of these opinions. He had an ability to analyze the facts of a complicated case, align them in the proper order and make

their relative significance clear. In his opinions, the statement of the facts and issues before the court bore witness to his singular ability to put aside the irrelevant and redundant and reach the core of the case. His opinions are also noteworthy for the citation of precedents and the broad application of the principle of *stare decisis*. The Supreme Court was a new court operating under new and revised rules. Nonetheless, Justice Ackerson's opinions are replete with citations of earlier decisions in support of the decisions of the new court.

Upon Justice Ackerson's retirement from the Supreme Court, Chief Justice Vanderbilt said:

"And in the arduous task of setting up the new judicial establishment under the Constitution of 1947 and making it work no other judge or justice has rendered more effective service.

"We do not say 'Hail and Farewell'. Instead we wish him many years of continued fine health and great public usefulness in other fields. We shall cherish happy recollections of him as a colleague and as a comrade, while maintaining as ever our personal relations and friendship with him."

Upon retirement from the court, Justice Ackerson became more not less active. He fulfilled the expressed wish of the Chief Justice for "great public usefulness in other fields".

The Justice collaborated in the production of three volumes for the New Jersey Practice Series entitled "Skills and Methods". In the words of the authors:

"Our purpose in publishing these three volumes is to provide New Jersey lawyers with a brief but reliable guide in the many phases or legal problems which arise almost daily in a law office * * *

"The work of the editors has included laying out the plans, arranging for the authors, and co-ordinating and editing the whole * * *

"The books, we believe, will serve a useful purpose as a quick reference or 'How-to-do-it' guide."

In his labors on this work, Justice Ackerson recalled facets of his life at the Bar. In the introduction, the Justice said:

“Perhaps the greatest thrill of a lawyer’s career is when he takes his first appeal to an upper court and comes to bat for the first time in the major league of his chosen profession. To such an advocate, on such an occasion, this outline of appellate procedure is affectionately dedicated.”

This quotation clearly demonstrates the Justice’s sympathies for the young lawyer, his memory of the thrill of an appearance in an upper court and the affectionate sentiments borne by him toward members of the Bar. These were sentiments exhibited by him on many occasions during his long career.

Justice Ackerson was a prime mover in the formation and development of the Legal Aid Society of Monmouth County and served as its President for more than fifteen years. He was very active in the organization and attended meetings until shortly before his death. His dedication to the cause of legal aid to the indigent, thereby assuring equal justice for all, was an inspiration to all of the members of the Bar, and contributed immeasurably toward the success of the Monmouth County Legal Aid Society, earning for it national recognition. He was elected a member of the Board of Governors of Monmouth Medical Center and became its general counsel. The Justice gave of his time and wisdom to the Monmouth County Bar Association which elected him a trustee *in perpetuum*.

In 1952 he accepted an appointment as a trustee of Rutgers University and headed the program for the development of the law school. Justice Ackerson was possessed of great energies and he gave unstintingly of those energies to this program. When the new law school building was completed, it was named Ackerson Hall. It could not have been more aptly named.

At its 187th Commencement held on June 3, 1953, Rutgers gratefully awarded him with the honorary degree of Doctor of Laws with the following citation :

“A leader of the Bar and Bench of the State of New Jersey; a member of the New Jersey State Senate during the years 1914-1919;

Judge of the Court of Errors and Appeals of New Jersey from 1919-1924; Circuit Court Judge from 1924-1948, during which time only three of your decisions were reversed; from 1948 until your retirement in 1952, Justice of the New Jersey Supreme Court, a Bench which has distinguished itself throughout the nation for the reforms it has brought about in the procedure and administration of justice.

"You have given yourself to many civic and charitable enterprises, but above all to your profession, the profession of justice. For these things, as well as for your devotion to The State University, I am happy to confer upon you, at the direction of the Trustees, *honoris causa*, the degree of Doctor of Laws."

Justice Ackerson was a lover of justice and a friend of his fellow man. The record of his service to the Bench and Bar comprises one of the bright pages in the legal history of New Jersey.

Theodore D. Parsons, *Chairman*
Maurice A. Potter
Max Finegold
J. Frank Weigand
J. Victor Carton

CHIEF JUSTICE: Mr. Justice Francis will respond.

JUSTICE FRANCIS: The Court is grateful to you Mr. Parsons and to your committee for your participation in this Memorial to Justice Ackerson.

And we particularly appreciate Mr. Parsons participation because we know that as a Monmouth County practitioner almost from a time when the memory of man runneth not to the contrary, he more than any other member of the bar has first hand knowledge of Justice Ackerson's virtues and accomplishments. So we know that the Memorial comes not only from history but from the heart as well.

Only one member of the present Court had the pleasure of sitting on the Supreme Court with Justice Ackerson, but all of us know his worth as an Appellate Judge from the books which we must turn to constantly in our search for precedents.

But all of us knew him as a Trial Judge. In that capacity we had personal knowledge of his greatness. To hear him charge a Jury, no matter how complicated the case, was an inspiration and an education that could not be gained elsewhere. Moreover, although he was stern of mien and demanding in his requirement for decorum in the Courtroom, he was fair and courteous to everyone and tolerant and helpful to the younger and less experienced members of the bar, and to newly appointed Judges. We wish that for its eternal guidance, posterity could have the sight and sound of him as he sat on the bench.

Throughout his professional career, Justice Ackerson stood straight and tall in the service of law and justice. We shall always remember him that way.

CHIEF JUSTICE: Thank you, Justice Francis. And our thanks to you Mr. Parsons, and to the members of the Committee. These proceedings will be recorded in the next volume of the opinions of the Court.