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IN

# THE SUPREME COURT

AT

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PROCEEDINGS IN THE SUPREME COURT  
OF THE UNITED STATES

*In Memory of Mr. Justice Murphy*<sup>1</sup>

TUESDAY, MARCH 6, 1951

Present: MR. CHIEF JUSTICE VINSON, MR. JUSTICE BLACK, MR. JUSTICE REED, MR. JUSTICE FRANKFURTER, MR. JUSTICE DOUGLAS, MR. JUSTICE JACKSON, MR. JUSTICE BURTON, MR. JUSTICE CLARK, and MR. JUSTICE MINTON.

MR. SOLICITOR GENERAL PERLMAN addressed the Court as follows:

May it please the Court: At a meeting of members of the Bar of the Supreme Court, held this morning,<sup>2</sup> resolutions expressing their profound sorrow at the death of Justice Frank Murphy were offered by a committee, of which the Honorable Benjamin V. Cohen was chairman.<sup>3</sup>

<sup>1</sup> Mr. Justice Murphy died at Detroit, Michigan, on July 19, 1949. Funeral services were held in Our Lady of Lake Huron Church, and interment was in Rock Falls Cemetery, Harbor Beach, Michigan, on July 22, 1949. See 338 U. S. pp. III-IV, VII.

<sup>2</sup> The Committee on Arrangements for the meeting of the Bar consisted of Solicitor General Philip B. Perlman, Chairman, Honorable Ira W. Jayne, Honorable Frank A. Picard, Dean E. Blythe Stason, and Honorable G. Mennen Williams.

<sup>3</sup> The Committee on Resolutions consisted of Mr. Benjamin V. Cohen, Chairman, Mr. John J. Adams, Mr. Thurman Arnold, Mr. Francis Biddle, Mr. James Crawford Biggs, Mr. Prentiss M. Brown, Mr. Wm. Marshall Bullitt, Mr. George J. Burke, Justice George E. Bushnell, Mr. James F. Byrnes, Mr. John T. Cahill, Judge William J. Campbell, Mr. Emanuel Celler, Mr. James A. Cobb, Mr. Archibald Cox, Mr. Myron C. Cramer, Mr. Homer S. Cummings, Mr. Walter J. Cummings, Jr., Mr. Joseph E. Davies, Mr. John W. Davis, Mr. John R. Dykema, Mr. John S. Flannery, Mr. Edward H. Foley, Jr.,

Addresses were made to the Bar by Edward G. Kemp, Esquire, who was closely associated with the late Justice through most of his career, Judge Charles Fahy of the United States Court of Appeals for the District of Columbia, and Thurgood Marshall, Chief Counsel of the National Association for the Advancement of Colored People.<sup>4</sup> The resolutions, adopted unanimously, are as follows:

## RESOLUTIONS

We of the Bar of the Supreme Court of the United States are gathered here to commemorate the life and works of Mr. Justice Murphy, whose untimely death occurred in Detroit, Michigan, on July 19, 1949. The brief words of tribute uttered today can give but inadequate expression to the great qualities of his mind and heart. His life was indeed an abundant one, dedicated to the noblest and highest traditions of our civilization. In every step of his varied career of public service, he exhibited a passionate and selfless regard for the rights of his fellow men. We do well, therefore, to reflect upon the life of one who has enriched the history of the Court and of the Nation.

Frank Murphy was born in the village of Sand Beach, now the city of Harbor Beach, Michigan, on April 13, 1890, the third of four children of John F. and Mary

Mr. John P. Frank, Mr. William L. Frierson, Mr. James W. Gerard, Mr. Eugene Gressman, Mr. Abraham J. Harris, Mr. Edward J. Hayes, Mr. Edwin E. Huddleson, Mr. Joseph B. Keenan, Mr. Isadore Levin, Mr. Norman M. Littell, Mr. George A. Malcolm, Mr. Francis P. Matthews, Judge Thomas F. McAllister, Mr. Kenneth Dobson Miller, Mr. Gilbert H. Montague, Mr. Thomas F. Moriarty, Mr. Robert P. Patterson, Mr. George Wharton Pepper, Mr. John H. Pickering, Mr. William J. Schrenk, Jr., Judge Raymond W. Starr, Mr. J. R. Swenson, Mr. Myron C. Taylor, Mr. Maurice J. Tobin, Mr. Thomas L. Tolan, Jr., Mr. John Patrick Walsh, Mr. Charles Warren, and Mr. James K. Watkins.

<sup>4</sup> It is understood that these addresses will be published privately in a memorial volume to be prepared under the supervision of Mr. Charles Elmore Copley, Clerk of this Court.

Brennan Murphy. The father was respected as an able lawyer and as a public-spirited citizen in Huron County; he served two terms as prosecuting attorney and achieved notable success in jury cases as a private practitioner. He was also the leading Democrat in an overwhelmingly Republican community. From him the young Frank acquired an interest in law and politics, a rugged spirit of independence and a capacity for leadership. The spirituality and gentleness of the mother were of the rarest quality and it was she who endowed Frank Murphy with his deep religious conscience. The Bible which she gave him when he was graduated from high school he carried with him to his dying day and upon it he took the oaths of the high offices which he attained. His parents, devout Catholics of Irish stock, inculcated in Frank Murphy not only deep faith in his religion and genuine pride in his ancestry, but an unusual sense of security regarding his religion and ancestry. He never felt that his own religion could be hurt by the peaceful rivalry of other faiths. Nor did he think that he could add a cubit to his own pride of ancestry by disparaging that of others. From his parents he learned at an early age that true self-respect involves an abiding respect and tolerance for the rights of others, a principle that was to have a profound influence upon his political as well as his judicial work.

The early education of Justice Murphy was acquired in the public schools of Harbor Beach. There he demonstrated his natural talents as a student, an orator, an athlete, and a leader of his fellows. These talents he carried with him to the University of Michigan, where he pursued his undergraduate studies and received a Bachelor of Laws degree in 1914.

Following his admission to the Michigan Bar in 1914, he began work as a law clerk with the Detroit firm of Monaghan & Monaghan and he quickly received recognition as a promising trial lawyer. During his first years at the Bar he also taught at the Detroit College of Law.

Soon after the entry of the United States into World War I, Justice Murphy sought active service in the Army where he served as a first lieutenant and later as a captain in the Fourth and Eighty-fifth Infantry Divisions. After the Armistice he served with the occupation army in the German Rhineland. Upon his discharge from the service, he continued his legal studies at Lincoln's Inn, London, and Trinity College, Dublin. In Ireland the growth and vitality of the movement for independence enlisted his keen and sympathetic interest, and his understanding of that movement was to be of invaluable assistance to him in later years in his work with the leaders of the Philippine movement for independence.

He returned to the United States in 1919 and became Chief Assistant in the office of the United States District Attorney in Detroit. It is said that in this capacity he lost practically no cases among the many in which he participated. Notable was his work in obtaining convictions for graft and fraud against the Government on large war contracts. He also assisted the Government in the successful prosecution of the condemnation proceedings resulting in the widening of the River Rouge and which in later years made possible the development of the vast River Rouge plant of the Ford Motor Company.

It was in the election of 1920 that he made his first and unsuccessful bid for public office, the office of Congressman from the First District of Michigan. A Wilsonian Democrat, he was defeated in the Republican landslide. After his service in the District Attorney's office, a brief interlude of private law practice in Detroit ensued.

In 1923, in a spirited campaign, he was elected to the Recorder's Court, a criminal court of Detroit. Judge Murphy took an active interest in the administrative affairs of the court. He helped to make the psychopathic clinic and probation department indispensable, non-political adjuncts of the court.

The most noteworthy trial that he presided over was the Sweet murder case growing out of bitter racial tensions.

Dr. Sweet, a Negro, had established his home in a neighborhood previously reserved for whites. A threatening mob gathered near his home, frightening him and other Negroes with him. Shots were fired. A white man was killed. Dr. Sweet and several other Negroes were indicted for murder. Public feeling was inflamed against them. To administer justice in these circumstances required more than a mere crusader's zeal; it required more than book-learning. It required courage, human understanding, dignity, and a grasp of the essential principles of criminal procedure. At the trial young Judge Murphy showed that he possessed all these qualities in good measure. It is important to recall not only that the trial resulted in the acquittal of the defendants in face of public clamor, but that the community, despite its original hostility, was convinced that the trial was fairly conducted from the standpoint of the community as well as the defendants. Clarence Darrow, counsel for the defendants, later remarked that Murphy was "a judge who not only seemed human, but . . . proved to be the kindest and most understanding man I have ever happened to meet on the bench."

In 1929, he was reelected to the Recorder's Court. A year later he resigned to become the successful candidate for the office of Mayor of Detroit. As chief executive of a great industrial city struck by the full force of unemployment and depression he recognized the importance of making all citizens conscious of their interest in the continued maintenance of the orderly processes of government. His bold advocacy of the principle of government responsibility for the destitute attracted Nation-wide attention. At the same time, however, he pursued a program of rigid economy in other services of the city government. He succeeded in fulfilling his campaign pledge that "not one deserving man or woman shall go hungry in Detroit because of circumstances beyond his control." Public appreciation of his efforts was demonstrated in 1931 by his reelection as Mayor.

In 1933 he was appointed by President Roosevelt to the post of Governor General of the Philippines. He quickly gained the confidence of the Filipino people and their leaders. Because he believed in them and in their right to freedom, they believed in him and eagerly sought his counsel long after he had left the Philippines. With the inauguration of the Commonwealth Government in 1935 he became the first United States High Commissioner of the Philippines. During his three years of service in the Philippines he was instrumental in placing the fiscal affairs of the government in good order and instituted several needed social reforms, including the modern probation system and public health services.

Frank Murphy returned home in 1936 to become the successful candidate for Governor of the State of Michigan. He assumed office on January 1, 1937, and was immediately confronted with the grave problems arising out of the historic sit-down strike then in progress at the Flint plant of the General Motors Corporation. His insistence that peaceful methods be exhausted before resort to force made him the center of Nation-wide attention and controversy. Some thought that he was condoning the flouting of the law, yet he never attempted to justify or condone the sit-down strike. He delayed sending troops into the plant when the strikers refused to obey a court order so that a peaceful settlement could be obtained which would avoid the use of force that he feared would result in bloodshed and resentment rather than respect for law. He continuously sought to convince the strike leaders that it was their duty to obey the law and within a few days a peaceful settlement was obtained.

Frank Murphy was profoundly convinced that collective bargaining and the settlement of labor disputes through direct negotiation of employer and employee representatives were fundamental prerequisites to our ultimate industrial and economic welfare, and even to the preservation of our system of government. In the bitter dispute at Flint, and in those which followed, he saw a

serious threat to these objectives. Men may differ as to the wisdom and propriety of his patient restraint. But both management and labor now testify that Governor Murphy's humane action prevented bloodshed. And it seems fair to say that by avoiding the use of force he strengthened the processes of peaceful settlement of industrial disputes.

During his term as Governor many reforms were accomplished—among these a civil-service law, an occupational-disease law, a modernized corrections system, a mental hygiene program, a modernized central accounting system, and an expanded old-age assistance program. He also initiated studies with a view to the modernization of the State government, the reorganization of the tax structure, and the stabilization of the milk industry.

He was defeated for reelection in 1938 but his great talents did not lie fallow. On January 1, 1939, President Roosevelt announced his appointment as Attorney General of the United States. Impressed by the growing threat of totalitarianism to our free world he had hoped to be given a position in which he could take an active part in building up our armed strength, but like a good soldier he accepted the post to which he was assigned. During the year that he served as the Nation's chief law officer he accomplished much of more than transient importance and value. Notable appointments to the Federal bench were made on his recommendation. He proceeded firmly against corruption in the judiciary and other high public offices. He set up a committee on Administrative Law under the Chairmanship of Dean Acheson whose work has had a great effect on the development of administrative law and practice. He also set up a committee on the administration of the Bankruptcy Act under the Chairmanship of Francis M. Shea and its recommendations led to important changes and improvements in the administration of insolvent estates in the Federal courts. A Civil Rights Section was established in the Criminal Division of the Department to encourage

more vigorous use of the civil rights statutes and to centralize responsibility for their enforcement; in 1947 the President's Committee on Civil Rights stated that "the total achievement of the Department of Justice in the civil rights field during the period of the Section's existence goes well beyond anything that had previously been accomplished."

Attorney General Murphy was nominated to be Associate Justice of the Supreme Court by President Roosevelt on January 4, 1940, and he took his seat on the Court on February 5, 1940 (309 U. S. III).

Frank Murphy thus brought to the Supreme Court uniquely significant talents and experiences. He brought to it a thorough and practical understanding of the interests and longings of masses of men and women in a highly mechanized society, an alert sensitiveness to the individual rights of a free people, an exceptional comprehension of the respective roles of the executive, legislative, and judicial branches of our Government, an acute awareness of the social and economic wrongs, and a determination to translate our constitutional and legal ideals into judicial reality.

Justice Murphy's labors on the Supreme Court bore rich fruit. In the decade of his association with the Court, he made a contribution that will forever be enshrined in the hearts of those devoted to the preservation and advancement of individual liberties. Time and again he spoke eloquently on behalf of the constitutional and legal rights of the accused, the unpopular, and the oppressed. Sometimes he spoke on behalf of the Court, sometimes for a minority of the Court, and not infrequently he spoke alone. But always he reflected a humane and an understanding sense of justice.

His forthright and eloquent defense of the rights of non-conforming individuals and groups, and his burning condemnation of racism, long will cheer and inspire defenders of freedom in a troubled world. His ability to rise above the popular passions of the moment to affirm the eternal

virtues of freedom despite the transient emotions engendered by crisis and war will long stand as an example of judicial fearlessness.

At the same time, the Justice was more than a humanitarian in his judicial labors. He was a hard-headed realist, a courageous fighter for his beliefs in all matters of judicial importance. And he helped to shape significant developments in the fields of constitutional law, labor law, administrative law, Federal-State relationships, and in numerous other aspects of the Court's jurisdiction. But he will probably be remembered, as he would probably want to be remembered, for his defense of human rights and freedoms under the Constitution. While he recognized the limited role of the judiciary in a democratic society, he believed and acted vigorously and constantly on the belief that the protection of the fundamental rights of the individual to freedom of thought, speech, and religion was essential to the preservation of democracy. He was concerned to protect the individual from the abuse of both political and economic power.

It is accordingly resolved that we express our deep sorrow at the untimely death of Mr. Justice Murphy and our grateful recognition of the enduring contribution made by him to the humanizing of the law, to the vindication of human rights, and to the preservation of the ideal of freedom.

It is further resolved that the Attorney General be asked to present these resolutions to the Court and to request that they be permanently inscribed upon its record.

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MR. ATTORNEY GENERAL McGRATH addressed the Court as follows:

May it please the Court: The Resolutions which have just been read, and the addresses which were delivered earlier this morning before the Bar of this Court, have described how the late Justice Frank Murphy devoted almost his entire adult life to a most distinguished career

of public service. That career is one to which fruitful consideration will be devoted at far greater length than is possible in these proceedings. I speak with personal knowledge, as it was my great privilege to have close associations with him during the major part of his public service. I came to know and value him when he was the Mayor of Detroit, and our friendship continued when he was Governor of Michigan and when he was Governor General of the Philippines. I was United States Attorney for the District of Rhode Island during the period when Justice Murphy was Attorney General of the United States, and, being an officer of the Justice Department, of which the Attorney General is the head, our duties brought us into frequent contact. After Justice Murphy became a member of this Court I appeared here as Solicitor General of the United States.

So it is that I am here, not only to pay a deserved tribute to a predecessor in the office I now hold, but also to speak of one who was my own chief in the Department of Justice, and who was my personal friend over a long period of years. It is, I believe, rare, indeed, that one who takes part in such ceremonies in an official capacity is privileged to bring to the occasion such an intimate and personal knowledge as I do of the departed Justice in whose memory we are gathered here today.

Justice Murphy was not one of those who thought that the only necessary or proper support for judicial action was a carefully constructed edifice of precedent. He by no means ignored the past; he accorded it all the respect that he felt was its due. But his realistic humanitarianism convinced him that the problems of today must be handled in a manner that will resolve them practically. He found abhorrent and incomprehensible the idea that old forms, which might indeed have contributed effectively to the attainment of justice in the past, should be permitted to govern in current cases where their operation seemed to him to result only in injustice. "The law

knows no finer hour," he wrote in his dissent in the *Falbo* case,<sup>1</sup> "than when it cuts through formal concepts and transitory emotions to protect unpopular citizens against discrimination and persecution." Similarly, in his concurring opinion in the *Hooven & Allison Co.* case,<sup>2</sup> wherein this Court held that imports from the Philippine Islands were protected against taxation by the States during the period immediately preceding the attainment of Philippine independence, Justice Murphy supported this view as "compelled in good measure by practical considerations," as well as by the "moral and legal obligations" of the United States to those Islands. Like many great judges of the law before him, Justice Murphy subordinated strict precedent to an altogether human ideal of justice. His was an instinct which is most intimately intertwined with our basic national ideals. And I am profoundly convinced that his decisions were motivated throughout by a deep awareness of those ideals, with an ungrudging and unquestioning disregard of any personal preferences of his own that might have stood against what he felt to be required by our national principles.

An outstanding instance of this appears in his actions in the various cases concerning the religious sect called Jehovah's Witnesses, members of which were involved in cases before this Court almost constantly during Justice Murphy's tenure. Another instance is his insistence that constitutional protection be accorded Communists.<sup>3</sup> A devout Roman Catholic, he disregarded personal preferences which we all know were very dear to him in favor of what his conscience told him to be his duty as a Justice of this Court. His views on the freedoms of religion and of communication were thorough. He consistently believed that their enjoyment should be guaranteed to all persons in whatever manner indulged in except when,

<sup>1</sup> *Falbo v. United States*, 320 U. S. 549, 561 (1944).

<sup>2</sup> *Hooven & Allison Co. v. Evatt*, 324 U. S. 652, 692 (1945).

<sup>3</sup> *Schneiderman v. United States*, 320 U. S. 118 (1943).

as in the *Chaplinsky* case,<sup>4</sup> the conduct in question was so deeply offensive to other principles vital to our society that the claim to freedom as an exercise of religion could not be tolerated. Thus, for instance, the late Justice wrote in his opinion for the Court in *Hartzel v. United States*,<sup>5</sup> that:

“. . . an American citizen has the right to discuss these matters either by temperate reasoning or by immoderate and vicious invective . . . .”

Justice Murphy was humanitarian in the deepest sense. He had profound confidence and faith in, and complete respect for, the individuals who constitute society. For him it followed logically from such a belief that the personal guarantees contained in the Bill of Rights should occupy a preferred position in the constitutional scheme. These guarantees, often referred to as “civil liberties” or “civil rights,” seemed to him to merit special protection by the judiciary, so that the usual presumption of constitutionality should be reversed when the question concerned statutes impinging on these guarantees. In one of his most famous and influential opinions, written for the Court in the case of *Thornhill v. Alabama*,<sup>6</sup> the late Justice declared that:

“The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government. . . . It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should ‘weigh the circumstances’ and ‘appraise the substantiality of the reasons advanced’ in support of the challenged regulations.”

<sup>4</sup> *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942).

<sup>5</sup> 322 U. S. 680, 689 (1944).

<sup>6</sup> 310 U. S. 88, 95-96 (1940).

The same emphasis appears in his vigorous dissent from the Court's holding in the first decision in *Jones v. Opelika*.<sup>7</sup> Tersely, but solemnly, Justice Murphy declared his conviction that “If this Court is to err in evaluating claims that freedom of speech, freedom of the press, and freedom of religion have been invaded, far better that it err in being overprotective of these precious rights.”

He expressed this conviction perhaps most plainly in his dissenting opinion in *Prince v. Massachusetts*.<sup>8</sup> “In dealing with the validity of [these] statutes,” the late Justice declared:

“. . . we are not aided by any strong presumption of the constitutionality of such legislation. . . . On the contrary, the human freedoms enumerated in the First Amendment and carried over into the Fourteenth Amendment are to be presumed to be invulnerable and any attempt to sweep away those freedoms is prima facie invalid. It follows [he concluded] that any restriction or prohibition must be justified by those who deny that the freedoms have been unlawfully invaded.”

Justice Murphy was anxious that democracy should exist in action, in practice rather than merely in theory. Accordingly, he was profoundly distressed by manifestations of discriminatory treatment based on race. Governmental actions based on this factor were particularly abhorrent to him. In the *Kahanamoku* case,<sup>9</sup> which arose from the imposition of martial law in the Hawaiian Islands during the recent war, he protested strongly against the implication that the people of Hawaii, because of their racial situation, should be deprived of trials by jury. He expressed his deep feeling in these moving words:

<sup>7</sup> 316 U. S. 584, 623 (1942).

<sup>8</sup> 321 U. S. 158, 173 (1944).

<sup>9</sup> *Duncan v. Kahanamoku*, 327 U. S. 304, 334 (1946).

"Especially deplorable, however, is this use of the iniquitous doctrine of racism to justify the imposition of military trials. Racism has no place whatever in our civilization. The Constitution as well as the conscience of mankind disclaims its use for any purpose . . . ."

In the *Hirabayashi* case,<sup>10</sup> Justice Murphy expressly pointed out in his concurring opinion that "Distinctions based on color and ancestry are utterly inconsistent with our traditions and ideals." Nevertheless, he did not feel that he could declare unconstitutional the curfew order applied to persons of Japanese ancestry on our West Coast in the early days of the recent war, even though he warned that he considered that the "restriction . . . goes to the very brink of constitutional power." But further than this he could not go. When the Court in the *Korematsu* case<sup>11</sup> held constitutional the wartime removal of Japanese-Americans from the West Coast, Justice Murphy dissented. Solemnly, he declared:

" . . . Such exclusion goes over 'the very brink of constitutional power' and falls into the ugly abyss of racism.

"I dissent, therefore, from this legalization of racism. Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is unattractive in any setting but it is utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States."

The strength of his feeling on this subject never waned while he lived. In the *Restrictive Covenant* cases<sup>12</sup> and

<sup>10</sup> *Hirabayashi v. United States*, 320 U. S. 81, 110, 111 (1943).

<sup>11</sup> *Korematsu v. United States*, 323 U. S. 214, 233, 242 (1944).

<sup>12</sup> *Shelley v. Kraemer*, 334 U. S. 1 (1948); *Hurd v. Hodge*, 334 U. S. 24 (1948).

in *Smith v. Allwright*, the *White Primary* case,<sup>13</sup> he joined the Court in invalidating the enforcement of restrictions against Negroes. Similarly, in the *Steele* case,<sup>14</sup> the late Justice concurred, expressly on constitutional grounds, in the Court's decision invalidating conduct by a labor union, under the Railway Labor Act, to discriminate deliberately against Negroes because of their race. Once again, Justice Murphy gave expression to the principle that "The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color."

The importance of procedure and administration in the rendition of justice has long been recognized as fundamental. The late Justice Murphy regarded it to be the duty of the Court to insist on strict adherence to all the requirements of procedural fairness set out in Constitution and statute. His vigorous dissent in the *Yamashita* case,<sup>15</sup> objecting to "the needless and unseemly haste" of the conviction there; his strong statements in the *Lyons* case<sup>16</sup> on the extreme impropriety of admitting in evidence a second confession which was obtained after a first one had been coerced; the exceptionally clear analysis characterizing his dissent in *Akins v. Texas*,<sup>17</sup> which involved the constitutionality of the selection of a jury; his insistence on the fullest definition of an accused person's right to counsel in the *Canizio* case;<sup>18</sup> his attitude toward police search and seizure as evidenced in his *Harris*<sup>19</sup> and *Trupiano*<sup>20</sup> opinions: these and many others of his written expressions from this Bench amply testify

<sup>13</sup> 321 U. S. 649 (1944).

<sup>14</sup> *Steele v. Louisville & N. R. Co.*, 323 U. S. 192, 209 (1944).

<sup>15</sup> *In re Yamashita*, 327 U. S. 1, 26, 28 (1946).

<sup>16</sup> *Lyons v. Oklahoma*, 322 U. S. 596, 605 (1944).

<sup>17</sup> 325 U. S. 398, 407 (1945).

<sup>18</sup> *Canizio v. New York*, 327 U. S. 82, 87 (1946).

<sup>19</sup> *Harris v. United States*, 331 U. S. 145, 183 (1947).

<sup>20</sup> *Trupiano v. United States*, 334 U. S. 699 (1948).

to his awareness of and concern with the procedural protections to individual liberty.

The late Justice Murphy was a great humanitarian, who combined with his humanity and idealism a practical realism which moved him always to emphasize the need for effective solutions to actually existing problems. His practical idealism proved to be a precious endowment to the people of his City, his State, and his Nation. It is a quality all too rarely found in men. All of us have reason to feel deeply the absence of Frank Murphy from our midst.

Therefore, may it please the Court: On behalf of the Bar of this Court, who speak in this matter for all the lawyers in our land, I move that the Resolutions in memory of the late Justice Frank Murphy be accepted by the Court and that, together with the chronicle of these proceedings, they be spread upon the permanent records of this Court.

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THE CHIEF JUSTICE said:

Mr. Attorney General: It is with a satisfaction tinged with sadness that I accept on behalf of the Court the Resolutions which have just been tendered—satisfaction, because those Resolutions demonstrate the appreciation which the Bar has for the works of Frank Murphy, late Associate Justice of this Court, and the respect which it holds for his memory; sadness, because of the absence from our midst of this kindly friend and brother. It is often said in ceremonies of this nature that the esteem of one's fellows is the highest accolade which can be accorded one in the legal profession. The many eloquent expressions of regret which came from so many different elements of our Nation at his demise have been no more sincere or laudatory than your own. For one who never attempted or professed to be a "lawyer's lawyer," your Resolutions thus become the highest of praise.

Full of the proverbial Irish wit and charm, Frank Murphy created an atmosphere of warmth and friendship wherever he went. His companionship was a constant delight to those of us who shared it. Although you, Mr. Attorney General, and you, Mr. Solicitor General, have indicated the awareness of the Bar to some of his most outstanding services, I should like to recount them once again, for I believe that the essence and spirit of Frank Murphy can best be revealed by the manner in which he administered the many distinguished offices which he attained.

Frank Murphy's history is one of Government service. He held high office almost from the day he finished his graduate work in London and Dublin to the date of his death. As an Assistant United States Attorney, he prosecuted with effective vigor the graft and corruption which plague government systems. As a municipal judge from 1923 to 1930, he instituted criminal reforms in his court and won Nation-wide praise for the manner in which he conducted the *Sweet* case. This trial took place in an ugly atmosphere of race prejudice and hysteria. Your Resolutions set forth that "the community, despite its original hostility, was convinced that the trial was fairly conducted from the standpoint of the community as well as the defendants." His steadfastness was an application of a facet of his belief which remained with him always—that our democratic system insists upon equal protection for all persons, including minorities, at all times. As Mayor of Detroit, in the depression years of 1930–1933, he labored to diminish the unhappy plight of the jobless and needy.

Serving as Governor General and United States High Commissioner to the Philippines from 1933 to 1936, he won and retained the affection and esteem of the people of those Islands till the day of his death. With his assistance and counsel, necessary reforms in the government of those Islands were instituted and the transition from the status of possession to independence was made easier.

His administration as Governor of the State of Michigan from 1937 to 1938 was marked by his efforts to resolve two evils—depression and industrial strife. Both he met characteristically, the former by calling a special session of the legislature in order to obtain money to feed the starving—a function of the State he called “elementary humanity”—the latter by refusing to evict forcibly the sit-down strikers. This decision, which brought him national prominence once again, illustrated his belief in the ability of the American people to solve the most difficult problems of the day by the use of the peaceful means of negotiation and conference. Indeed, this insistence upon the measures of the conference table, rather than the bayonet, characterized his entire administration of the industrial-relations dilemma of one of our most highly industrialized States. Criticized at the time as ineffectual and too partial, that approach, in the minds of many, has been vindicated by the subsequent history of labor-management relationships.

And, as Attorney General of the United States from 1939 to 1940, he attained a large measure of renown because of the integrity and care with which his recommendations for judicial office were made. But, his proudest achievement during this period was the establishment of a Civil Rights Section in the Department of Justice to provide the full weight of the Executive Branch of the Federal Government in assuring the civil liberties of all of its citizens.

Let it not be thought, however, that this impressive list of Frank Murphy's achievements, which I have related and those characteristics which I have emphasized, derogate from the other and perhaps more routine aspects of his positions, for what ranked this man above so many of his fellow citizens was his ability to accomplish ably and to the fullest every detailed requirement of his offices, while never neglecting or forgetting his ideals. Rare is the man with courage and conviction who attains an office which will enable him to effectuate those convictions.

Frank Murphy held many such offices. Rarer still is the man who, having attained high office, is able to hold fast to those ideals without serious compromise, and yet is able to effect substantial practical achievements consistent with those ideals. Frank Murphy was such a man.

The particularized actions and positions I have cited do not completely describe the man; they remain but indicia of his character. Though he was sociable and friendly, he limited himself in joining organizations lest there be a question as to the obligations he owed those associations. Devout, he joined in opinions of this Court that protected those who most bitterly assailed the religion to which he was deeply devoted. Peace-loving, he volunteered and served his country as an infantry officer in the First World War, and indeed sought service in World War, II, because of his conviction that it was necessary to fight to preserve the democracy he loved. Tolerant, in the noncondescending sense of the word, he became the protagonist of the freedoms of those who were charged with attempting to destroy those very freedoms.

When Frank Murphy was appointed an Associate Justice of this Court in 1940, he had already prosecuted fraud in high places. He had witnessed the devastating effects of race prejudice and had battled poverty and hunger. He had assisted labor to rise to a new position of respect in the community, and had helped mediate some of the most violent struggles between management and labor. He had seen imperfections in a criminal system in this country and had assisted in the development of a foreign land from a possession to a self-administering nation. It was inevitable that Frank Murphy's frame of reference had as its centerpiece a vigilant defense of the underdog and an unassailable belief in the overwhelming importance of the individual.

Frank Murphy would have been proud of the emphasis which your Resolutions have placed on his stand on those issues which have come to be known as civil liberties issues, for he himself characterized civil liberties as “the

hallmarks of civilization" and the "finest contribution America has made to civilization." This conviction, formed in those earlier years and nurtured while on this Court, crystallized in his statement that "the law knows no finer hour than when it cuts through formal concepts and transitory emotions to protect unpopular citizens against discrimination and persecution." In his philosophy, the most important function of government in general, and this Court, in particular, was the protection of individual freedom and thought from restriction.

In our accentuation of his vigorous stand on civil liberties and labor issues we tend to forget the many other problems which received his attention. Whatever the problem, each of his votes was his considered judgment, each of his opinions a clear and careful development of the issues. It is interesting to note, for example, that almost one-third of the majority opinions he wrote for this Court were concerned with tax matters. His views on the power of both State and national legislatures to alter existing economic conditions; his belief that State statutes should not be upset merely because there was a possibility that they conflicted with federal law; his respect for the determinations of administrative tribunals all received eloquent expression in his opinions. It was in those areas of the law, however, with which his experience had made him most familiar, that he became the zealot, the protagonist, the valiant defender. I shall not repeat at this time the citations to those opinions which are still fresh in our memories. No matter what our own conclusions of the merits of his views of those famous cases, Frank Murphy's fluent and cogent presentation will ever force us to reflect on considerations which are often submerged by the stress of modern times.

Frank Murphy was, is, and, for years, will continue to be a controversial figure. Whenever and wherever democracy is lived or discussed, the problem of the individual versus the state will occupy men's thoughts and deeds. Frank Murphy's opinions, whether he was writing for

the Court, for himself and others in separate agreement, or vigorous dissent, will be censured or revered, depending upon one's own predilections. Whatever may be history's decision, however, on his wisdom or the accuracy of his fears, all who read his words will be impressed with his integrity, his courage, and his faith in the principles for which he stood.

As municipal, state, territorial, or federal executive, administrator, or judge, Frank Murphy lived by the conviction that all men, if not created in equal circumstances, must be treated equally before the law and the majority who enact the law—that all men must be given the opportunity to attain that equality of circumstance. By his life and his deeds, those ideals were nourished and grew strong. By virtue of his own character, the democracy he loved gained compassion and vigor.

Let the minutes of the Resolutions be spread on the records of this Court.