

12-1-1958

A Tribute to Judge John J. Parker-The Gladsome Light of Jurisprudence

Morris A. Soper

Fred B. Helms

Orie L. Phillips

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

Recommended Citation

Morris A. Soper, Fred B. Helms & Orie L. Phillips, *A Tribute to Judge John J. Parker-The Gladsome Light of Jurisprudence*, 37 N.C. L. REV. 1 (1958).Available at: <http://scholarship.law.unc.edu/nclr/vol37/iss1/5>

This Comments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

A TRIBUTE TO JUDGE JOHN J. PARKER— “THE GLADSOME LIGHT OF JURISPRUDENCE”†

JUDGE MORRIS A. SOPER‡

*This issue is respectfully dedicated to the memory of Judge John Johnston Parker who served his nation with wisdom, character, and devotion.**

Everyone in this gathering today will remember the shock he received on that Monday morning in March when the swift incredible news came that Judge Parker, apparently in good health, had died in the nation's capital. Everyone of us will agree that the first public session of this Judicial Conference to be held after his death should be devoted to his memory. He created this organization, he determined its policies, he shaped its lines of work, and he opened its doors to the elite of the legal profession in public office and in private practice in the five states of the Fourth Judicial Circuit, and to the fair women of their families. To all of us the Conference has been a stimulating source of interest and information in the development of important procedures in the law and a happy opportunity for personal contacts with the leaders of the bench and bar in this area. To Judge Parker it was a veritable source of pride and joy.

Somehow it seems most appropriate that Washington should have been the place of his death, for Washington stands for service to the nation and public service was the keynote of his character and his career. Fortunate it was for us and for the courts, and for the development of the law of this country, that such was the bent of his mind. No one who knew his abilities and his attainments can doubt that at any time in his career, if he had chosen to do so, he could have become a great advocate in private practice, serving large business undertakings to their benefit and his own enrichment. But he preferred the public domain. It exhilarated him to participate in significant movements for the better understanding and defense of the Constitution of the United States. He joined with eagerness in organized efforts to arouse the judges and lawyers of America to a consciousness of their responsibility

* The *North Carolina Law Review* expresses its gratitude to Honorable Morris A. Soper, Judge Fred B. Helms, and Honorable Orie L. Phillips for giving permission to publish the following speeches given by them at the Memorial Session of the Twenty-eighth Judicial Conference of the Fourth Circuit, July 1958.

† Sir Edward Coke from the Epilogue of *Commentary upon Littleton*. First Institute.

‡ Judge, United States Court of Appeals for the Fourth Circuit.

to reform the practice of the law so as to insure speedy and even-handed justice for the whole people.

That he enjoyed it all to the full was manifest; but we celebrate him today because he found his chief happiness and his principal recreation not in the power and prestige of his office nor in the amiable pursuits which other men enjoy, but in an unrelenting and persistent effort to make the law a vital instrument to serve its high purpose.

The important work of this Judicial Conference which he led during the entire twenty-seven years of its existence illustrates the point. It seems now so simple as to be obligatory that the judges in charge of the business of the courts in a large part of the country, such as our Circuit, should come together from time to time to discuss their problems and to share the information they had gathered and the methods they had found to be effective. Yet it had never been done in our circuit, or systematically in any federal circuit, until Judge Parker did it here. The idea germinated and spread. It brought home to the legal profession the need to organize the courts in an efficient, self-governing body and it put an end to the regime of the isolated judge who sat in his own little kingdom with little or no sense of responsibility to the system as a whole.

It was the same idea that led to the establishment of the Administrative Office of the United States Courts under the control of the Supreme Court of the United States. It took hold also in many states of the Union and led to the organization of their courts under the chief justice of the state as the administrative head. What Judge Parker did to promote this movement throughout the country from coast to coast will be told by another speaker, and will be retold again and again in the years to come. I content myself with saying that no other man in America did so much as he; and I like to remember that the success he had in the Judicial Conference of this Circuit led him to exert himself in the broader fields so that his shadow covered the land.

You know so well the many projects we have discussed in these meetings. You remember so well the famous men that Judge Parker brought to meet us. There is no need to detail them now. I mention only one project by way of illustration. That project concerned the Federal Rules of Civil Procedure which were promulgated by the Supreme Court under the authority of an act of Congress passed on June 19, 1934. The first preliminary draft of the Rules was prepared by an advisory committee of lawyers, of which that great lawyer, the late William D. Mitchell, was chairman. This draft was presented in 1936 at our Sixth Judicial Conference and we devoted almost our entire time to its consideration under the leadership of Mr. Mitchell and Judge Charles E.

Clark, who was then dean of the Law School of Yale University. I think it was the first public discussion of a great reform in practice in the United States courts which has been followed by similar enactments in many of the states throughout the nation. The leaders in the work were glad to accept Judge Parker's invitation to come to our meeting, because the function of the Conference as a workground for new ideas had already been recognized. I believe our participation was helpful in the formation of the final draft, and I know it was of very great benefit to our courts and our lawyers to be introduced to this great project in its very inception.

The work of the Judicial Conference such as this one is something that has been added in the past generation to the present function of the judges of hearing and deciding cases, but it has proved itself so useful and important that it is now regarded as essential to the operation of the courts. It has become a standard judicial duty that must be done. But what of the primary duty of deciding cases and writing opinions, announcing, modifying and extending the rules of law for the guidance of the profession? How did Judge Parker perform this duty? Well, primarily he was a man of action. He was not given to scholarly speeches. He said in one speech that "such scholarship as I possess is embalmed and buried in the Federal Reporter and I shall not dig it up for the purpose of displaying it here." It would be a rewarding task if it were dug up, because in the hundreds of opinions which he wrote in the past thirty-three years would be found a profile of the federal law in the greatest extension of federal power in the history of the United States.

We cannot do it today but we can show in a word the diligence with which his court performed its main duty of deciding cases. There appeared in the June issue of the *American Bar Association Journal* an article by Will Shaforth, the statistician of Administrative Office of the United States Courts, containing a table which shows the time interval between the filing of the record and the final disposition of cases heard in the federal courts of appeal in 1957. The Fourth Circuit stands at the top of the list with a period of only 3.8 months. This is about one-half of the average medium period for all of the circuits. Outside of the Fourth Circuit the shortest time in any circuit was 5.7 months, and the longest 10.4 months. It is not false modesty on the part of Judge Parker's associates to acknowledge that this achievement was due to his leadership and his execution of more than his share of the work. They kept up him with as best they could under the stimulus of his example.

It warms our hearts today to think how he would have enjoyed seeing this account of his work as Chief Judge of this Circuit.

Let me pay some tribute to the activities of the Judge in another field that also show the outstanding capacity and eagerness to serve of this remarkable man. The consciousness that he had become one of the most respected judges in the country for his work in the Fourth Circuit and that he had aroused the whole profession to the need for the reform of judicial procedure was not enough. He was in constant demand as a speaker and made hundreds of speeches in universities, law schools and gatherings of lawyers in all parts of the United States. Never were his speeches trifling efforts to entertain an audience, always they took a lofty tone which showed the true character of the man.

He was a staunch and fundamental constitutionalist; but, on the other hand, his mind was ever open to new proposals for the improvement of the law. He believed that the greatest contributions of the United States to the science of government were (1) the guarantee of basic human rights against the opposition of governmental groups and majorities, (2) the division of the national sovereignty which left matters of local law to the states, and (3) an independent judiciary as a full partner with the legislative and executive branches of the government clothed with power to interpret and guard the Constitution of the United States. He had no sympathy with the clamor in some quarters that the power of the Supreme Court to strike down legislation which in its judgment offends the general language of the due process and equal protection clauses of that instrument. He held that the power of the Court in this respect should not be impaired, even though erroneous decisions springing from the social predilections of the judges may sometimes occur. He said: "It is infinitely better that reform be delayed for a few years than that we surrender the safeguards against tyranny which are contained in the right of the court to enforce the great general clauses of the Constitution. The Supreme Court's only strength lies in the confidence and support of the people; and for that support it must depend upon the leadership and intelligence of the bar. . . . It is true that in condemning legislation as lacking in due process or equal protection, the judge must apply standards of reasonableness; but these standards are supposed to be, and generally are, those of the age in which he is living; and not his personal views. The court may make mistakes in determining or applying standards; but where the final appeal is to reason, as it is under our judicial system, mistakes will be corrected when reason has time to assert itself . . ."

He also strongly upheld the integrity of the power of the Executive in a series of speeches in which he vigorously opposed the Bricker

Amendment, which would have imposed upon international executive agreements the restrictions that are applicable to formal treaties and would have denied to any treaty the effect of internal law unless it is supported by legislation enacted in the customary form. He said: "If the time ever comes when the President and two-thirds of the Senators are willing to enter into treaties which would impair our constitutional structure or surrender the rights of citizens of this country to foreign powers, we shall have reached such a stage of national deterioration that nothing that we might write in the Constitution would do us any good [A]nd, if democracy is to survive in the world contest with communism, democracy must be efficient. We cannot afford to sacrifice that efficiency anywhere, least of all in the realm of our capacity to make war effectively and cooperate with foreign nations in preserving world peace. . . . The real issue . . . is whether we propose to take counsel in foolish fears and retreat into isolationism or whether we propose to accept courageously the leadership of the nations of the free world."

Yet, this was the man who supported every forward step to simplify legal procedures. In urging, in a series of speeches, that the states restore to the trial judge his common law power to charge the jury, and in strongly condemning a bill in Congress to curtail the powers of the federal judge, he said: "Witnesses talk about facts. Lawyers talk about facts. When the jurors get out in the jury room they talk about facts. The judge is the only disinterested lawyer connected with the trial and you will not let him open his mouth." Lashing out at a favorite target—legislative interference with judicial administration—he said: "Congress has no more right to regulate the exercise of the judicial function than the Courts or the President have to regulate the legislative function. The ideal trial atmosphere is one in which any evidence which may throw any light on the issues is liberally received and the danger of such evidence to mislead is minimized by the power of the judge to comment on the evidence and explain its bearing on the issue. Courts exist to do justice, not to furnish a forum for the display of skill or eloquence; and, if justice is to be done, someone must be charged with responsibility for its administration and given power commensurate with the responsibility."

What a variety of weighty subjects Judge Parker found time and energy to examine and discuss as by-products of the performance of his judicial office. He spoke, amongst other things, of: Courts and Constitutional Law, Practice and Procedure in the Administration of Justice, Banks and Banking, Bankruptcy, Patents, Evidence, Juries, Habeas Corpus, Legal Ethics, Sociology, International Organization, War, Jurisprudence, and Democracy; and he enriched the literature of all

these subjects in their legal aspects. What he had to say might well be collected for the instruction and encouragement of all men of noble purpose in these fields.

There are speakers on this program who will speak of Judge Parker on other lines and you and I are eager to hear what they may have to say. But first, let me characterize our friend and leader in a phrase. When these poor words of mine were in preparation my secretary brought me a title page on which was written: "Tribute to Judge John J. Parker—The Gladsome Light of Jurisprudence." The phrase is taken from the epilogue of Coke's Commentary upon Littleton. Whatever its context in the original work, I accept it as a true description of the man we all revere. His was a light that shone gladly, even brilliantly, whenever occasion arose to support and refine the institution of the law that he loved; it shone with full vigor and authority as he sat on the bench in his own impressive embodiment as the Chief Judge of our Circuit; it shone with warmth and affection, indeed with tenderness, in his personal relationships with his colleagues through many happy and unforgettable years—and it will shine always in our hearts.

* * * * *

FRED B. HELMS*

It has been said that "The greatest man is he who chooses the right with invincible resolution; who resists the sorest temptations from within and without; who bears the heaviest burdens cheerfully; who is calmest in storms, and most fearless under menace and frowns; and whose reliance on truth, on virtue, and on God, is most unfaltering."

John Johnston Parker from birth was destined for greatness. He was descended from a virtuous and noble ancestry to which he added in generous measure his own virtue and nobility. He was richly endowed by nature with a strong body and a massive brain. He was born and nurtured in a healthy atmosphere, surcharged with the unchanging principles of truth, honesty, courage, ambition, the brotherhood of man and the fatherhood of God. Early in his life he embraced, and throughout his career strengthened, an abiding faith in the wisdom, and the sufficiency of the Eternal God and truth as revealed to humankind in the Scriptures. This was not merely the foundation of his religious convictions and practices, it was the foundation of his philosophy of law, of government and of life. His convictions and his philosophy were eloquently stated by him in 1957, upon the presentation to him by the National Conference of Christians and Jews of a medal for distinguished service in the promotion of the brotherhood of man, when he said:

* Past President of the North Carolina Bar Association.

This doctrine of brotherhood is not a mere sentimental matter, as some so vainly imagine, but a profound philosophy of human relationships It is based upon the concept that there is one God, the loving Father of all mankind, and that we all are His children and of equal value in His sight. Democracy is but the recognition of this great truth; for democracy, my friends, is not a mere form of government. It is a philosophy of life—a philosophy based upon the worth and importance of the individual man—a philosophy which believes that institutions exist for men, not men for institutions, and that the happiness of the poor and the humble is of as much importance as the happiness of the great and the proud. Our country came into existence proclaiming this philosophy as her confession of faith And the greatness of our country is that she still holds to this philosophy. She is great, not because of the strength of army or navy or air force—not because of the wealth of field or forest or mine or factory—not because of the splendor of her cities or the culture of her institutions of learning, but because in her heart of hearts she still believes in the sovereignty of the individual soul and the open door of opportunity for every man. Freedom of thought, freedom of speech, freedom of conscience—the right of every man to be secure in his person, and in his home, against unreasonable exercise of power, the right to public trial and to be confronted by one's accusers, the right not to be deprived of life or liberty or property but by the law of the land—the general law, which hears before it condemns, proceeds upon inquiry and renders judgment only after trial—these are the things that make America great; and these are but the application in the realm of government of the principles of democracy, the spirit of good will and brotherhood, and of equal opportunity under the law.

Our Constitution . . . has embodied this philosophy in the framework of our government as the fundamental law of the land; but we must ever remember that freedom lives, not in a written document, but in the minds and hearts of the people, just as the music of a symphony is not in the written score but in the understanding of the men who play the instruments. Freedom, if it is to live, must be and remain a vital force in the life of the community. Freedom of thought and freedom of speech must be preserved; all men must have equal rights under the law; all men without regard to race or religion or color and any other circumstances.

As a student, as a lawyer, and as a jurist, Judge Parker was never content, merely to enjoy his endowments or the fruits of his labors. On the contrary, he assiduously pursued the task of developing and adding to his abundant resources and to the work of making the benefits of his services an ever-increasing blessing to mankind. His amazing accomplishments in the multiple activities of his busy life can be properly evaluated only by history, and sufficiently appreciated only by a dis-

cerning posterity. He was a completely dedicated public servant. He epitomized and confirmed the practical wisdom stated by The Eternal two thousand years ago when He said: "He that is greatest among you must be servant of all." At the funeral service in the little Episcopal church in Charlotte where he had been an active and devoted member, Bible teacher and officer, for more than thirty years, some were momentarily shocked as the minister, in his prayer, referred to our departed friend as "Thy servant John," rather than as "Judge Parker," but the shock was changed to admiration and appreciation as one realized that the minister, in referring to him as the servant of The Most High was expressing the finest compliment and recording the greatest honor which can come to a human soul. Moreover, the prayer from the "Book of Common Prayer" was especially fitting as the minister led the congregation saying:

Remember Thy servant, John, O Lord, according to the favor which Thou bearest unto Thy people, and grant that, increasing in knowledge and love of Thee, he may go from strength to strength, in the life of perfect service, in Thy heavenly kingdom; through Jesus Christ our Lord, who liveth and reigneth with Thee and the Holy Ghost ever, one God, world without end.

Within the limitations of this program, one could easily occupy the allotted time on any one of the many segments and activities of the career and life of this remarkable man, as a brilliant student, a successful lawyer, a Trustee of the University of North Carolina, as a leader in the American Bar Association and in the American Law Institute, and as a national and international jurist. In the galaxy of the great in all of these areas the star of no one shines more brightly than that of John Johnston Parker. His devotion, his zeal, his untiring activities, and his superb leadership and contributions in all of these areas are faithfully and comprehensively catalogued and recorded in the minutes of the Memorial Services in the Court of Appeals of the Fourth Circuit at Richmond, Virginia, as presented by three of his close, personal friends, Justice William H. Bobbitt, of the North Carolina Supreme Court, Honorable Frank P. Graham, former President of the University of North Carolina, and Honorable Francis E. Winslow, a classmate at the University of North Carolina. With the permission of the Conference, these three minutes, copies of which are appended hereto as addenda, will be recorded in the records of this Conference, of which Judge Parker was the guiding genius, both in creation and in operation.

As a jurist, Judge Parker adhered faithfully to the constitutional foundation of our Federal Government. His knowledge of law was so profound and his innate moral and intellectual honesty was so robust.

that he could not stray from the fundamental principles upon which our Republic is founded. His wide experience and his wise foresight as a judge, and the clarity of his concepts as a scholar, would not have permitted him to have tampered with the delicate but fundamental balance of power between the three coordinate branches of our central government. He had no patience with "judge-made legislation." He was equally inhospitable toward and intolerant of any attempt by the Executive or the Legislative to invade the Judicial. His views on some of these fundamentals were clearly and forcibly stated in the White Lectures which he delivered before the University of Virginia in 1940, wherein he said:

The Constitution is to be interpreted as a charter of government, not as a contract; and its meaning is to be ascertained, not merely by inquiring what was in the minds of its framers, but by considering the principles which it embodies in the light of the history of the nation and the needs of the social organism The Constitution is the formulation and expression of the legal principles upon which sovereignty is exercised. They must be interpreted and applied to changing conditions, and one of the highest functions of the judiciary is to so interpret and apply them

And with respect to the power to hold statutes unconstitutional, he said:

In the exercise of this power, the courts should proceed with great caution and accord due respect to coordinate branches of government. They are given no power to legislate or to substitute their views as to what is wise and expedient for the views of the legislature.

As a jurist, he ranks with not only the greatest of his time, but also with the leading jurists of all time, in both national and international jurisprudence. His participation in and his contributions to the greatest international experiment in jurisprudence in history, at Nuremberg have been acclaimed by the others who participated in that epochal event. His character as a jurist, as well as a man, was quietly but dramatically illustrated in his refusal to join with Russian members of the court in a toast to the conviction of the war criminals in the Nuremberg court over which they and Judge Parker were presiding. Such lofty concepts and such unswerving fidelity to justice characterized his every act as a judge, regardless of whether the case before him was relatively minor or of international importance, and irrespective of whether the litigant was the humblest citizen or the most powerful corporation.

With Gladstone, Judge Parker at all times maintained that "Justice delayed is justice denied." Next to his accomplishments in his distinguished judicial career, Judge Parker's greatest work was in improving the administration of justice in both federal and state courts. He was Chairman of the Judicial Section of the American Bar Association in 1937-1938, when Arthur T. Vanderbilt was President of the Association, and with Vanderbilt inaugurated the program for improving the administration of justice, which has had wide influence throughout the country. For seven years he served as Chairman of the Special Committee of the American Bar Association charged with the advocacy of the program of improvement. In this program, and in related areas he served on numerous other important committees and organizations. His matchless contributions earned for him in 1943 the American Bar Association Medal for "Conspicuous Service in the Cause of American Jurisprudence," which is the highest honor bestowed by the American Bar Association. After the adoption of the many reforms advocated by Judge Parker and the "Parker Committees," including the Federal Rules of Civil and Criminal Procedure, and including pre-trial practice and procedure in the federal courts, he turned his interest and activities toward the improvement of the administration of justice in state courts. He gave unreservedly of his time and talents to this work. He traveled throughout the country for conferences with state leaders, and for speeches to state bar associations and other state organizations which were interested in the modernization of procedure and the improvement of the administration of justice in state courts. His interest and activities extended to probably every state in the Union. His leadership and inspiration, in large measure, have been responsible for the adoption of rules of procedure similar to the Federal Rules, and other improvements by many of the states, including his native state of North Carolina. With due recognition to the other leaders in America who shared his zeal and participated in his work, it can be properly said that no one has done more to improve the administration of justice in America in our history.

The decision by the Supreme Court of the United States in *Brown v. Board of Education of Topeka*,¹ precipitated in the South in particular and in the country in general, a grave crisis—the most serious since the Civil War. No man in America has done more to steer the South and the country along lines of moderation than Judge Parker did by his clear analysis of the decision in *Brown v. Board of Education*.²

¹ 347 U.S. 483 (1954).

² 132 F. Supp. 776 (E.D.S.C. 1955).

In his decision in *Briggs v. Elliott*, the Clarendon County, South Carolina case, he said:

Whatever may have been the views of this Court as to the law when the case was originally before us, it is our duty now to accept the law as declared by the Supreme Court.

Having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the federal courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals.³

Judge Parker had a passionate devotion to our three fundamental institutions—the family, the church, and government. With Henry Ward Beecher, he could say:

If God has taught us all truth in teaching us to love, then he has given us an interpretation of our whole duty to our households. We are not born as the partridge in the wood, or the ostrich of the desert, to be scattered everywhere; but we are to be grouped together, and brooded by love, and reared day by day in that first of churches, the family.

The secret of his amazing stamina and his prodigious amount of work, without any hobby or relaxation in golf or other sports, inhered in the happiness and joys which he had in his family and in his home. While the intimacies of his family circle and family life should not be invaded in public address, it can be said with becoming propriety that as a husband, as a father, and as a grandfather, he never grew old, but in the freshness and the vitality of unbounded affection he nurtured and was nurtured by his loved ones, and from this inexhaustible fountain

³ 132 F. Supp. at 777.

he derived the inspiration and the strength for the heavy burdens and responsibilities of his distinguished career. Even the one break in his family circle—the accidental and tragic death in an automobile collision of his brilliant son, John Johnston Parker, Jr.—failed to undermine his faith, but he could say with Bryant that:

Difficulty is a nurse of greatness—a harsh nurse, who rocks her foster children roughly, but rocks them into strength and athletic proportions. The mind, grappling with great aims and wrestling with mighty impediments, grows by a certain necessity to the stature of greatness.

It has been said that behind every great man is a great woman. Of Judge Parker it can be truly said that in his life there were two great women—his noble mother and his devoted wife. His mother nurtured him in the principles which were the guiding stars of his life. His wife, by her constancy, her love, and companionship, sustained him throughout his busy career.

Those who shared the rich treasures of his friendship are unwilling to entrust these treasures to the uncertain and inadequate limitations of language, but rather prefer that they shall continue to repose in the eternal and expanding capacities and understanding of the heart and soul of each of his friends.

How shall one conclude these altogether inadequate expressions of the thoughts, the admiration and the affection of all of us for our friend who has gone on, but who is still with us? To all of us as lawyers, the answer is found in the last paragraph of the speech which he was to have delivered at a dinner of the United Nations League of Lawyers in Washington on March 18, 1958, which was the day after his death, and which was his last word to his fellow lawyers, as he said:

This, if I may repeat, is the challenge that comes to the lawyers of today. May we go forward together, not merely today and tomorrow, but in all the years that lie ahead, leading the free world toward the attainment, not merely of world order, but of world order based on law and on those eternal principles of human liberty which are the chief glory of the Western World.

Judge Parker had a real zest for the ocean. Summer after summer at Myrtle Beach he could be seen in the surf. He loved to breast the waves of the sea and of life; so in seeking some final word which Judge Parker would have wished to say to this Conference, one comes, inevitably, to these words of Tennyson:

Twilight and evening bell,
And after that the dark!

And may there be no sadness of farewell,
When I embark;
For tho' from out our bourne of Time and Place
The flood may bear me far,
I hope to see my Pilot face to face
When I have crossed the bar.

HON. ORIE L. PHILLIPS*

I appreciate very much the privilege you have afforded me of joining with you in paying tribute to your beloved friend and my beloved friend, Judge John J. Parker.

It could be well said that the excellent character, the superb attributes of mind and heart, and the fine quality and high order of judicial service which Judge Parker rendered over a period of more than 32 years speak for themselves far more eloquently than any mere words I can command on this occasion. But the character and the quality of public service rendered by Judge Parker disclosed attributes of mind and heart and character which we may fittingly refer to on this occasion.

He was appointed United States Circuit Judge on October 3, 1925. He had practiced law for 16 years. His professional experience was wide and varied. He was an able trial lawyer and advocate. I briefly refer to these facts because, in my opinion, service at the Bar and a broad background of experience in the every-day affairs of life are important qualifications for judicial service.

My acquaintance with Judge Parker began early in 1930. As I came to know him better, I found in him a man with a broad understanding of human nature and human frailties and a deep sympathy for his fellow man; a man with a wealth of common sense and sound judgment, ripened and seasoned by a long and broad experience; a man who loved justice and ordered liberty under law and who hated wrong and oppression; a man who understood, believed in, and appreciated American institutions, the American system of government, and the American way of life.

A more intimate acquaintance and association with him led me to find in him a man learned in the law and learned in the ways of men, standing firmly for truth and virtue, and uncompromisingly against falsehood and wrong. Patient, when forbearance was required. Swift, when dispatch was possible. Insensible to the attack of the demagogue or the blandishments of the flatterer. Striving always to square his official actions with the dictates of his own conscience and his high conception of even-handed justice. Fearless, wise and just. To the arrogant, he was adamant, to the timid, reassuring, and to the ignorant,

* Former Chief Judge United States Court of Appeals for the Tenth Circuit.

merciful. As a judge, he never shirked a duty, however unpleasant, distasteful, or laden with unpopularity. He never usurped power, but neither did he fail to exercise it when it existed and the occasion demanded its exercise. On those occasions when it would have been easier to pass a bitter cup, an experience which doubtless comes to every judge, and the alternative was to fail in a duty, he neither shrank nor hesitated, but resolutely discharged the duty that fell upon him.

My acquaintance with Judge Parker over a long span of years ripened into an intimate and lasting friendship, which I highly esteemed and which I shall ever cherish. We were contemporaries in the literal sense of that term, having been born on the same day, month and year.

When Judge Parker's nomination for Associate Justice of the Supreme Court by President Hoover in 1930 failed of confirmation I wrote him a letter calling to his attention an observation made by President Jackson in the latter days of his life. Shortly after Martin Van Buren had taken the oath as President of the United States and Taney had become Chief Justice, President Jackson said to a friend: "I have lived to see my rejected nominee for Associate Justice of the Supreme Court of the United States, as the Chief Justice of that Court, administer the oath of office to my rejected nominee as Ambassador to the Court of Saint James, as the President of these United States. Sir, I am satisfied." At that time I hoped and confidently expected that it would be only a matter of time when Judge Parker would be appointed either Chief Justice or Associate Justice of the Supreme Court. Judge Parker would have graced the Supreme Court of the United States. He was eminently qualified to fill the office of Chief Justice or Associate Justice and he would have served in those offices with outstanding ability, honor, and distinction. But the wheel of fortune did not turn his way.

It may have been providential that Judge Parker was destined to remain the Chief Judge of the Fourth Judicial Circuit. On more than one occasion I told him that the service he rendered on his court, in the American Law Institute, in the organized bar, on the Judicial Conference of the United States and on important committees of that Conference, as alternate member of the International Military Tribunal, and by his outstanding public addresses, constituted a greater and more important contribution to the improvement of the quality of justice, both civil and criminal, and its administration in both the state and federal courts of the United States, and to the establishment of international law and justice in the world, than he could have rendered as a member of the Supreme Court of the United States.

Judge Parker was the father of the Judicial Conference. It was largely due to the fact that he had held Judicial Conferences in his own circuit prior to the enactment of the Act of August 7, 1939, providing for "The Administration of the United States Courts," and had demonstrated the wisdom and value of such circuit conferences, that there was incorporated in that act a provision requiring such circuit conferences to be held annually in each circuit. His service on the Judicial Conference of the United States covered a long span of years. He served on many important committees of that Conference. Because of his sound judgment, ripened by long experience, his great energy and his ability to get to the heart of a problem and arrive at a sound conclusion, his contribution to the work of the Conference was of outstanding value.

No man in his time and generation did more to bring about exact, expeditious and impartial justice under law, both substantive and procedural, than did Judge Parker.

Judge Parker's opinions were clear, concise, logical and learned. As was said of another great jurist, his opinions exhibited "genius, and learning and consummate skill, moulding each thought, obedient to the will."

Judge Parker's warm human qualities, his genial personality, and his humility, along with his great ability, won for him the respect and affection of his brothers of the bench and the bar. Surely, no one had a wider circle of friends or was more highly regarded by the judges and lawyers of America than Judge Parker.

It has been truly said that "the highest award, aside from the approval of his Heavenly Father and his own conscience, vouchsafed to man in this mortal existence is the approval of his course and acts by those of his fellow citizens whose character, knowledge, and wisdom qualify them to judge his course and his acts." Judge Parker richly deserved and was accorded that award. One of the many manifestations of that fact was the award made to Judge Parker in 1943 of the American Bar Association Medal for conspicuous service in the cause of American jurisprudence. And I am certain, also, that Judge Parker, Christian gentleman that he was, has now received the approbation of his Heavenly Father.

A reading of many of the opinions of Judge Parker throughout the period of his judicial service has led me to conclude that he earnestly endeavored to make the law so living and dynamic as to meet the needs of a modern and complex society and yet so constant in its principles and their applications as to enable men to know the rules that condition

their acts and the legal consequences of their contractual and other obligations.

The perpetuity of American institutions and the preservation of individual freedom and ordered liberty under law depend, in a large measure, upon the maintenance of judicial establishments, presided over by judges who are able, conscientious, fearless, honest, competent and just; where the humblest citizen may resort, when his property, his liberty, or his life is threatened, and, calling to his aid the principles of right and justice embodied in the Constitution and the law, may defy the multitudes, knowing that the sword and shield of the law will afford protection to his rights and the restraining hand of equity will stay those who would encroach thereon; where rich and poor and high and low alike may confidently meet any adversary, knowing that right and justice will align their strength with him whose cause is just. Could we always be assured of judges of the character, courage, and learning of Judge Parker, we could rest confident that such judicial establishments will be maintained.

Mr. Webster, in his eulogy of Mr. Justice Story, said:

Justice, sir, is the greatest interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society.

The quality of the judicial service by Judge Parker connects him, "in name, and fame, and character, with that which is and must be as durable as the frame of human society."