

4-1-2012

## Bringing Nuremberg Home: Justice Jackson's Path back to Buffalo, October 4, 1946

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### Recommended Citation

John Q. Barrett, *Bringing Nuremberg Home: Justice Jackson's Path back to Buffalo, October 4, 1946*, 60 Buff. L. Rev. 295 (2012).

Available at: <https://digitalcommons.law.buffalo.edu/buffalolawreview/vol60/iss2/4>

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## MITCHELL LECTURE ESSAYS

### **Bringing Nuremberg Home: Justice Jackson's Path Back to Buffalo, October 4, 1946**

JOHN Q. BARRETT†

During one permanently consequential decade in the history of the United States and the world, United States Supreme Court Justice Robert H. Jackson delivered three major lectures at the University of Buffalo. The last of

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This Essay is based on the James McCormick Mitchell Lecture that I was honored to deliver at SUNY Buffalo Law School on October 4, 2011. I am very grateful to the late Mr. Mitchell and his family and friends for endowing this lecture series; to Dean Makau Mutua, Vice Dean Ilene Fleischmann, Professors Kim Diana Connolly, Alfred S. Konefsky and Tara J. Melish, and their colleagues and students for planning and hosting a superb program; and to my fellow lecturers Eric L. Muller and Mary L. Dudziak for their company and wise comments. I also thank Fred Konefsky, William Offhaus, and Karen L. Spencer at the SUNY Buffalo Archives Special Collections; Marcia Zubrow and Terrence McCormack at SUNY Buffalo's Charles B. Sears Law Library; Cynthia Van Ness at the Buffalo & Erie County Historical Society; Katherine S. Bifaro at the Erie County Bar Association and their respective colleagues for excellent assistance with archival research in Buffalo; Jeff Flannery, Daun van Ee, and their colleagues for the same at the Library of Congress Manuscript Division; Gregory L. Peterson, Stan Lundine, and all of our colleagues at the Robert H. Jackson Center for vision, commitment, and constant assistance; Justice Jackson's family for unstinting support; and all of the foregoing for generous friendship.

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these, widely known then and now, was Jackson's May 9, 1951, James McCormick Mitchell Lecture, "Wartime Security and Liberty Under Law," which inaugurated this distinguished lecture series.<sup>1</sup>

Justice Jackson's first formal lecture at the University of Buffalo occurred on February 23, 1942, halfway through his first year as a Supreme Court Justice and just twelve weeks after the attack on Pearl Harbor had brought the United States into World War II. Jackson delivered this speech, entitled "Youth Faces 'The New Order,'" in Edmund Hayes Hall at the University's forty-second annual mid-year convocation. In the lecture, Jackson, intrinsically pacific and by experience no warrior, spoke very candidly as a high official of a country at war, facing uncertain, perhaps bleak prospects for the future.<sup>2</sup>

The second, the middle, of Justice Jackson's three University of Buffalo lectures occurred on Friday, October 4, 1946, at the closing ceremony of the University's centennial convocation. Jackson, who wrote all of his own speeches (and also his judicial opinions), gave this one no title. It did not need one. Who Justice Jackson was, and where he had come from at that moment—he came to Buffalo then directly from the just-completed international trial of Nazi war criminals at Nuremberg, which he had brought into being in fall 1945 and where he had served for the ensuing year as U.S. chief prosecutor—was obviously his identity and his topic, and it was part of what made his speech so powerful to its audience and very significant in its time.

## I. JACKSON'S PATH, 1892-1945

### A. *Birth to Buffalo*

Robert Jackson's early life path ran more or less from the American wilderness to Buffalo, one of the nation's biggest cities. In 1892, he was born on the family farm in Spring Creek Township in Warren County, Pennsylvania. Before the turn of the century, the Jackson family moved

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1. See Robert H. Jackson, *Wartime Security and Liberty Under Law*, 1 BUFF. L. REV. 103 (1951).

2. See *Grim Choice Faces U.S., Says Jackson*, BUFFALO COURIER-EXPRESS, Feb. 24, 1942, at 7; *Drop Comfort and Get Tough, Says Jackson*, BUFFALO EVENING NEWS, Feb. 24, 1942, at 16 (United Press Wire Report).

north, settling just above the state line in Frewsburg in Chautauqua County, New York. After graduating from Frewsburg High School in 1909, Jackson spent the next year commuting north by trolley to Jamestown, New York, where he attended Jamestown High School and earned a second diploma in June 1910. That fall, Jackson, age eighteen, went to work as an apprentice, “reading the law” in the office of two Jamestown attorneys, Frank H. Mott (who had studied law at Buffalo Law School) and Benjamin S. Dean. The next year (1911-12), Jackson effectively transferred into Albany Law School—it gave him credit for his apprentice year in Jamestown, a year of “senior” courses, and high grades, but, to his surprise on the eve of graduation, only a certificate of completion rather than a law degree because he was not yet twenty-one years old. In summer 1912, Jackson returned to Jamestown and worked again for Mott and Dean. The next year, having completed three years of law training and having turned twenty-one, he was admitted to practice in New York.<sup>3</sup>

Jackson’s early law practice soon impressed a leading lawyer who recruited him to Buffalo. Beginning in 1913, Jackson’s practice was based in Jamestown, but he handled legal matters, including many trials, throughout western New York State. On one occasion, he caught the eye of newly-appointed New York State Supreme Court Justice Charles B. Sears.<sup>4</sup> More than thirty years later, Judge

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3. See John Q. Barrett, *Albany in the Life Trajectory of Robert H. Jackson*, 68 ALB. L. REV. 513, 513-29 (2005).

4. Charles Brown Sears (1870-1950), born in Brooklyn, earned degrees from Yale University (A.B., 1892) and Harvard University (LL.B., 1895). He settled in Buffalo and practiced law with various firms including, beginning in 1901, Norton, Penney, and Sears. In 1917, he was appointed to the New York State Supreme Court, to which he was elected later that year and reelected in 1931. In 1922, he was assigned to the Appellate Division, Fourth Department, where he served as Presiding Justice from 1929 until January 1940. He then was appointed to the New York Court of Appeals, where he served until reaching the mandatory retirement age at the end of the year. He later presided, by appointment of United States Attorney General Robert H. Jackson, at deportation hearing proceedings concerning labor union leader Harry Bridges and, by appointment of President Truman in 1946, as a judge at one of the subsequent trials in Nuremberg. See generally New York State Supreme Court, Appellate Division Law Library Portrait Collection Biography; *Charles B. Sears, Jurist, Dies at 80*, N.Y. TIMES, Dec. 18, 1950, at 31. I thank the Honorable Salvatore R. Martoche, New York State Supreme Court, Appellate Division,

Sears, who from this start became a Jackson mentor and friend for life, recalled that,

[i]t was in 1917 when I was holding my first trial term in Chautauqua County. I am not sure [Jackson] tried a case before me at that time but he either did so or was in the court on return[?] matters. I had a number of talks with him at that time and was impressed then (I think) by his interests in trial practice in general as distinguished from an interest in merely local matters + local personalities.<sup>5</sup>

Justice Sears knew that his former law firm in Buffalo, once called Norton, Penney, Spring, and Moore but more recently reconstituted as Penney, Killeen & Nye, was looking for a “trial man.” The firm defended a substantial amount of tort litigation for its principal client, the International Railway Company, Buffalo’s street car company. Partners Thomas Penney, Henry W. Killeen, and Olin T. Nye were among Buffalo’s leading attorneys and citizens—Mr. Penney, for example, as Erie County (Buffalo) District Attorney in 1901, had prosecuted successfully the assassin of President William McKinley. On Sears’s recommendation, his former partners offered a position to Jackson, age twenty-five.

Almost four decades later, Jackson recalled that he originally met Judge Sears by trying “a small negligence case before him” in Mayville, the Chautauqua County seat.<sup>6</sup> As Jackson recalled it,

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Fourth Department, for providing much of this biographical information on Judge Sears.

5. Letter from Charles B. Sears to Eugene C. Gerhart, at 1 (Aug. 31, 1949) (photocopy) (Eugene C. Gerhart Papers, Robert H. Jackson Center). In an earlier letter, Sears wrote, “I know [Jackson] impressed me by an interest in things legal outside the narrow ambit of the particular county. He was young + vigorous but there was little to foretell his distinguished later career.” Letter from Charles B. Sears to Eugene C. Gerhart (estimated date July/Aug. 1949) (photocopy) (Eugene C. Gerhart Papers, Robert H. Jackson Center). In 1949, Gerhart had requested Judge Sears’s recollections of Jackson as part of Gerhart’s research for a Jackson biography. See EUGENE C. GERHART, *AMERICA’S ADVOCATE: ROBERT H. JACKSON*, at xi (1958); see also EUGENE C. GERHART, *SUPREME COURT JUSTICE JACKSON: LAWYER’S JUDGE* (1961).

6. COLUMBIA UNIVERSITY ORAL HISTORY RESEARCH OFFICE, *THE REMINISCENCES OF ROBERT H. JACKSON* 135 (Dr. Harlan B. Phillips, ed., 1955) [hereinafter *JACKSON ORAL HISTORY*].

[t]he result was that Judge Sears asked me if I wouldn't be interested in going to Buffalo to try cases for a law firm that handled the legal business for the International Railway Company. He had formerly been a member of the firm. He thought the experience would be very good for me. At the time they were looking for a trial man, and he thought he could recommend me as a prospect. I felt very much flattered at this since he was regarded as one of the best trial lawyers in our part of the state.<sup>7</sup>

### B. *Buffalo Law Practice*

The exact dates of Jackson's residency and law practice in Buffalo are elusive. In late 1916, a newspaper reported that Jackson's wife (Irene Alice Gerhardt Jackson) was one of the "prominent Buffalo women" who escorted the First Lady, Edith Bolling Wilson, as she accompanied her husband President Woodrow Wilson on his October 31, 1916, campaign stop in Buffalo.<sup>8</sup> Buffalo's 1918 directory lists Robert Jackson as residing at 49 Johnson Park, an apartment building on a lovely pocket park near the heart of downtown.<sup>9</sup> He and Irene seem to have lived in Buffalo for a year or two between late 1916 and fall 1918.<sup>10</sup>

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7. *Id.*

8. This information comes from part of a morning newspaper article, headlined *Mrs. Wilson's Escort* (copy on file with the *Buffalo Law Review*), that Irene Jackson's sister Elizabeth Gerhardt pasted into a scrapbook without noting the date or the name of the paper. The article describes planned events—a women's committee hosting Mrs. Wilson in Buffalo's Iroquois Hotel while President Wilson held a reception in its ballroom; the President then meeting at the Hotel both the committee on arrangements and the women's committee hosting Mrs. Wilson; and the women then escorting the First Lady to her seat on the Broadway auditorium stage from which the President spoke—that occurred later in the day on October 31, 1916. See, e.g., *Wilson Deplores Partisan Bias in Foreign Crisis*, N.Y. TIMES, Nov. 2, 1916, at 1 (describing the President's Buffalo speeches). The scrapbooked article erroneously refers to "Mrs. Robert A.[sic] Jackson." And in 1916, neither Robert H. Jackson nor Irene G. Jackson was prominent or from Buffalo.

9. See THE BUFFALO DIRECTORY 738 (1918).

10. See Letter from Harold Stuart Brown to Irene G. Jackson (Oct. 11, 1954) (Robert H. Jackson Papers, Library of Congress, Manuscript Division [hereinafter Jackson Papers, LOC], Box 6, Folder 2) ("[T]he happy days in Buffalo, when we [Robert Jackson and Mr. Brown] were trying street car cases together . . . Jean and I remember you so well. When you first came to Buffalo

Jackson's employer, Penney, Killeen & Nye, was located on the eighth floor of the Ellicott Square Building.<sup>11</sup> (When this building, designed by architect Daniel H. Burnham, opened in 1896, it was the largest office building in the world). Young Jackson worked primarily under the supervision of Henry Killeen, twenty years Jackson's senior, who previously had served as Buffalo's city attorney.<sup>12</sup> In the early 1950s, Justice Jackson recalled this Buffalo law practice as follows:

I was there one [court?] term and tried many cases, practically all of which were defending the International Railway in negligence suits. It was a mass litigation proposition. Three of us [young lawyers] were engaged in defending [New York State] Supreme Court cases, and we had an agreement with the Court that we would keep two parts of the Court going. As a result I was in court practically every day and oftentimes would not know in the morning what case I would be trying that day. We had a large staff engaged in preparing cases and in getting the witnesses to attend. Often something like sickness would happen and the case you expected to try would go over. Since we were under agreement to be ready in the next case, we had to come on and try it, whether we were prepared or not. But while the plaintiff was giving his evidence our staff was getting our witnesses in.

It was a very good experience in trial work. I was before a strong bench, on which were some good trial lawyers. They taught a young man a great deal. They were kind to me.<sup>13</sup>

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and were on Johnson Park and then being with you at your house in Jamestown.”).

11. See THE BUFFALO DIRECTORY 1181 (1919) (“856 Ellicott Square”). For a period of time, Buffalo Law School, the independent school that became the University of Buffalo Law School, also was located in Ellicott Square. See HISTORY OF THE BENCH AND BAR OF ERIE COUNTY NEW YORK: HISTORICAL AND BIOGRAPHICAL 23 (1909) [hereinafter HISTORY OF THE BENCH AND BAR].

12. See HISTORY OF THE BENCH AND BAR, *supra* note 11, at 193-94 (biographical sketch of Henry Walter Killeen); see also Letter from Robert H. Jackson to Henry W. Killeen (Aug. 7, 1941) (carbon copy) (Jackson Papers, LOC, Box 119, Folder 3) (recalling “trying lawsuits under your direction and instruction”).

13. JACKSON ORAL HISTORY, *supra* note 6, at 135-36. In early 1919 (I assume), Jackson wrote that he earned \$1500 in taxable income, with \$480 in deductible expenses, at Penney, Killeen & Nye during 1918. Robert H. Jackson, Work Sheet for Individual Income Tax Return for Net Incomes of Not More than \$5,000 for Calendar Year 1918, at 2 (Jackson Papers, LOC, Box 196, Folder 5);

C. *Buffalo to Nuremberg, 1918-1945*

By Justice Jackson's later account, he moved to Buffalo in 1917 or 1918 or so to practice law with Penney, Killeen & Nye "on an experimental basis," without "abandon[ing his] office in Jamestown."<sup>14</sup> A year or so later, having acquired valuable experiences and a rich network of personal friends and professional contacts who were important parts of the rest of Jackson's life,<sup>15</sup> he decided to return to Jamestown. In his oral history, Jackson explained the decision as follows:

Despite its value as experience, I didn't like it as a permanent thing. I didn't want to be a lawyer for just one client. I didn't want to try just one kind of lawsuit. I didn't care how much a job paid or how good it was, I wanted my own independent law practice. So I was confronted with the problem of whether I would stay in Buffalo or go back to Jamestown. I liked living in Jamestown very much better than I did in a larger place. I'm naturally a countryman, I guess. So I went back to Jamestown with an experience, of course, which was most helpful.<sup>16</sup>

In Jamestown, Jackson served in late 1918 as the city's acting corporation counsel. The next year, he and colleagues formed a new law firm. It grew and prospered, handling, as did its successor iterations over the next fifteen years, all types of matters and clients, in the city and throughout the region. In 1919, the Jacksons became parents, and in 1921 they had a second child. They built a large house and, in time, acquired a large horse riding farm and a cabin cruiser

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*see also New Law Partnership*, JAMESTOWN J., Apr. 7, 1919 ("[F]or the greater part of 1918 [Jackson] was associated with the Buffalo firm of Penney, Killeen & Nye, counsel for the International Railway Company. Mr. Jackson was engaged in trial work for the firm . . .").

14. JACKSON ORAL HISTORY, *supra* note 6, at 135.

15. Some of the Buffalo legal giants who were among Jackson's close contacts and friends across his life, some of whom he first met in Buffalo in 1917 or 1918, included Charles Sears, Thomas Penney, Henry Killeen, Olin Nye, John Lord O'Brian, David Diamond, James McCormick Mitchell, Charles S. Desmond, Daniel Kenefick, Manly Fleischmann, Dean Francis M. Shea, Professor and then Dean Louis Jaffe, Philip Halpern, General William J. Donovan, and Philip Wickser. *Cf.* John Q. Barrett, *A Jackson Portrait for Jamestown, "A Magnet in the Room,"* 50 BUFF. L. REV. 809, 810-11 (2002) (describing Jackson's lifelong, close ties to Buffalo, the University of Buffalo, and its School of Law).

16. JACKSON ORAL HISTORY, *supra* note 6, at 136.



on Chautauqua Lake. During the 1920s, Robert Jackson became very active in local, regional, and national bar association work. He briefed and argued cases in the New York Court of Appeals, impressing Chief Judge Benjamin N. Cardozo, who became a Jackson mentor. In 1930, Judge Sears nominated Jackson to membership in the American Law Institute and, with Cardozo's support, Jackson was elected. In 1933, Jackson was elected chairman of the American Bar Association ("ABA") Conference of Bar Association Delegates (a predecessor of today's ABA House of Delegates).

Jackson also had, of course, an interest in politics. A "hereditary" Democrat, Jackson had been an early and dedicated supporter of Woodrow Wilson, as a 1912 presidential candidate and then during his first term and his reelection. That cooled with The Great War. More generally, as Jackson's law practice flourished, he spent much less time on partisan activities. Beginning in 1928, however, the New York gubernatorial candidacy of Franklin D. Roosevelt, followed by his first term as governor, his 1930 reelection, and his 1932 presidential campaign, drew Jackson back into campaigning, political advising, and volunteer, part time public service.<sup>17</sup>

Robert H. Jackson then went to Washington. In 1934, President Roosevelt nominated and the Senate confirmed Jackson's appointment to serve as Assistant General Counsel in the Bureau of Internal Revenue, United States Department of Treasury. In 1935, Jackson became very well-publicized as he led the government's successful civil tax prosecution of the former Secretary of the Treasury, Andrew W. Mellon. In 1936, after a high profile stint at the Securities and Exchange Commission defending the constitutionality of the Public Utility Holding Company Act, Jackson was appointed Assistant Attorney General. He headed the Department of Justice's Tax Division during 1936 and then the Antitrust Division during 1937. In 1938, Jackson was appointed Solicitor General of the United States. In 1940, he was appointed Attorney General of the United States. In mid-1941, Jackson, then age forty-nine, was appointed an Associate Justice of the Supreme Court of the United States.

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17. See ROBERT H. JACKSON, *THAT MAN: AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT* 6-9 (John Q. Barrett ed., 2003).

When Robert Jackson left New York State for Washington in 1934, he expected to be gone for only about six months. At first, he attempted to keep his Jamestown law practice going. In time that became impossible. Jackson's heart remained connected to western New York—as often as he could, he visited New York State, including his family and many friends in Jamestown and Buffalo. But his career became first the Roosevelt administration and then a lifetime judicial appointment.

In spring 1945, Justice Jackson was preparing for summer sojourns in New York State, including visits to Chautauqua and Erie Counties and fishing on Lake Ontario. Then President Roosevelt died. The defeat of Nazi Germany was imminent. The capture of Nazi leaders, perhaps including Adolf Hitler, loomed. The new president, Harry S. Truman, inherited a rough plan by the Allied leaders to prosecute Nazi leaders as war criminals. In late April, he recruited Justice Jackson, who Truman knew to be a skilled trial lawyer and advocate and a jurist of highest stature, to head this United States and international effort. Jackson accepted. He spent the next year-plus away from his Supreme Court work, first in London, then in Nuremberg.

## II. JACKSON'S PATH BACK TO BUFFALO, 1946

### A. *Jackson in Nuremberg*

Justice Jackson's "Nuremberg" story is vast and complicated.<sup>18</sup> President Truman announced Jackson's appointment on May 2, 1945. He promptly assembled a small core staff and began to review legal and evidentiary material. In late May, Jackson made a survey trip to liberated, devastated Europe, where he consulted with

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18. See generally ROBERT E. CONOT, *JUSTICE AT NUREMBERG* (1983); WHITNEY R. HARRIS, *TYRANNY ON TRIAL: THE TRIAL OF THE MAJOR GERMAN WAR CRIMINALS AT THE END OF WORLD WAR II AT NUREMBERG, GERMANY, 1945-1946* (1954; reissued 1995; rev. ed. 1999) (foreword Robert G. Storey; introduction Robert H. Jackson); MICHAEL R. MARRUS, *THE NUREMBERG WAR CRIMES TRIAL OF 1945-46: A DOCUMENTARY HISTORY* (1997); JOSEPH E. PERSICO, *NUREMBERG: INFAMY ON TRIAL* (1994); I DREXEL A. SPRECHER, *INSIDE THE NUREMBERG TRIAL: A PROSECUTOR'S COMPREHENSIVE ACCOUNT* (1999); TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS: A PERSONAL MEMOIR* (1992); ANN TUSA & JOHN TUSA, *THE NUREMBERG TRIAL* (1983; reissued 1995).

military and political leaders. In June, Jackson relocated to London, where he and Allied counterparts then negotiated through July. On August 8, 1945, they signed the London Agreement, creating the International Military Tribunal ("IMT") and spelling out, in its charter, its procedures and jurisdiction. They selected Nuremberg, in the United States occupation zone of the former Germany, to be the first trial site. That fall, the Jackson team gathered and analyzed evidence. In October, the prosecutors presented to the IMT the indictment charging twenty-four individuals and six Nazi organizations with conspiracy, aggressive war, war crimes, and crimes against humanity.

The international Nuremberg trial began on November 20, 1945. The next day, Justice Jackson delivered the first opening statement, a heroic and historic speech. National prosecutors presented their respective cases, including harrowing documentary and film evidence and witness testimony, over the next three months. Beginning in March 1946, defense counsel in turn presented their cases, with many of the defendants choosing to testify.

#### B. *Invitation to Buffalo, Offered and Accepted*

In spring 1946, the Nuremberg trial was in its sixth month, taking too long and controversial in the eyes of many, when Justice Charles Sears, acting as Vice-Chairman of the Council of the University of Buffalo and at its direction, again invited Robert Jackson to come to Buffalo.

At suggestion of attorney John Lord O'Brian, a Sears-Jackson mutual close friend and a Buffalo giant who by 1946 had relocated to Washington law practice with the Covington, Burling, et al. law firm, Sears telephoned Lieutenant Commander Charles Horsky, another Covington partner who was, as a United States Coast Guard Reserve officer, running Chief of Counsel (Nuremberg chief prosecutor) Jackson's Washington (Pentagon) office.<sup>19</sup> Horsky, who Sears found to be "most cooperative,"<sup>20</sup> immediately conveyed the message in a May 22, 1946, cable to Jackson:

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19. Letter from Charles B. Sears to Robert H. Jackson, at 1 (June 9, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

20. *Id.*

Judge Sears, Buffalo, requests Justice Jackson as guest of Buffalo University October 3 and 4 to receive honorary degree on occasion of 100th anniversary. Would like immediate confirmation of Jackson acceptance.<sup>21</sup>

Jackson responded immediately and, despite calendar concerns, positively—he cabled back to Washington a message for Buffalo:

Please notify Judge Sears of acceptance and appreciation of his offer. The date suggested immediately precedes opening of Fall Term Supreme Court which creates some possibility of interference and would have to give Court duty priority. So far as I can see however I can be present.<sup>22</sup>

A few weeks later, on June 9th, Sears wrote a personal letter to Jackson. After lamenting the press coverage of the Nuremberg trial—“the accounts in our papers are so meager that we have little comprehension of the events”—Sears explained in more detail the University’s invitation:

The University was chartered in 1846 so this year is its centenary. At first its only department was that of medicine—which was rather distinguished. The many departments now being operated came to being gradually. The University to date has never awarded honorary degrees but at the celebration of the hundredth anniversary has determined to do so to a few honored guests (and in my mind principally to you). . . . You will doubtless be asked to speak but that can be taken up on your return. We were all immensely pleased to get your affirmative response. We understand the saving clause you included in your acceptance but I’m sure you can arrange matters so that you can be with us.<sup>23</sup>

Shortly thereafter, on June 15th, University of Buffalo Chancellor Dr. Samuel Capen wrote Justice Jackson to note his knowledge of the Sears-Jackson communication, express his pleasure at Jackson’s acceptance, and note the uniqueness of the honorary degree offer.<sup>24</sup>

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21. Incoming Message from Charles A. Horsky to Justice Robert H. Jackson (May 22, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

22. Incoming Message from Justice Robert H. Jackson to War [Department], Washington (May 24, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

23. Letter from Charles B. Sears to Robert H. Jackson, *supra* note 19, at 1-2.

24. See Letter from Samuel P. Capen to Robert H. Jackson (June 15, 1946) (Jackson Papers, LOC, Box 44, Folder 1) (“[T]he University of Buffalo early in its history adopted the policy of conferring no honorary degrees. It will break

C. *Withdrawal, Offered but Rejected*

It took some time for Sears's and Capen's letters to reach Justice Jackson in Nuremberg. In the interim, Jackson had created significant news and public controversy. On June 10th, four days after President Truman announced the appointment of a new Chief Justice of the United States, Fred M. Vinson, Jackson sent from Nuremberg and released publicly a cable to the chairmen of the Senate and House Judiciary Committees.<sup>25</sup> In this unprecedented missive, Jackson first praised Vinson and then vigorously defended his (Jackson's) own conduct as a justice. In the process, Jackson aired some Supreme Court confidences and disparaged fellow justices.

In his cable, Jackson sought to answer what he regarded as false and outrageous public attacks on him that recently had been generated by other justices and their emissaries, especially during the period when President Truman was deciding whom to appoint to the chief justiceship following Chief Justice Harlan Fiske Stone's death on April 22nd. These reports claimed that Jackson would make a poor chief justice because he had personality-based feuds with colleagues. In fact, Jackson now stated publicly, the Supreme Court's problem was improper behavior by other justices. Jackson revealed that Justice Hugo L. Black had in one case tried to pressure Justice Frank Murphy to announce a five-to-four decision in favor of a labor union before Murphy had completed writing his opinion, so as to help the union in ongoing collective bargaining negotiations. Black also had endeavored, Jackson stated, to get the full Supreme Court's imprimatur on the rejection of a motion seeking Black's disqualification from a case for possible bias, even though such a motion in fact is decided only by the justice at issue. And Jackson revealed that Black had, a year earlier while Jackson was still in Washington and early in his Nazi prosecution assignment, threatened Jackson in the justices' private conference with "war" for not signing on to the Court's per curiam denial of that disqualification motion. Jackson

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this ancient precedent on its hundredth birthday and will confer a few degrees upon persons of unusual distinction in academic and public life.").

25. *E.g.*, *Text of Court Statement by Jackson*, WASH. POST, June 11, 1946, at 1 (*Washington Post's* reprint of Jackson's cable).

believed that Black had lived up to his threat over the past six weeks. Now that any Jackson response could not be construed as special pleading for a chief justice appointment, he explained, he was defending himself.

As controversy raged in the weeks following Jackson's cable, he recognized that the University of Buffalo might be feeling uncomfortable about its offer to honor Jackson that fall. Thus on June 29th, Jackson, still in Nuremberg, again wrote to Judge Sears, now at his summer home in the town of Eden south of Buffalo, this time offering to let the University off the hook:

I have greatly appreciated your thought of me in connection with the anniversary of the University of Buffalo and I have a letter from Chancellor Capen concerning it.

I am not altogether sure that the University is wise in departing from its policy of no honorary degrees. But I know I can be perfectly candid with you. Since this invitation was extended, I have become a party to what from this distance looks like a tempest. That it would be such and would be the cause of great criticism to me, I fully understood, and knowingly took the risk for motives which I well knew would be misunderstood. Whether it was wise or unwise, and whether my reasons were sufficient, we can talk over some day in the leisure of Eden, I hope. I am certain that if the trend toward making the [United States Supreme] Court a purely political instrument is not stopped by some drastic thing, we are in for a pretty fundamental change and not unlike that which came over Germany during the early days of the Nazi regime. As I have viewed from a distance the swearing-in of the new Chief Justice at the White House with bands playing and the Democratic leader of the House of Representatives presiding, and political personalities arranging it, the whole thing looks grotesque as a political celebration.

The point of the thing at this time, however, is this: I well know how timid many people are and how they fear to appear to be taking sides when a controversy is raging, and undoubtedly it is better for a University not to get itself in the line of fire. If there is in this situation anything of embarrassment to the University, I would want you to tell me so, and we will forget the whole thing. I will not misunderstand it.<sup>26</sup>

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26. Letter from Robert H. Jackson to Charles B. Sears, at 2 (June 29, 1946) (unsigned carbon copy) (Jackson Papers, LOC, Box 44, Folder 1). Jackson also sent, at this same time, a brief letter to the Chancellor, cueing him to talk to Sears. *See* Letter from Robert H. Jackson to Samuel P. Capen (June 29, 1946)

Due to the vagaries of transatlantic mail in 1946, Sears did not receive Jackson's June 29th, letter from Nuremberg for nearly a month. When Sears received it at his summer home on about July 26th, he immediately telephoned leading Buffalo lawyer and his fellow University Council member, its chairman James McCormick Mitchell (who is commemorated in this lecture series).<sup>27</sup> Sears read to Mitchell the above Jackson paragraphs and they agreed to keep his letter private among themselves and Chancellor Capen.<sup>28</sup> Sears then penned a letter to Capen, who was on vacation in Maine, filling him in on Sears's talk with Mitchell and casting Sears's vote against accepting Jackson's offer to withdraw:

As to the Justice's suggestion that we withdraw our invitation + call the matter off as far as he is concerned, I am opposed to it. Jackson's [June 29th] letter [to Sears] does him great credit and I'm proud to have participated in the [University's] invitation even though I think Robert's attack on [Justice] Black ill-advised.<sup>29</sup>

Sears then sent to Mitchell, at his law firm,<sup>30</sup> a package including Jackson's letter to Sears and his letter to Capen.<sup>31</sup> Sears, "rather helpless here in the country," asked Mitchell to do the secretarial work of having Jackson's letter retyped and sending that, along with Sears's covering letter, to Capen in Maine.<sup>32</sup> (Sears also, perhaps unbeknownst to

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(Jackson Papers, LOC, Box 44, Folder 1) ("Judge Sears is pretty fully informed of my plans and I will keep him informed of my movements. However, I want you to know how deeply I appreciate the action you have taken.").

27. See Letter from Charles B. Sears to James McCormick Mitchell, at 1 (July 26, 1946) (typed version prepared by Mitchell for Capen) (University Archives, State University of New York at Buffalo, Office of the Chancellor Centennial, 1946, 5/3/29, Box 1, Folder 7).

28. See *id.*

29. Letter from Charles B. Sears to Samuel P. Capen, at 1 (July 26, 1946) (University Archives, State University of New York at Buffalo, Office of the Chancellor Centennial, 1946, 5/3/29, Box 1, Folder 7).

30. The firm, founded in 1834 (long before Mr. Mitchell's time), was called Kenefick, Cooke, Mitchell, Bass, and Letchworth in 1946. It continues today as Phillips Lytle LLP. See *About—New York History*, PHILLIPS LYTLE LLP, <http://www.phillipslytle.com/History.aspx> (last visited Feb. 26, 2012).

31. Letter from Charles B. Sears to James McCormick Mitchell, *supra* note 27, at 1.

32. *Id.*

Mitchell or Capen, wrote back to Jackson, acknowledging receipt of his “most interesting” June 29th letter, stating personal support, but informing Jackson that the decision would be Capen’s.)<sup>33</sup>

Chancellor Capen, after receiving the material forwarded by Mitchell, immediately wrote back to Sears. Although this Capen letter has not been located, Sears’s August 5th response reveals its substance:

Dear Sam

Just a line to thank you for your letter and to say that your feeling about the Jackson matter is just as I expected. I’m writing to Jackson to say that the University by no means withdraws its invitation but rather reissues it, and that we expect him to speak at convocation (whatever that may be). It seems to me it would be good if you, too, would write him.<sup>34</sup>

Jackson had, in the meantime, returned to Washington from Nuremberg. Following his closing argument on July 26th and then the summations of his fellow chief prosecutors, Jackson left Nuremberg on July 31st. He announced that his departure was temporary, and that he expected to return in mid-September for the IMT announcement of its judgment. Following refueling stops, Jackson landed at Washington National Airport on the morning of August 2nd.<sup>35</sup> He greeted Irene with a public kiss that, photographed, was published widely.<sup>36</sup> (When Sears wrote to Jackson on August 5th, he wrote to him at his home, Hickory Hill in McLean, Virginia—“I know you

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33. Letter from Charles B. Sears to Robert H. Jackson, at 1 (July 26, 1946) (Jackson Papers, LOC, Box 44, Folder 1) (“I’m not going to answer it [Jackson’s letter] further than to say that I personally would not think of changing the University program, but I have thought it proper for your suggestion to be communicated to Chancellor Capen and I shall not hear from him (he is in Maine) for a few days. When I hear from Dr. Capen I’ll write you further.”).

34. Letter from Charles B. Sears to Samuel P. Capen, at 1 (Aug. 5, 1946) (University Archives, State University of New York at Buffalo, Office of the Chancellor Centennial, 1946, 5/3/29, Box 1, Folder 7). Sears then did write to Jackson, probably immediately, reporting Capen’s response and that Jackson would “no doubt hear from the Chancellor direct.” Letter from Charles B. Sears to Robert H. Jackson (Aug. 5, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

35. See *Jackson Here, Reticent on Intentions*, WASH. POST, Aug. 3, 1946, at 5.

36. See, e.g., *id.* (Associated Press Wirephoto).



are home now, not only from the printed word but also from photographic demonstration.”<sup>37</sup>

D. *Offer and Acceptance, Finalized*

In early August, Justice Jackson wrote to Sears that he (Jackson) would be willing to speak at the University's centennial convocation.<sup>38</sup> Sears reported that to Chancellor Capen, who was still on vacation.<sup>39</sup>

The next week, when Capen was back in his office, he wrote to Justice Jackson, back in his Supreme Court chambers, to finalize plans.<sup>40</sup> The University centennial would be celebrated on Thursday, October 3rd, and Friday, October 4th. The final convocation, at which Jackson would speak, would occur at 4:00 p.m. on Friday afternoon. Capen invited Jackson to speak then on any topic:

With regard to the subject of your address the officers of the University have no suggestions to offer. We are glad to leave the choice of topic entirely to you. The audience, which is expected to consist of delegates from the principal colleges and universities of the eastern part of the country and Canada, together with a representative body of citizens of Buffalo, will, I know, be interested in whatever you may wish to say.<sup>41</sup>

For Jackson, the choice of topic was easy. Within days, he wrote to Capen that,

[u]nless you think it would be inappropriate for some reason, I would make the subject of my address some aspect of the Nurnberg trials and their relation to the future peace of the world. That, of course, is of great interest to me at present and is a

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37. Letter from Charles B. Sears to Robert H. Jackson, *supra* note 34; *cf.* Letter from Charles B. Sears to Samuel P. Capen, *supra* note 34, at 1 (“Did you see the picture of the connubial greeting of Justice + Mrs Jackson. Charles Desmond says that [they] would have done better after a Hollywood try-out!”).

38. *See* Letter from Charles B. Sears to Samuel P. Capen, at 1 (Aug. 10, 1946) (University Archives, State University of New York at Buffalo, Office of the Chancellor Centennial, 1946, 5/3/29, Box 1, Folder 7) (summarizing and quoting from Jackson's letter to Sears, which has not been located).

39. *See id.* at 1-2.

40. *See* Letter from Samuel P. Capen to Robert H. Jackson (Aug. 15, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

41. *Id.*

subject upon which I can perhaps speak with as much authority as any.<sup>42</sup>

#### E. *Travel, Speech Preparation, Arrival*

On August 3, 1946, Justice Jackson returned to the Supreme Court for the first time in more than a year. He found that a huge amount of work had accumulated during his absence. Daunted, he began to doubt whether he should return to Nuremberg (a long, arduous trip) to be a spectator when the IMT announced its judgment (a brief event).

On August 15th, Jackson met at the White House with President Truman.<sup>43</sup> He told Jackson, his appointee to serve as Chief of Counsel at Nuremberg, that he should be there when the judgment came down. Reporters tried to interview Jackson as he left the White House. Declining to recount his conversation with the President, Jackson did say that he expected to return to Nuremberg shortly for the IMT's announcement of its verdicts. He also said that he expected to be on the Supreme Court bench when the new Term began on Monday, October 7, 1946.<sup>44</sup>

Justice Jackson was not forgetting his University of Buffalo commitment. A day or two after his meeting with Truman, Jackson wrote privately to a close friend in Buffalo, attorney Philip J. Wickser, that Jackson would be coming to Buffalo on October 2nd and 3rd.<sup>45</sup> Jackson apparently was not, however, in August or even in September, working yet on his Buffalo speech. When a University public relations official in early September

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42. Letter from Robert H. Jackson to Samuel P. Capen (Aug. 21, 1946) (unsigned carbon copy) (Jackson Papers, LOC, Box 44, Folder 1). In response, Capen wrote that he "had hoped that [Jackson] would choose to discuss some aspect of the Nurnberg trials at the University of Buffalo Centennial. Certainly no topic would be of greater interest to the members of the University and its guests." Letter from Samuel P. Capen to Robert H. Jackson (Aug. 24, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

43. *Jackson Plans To Be on Bench as Court Opens*, WASH. POST, Aug. 16, 1946, at 5 (United Press Report).

44. *Id.*

45. See Letter from Philip J. Wickser to Robert H. Jackson, at 2 (Aug. 20, 1946) (Jackson Papers, LOC, Box 21, Folder 10) (recounting what Jackson had just written to him).

requested a copy of the manuscript,<sup>46</sup> Jackson politely told him to wait until the last minute, and to relax:

I will not be able to get my manuscript in your hands by September 30th. I am under the necessity of going back to Nurnberg and it is quite possible that I will not return to the States [i.e., Washington, D.C.] until October 2nd or 3d. I will have it mimeographed in Nurnberg and prepared for release, and bring it with me.<sup>47</sup>

On September 17th, the IMT announced in Nuremberg that it would not be handing down its judgment until September 30th. Jackson, although concerned about his ever-tightening schedule, stuck to his travel plan. On the evening of September 18th, he left Washington with a small entourage of close friends and Nuremberg colleagues, including former University of Buffalo Law School Dean Francis M. Shea. After airplane refueling stops in Labrador and Iceland, they landed in Paris. Jackson decided to stay there during the wait for the IMT because he found Paris more pleasant than Nuremberg, and because he had work to do. Among other things, Jackson spent the last week of September 1946 in Paris writing two important documents: the final report that he would be delivering to President Truman, and the lecture that Jackson had agreed to give at the University of Buffalo.

On Monday, September 30, 1946, Justice Jackson was present in Courtroom 600 in Nuremberg's Palace of Justice to hear the IMT judges read their lengthy Judgment.<sup>48</sup> It affirmed the validity, in international law, of each crime charged in the indictment. That afternoon, the court returned its verdicts—some convictions, some acquittals—on the indicted organizations. The next day, the IMT delivered its verdicts on twenty-two individual defendants. Nineteen were found guilty and three were found not guilty. Of the nineteen, seven were sentenced to terms of

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46. See Letter from Arthur I. Goldberg to Robert H. Jackson (Sept. 4, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

47. See Letter from Robert H. Jackson to Arthur I. Goldberg (Sept. 17, 1946) (Jackson Papers, LOC, Box 44, Folder 1).

48. See INT'L MILITARY TRIBUNAL, JUDGMENT OF THE INTERNATIONAL MILITARY TRIBUNAL FOR THE TRIAL OF GERMAN MAJOR WAR CRIMINALS (1946). Its text is available at [http://avalon.law.yale.edu/subject\\_menus/judcont.asp](http://avalon.law.yale.edu/subject_menus/judcont.asp) (last visited Feb. 18, 2012).

imprisonment and twelve were sentenced to death by hanging.

Jackson left Nuremberg at 5:30 p.m. on Tuesday, October 1, 1946. His plane made refueling stops in Paris, the Azores, and Newfoundland. By the end of the next day, October 2nd, he was back in Washington. On Thursday, October 3rd, he worked in his Supreme Court chambers. That evening, after attending a Federal Bar Council dinner honoring senior United States Circuit Judges, Jackson boarded a Pennsylvania Railroad night train at Washington's Union Station. On October 4th, just before 8:00 a.m., Jackson arrived in Buffalo.

### III. JACKSON AT THE UNIVERSITY OF BUFFALO CENTENNIAL

The University of Buffalo centennial celebration had begun on October 3, 1946.<sup>49</sup> The public ceremonies that day included an opening convocation, dedication of a new engineering building, a luncheon for the assembled academic delegates, an afternoon reception and, that evening, an alumni banquet at the Hotel Statler featuring James McCormick Mitchell as toastmaster and John Lord O'Brian as a principal speaker.<sup>50</sup> The next morning, the University hosted a "Conference on the Future of University Education."<sup>51</sup>

Justice Jackson was not in Buffalo to attend any of these events. Following his early arrival in Buffalo on the morning of Friday, October 4th, it seems that Jackson got to visit privately with his friend Judge Sears, probably at his downtown home.<sup>52</sup> At midday, they drove to Buffalo's Kleinhans Music Hall, then the five-year-old Eliel and Eero Saarinen-designed home of the Buffalo Philharmonic Orchestra. (Today this extraordinary building is still the home of the Philharmonic, and a National Historic

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49. See CENTENNIAL CELEBRATION OF THE UNIVERSITY OF BUFFALO 1846-1946 (post-event commemorative publication, with reports and/or transcripts of all proceedings).

50. *Id.* at 6-7.

51. *See id.*

52. See Letter from Charles B. Sears to Robert H. Jackson, at 3 (Oct. 1, 1946) (Jackson Papers, LOC, Box 44, Folder 1) ("Know [if] I fail to meet you (from some unforeseen cause) please take a taxi to my house and my housekeeper will know where to find me.").

Landmark.) Sears and Jackson attended a luncheon there for the delegates and other invited guests.<sup>53</sup> Following lunch, they “robed” in preparation for the culminating event, the Centennial Convocation.

The Convocation, an assemblage of 2000 people, began at 4:00 p.m. with a musical processional, a religious invocation, and then the singing of the National Anthem.<sup>54</sup> Chancellor Capen then introduced, effusively, Justice Jackson:

The University of Buffalo counts itself especially fortunate in the presence at these concluding exercises of its Centennial celebration of the gentleman who is about to address us. He was for many years a neighbor, an intimate friend and associate of members of the [University] Council and of the faculty of the University's School of Law, and of other leaders of the bench and bar in this community.

But for somewhat more than a decade his former neighbors have had to follow his distinguished career from afar. They have seen him serve successively as Assistant Attorney-General, Solicitor General and Attorney-General of the United States, and as Associate Justice of the United States Supreme Court.

To his discharge of the duties of each of these offices he has brought the personal qualities and the professional accomplishments with which they were already familiar: sanity, good temper, deep veneration for justice and for the law as an instrument of justice, unrivalled skill both as an advocate and as a judge, and such rare command of the resources of the English language that his writings are not only masterpieces of legal statement but also documents that inspire the minds and lift the hearts of those to whom the law is an undiscovered country.

And now the admiration which we of his own region have long felt for him is shared by all informed Americans. For out of his imagination and wisdom has come a new formulation of the responsibilities of states and of statesmen, the basis of a new hope for the war-torn human race that the rule of law and of justice may at last control the relations of nations with one another. Through him in these last troubled months the conscience of America and the deepest aspirations of America have spoken to the world. The words have been in the great American tradition,

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53. See CENTENNIAL CELEBRATION OF THE UNIVERSITY OF BUFFALO 1846-1946, *supra* note 49, at 7 (providing schedule of day's activities).

54. *Id.*

clear as befits a statement of high principle, eloquent with the eloquence of passionate conviction, at the same time persuasive and prophetic. Once more a standard has been set up to which the wise and just may repair. The event is in the hands of God.

The University of Buffalo welcomes the opportunity to say to him on behalf of his fellow-countrymen: "Well done!"

It is my privilege to present to you the Honorable Robert H. Jackson.<sup>55</sup>

Justice Jackson, wearing an academic cap and gown, then delivered his speech. He (non)titled it as merely an "Address."<sup>56</sup> At a lectern on the Kleinhans stage, he spoke from an eleven-page typed manuscript, which he had marked up in advance to indicate places to pause and points to emphasize.<sup>57</sup> He also had penned two textual inserts, referring to the IMT's legal judgments and sentences.<sup>58</sup> These inserts indicate that Jackson had finished writing his speech and had had it typed up, apparently in Paris, before he was present and witnessed the IMT rendering its Judgment in Nuremberg on September 30th and October 1st.

Justice Jackson's speech, which he delivered with great eloquence,<sup>59</sup> is powerful and complex. It was recorded and

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55. *Id.* at 79.

56. *See* Robert H. Jackson, Address at the University of Buffalo Centennial Convocation, at cover page (Oct. 4, 1946) (Jackson Papers, LOC, Box 44, Folder 1). This is the press release copy of Jackson's address, captioned "FOR RELEASE ON DELIVERY." *Id.*

57. This original Jackson reading copy of his lecture is in his Buffalo lecture event file. Robert H. Jackson, Address at the University of Buffalo Centennial Convocation (Oct. 4, 1946) (reading copy) (Jackson Papers, LOC, Box 44, Folder 1).

58. *See id.* at 5 (adding, after typed text describing the London Agreement's codification of the crime of aggressive war as based sufficiently in existing international common law: "The International Tribunal judgment agrees with us."); *id.* (adding, after typed text describing the London principles as embodied in the IMT's judgment, "and erstwhile principal leaders are sentenced to be hanged for violating them.").

59. *See, e.g.,* Letter from Philip Halpern, Buffalo attorney, to Robert H. Jackson (Nov. 29, 1946) (Jackson Papers, LOC, Box 14, Folder 2) ("I would like to repeat in writing what I told you at the conclusion of your address at the Buffalo Centennial celebration. Your address was undoubtedly the high point of

rebroadcast that evening on Buffalo radio (WBEN),<sup>60</sup> but no recording has been located to date. The speech was reported, printed, published, and distributed in its time.<sup>61</sup> It is republished in this issue of the *Buffalo Law Review*. The speech bears reading and rereading.

In the speech, Jackson described and summarized the just-completed work of the international trial process at Nuremberg. He considered that topic in relation to higher education, connecting the work of Nuremberg to the work of institutions such as the University of Buffalo. He noted that while modern dangers come from "the educated," education also can be humanity's hope. He offered Nuremberg as a new lesson in law: war is illegal, now in international law as it always has been in the moral order, and all individuals, even so-called "statesmen," are liable criminally for this kind of law-breaking. He also explained that international law now reaches evils related to war: tyranny, dictatorship, and violations of minority rights. And, turning from international to national legal systems, Jackson urged his listeners to contemplate the design choice that people can and by their behavior will make: as in Nazi Germany or in 1946 Eastern Europe under the power of Soviet Communism, people can systemize tyrannical power, or, as in the U.S. legal system, people can place constitutional limits on majority power. And Nuremberg is relevant in the national legal realm, Jackson explained, because Nuremberg brings international standards, and higher ones, to these domestic legal design and behavior choices.

Following Jackson's speech, the University of Buffalo conferred the first honorary degrees in its history. The first ten recipients, each presented by a sponsor and described in a citation, were persons of leading accomplishments in their lives and professional fields: Dr. George Hoyt Whipple, M.D., pathologist, teacher, dean, and medical researcher; Vannevar Bush, physicist, engineer, teacher, and defense

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the celebration and is still the subject of laudatory comments whenever those who attended the meeting foregather.").

60. See BUFFALO EVENING NEWS, Oct. 4, 1946, at 27; see also Letter from Edward H. Letchworth, Buffalo attorney, to Robert H. Jackson (Oct. 7, 1946) (Jackson Papers, LOC, Box 44, Folder 1) ("I heard your talk rebroadcast on the radio that evening and congratulate you on making such a splendid presentation.").

61. See *infra* notes 70-72 and accompanying text.

administrator; Georges Connes of France, writer, teacher, political leader, and former Nazi resister and prisoner; Mildred McAfee Horton, sociologist and college president; Dr. William Carlos Williams, physician and poet; Dr. Owen Harding Wangensteen, M.D., physician, biologist, teacher, and surgeon; Dr. Edmund Ezra Day, Ph.D., economist, statistician, and educator; Francis Trow Spaulding, teacher, soldier, and administrator; Robert Charles Wallace, geologist, professor, and university leader; and Owen D. Young, lawyer, industrialist, educator, and statesman.<sup>62</sup>

The eleventh and final honorary degree recipient was Justice Jackson. Justice Charles P. Sears spoke, presenting and sponsoring the candidate:

Mr. Chancellor: I have the honor to present for the honorary degree of Doctor of Laws, Robert Houghwout Jackson, an Associate Justice of the Supreme Court of the United States.

Mr. Justice Jackson, familiarly known as "Bob," is a full time product of Western New York. In fact the most conspicuous events in his early life which occurred outside this area were his birth in Pennsylvania and his sojourn in Albany at the law school and where more importantly, he won his charming wife. His youth and early manhood were lived in Chautauqua County, and there he began his practice of the law except for a short period in Buffalo, and carried it on to leadership in his profession.

In 1934 he was called to Washington. Little sensing the duties and services and honors that lay before him and after some hesitation, he responded to the call and became General Counsel to the Bureau of Internal Revenue. Office after office then fell to him in quick succession. He became Assistant Attorney General of the United States. A little later, Solicitor General, in a sense the greatest post for a lawyer in the whole country; for to the Solicitor General's office falls the duty of representing the United States in the Supreme Court in the cases in which the United States itself is a party to the litigation. With a record of distinction in this arduous position, he passed in 1940 to the Attorney Generalship. It was then but natural when a vacancy occurred on the bench of the Supreme Court in 1941, that the man who had served the country with such ability in this succession of positions, should be named by the President to a seat on our very highest judicial tribunal. To be a Justice of the Supreme Court is usually the final

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62. See CENTENNIAL CELEBRATION OF THE UNIVERSITY OF BUFFALO 1846-1946, *supra* note 49, at 89-100 (publishing the respective presentations and honorary degree citations for these persons).



crown of the career of any lawyer who attains it, as it was for example with Chief Justice Marshall and Justices Holmes, Brandeis and Cardoz[o]. Not so, however, with Justice Jackson. At the end of the war with Germany the question of the war crimes came to the forefront and in 1945 the President appointed him to represent the United States in negotiations with Britain, France and the Soviet Union as to the treatment of war criminals. It was the proposal of the United States as to the court to be created, the procedure to be followed and the principles to be applied that, with scarcely any modification, was adopted by the four nations. It is significant that the plan is based on sound theories of national honor and responsibility. The principle was introduced (and I believe we owe this largely to Justice Jackson) that offenses against humanity must take their place in the list of crimes for which participating agents of a state must answer at the bar of justice. Can anyone doubt that it was Justice Jackson's character and argumentative power as well as the righteous sternness of our country's plea that brought into international law this basis of responsibility of man and of nation toward the right of mankind to enjoy freedom against claims of superiority whatever their bases. A spiritual element is thus incorporated in the doctrines of international justice. It has also fallen to Justice Jackson to present the case of the United Nations against a large number of high officials of our late enemies for crimes that have shocked the conscience of mankind. All know the verdicts which have just been rendered.

I rejoice to present for this honor of the University the man whose record I have only partially sketched.<sup>63</sup>

Chancellor Capen then read the honorary degree citation:

Robert Houghwout Jackson: Interpreter of the law and through the law of man's dignity and his moral aspirations; member of the nation's highest tribunal; authentic spokesman of America's unchanging principles and noblest purposes; the University of Buffalo confers upon you the degree of Doctor of Laws.<sup>64</sup>

The Convocation then adjourned, concluding the University's centennial celebration before the sun had set.<sup>65</sup>

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63. *Id.* at 101-02.

64. *Id.* at 102.

65. This timing was, if only accidentally, appropriate and respectful, especially in the context of an event that related to Nuremberg and its evidence of the Nazi crimes that we call the Holocaust. As the University of Buffalo might

Jackson spoke to and received congratulations from many, including Buffalo friends who were present.<sup>66</sup> He might then have attended the 6:30 p.m. informal dinner that James McCormick Mitchell hosted at The Saturn Club.<sup>67</sup> Although Jackson then might have taken the night train from Buffalo back to Washington,<sup>68</sup> it seems more likely that he stayed overnight (probably with Sears) and left the next day.

On Saturday, October 5th, Jackson was back in Washington. He worked in his chambers until 8:00 p.m. that Saturday evening on his final Nuremberg report to President Truman. At noon on Monday, October 7th, he returned fully from Nuremberg to domestic law, taking the bench with his colleagues to commence the Supreme Court's October Term 1946.

#### CONCLUSION

Justice Jackson's October 4, 1946, Buffalo speech was published widely. The wire services and thus many afternoon papers published or at least reported it on that same Friday afternoon.<sup>69</sup> Saturday newspapers also

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have recognized when it set its schedule, sundown on October 4, 1946, marked the start of *Yom Kippur*, the Day of Atonement that is for Jews the holiest day of the year. Cf. Letter from Charles E. Wyzanski, Jr., U.S. District Judge, to Robert H. Jackson (Oct. 21, 1946) (Jackson Papers, LOC, Box 114, Folder 1) (reporting that he had been unable to deliver a Nuremberg-defending paper at an October 4-5, 1946, conference at Kenyon College "as the authorities had scheduled my talk for a Jewish holiday").

66. See, e.g., Letter from Philip Halpern to Robert H. Jackson, *supra* note 59.

67. See Invitation from James McCormick Mitchell (engraved invitation in Jackson's papers) (Jackson Papers, LOC, Box 44, Folder 1).

68. See Letter from Robert H. Jackson to Arthur I. Goldberg, *supra* note 47 (asking Goldberg to purchase such a ticket, for which Jackson would reimburse him as soon as he arrived in Buffalo).

69. See Letter from John A. Hall, Managing Editor, *The Post-Journal* (Jamestown, N.Y.), to Robert H. Jackson (Oct. 7, 1946) (Jackson Papers, LOC, Box 44, Folder 1) (explaining that the *Buffalo Evening News*, desiring to publish Jackson's speech on October 4th, persuaded the Associated Press and United Press to move the release time up to 2:00 p.m., before Jackson actually delivered the speech); see also Lance Zavitz, *War Trial Set Rule By Law, Jackson Says*, BUFFALO EVENING NEWS, Oct. 4, 1946, at 1; *Jackson Sees Peace Threat in Absolutism*, POST-J. (Jamestown, N.Y.), Oct. 4, 1946, at 1.

reported and published it.<sup>70</sup> It was subsequently published in the University of Buffalo's centennial book<sup>71</sup> and in at least one national magazine.<sup>72</sup>

On October 4, 1946, Justice Jackson, back physically in the United States from Nuremberg but intellectually and spiritually still deeply in it as he spoke in his Buffalo about his just-completed Nuremberg work, recognized all but explicitly that his topic should be studied in the twenty-first century. In Kleinhans Music Hall that afternoon, just sixty-five years ago, Jackson articulated a long view of the Nuremberg project, a view that connects his time to our time and beyond:

It will take time—more time than any of us will ever see—to learn the ultimate effect of the Nurnberg trial on International Law, and to what extent it may deter attacks on the peace of the world and persecutions of minorities. Whether the [London] Agreement among nations that underlies this trial is but a flash of light in an otherwise dark century, or is the harbinger of a dawn, will depend in large degree upon the adherence it wins in circles such as this where the coming generations will shape the concepts by which they in their time will be guided. But the Nurnberg trial has been a sincere and carefully planned effort by the nations to give to International Law what Woodrow Wilson described as “the kind of vitality it can only have if it is a real expression of our moral judgment.” I shall not be surprised if a distant day will recognize this legal condemnation of oppressions and aggressions as civilization's chief salvage from the second World War.<sup>73</sup>

Jackson also forecast then, correctly, that the University of Buffalo would be a site for such study and learning. “[T]he Nuremberg trial,” Jackson predicted, “is not

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70. See, e.g., Morris Kaplan, *Minorities' Rights Are Key to Peace, Jackson Declares*, N.Y. TIMES, Oct. 5, 1946, at 1; *Text of the Address of Justice Jackson at the University of Buffalo*, N.Y. TIMES, Oct. 5, 1946, at 4; *Jackson Hopes For 'Forum' to Deter Tyrants*, N.Y. HERALD TRIB., Oct. 5, 1946, at 7; *Jackson Sees Trial as Top War Salvage*, BUFFALO COURIER-EXPRESS, Oct. 5, 1946, at 1.

71. CENTENNIAL CELEBRATION OF THE UNIVERSITY OF BUFFALO 1846-1946, *supra* note 49, at 80.

72. Robert H. Jackson, *The Nurnberg Trial: Civilization's Chief Salvage from World War II*, 13 VITAL SPEECHES OF THE DAY 114 (Dec. 1, 1946).

73. Robert H. Jackson, *Address at the University of Buffalo Centennial Convocation, October 4, 1946*, 60 BUFF. L. REV. 283, 293 (2012).

unlikely considerably to influence legal thought in this Institution's second century."<sup>74</sup> As it is.

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74. *Id.* at 286.