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Stanley Reed

Warren E. Burger

Supreme Court of the United States

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The editors and staff respectfully dedicate this issue to the late Justice Stanley Reed.

STANLEY REED

Stanley Reed’s career as a lawyer, government official and jurist was one of consistent distinction. In his own unobtrusive, imperturbable and conscientious manner, he rendered great service to his nation.

Trained in the law at the University of Virginia, Columbia and at the Sorbonne, Reed returned to his home town of Maysville, Kentucky to practice law. It did not take long for his reputation to spread to other states. His standing as an advocate was such that the Republican Hoover Administration brought Reed, a leading Kentucky Democrat, into the government—first as Counsel for the Federal Farm Board, then as General Counsel to the Reconstruction Finance Corporation—where he took a pay cut of half his salary. When the new Democratic Administration took office a few years later Reed’s reputation was such that he was continued.

Stanley Reed could be described as a moderate who believed that much good could be done when government power is wielded discerningly in the public interest. Soon Reed became Solicitor General of the United States and by that time he had already argued before the Supreme Court the Gold Clause Cases—and prevailed in that important litigation. During a tumultuous era for Court and country, Reed then argued many of the important cases involving the constitutionality of Roosevelt’s New Deal legislation against some of the finest legal talent in the country. Reed saw the potential for legitimate social change within the Constitution, recognizing that the Constitution is “not a gaoler to preserve the status quo.” He worked for fresh approaches drawn from old understandings to meet the crises caused by the Great Depression and the pervasive social and economic changes that came in the wake of World War I.

Reed lost a few cases, to be sure, but even in defeat his performance was marked by thoroughness of preparation, and
his arguments were characterized by clear, down-to-earth presentations. History records, however, that he won most of his cases as Solicitor General, and those cases remain landmarks in American constitutional law. The pressures on an advocate responsible for so many highly charged cases over a relatively brief period took their toll and on one occasion Reed collapsed at the lectern while arguing a case.

Homer Cummings, Attorney General in the early years of the New Deal, came to regard Stanley Reed as “qualified to fill any post.” It was in January 1938 that President Roosevelt chose Reed to succeed George Sutherland as Associate Justice of the Supreme Court. It was a popular appointment. Those who were ready to predict how Reed-the-jurist would act based upon the work of Reed-the-Solicitor General were mistaken. When Stanley Reed put on his judicial robes, he shed the attitudes of the advocate.

As Solicitor General, Reed had not always waxed enthusiastic about the manner in which the Supreme Court was exercising its power of judicial review. As Justice Reed, he was well aware that while judicial review might sometimes interfere with the prompt action of the government, it also assured deliberate judgments which contributed to sparing America those “gusts of popular frenzy that sweep away the rights of the individual, and excessive centralization that shrivels local political administration.”

But as one born and bred a Southern Democrat he believed that a Court entrusted with the great power of judicial review could not and should not usurp the role of the democratically elected branches. It is told that once a law clerk suggested to Reed that he judge by looking to the desirable solution. That was not, for Reed, the proper criterion of the function of the Court. He was not a result oriented, problem solving judge. He sent that law clerk to an unabridged dictionary to look up the word “krytocracy.” The clerk discovered the word meant “government by judges” which Reed opposed. Throughout his judicial career he sought to restrain his colleagues—and himself—from reaching “desirable” results because they fitted a particular social philosophy.

Reared in a border state, Reed made a major contribution
to helping this nation move towards racial equality. He wrote opinions in those cases where all-white primary elections and segregation in interstate transportation were held unconstitutional. He approached the Court’s opinion in *Brown v. Board of Education* cautiously because he weighed whether the decision might impede rather than assist race relations in America. In his thoughtful, careful way he was to call *Brown* the most important decision of his years on the Court, and one of the most important in the history of the Court.

During his nineteen years of dedicated service as Associate Justice, Reed authored 231 opinions for the Court, 20 concurring opinions and 88 dissents. The eighteen Justices who sat with him respected his intellect. They knew that he was “keenly aware of the constitutional burdens which rested on his shoulders.” He was a superb colleague—devoted to his duty, tremendously hardworking, conscientious and painstaking.

There was nothing in him of the prima donna. Nor did he offer good copy to the press. Others might make the front pages. Others might hector their colleagues. But Reed—serious, modest, retiring, and always courtly—went about his job. Kindly and warm, he could not help but be popular with his colleagues, for his unfailing courtesy, even temper and dry sense of humor. He was a moderate in all things and exemplified the virtues of a true Eighteenth Century gentleman—the epitome of civility.

Justice Reed stepped down from the Court in good health at the age of seventy-two. Like John Jay, Thomas Johnson and George Shiras before him, he had decades of life left. He maintained chambers in the Supreme Court building and continued some activities as a Senior Judge into his tenth decade. Like his colleague, Tom Clark, Justice Reed continued to render inestimable service sitting on lower federal courts and as Special Master by appointment of the Supreme Court. He sat by designation of the Chief Justice in more than 250 cases in the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Claims. I had argued cases before him, but I came to know him well sitting on panels of the D.C. Circuit on a number of cases from 1958 to 1961. He main-
tained chambers at the Court of Appeals and regularly joined at the judges’ lunch table where he often regaled us with stories of Kentucky and of the New Deal days.

Justice Reed was the longest lived man ever to have been a Justice of the Supreme Court—a rich, full life of over ninety-five years. In our age with so much instability in family life, we ought to remark upon the joy Stanley Reed derived from his marriage to his hometown sweetheart, Winifred Davis Elgin and his two lawyer sons. He said, “All the success I have I owe to my wife, the beautiful Winifred Reed.” They were married over seventy-one years—Mrs. Reed still survives—and they were also blessed with three grandchildren.

Kentucky has contributed mightily to the history of the Supreme Court of the United States. Ten of the 101 Justices were either born in Kentucky or appointed from that state—among them the first John Marshall Harlan, Samuel Miller, Louis D. Brandeis and Chief Justice Fred Vinson. Stanley Reed was a Kentuckian who never lost his great affection for the state. He used to speak of his forbears who “[b]efore we were a nation . . . traversed the Wilderness Road to the Bluegrass.” When he was in his ninth decade he recalled that “spot on Raccoon Creek where I shot my first quail.”

His funeral took place “but a stone throw” from where he had lived as a boy, “scarcely a block distant from his first law office.” He was proud of his Kentucky roots, of membership in the Kentucky bar for over seven decades, of his term in the Kentucky General Assembly, of honorary degrees from Kentucky Wesleyan, the University of Kentucky and the University of Louisville. He loved to return to his farm in Kentucky. Indeed, he told his colleagues on the Supreme Court that he “worked for fifty-six years in order to maintain the dairy cows” on his farm “in the manner to which they’ve been accustomed.”

The Maysville paper once asked, “[w]hat did Mr. Justice Reed look like in the prime of his life when he was making epochal decisions in the nation’s Capital and earning the tribute of ‘Unshaken Reed’ by his colleagues and the people in the press?” Their answer was:

Well, he looked like any farmer in work clothes coming to
town on a hot summer day to visit the Mason County ASC office to attend to farm matters or to buy something needed to get his farm back in shape. He was a tall, lean, straightbacked man who looked forbidding until he smiled. After that you felt comfortable with him.

Stanley Reed smiled often and in the years that I knew him well, he dined in our home and we in his. His delight in small, gentle banter was revealed in an exchange at our home when he questioned of a pre-dinner aperitif, “and where did this come from, may I ask?” My response was, “why, from the only place good Bourbon is made.” Every Christmas after I came to the Court Stanley Reed came to my chambers bearing a package of Kentucky’s famous produce. I in turn sent him a bottle of Bordeaux or Burgundy.

As Stanley Reed never forgot Kentucky, neither did Kentucky forget him. He was invited back to speak at county fairs and on other occasions. In 1957 Maysville observed Stanley Reed Day and renamed in his honor the street where he once had his law office. Chief Justice Warren and Justice Sherman Minton attended those festivities. At his death his hometown newspaper wrote that “we here as fellow townsmen feel that the Nation was the richer for his shining integrity, the depth of his wisdom, and his profundity of knowledge.” It is therefore appropriate that Justice Reed has been buried in Maysville, bearing out the words of a poem written by Alice K. Roberts for Stanley Reed Day:

He will go, back to quiet lanes
where cities’ hum shall cease
to walk again The gentle ways
the paths of rest and peace.

Warren E. Burger