

TRIBUTE

JUSTICE JACK D. H. HAYS

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Jack David Harrington Hays, a retired Chief Justice of the Arizona Supreme Court, died on June 18, 1995, in Sedona, Arizona. He was 78 years of age. During his life, he served his state and nation as a soldier, attorney, legislator, federal prosecutor, trial judge and supreme court justice. His judicial career, spanning a period of 26 years, ended with his retirement from the state supreme court in 1987. He was an extraordinary and extraordinarily influential man.

Hays was born in Lund, Nevada, on February 17, 1917. He almost was born in a log cabin but, at the last minute, his mother chose a nearby clinic instead of their home for the delivery. Thus, as he often lovingly chided her, he was deprived of a Lincolnesque beginning in life. He acquired stature nonetheless.

When he was three years old, his father died. A few years later, his mother happily remarried and her new husband adopted her son. Hays, while loving his new dad, continued to honor his father and his Irish heritage by retaining Harrington as part of his name. Hays received his bachelor's and law degrees from Southern Methodist University in Dallas. After completing his law degree in 1941, he entered the United States Army as an enlisted man. Subsequently, he was commissioned as an artillery officer, ultimately achieving the rank of major. During World War II, he served in combat in the Italian campaign. In later years, he confided that he was especially proud of being able to assist the much-decorated Japanese-American regiment in their battles in Italy; Hays was in charge of directing artillery fire in support of that group, and he always greatly admired their courage and dedication.

Hays' introduction to Arizona occurred when he was stationed at Fort Huachuca prior to his overseas assignment. He liked what he saw and, after his

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The authors are, respectively, a former Chief Justice of the Supreme Court of Arizona, a judge on the Arizona Court of Appeals, and a retired judge of the Maricopa County Superior Court. Justice Holohan served as an Assistant United States Attorney to United States Attorney Hays, and as a supreme court justice with Justice Hays. Judge Ehrlich clerked for Chief Justice Hays on the Arizona Supreme Court, and Judge Strick clerked for Judge Hays as a member of the Maricopa County Superior Court.

release from military service in 1946, he returned to Arizona to begin his legal career and raise a family. He was an able lawyer and he also was attracted to politics, becoming one of the leaders of the 1952 effort to have the Arizona Republican delegation support the presidential nomination and campaign of Gen. Dwight D. Eisenhower. In that same year, Hays was elected to the Arizona legislature. Late the following year, however, he resigned that office to accept Eisenhower's appointment as the United States Attorney for the District of Arizona. Hays held that post during both of Eisenhower's terms.

Hays' Assistant U. S. Attorneys revered him, in part because of their knowledge that "the boss" not only trusted them to try some of the most challenging cases being fought against some of the finest legal talent in the state, but also because he supported and protected them from any economic or political pressure. Perhaps the best measure of his influence over his assistants is the fact that, of the nine assistants serving him during those years, seven of them became judges, one a Phoenix magistrate (Ralph Smith, Jr.), three superior court judges (Robert Royston, Morris Rozar and Bill Holohan), of whom one (Holohan) became an Arizona Supreme Court Justice and Chief Justice, two on the Arizona Court of Appeals (Mike Lacagnina and Bill Eubank), and one a U.S. District Court Judge (Mary Anne Richey). "The boss" was an inspiration to public service.

Hays' judicial career began in 1960 when Arizona Governor Paul Fannin appointed him to be a Maricopa County Superior Court Judge. Hays quickly established himself as an able, hard-working, courteous but no-nonsense jurist. Probably his greatest challenge on that bench was when he was assigned to the juvenile division. In 1964, the Maricopa County juvenile court was a badly-broken system. Hays fixed it. He introduced personnel policies built on merit, not politics; he conducted court in a fair and impartial manner; cases were heard in a timely fashion; backlogs were eliminated; and public confidence and support were re-established for the juvenile system. The task was both mentally and physically taxing and, in later years, Hays would say that it was the most difficult assignment he ever had undertaken. Yet he recognized that changing a young person would prevent a wasted life.

During his tenure as a trial judge, Hays was one of a small group of trial judges who employed law clerks. He endorsed this practice as beneficial to both the judge and the fledgling attorneys. Service as a Hays law clerk was truly special; he made the term both educational and enjoyable. In this genial atmosphere, lessons of great significance from greater experience readily were imparted. He taught the importance of the rule of law in a democratic society and constantly marveled that, in the United States as in no other country in the world, order could be maintained by a mutual acceptance of beliefs without force. But he never forgot the individual litigants and taught the wisdom of not keeping matters under advisement. "It doesn't do either side any good if they don't know whether they've won or lost so do something—even if it's wrong. And once you think you've done all you can do to make a decision, do it; don't agonize and vacillate. When you rule, you're right—at least until a bigger judge says you're wrong." In 1969, Hays became that "bigger judge" when he was elected to the Arizona Supreme Court. He joined a court whose average age was over 70 years but he very soon was accepted and recognized as a capable administrator and a cordial colleague. Changes began to appear in the way the

supreme court conducted business. Modern personnel and business practices took hold. His colleagues recognized Hays' administrative abilities and, in unprecedented fashion, elected him chief justice of the court for three consecutive terms. While Hays was a skilled administrator, this was only part of the job of being a supreme court justice. He realized that his first duty under the Arizona Constitution was to decide cases and write opinions. He became the court's most prolific author of decisions, still holding the record for the most opinions authored by a justice in any single year (100), but, again, there was no loss of recognition of the significance of the individual cases both to the litigants and as precedent. There was no doubt that he enjoyed the respect and affection of his colleagues and the members of the bar. During his final term as Chief Justice, Hays was responsible for having the court adopt a complete revision of the Arizona Criminal Rules of Procedure. The new rules were the most progressive in the nation, exemplified by the requirement of full disclosure in criminal cases, and served as models for other states.

As it had before, Hays' influence spread to others. His example and dedication influenced a record number of former law clerks to choose the judiciary and he nurtured many a career, being among the first to actively promote women lawyers. He taught that public service, and particularly service to the legal system, was both a necessary and noble calling, as well as an ambition that could be met with personal satisfaction and joy through participation in the process. Among those former law clerks who became judges are a U. S. District Court Judge (Bob Broomfield), a member of the Arizona Court of Appeals (Susan Ehrlich) and several superior court judges (Gerry Strick, Mel McDonald, Myron Shapiro).

In examining the life of great people, we look for those qualities which contributed to their greatness. One of the outstanding attributes demonstrated by Hays was his ability to get along with people. Although he never compromised his principles, he would state his position in a courteous and professional fashion, stick by it if convinced it was correct and, while expressing his regard for the opinions of his colleagues and the attorneys, respectfully disagree. All appreciated him for his courtesy, knowledge and courage. Indeed, he rightly was called "the consummate judge."

Outside of his professional life, Hays was a warm and friendly person. He had a great sense of humor and mischief, and he enjoyed having fun. He was an avid fisherman, explorer, outdoorsman, sportsman and, on occasion, a pretty good camp cook. He took great pleasure in the mountains and rivers of his beloved Arizona. He relished visiting and exploring historical places within the state, and he delighted in sharing his discoveries and adventures, some of which, such as the "High Line Judicial Conference," are better left untold. Many a law clerk was quizzed about Arizona places and lore.

His greatest joy, however, was his family. Twice a widower, he had love and companionship in his last years with his wife, Mary. He was a devoted and understanding parent, taking great pride in his children although he was to suffer the loss of two of his five over the years. His first child, a daughter, Antoinette, died when she was six years of age; an adult son, Bruce, died in 1994. He took comfort in the fact that his three living children were successful in their various pursuits. Rory became a lawyer, Eugene a Tucson city magistrate and Victoria a nurse. They also enabled him to become a doting

grandfather to seven children and he was beginning to enjoy a great-grandchild when death took him.

These glimpses into the life of Jack D. H. Hays remind us that he was a man who accomplished great deeds, but who also enjoyed life and nature and his family and friends. He long will be remembered for his contribution to justice, both directly and indirectly through those men and women he influenced so markedly. He was a wise and caring judge. He was a mentor, teacher, guide and dear friend to thousands. We all are richer because he lived among us.