The Creed of One Southern Liberal

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When Dean Christopher asked me to speak at this place on this occasion, I was flattered. What lawyer would not be and what Southern lawyer who lived through the years of Hugo Black's public career and shared most of his views could resist, especially this year when the White House is occupied by one who is indisputably Southern.

Jimmy Carter and I were born six years and eighty miles apart. His national career lies ahead. Hugo Black was a generation older than I, but we came from similar backgrounds: poor parents, reared in small Southern rural towns, but with this difference. Black was born a Baptist, and I a Jew. This was usually a great difference, but Black's humanism overarched all such usual distinctions, and his national career is now both history and a model of public service.

I am at a stage and condition of life when I tend to be very reflective, especially about my Southern roots. I have grown increasingly interested not only in defining what I believe, but in trying to discover why. It was in this spirit that I approached with respect and intensity the life and works of the man whom we especially remember today.

When my preparations were complete, I could say to myself, as I do to you, that in the main I share the views of Hugo Black on most of the issues of our times; disagree with him on a few; regard his example as a model as appropriate for the future as it was to the past; and believe that his life represented the inextinguishable Southern tradition of Jefferson, Madison, Washington, Randolph, Kefauver, Gore, and even Alexander Stephens.

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Black said as much in an unrecorded speech at the University of Georgia in 1967. According to a law dean who heard him, he told his listeners then: “The South of slavery and secession is dead. The South of freedom and progress is here. Some of you may not like my views, but I am one of you whether you like it or not.”

Anyone who ever had contact with Justice Black knew instinctively that he was in the presence of a Southerner. His manner was courteous and gentle; his voice was soft with the “r’s” little emphasized. He was stubborn in conviction, persuasive, eloquent and even passionate in argument, but not the least bit disagreeable in disagreement. No lawyer was ever hectored by him from the bench and not even 34 years of life tenure on the Supreme Court ever diminished the memories of his humble origins and his empathetic understanding of the ordinary folk among whom he was raised.

I had one long and to me important conversation with him. It was in the winter of 1948. I had just returned from Oxford and was trying to decide whether to go back to Georgia to practice law. A friend who had formerly clerked for the Justice got me an appointment with him to get his advice.

As we talked in his chambers, Justice Black discovered that I wished to do battle with the Georgia County Unit selection law, that I did not accept segregation and that I tended to question many of the traditional premises on which current Southern economic, social, and political life were based.

He said to me in effect, “If you return to Georgia and pursue your beliefs, expect to get your head beaten in.” And then to nail down his point with a concrete example, he mentioned a lawyer in Birmingham, Joe Gelders, who had had just that sort of experience for those reasons. I allowed as how I knew of Joe Gelders, for his uncle (I believe), Isadore, lived and published a weekly newspaper in my home town of Fitzgerald, Georgia. I told the Justice that Isadore Gelders, a Jew of Dutch birth and mildly socialistic convictions, had been a big influence on my life, and that he had occasionally been beaten up, and that his paper teetered perennially on the verge of bankruptcy.

We then discussed the big firm-small firm issue as it related to the possibility that I might practice in Atlanta. The Justice said that he had no choice when he went to Birmingham. As he put it, the big firms didn’t want him because he had not come from an Ivy League school, had no important family or social connections and had no prospects of bringing in big clients. Therefore, he said, he became a people’s lawyer, and that meant, he said, he had to meet
the people. He told me that he joined every organization that he could, adding with a twinkle, that if he had been eligible he would have joined B’nai Brith.

I decided to return to Georgia, and for 15 years I practiced law in Atlanta. There I fought the County Unit System, eventually argued that case before the Court of which Black was still a member in 1962, said and did what I pleased in public life, and survived very well. I was never thrashed but sometimes threatened.

And now I have lived 14 years in the North, but I still consider myself a Southerner. After much study of Black’s views and thirty years of practice, I find myself far more in agreement with his philosophy than with the philosophy of most prominent contemporary public figures whom I respect and for whom I vote.

My purpose tonight is to review what I understood to be the outline of Justice Black’s important stands, indicate the points on which I differ, and finally extend my remarks to examine how Justice Black’s position might apply to a pressing current problem of the law—the so-called Hustler case.

Hugo L. Black is the only man to have served on what was essentially the pre-Roosevelt court of the Nine Old Men, and the new subsequent courts. He came as an avowed New Deal Senator, a proponent of the 30-hour week (the Black-Connery Act) as early as 1933, a supporter of Roosevelt’s court-packing plan, a foremost nemesis of big business, a trust buster, utility regulator, and vigorous investigator (which may explain his later Fourth Amendment wire tapping views). He was sworn in on a court which had knocked down New Deal legislation with the pointed aim and matter-of-fact regularity of professional bowlers. The NRA, the AAA, and other cornerstones of the Roosevelt program had been declared unconstitutional. The Court to which Black was appointed had read the commerce clause, Art. I, Sec. 8 of the Constitution, as if federal power was dispensed through an eyedropper. A learned scholar, Prof. W. W. Crosskey of the University of Chicago Law School, had been hard at work for years on his monumental two-volume opus, Politics and the Constitution, attacking the current restrictive interpretation of the Federal commerce power and arguing that the constitutional fathers intended to confer on Congress the power to regulate all commerce having a national impact. But before Cross-

2. W. CROSSKEY, 1, 2 POLITICS AND THE CONSTITUTION (1953).
key’s book was published, Black’s roughly similar view had been, however reluctantly, accepted by the Court. Black’s career in his ten years in the Senate and his first decade on the Court is somewhat of a paradox. For Black was in many ways a Jeffersonian Democrat—certainly not a spiritual Federalist. In the words of Sidney Davis, a former Black law clerk, “If Thomas Jefferson had lived in the twentieth century, he would have been Hugo Black.” Yet the depression of 1929-1941, added to the pervasive and persistent poverty of his Southern constituency, had by 1926 made Black a strong advocate for and legal supporter of National Power as the remedy for intolerable economic and social conditions. Though the small town Southerner might in normal times have doubted the wisdom of creating a powerful national bureaucracy and huge national programs, Black never questioned the constitutional power of Congress to cope with national economic problems. In the words of another former Black law clerk, Prof. John Frank:

By the time he left the Senate, he had developed and firmly expressed his basic views . . . on the commerce power which he thought co-extensive with the needs of the economy.

and concomitantly,

On the doctrine known as substantive due process which he opposed in every form and under every label until he died.

Of course, it was this principle of “substantive due process” on which the old Court had so frequently learned to invalidate the New Deal laws.

Were Black judged only on his views of federal power over commerce and his opposition to substantive due process, he would seem to have been cast more in the mold of Hamilton than Jefferson, but one must keep in mind that the Hamilton-Jefferson disputes over the handling of the economy took place in an infant and largely rural nation. Jefferson apparently had not the slightest notion that the 13 Colonies would become a Continental state of 225 million, of which 97% of its population would live on 1.6% of its land. Indeed, Jefferson would have had little faith that Democracy could survive in such a setting. In 1781, Jefferson published anonymously, abroad and in French, his Notes on the State of Virginia,3 in which he said:

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The mob of the great cities add just so much to the support of pure government as sores do to the strength of the human body. It is the manner and spirit of the public which preserves a Republic in vigor. A degeneracy in these is a canker which soon eats at the heart of its laws and Constitution.

Black, when the economic battles were won and the depression was overcome by war and kept at bay by government action, spent the next twenty years of his service buttressing the power of the individual against the state. In retrospect, it almost appears that having been a prime force in creating and validating a powerful government, Black was determined to channel and restrict its powers and to gird its citizens with protective armor forged from his reading of his well-worn copy of the Constitution.

He would enjoin Presidents who had attempted to exercise power by fiat. No, Harry Truman could not seize and operate steel mills threatened with strike even during the Korean War.4

He told another President, Richard M. Nixon, that “national security” claims could not be invoked to stop the publication of the Pentagon Papers.5

He fought a long battle for incorporation of the Federal Bill of Rights into the Fourteenth Amendment.6 Although Black fired his first shots as a mere sniper, alone in dissent in Adamson v. California,7 his battle ended in almost complete practical victory. In Adamson his dissent, possibly his longest opinion, spelled out an essence of his judicial philosophy. Of the limitations on Federal power, Black said:

The first ten amendments were proposed and adopted largely because of fear that Government might unduly interfere with prized individual liberties. The people wanted and demanded a Bill of Rights written into their Constitution. The amendments embodying the Bill of Rights were intended to incorporate all branches of the Federal Government in the field touched by the amendments—Legislative, Executive, and Judicial.8

6. U.S. Const. amend. XIV.
8. Id. at 70.
Turning to the Fourteenth Amendment's constitutional limitations on state power, Black spread forth his "incorporation" argument—one never fully adopted by the Court, but of profound practical effect nevertheless. The following ideas of Black did not then or afterwards win the ideological or historical war, but by the time he died, most of the specific battles had gone his way:

My study of the historical events that culminated in the Fourteenth Amendment, and the expressions of those who sponsored and favored, as well as those who opposed its submission and passage, persuades me that one of the chief objects that the provisions of the Amendment's first section, separately, and as a whole, were intended to accomplish was to make the Bill of Rights, applicable to the states.\(^9\)

Consider, if you will, the profound effect which this doctrine of incorporation, by its very absence, had upon the infamous Leo Frank case.\(^10\) Because the Court refused to recognize the applicability of the Bill of Rights to the state, the victim of state injustices and state bigotries had no recourse beyond the courts of the offending state itself. There could be no fully effective rights of national citizenship under such circumstances.

For Black, the Bill of Rights applied across the board. And among those ten amendments, the First Amendment was to Black a rock on which free government rested. It was first because its claims were primordial and absolute. Black set forth his views with candor in a 1962 interview with Professor Edmund Cahn:

CAHN: Is there any kind of obscene material, whether defined as hard-core pornography or otherwise, the distribution and sale of which can be constitutionally restricted in any manner whatever, in your opinion?

JUSTICE BLACK: I will say it can in this country, because the courts have held that it can.

CAHN: Yes, but you won't get off so easily. I want to know what you think.

JUSTICE BLACK: My view is, without deviation, without exception, without any if's, but's, or whereas's, that freedom of speech means that you shall not do something to people either for the views they have or the views they express or the words they speak or write.

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9. Id. at 71-72.
There is strong argument for the position taken by a man whom I admire very greatly, Dr. Meiklejohn, that the First Amendment really was intended to protect political speech, and I do think that was the basic purpose; that plus the fact that they wanted to protect religious speech. Those were the two main things they had in mind.

It is the law that there can be an arrest made for obscenity. It was the law in Rome that they could arrest people for obscenity after Augustus became Caesar. Tacitus says that then it became obscene to criticize the Emperor. It is not any trouble to establish a classification so that whatever it is that you do not want said is within that classification. So far as I am concerned, I do not believe there is any halfway ground for protecting freedom of speech and press. If you say it is half free, you can rest assured that it will not remain as much as half free. Madison explained that in his great Remonstrance when he said in effect, "If you make laws to force people to speak the words of Christianity, it won't be long until the same power will narrow the sole religion to the most powerful sect in it." I realize that there are dangers in freedom of speech, but I do not believe there are any halfway marks.

CAHN: Do you subscribe to the idea involved in the clear and present danger rule?

JUSTICE BLACK: I do not.

A more formal statement of the same view can be found in Black's 1968 Third Carpentier Lecture at Columbia University in which he explicitly says of obscenity: "And I cannot help pointing out here, in light of what seems to be happening today, that I think the Supreme Court is about the most inappropriate Board of Censors that could be found." Black, consistent with his legal position, never had to read or look at the flow of filth which clutters court records dealing with obscenity. Indeed, he readily admitted as much in Mishkin v. New York. He was naive and he was puritanical, so he had to know that the examples of pornography in the records would have shocked and personally offended him. He simply followed his Constitutional Faith, interestingly enough the title of his Carpentier Lectures, but the "faith" he pursued was not his own.

12. Mishkin v. New York, 383 U.S. 502, 516 (1966) (Black, J., dissenting) (As Black explained it, "Neither . . . have I read the alleged obscene material. This is because I believe . . . that this Court is without Constitutional power to censor speech or press regardless of the particular subject matter discussed.").
It was the faith of the Constitutional Fathers as followed by a believer who, moreover, had sworn in solemn oath to follow that faith. Thus, Black joined Douglas’s dissent in Roth v. United States,\(^1\) even though the decision was hailed by libertarians as a great leap forward because it established the then new standard for judging obscenity as follows: “[W]hether, to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest.”\(^1\) While libertarians cried “Hallelulah” at the new standard, Black had no reason to believe, but history of which he was a diligent student gave him every reason to suspect, that in this new liberal approach lay a hidden horror.

In Ginzburg v. United States,\(^1\) he exposed the lurking danger, then only a working hypothesis of what could be the worst to come:

> The first element considered necessary for determining obscenity is that the dominant theme of the material taken as a whole must appeal to the prurient interest in sex. It seems quite apparent to me that human beings, serving either as judges or jurors, could not be expected to give any sort of decision on this element which would even remotely promise any kind of uniformity in the enforcement of this law. . . . In one community or in one courthouse a matter would be condemned as obscene under this so-called criterion but in another . . . courthouse in the same community, the material could be given a clean bill of health.\(^1\)

Then continuing his dissent, Black dealt with the so-called community standard:

> Nothing that I see in any position adopted by a majority of the Court today and nothing that has been said in previous opinions for the Court leaves me with any kind of certainty as to whether the “community standards” referred to are world-wide, nation-wide, section-wide, state-wide, country-wide, precinct-wide or township-wide.\(^1\)

Many at the time of the Ginzburg dissent thought that Black was exercising his well-known advocacy when he wrote further:

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14. Id. at 489.
16. Id. at 478-79.
17. Id.
Could one expect the same application of standards by jurors in Mississippi as in New York City, in Vermont as in California? So here again the guilt or innocence of a defendant charged with obscenity must depend in the final analysis upon the personal judgment and attitudes of particular individuals and the place where the trial is held. And one must remember that the Federal Government has the power to try a man for mailing obscene matter in a court 3,000 miles from his home.\textsuperscript{18}

Black did not participate in \textit{Miller v. California},\textsuperscript{19} in which his expressed fears were finally grafted into a majority opinion, holding that a local jury may measure the essentially factual issues of prurient appeal and patent offensiveness by the standards that prevail in the forum community and need not employ a national standard.

So now we find that what was to Black unthinkable is the law. The Court has validated what were not merely fears for Black, but horrors. The issue goes beyond free speech because there is no definition of what free speech itself is. If a jury in Cincinnati today can find \textit{Hustler} obscene and send its publisher to jail, why can’t a jury in Anchorage, Alaska find a picture spread on bathing suits in \textit{Women’s Wear Daily} obscene and send its publisher to jail? Wouldn’t \textit{Playboy} be obscene at Bob Jones University? And wouldn’t \textit{Nasty Habits}—which isn’t even rated “X”—be rated obscene in French-Catholic areas of New Hampshire? And from there, how large a step is it to go beyond the mere sex standard in determining obscenity? I personally feel that violence is obscene. Does that mean that if I am a prosecutor working with a compliant grand jury, I may indict and prosecute in Columbus, Georgia, the producer of a documentary film on the war in Vietnam such as \textit{Hearts and Minds} or in Minnesota, the television station which broadcasts a report showing the dreadful physical effects of pollution from a local plant which furnishes employment to a substantial number of local people? If this sounds like a slippery slope argument to you, I say we are already tobogganing. Recall Tacitus describing a time in which criticizing the Emperor was obscene. And now Black’s fears have come to be law and reality in the prosecution of Larry Flynt in Cincinnati. To Flynt those fears may mean years in prison.

Black, as everyone, was fallible, and when he made a mistake it was in the memorable words of another public figure a “beaut.”

\textsuperscript{18} Id. at 480.

Once when he strayed from his creed in upholding compulsory flag salutes in public schools, he quickly recovered and three years later faced and frankly acknowledged his error and recanted. The reversal is all the more remarkable because it came at a time when men were fighting for and dying for the flag all over the world. Yet Black (and Douglas too) didn’t flinch as they confessed error.

On another occasion during the same war, Black was the author of an opinion which seems totally inconsistent with his creed. Black and the Court upheld the exclusion of Japanese from areas on the West Coast and their relocation in assigned places. Black apologists regard this opinion as aberrational. Black himself never retracted. We all know that a Southerner can be moved by feelings associated with deep patriotism in a war. This is especially true of World War II, which was described by Black as the “only” war of which “I thoroughly approve.” But recall, this case was before the MacArthur incident, before Vietnam, and before the revisionist history of World War I. And a Southerner can also be very stubborn in the defense of a basic conviction. Korematsu to me is wrong, indefensible, and though Black took great pains to deny any racial implications in his opinion, I believe the policy originated in part on racial grounds. (Note that no German exclusion and relocation acts were ever even contemplated.)

A third example of what I deem to be error on Black’s part, and with which position I violently disagree, is his attitude towards wiretapping. I mentioned before that perhaps this attitude on Black’s part can be traced to his days as an intense and resourceful investigator. But one simply cannot accept as “strict constructionism” Black’s refusal to recognize wiretapping as unconstitutional because the Constitution fails to mention it. And his idea that eavesdropping existed in the 18th Century so that the Framers were aware of it and chose not to secure against it, is far from convincing. Article

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Black makes this position explicitly clear:

Tapping telephone wires, of course, was an unknown possibility at the time the Fourth Amendment was adopted. But eavesdropping (and wiretapping is nothing more than eavesdropping by telephone) was
I, Section 8 fails to mention railroads, yet Black found the Constitution brimming with the power to control such modern devices.

It seems to me, instead, that Black's wiretapping position is an example of a man influenced and formed by his background. We have examples in our day too; the best way to explain the recent abortion decision—an aberration, to say the least—an activist decision by a passive court—is to recognize that Justice Blackmun represented the Mayo Clinic for years. He is a man acutely aware of the medical realities. And Black, the investigator, was fully aware of the practical realities of investigation.

Despite the apparent discrimination against a minority upheld in Korematsu, Black vigorously supported other minorities in other contexts and other times:

— "an ancient practice which at common law was condemned as a nuisance. . . . In those days the eavesdropper listened by naked ear under the eaves of houses or their windows, or beyond their walls seeking out private discourse." . . . There can be no doubt that the Framers were aware of this practice, and if they had desired to outlaw or restrict the use of evidence obtained by eavesdropping, I believe that they would have used the appropriate language to do so in the Fourth Amendment. They certainly would not have left such a task to the ingenuity of language-stretching judges. No one, it seems to me, can read the debates on the Bill of Rights without reaching the conclusion that its Framers and critics well knew the meaning of the words they used, what they would be understood to mean by others, their scope and their limitations. Under these circumstances it strikes me as a charge against their scholarship, their common sense and their candor to give to the Fourth Amendment's language the eavesdropping meaning the Court imputes to it today.

See also Berger v. New York, 388 U.S. 41, 73 (1967) (Black, J., dissenting): However obnoxious eavesdroppers may be they are assuredly not engaged in a more "ignoble" or "dirty business" than are bribers, thieves, burglars, robbers, rapists, kidnappers, and murderers, not to speak of others. And it cannot be denied that to deal with such specimens of our society, eavesdroppers are not merely useful, they are frequently a necessity. I realize that some may say, "Well, let the prosecuting officers use more scientific measures than eavesdropping." It is always easy to hint at mysterious means available just around the corner to catch outlaws. But crimes, unspeakably horrid crimes, are with us in this country, and we cannot afford to dispense with any known method of detecting and correcting them unless it is forbidden by the Constitution or deemed inadvisable by legislative policy—neither of which I believe to be true about eavesdropping.

Chief Justice Warren described the entry of the Court into the equalization of representation and voting power as a most important innovation of his term of service. As early as 1946 in his dissent in *Colegrove v. Green*, Black had been on record that it was the Court's business to keep the channels of democracy open and to equalize access to political power. He vigorously resisted from the outset Justice Frankfurter's attempt to bar judicial review from this area. In every one of the County Unit cases I brought to the Court from Georgia in a 14-year fight from 1949 to 1963, Black consistently found federal jurisdiction and eventually was able to join Douglas in a 7-2 decision pronouncing the doctrine of "one man, one vote."

It scarcely requires stating in Alabama, but how can one fail to note that Justice Black, beginning in 1940 in *Chambers v. Florida*, through *Brown v. Board of Education of Topeka*, was in the forefront of the slow case-by-case judicial affirmation of the constitutional rights of Blacks—fair trials, education and suffrage.

In the 1960's the Court, as the other two branches of government, had to deal with the protests, demonstrations, and violence which were endemic to the times. Black, to the dismay of many admirers, opted with those who would control some of the manifestations of this protest. Black, an absolutist on the free speech issue, could not consistently believe that marching, picketing, and demonstrations were pure speech—though such action, when peaceful, might have been to some the only available form of expression. He was deeply disturbed by such disorders as accompanied McNamara's appearance at Harvard. Even in my own experience, I have been disappointed at the attitude that some people do not have the right to say wrong things—even at a university. And Black, in his concurring opinion in *Cox v. Louisiana*, said: "Picketing, though it may be utilized to communicate ideas, is not speech, and therefore is not of itself protected by the First Amendment."

Vintage Black on the subject is to be found in *Adderley v. Florida*, in which, writing for the Court, he upheld the conviction

30. *Id.* at 578.
of students under a Florida trespass law for demonstrating on grounds around a jail after having been directed by the sheriff to leave. The philosophy behind this and other opinions of a similar import were set forth in the Third Carpentier Lecture:

Our government envisions a system under which its policies are the result of reasoned decisions made by public officials chosen in the way the laws provide. Those laws do not provide that elected officials, councilmen, mayors, judges, governors, sheriffs, or legislators, will act in response to pre-emptory demands of the leaders of tramping, singing, shouting, angry groups controlled by men who, among their virtues, have the ordinary amount of competing ambitions common to mankind. A control of this kind by such particularized groups is directly antagonistic to a control by the people's representatives chosen by them to manage public affairs. In other words, government by clamorous and demanding groups is very far removed from government by the people's choice at the ballot box. What we have in this country is a government of laws, designed to achieve justice to all, in the most orderly fashion possible, and without leaving behind a deluge of hate-breeding divisions and dangerous riots.32

The Constitutional Faith of the Fathers which Black made his own forbade restraints on the verbal, printed, and pictorial expression of ideas, no matter how odious. But Black could find no similar absolute bars to government action designed to protect the general public from disorder and crime. However, he overlooked the fact that peaceful demonstrations could be in some situations the only available form of speech.

Black was not totally in any "camp." He was a principled man, who approached his work from a well-developed philosophy—not an ad hoc case-by-case group of contrivances. One may have disagreed with him and I sometimes did, but given his values and his approach, his opinions made sense to a student of the man.

Finally, now I should like to sum Hugo Black as I see him:

He was a courteous, wise, and largely self-educated Southerner. Indeed, much of his education came through his service in the Senate with such men as Norris, LaFollette, Borah, and Wagner, to name a few. His philosophy was that of Jefferson, his political motivations sprang from Southern populism, and his personal life re-

lected the tradition of small-town Southern America.

He was a passionate man of faith, not a New England skeptic such as Holmes. When Black dissented, as he and Holmes so often did, Black was apt to write a lawyer’s brief—a reasoned and impassioned argument. Holmes more frequently simply staked out his views as a bench mark to which he and a majority might some day return. For Black, the passionate advocate, it was never enough to state one’s position and move on, satisfied that the record was preserved.

Black passionately and successfully stood by his constitutional views of a political state which was free of tyranny, protected federally and in the states by the Bill of Rights; of an economy which was opened by antitrust laws and business regulation; of an educational system which was equally available to all children; of a democracy which was truly representative and in which each man had one and only one vote; and of a society which was tolerant and not dominated by the power of a majority or the disruptions of a minority. In effect, Hugo Black believed that organized society should provide a stable platform in which diverse opinions, talents, and initiatives could compete without disorder to pursue truth as best it can be discovered, and the fruits of labor as best they can be maximized. He believed that there was no way to discern truth except in the marketplace of contention and through the unfettered competition of forces seeking to assert particular views. He had very little sympathy with inflated government, inflated business, inflated labor, or inflated egos. He believed that the duty and indeed the *raison d’etre* of government was to provide that stable platform in which the ideological and productive forces could contend competitively and without violence. He opposed all who would forcibly remove others from the platform or tilt it to their advantage. The platform must remain available and level!

It is interesting, in conclusion, to compare Black with Holmes and Brandeis—jurists whose lives overlapped at a crucial time in this country’s history. All of these men, unlike so many others who sit and have sat on the Supreme Court, possessed a global philosophy—an approach to the law which he could consistently and even-handedly apply. It is remarkable, but not to me or other Southerners, that Black’s influence on his time was really greater than that of Holmes, the great scholar, and Brandeis, the great corporate lawyer. Holmes and Brandeis, sad to say, never lived to be in the majority. Black did. He pressed his beliefs, and he saw them become
law. This largely self-educated but extraordinarily intelligent and learned man held an overall view of the law which he saw prevail.

It had been said—by Richard Nixon—that the South was without a voice on the Supreme Court. Justice Black was that voice of our better nature for 34 years. This Twentieth Century Jefferson appropriately sprang from Southern soil and walked these grounds. He has been one of my heroes. I trust he is a hero of President Carter who could have no better model.