

Professionalism

Hugo Black and the Bill of Rights

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by Roger A. Stetter

“... I was born in a frontier farm home in the hills of Alabama in the troubled times of Reconstruction, after the Civil War, and my early life was spent in plain, country surroundings. There I became acquainted with the short and simple “annals of the poor,” among plain folks who learned most of their law and sound philosophies from the country schools and churches. In due course the people of Alabama chose me to become their United States Senator. I served in the Senate until appointed Associate Justice of the United States Supreme Court.... It is a long journey from a frontier farmhouse in the hills of Clay County, Alabama, to the United States Supreme Court, a fact which no one knows better than I. But this nation, created by our Constitution, offers countless examples just like mine.”

Hugo Black, **A Constitutional Faith** (1968).

Our purpose today is to chronicle briefly the education and career of Hugo Black and provide some insight on how he made the journey from country boy to Supreme Court Justice and defender of the Bill of Rights.

Early Life and Education

Hugo La Fayette Black was born on a wintry day in February 1886 in a log cabin home in northern Alabama and named after the French novelist, Victor Hugo. He was the youngest of seven children. Just a week before his birth, Hugo’s two-year old sister died and was buried in the family cemetery, Old Mount Ararat. Over eighty years later, Justice Black would sadly recall the baby sister he never met:

... The time within which the little headstone was bought that marks the spot where she lies is still within my memory. Usually when I return to Alabama, if I have any time, I go back to Old Mount Ararat to drop a tear at this little grave that, while in the midst of the remains of my relatives, somehow seems so lonely away from her immediate family. My little sister, whose departure from this world so nearly coincided with my entrance, was undoubtedly a victim of the inadequacies of the frontier days....

The Memoirs of Hugo L. Black at 4-5 (Elizabeth Black, ed. 1986) ("Memoirs").

Black would later lose his favorite brother, a lawyer who drowned in a creek when his horse and buggy went astray, and both parents died before he was twenty years old. Black wrote of his mother:

... Looking back, I cannot recall that there was ever a time when I left home, whether for a long or a short period, that my mother did not go with me to the front steps, sometimes to the front gate, take a last look to see if my hair was combed, straighten out any part of my clothing that needed it, and then kiss me goodbye. She was one of a small number of young women of her generation in Clay County who attended one of the few higher academies of learning in Alabama at the time....

Id. at 21.

Hugo Black nonetheless described his boyhood as a happy one, made more so by his love of reading:

As a boy I rode horses, fished, swam, jumped, turned hand springs in the air, and walked all over Ashland on my hands; played checkers, dominoes, pitched horseshoes and played baseball as often as possible. I also read a great deal, frequently lying on my stomach on the front porch of our home or somewhere in the shade of trees in the woods close to home. I read everything that was both readable and available.

Memoirs at 13.

Black realized very early that he wanted to become a lawyer. Living in the County seat of Ashland, Alabama, where his father owned a general store, Hugo spent countless hours watching the proceedings in the County courthouse:

... I cannot remember the time when I did not want to be a lawyer.... [From] the time I was around six years old [I became] the most regular attendant at all the court sessions held in Ashland from Justice of the Peace on up. I can remember yet how exciting were the many trials I sat through.... I can remember instances in which I felt in those early days that some lawyers failed to ask the right questions or make the right arguments in the right way, while others thrilled me with their skill and eloquence.

Hugo Black, “**Reminiscences,**” Alabama Law Review (Fall 1965).

Law Study and Practice

Black studied law for two years at the University of Alabama in Tuscaloosa, although the Law School was then a stepchild of the University, its two-man faculty impressed Hugo Black. One of his law teachers, Professor William Thorington, had served as a judge on the Alabama Supreme Court and wore a handle-bar mustache -- not unlike the one worn by U.S. Supreme Court Justice, Oliver Wendell Holmes.

Graduating in 1906, Black used his modest inheritance to purchase a first-rate law library for his new law office overlooking Ashland square. But young lawyer Black had few clients and his office, including all of his law books, burned to the ground within a year of its opening. Shortly thereafter, Black packed his few belongings and set out for Birmingham and a new beginning.

A stranger in the booming industrial city that Birmingham was in 1907, Black found his footing quickly, becoming a highly respected and successful personal injury lawyer in the space of ten years. His calling as a champion for the underdog was presaged in the first case Hugo Black tried in Birmingham. A black convict laborer, Willie Morton, was referred to Hugo Black by an older attorney who didn't think much of the case. During his imprisonment, Willie Morton had been leased by the county jailer to a steel company. There was nothing unusual in that arrangement: leasing of convict labor was commonplace at the time, a source of cheap labor for industry that also fattened the coffers of county sheriff's offices. However, Willie Morton had been forced to work in the steel company's coal mine for twenty-two days *after* his prison sentence was up. The case pitted Hugo Black against one of the city's leading trial lawyers, a partner in a downtown law firm that included the steel company among its wealthy corporate clients. But Black won the case and split the \$150 judgment with his client.

A few years later, the presiding judge in the Willie Morton case became public safety commissioner of Birmingham and appointed Hugo Black as a police court judge. His gift of moving a busy docket quickly, without losing either his sense of humor or compassion, lead a popular journalist to sing Black's praises in one of Birmingham's major dailies. The reporter nick-named the young police judge, "Hugo-to-Hell" Black. Judge Black was stern when he had to be, but fair as well. On one occasion, he released twenty-two black men accused of disorderly conduct at a dance, telling the arresting police officers they had "no more right to break up that dance than any other." Virginia Van der Veer Hamilton, **Hugo Black: The Alabama Years** 43 (1972).

The experience of being a police judge undoubtedly contributed to Hugo Black's keen understanding of people, a trait he displayed throughout his life and work:

From his bench each morning, Judge Black viewed a motley collection of drunks, petty thieves, crapshooters, dope peddlers, loafers, prostitutes, and those who the night before had been hot-tempered or careless with fists, razors, or switchblades. Minor offenders were the clientele of police court, where the dregs of a city famed for violence got their reprimands and sentences.

Id. at 38.

Black went on to become the public prosecutor of Jefferson County, one of the wealthiest personal injury lawyers in Alabama (earning \$40,000 in 1925), and a United States Senator. Running against a former governor and U.S. senator's son, Hugo Black won his first Senate race handily in 1926. His conservative opponents labeled Black a "damage suit lawyer" who

"generously" allowed widows and orphans to keep one-half of the judgments he recovered on their behalf. Using the formidable forensic skill he had developed as a jury trial lawyer, Black responded easily to such attacks, often turning them to his advantage:

...Yes, he acknowledged, he had tried some damage suits. How else could poor men and women afford legal counsel except by offering some lawyer a percentage of the damage award? "I have represented the injured and the broken, the widows and the orphans of men killed beneath the wheels of trains or buried in the falls of rock down in the mines of coal and iron." He had as much right to represent these people, Black shouted to the crowd of excited voters, as his opponents had to represent corporations.

Id. at 130.

Supreme Court Nomination and its Aftermath

President Franklin Delano Roosevelt nominated Hugo Black as an Associate Justice to the United States Supreme Court in 1937. The nomination caused an uproar in the country but Hugo Black came through it all a better man and a great judge.

FDR chose Black to take a seat on the High Court because he had a distinguished record as an ardent New Dealer in the Senate and defended President Roosevelt when the chips were down. In particular, Black defended FDR's court-packing plan, deflecting criticism away from the President and towards the conservative Justices who invalidated social legislation under the Due Process clause -- elevating their laissez faire views of society into Constitutional doctrine, the supreme law of the land. The President confided to his Interior Secretary, Harold Ickes, that Black was altogether too liberal for his home state, and was concerned that he might not win re-election. FDR also sympathized with Black because his younger son, Sterling, was suffering from ear trouble that might require expensive medical treatment.

In August 1937, FDR summoned Hugo Black to his study in the White House. He held out a Supreme Court nomination form and said, "Hugo, I'd like to write your name here." Receiving the answer he wanted, FDR inscribed the words, "Hugo L. Black, of Alabama," sealed the envelope, and had it delivered to the Senate chamber the next day. Not surprisingly, the Senate wasted little time confirming one of its own. A week later, Black took his judicial oath from the Secretary of the U.S. Senate, and then traveled to Europe with his beautiful wife, Josephine, for an extended holiday before the Supreme Court's October Term began.

In September, while the Blacks were still vacationing in Europe, an enterprising investigative reporter discovered that Justice Black had been (perhaps still was) a member of the Ku Klux Klan. The news story caused a sensation, embarrassed President Roosevelt, and probably would have toppled a less sturdy and intelligent man. Returning from Europe, Black gave a radio address to a

huge national audience, some 30 million people. In an eleven-minute speech, he won his case in the jury of public opinion, convincing the American people that he detested racial hatred and intolerance, believed deeply in the Bill of Rights for all Americans, and -- although he had joined the Klan briefly -- never took it seriously and quit before he became a United States Senator.

Interestingly, most of the American people, including people who had themselves been victims of persecution, and organs of liberal opinion, rallied behind Hugo Black, allowing him to take his seat on the Supreme Court without difficulty in October 1937. A Jewish department store owner in Birmingham remarked that the dispute was "dirty politics." A Jewish man from Baltimore wrote to President Roosevelt: "I prayed to God that you would appoint more Klansmen of the type of Hugo Black." The *Nation*, acknowledging that Black had joined the Klan to further his Senate ambitions, explained that he had to fight his way up against "the ignorance and bigotry of the Southern masses" without the benefit of a Harvard education. Similarly, the *New Republic* commented that there was a "generally recognized moral statute of limitations that runs against the errors of a man's early career." Hamilton, **Hugo Black: The Alabama Years**, pp. 283-300.

Mr. Justice Black

No one who has studied his record on the High Court can help but be awed by the greatness of Justice Hugo Black. Perhaps more than any other Justice, Hugo Black gave our people a deep appreciation of the Bill of Rights and an abiding respect for the role of a Supreme Court justice in safeguarding our precious liberties.

What made Justice Black such a great judge? Many forces shaped Hugo Black's character, as with all of us in this Courthouse tonight. But one attribute that surely contributed to his greatness was Justice Black's love of books. The second-floor study of Hugo Black's home in Old Town Alexandria, Virginia was lined with great books that Justice Black loved more dearly than any of his other earthly possessions. High on his list of favorites were writings from ancient Greece and Rome, writings of Thomas Jefferson and other works from the "seedtime" of the American Republic, and books on the French Revolution.

One of his former law clerks, Dan Meador, explained Justice Black's passion for reading, and how it affected his outlook as a judge, in these words:

... Reading was for [Hugo Black] a means of instruction in human nature. In the lives of men over a two thousand year spread of time and place he perceived repeated patterns of behavior -- moments of glory and high purpose, acts of skulduggery, displays of the strengths and weaknesses of character, persecutions of the weak by the powerful, triumph and disaster, corruption in public office, and struggles for liberty against arbitrary officialdom. He thought that the foibles of people and politics were essentially the same in all ages. With this sense of history

and the human condition, there was for him little or nothing that was fundamentally new or different in the issues coming before the Supreme Court.

Daniel J. Meador, **Mr. Justice Black and His Books** 31 (1974).

Justice Black shared his reading interests with his new law clerks at the beginning of their clerking experience, often making a deep and lasting impression on their development as lawyers:

"Have you read these books?" This question from Justice Black was heard by many a new law clerk shortly after coming on the job. "These books" usually referred to some of his volumes of Tacitus, Thucydides, Plutarch, or Livy, or to *The Greek Way*, or to some other historical work he might happen to be reading at the moment. On getting a negative response, as he did all too often, Black would say something like: "Well, they're your first assignment. What they have to say about human nature and history is more relevant than anything I can think of to the issues now before the Court."

Id. at 30.

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Further Reading

1. Hugo L. Black, **A Constitutional Faith** (1968).
2. Virginia Van der Veer Hamilton, **Hugo Black: The Alabama Years** (1972).
3. Daniel J. Meador, **Mr. Justice Black and His Books** (1974).
4. Elizabeth Black, **Mr. Justice and Mrs. Black: The Memoirs of Hugo L. Black and Elizabeth Black** (1986).
5. Hugo L. Black, "Reminiscences," *Alabama Law Review* (Fall 1965).
6. *Chambers v. Florida*, 309 U.S. 227 (1940); *Barenblatt v. United States*, 360 U.S. 109, 134-162 (1959) (Black, dissenting); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *The New York Times Co. v. United States*, 403 U.S. 713, 714-720 (1971) (Black, concurring).
7. CBS NEWS SPECIAL (TV broadcast): "Justice Black and the Bill of Rights" (12/3/68) (CBS News Archives, New York, NY).