

MEMORIAL SERVICES

HELD IN THE SUPREME COURT OF ILLINOIS AT THE JUNE
TERM, 1938, ON THE LIFE, CHARACTER AND PUBLIC
SERVICES OF THE LATE JUSTICES WARREN W.
DUNCAN AND H. PAUL SAMUELL.

At the hour of ten o'clock A. M., June 14, 1938, other business having been suspended, the following proceedings were had:

MR. CHIEF JUSTICE SHAW:

This hour has been set aside for the purpose of receiving memorials for the late Justices Warren W. Duncan and H. Paul Samuell. The memorial for Mr. Justice Duncan will be presented on behalf of the Illinois State Bar Association by its first vice-president, Mr. Charles O. Rundall.

MR. CHARLES O. RUNDALL:

May it please the court—I desire to present the following memorial:

“Warren Webster Duncan was born on January 21, 1857, in Lake Creek township, Williamson county, Illinois, the son of Andrew Jackson Duncan, a country merchant, and Matilda Nall Duncan. His mother died during his infancy. He received his common school education in the rural schools of Williamson county and attended Ewing College, at Ewing, Franklin county, Illinois, from which he received the degree of Bachelor of Arts in 1879.

Following his graduation from Ewing College, he taught in the common schools of his native county, later returning to Ewing College to teach higher mathematics while pursuing studies for the degree of Master of Arts, which he received in 1883. During this time he began the study of law in the office of Judge W. H. Williams, at Benton, and the office of Judge George W. Young, of Marion. He attended the St. Louis Law School, from which he received the degree of Bachelor of Laws, *magna cum laude*, in the year 1885. He was admitted to the Illinois bar at Mt. Vernon on February 25, 1885, and in August of that year entered upon the practice of his profession in the city of Marion. In the following year he was elected county judge of Williamson county, which office he held for four years. Retiring from the office of county judge, he engaged in the general practice of law in Marion until 1903, in which year he was elected judge of the first judicial circuit of Illinois, being re-elected in 1909. By appointment of the Supreme Court of Illinois he served as judge of the Illinois Appellate Court for the Fourth District in 1909 and 1910, and for the First District during the years from 1911 to 1915, inclusive. In 1915 he was elected to the Supreme Court of Illinois representing the First Supreme Judicial District, and was re-elected in 1924. He was not a candidate for re-election in 1933, but retired to spend the rest of his life in the city of Marion.

"On November 20, 1890, he was married to Miss Ella Goodall, who, with one daughter, Mrs. Edwin G. Bolger, of Denver, Colorado, survives.

"Judge Duncan died at his home in Marion on April 11, 1938."

For many years Mr. Justice Duncan was an active member of the Illinois State Bar Association. On behalf of that association I am privileged to present this brief biographical sketch, realizing full well that an appropriate tribute to Judge Duncan can best be found in those splendid opinions which he delivered as a member of this court. I move that this memorial be received and spread upon the records of this Court.

MR. CHIEF JUSTICE SHAW:

The court will now be pleased to hear Mr. Hosea V. Ferrell, of Marion, who will speak further in the memorial to Mr. Justice Duncan.

MR. HOSEA V. FERRELL:

May it please the court—In the death of Mr. Justice Duncan Illinois has suffered the loss of one of its most distinguished judges, attorneys, and citizens.

The foundations of this nation are not its great cities, railway systems, industrial organizations, and educational institutions. A democracy is built upon a lawful system of government. For its security such a government requires learned and impartial judges who will fairly and judicially interpret the laws, and a citizenry that will respect and willingly obey the decisions of those judges. By his lifelong practice Judge Duncan upheld the high traditions of our American jurisprudence.

The year 1857 was one of the darkest years in the history of the American Republic. The slavery question was at a bitter point in the United States. The lightnings and thunders of the approaching civil war were beginning to be seen and heard. The country had succumbed to a commercial prostration. The best minds were disturbed. Panic and chaos swept over the Union. At the beginning of this year, on January 21, 1857, in Lake Creek township, about six miles north of Marion, Williamson county, Illinois, Warren Webster Duncan was born. His parents were Andrew Jackson Duncan and Matilda Nall Duncan. His mother died during his infancy, and the boy "Webb," as he was called, was tenderly reared by his step-mother, Nancy Powell Duncan.

Andrew Jackson Duncan was a successful merchant of the community, a man of strong will-power and fixed opinions, having many of the characteristics of "Old Hickory" for whom he was named. Joseph Warren, one of the heroes who fell at Bunker Hill, and Daniel Webster, the great constitutional lawyer, who had just recently died, were great in the esteem of the senior Duncan. When it came time to bestow a name upon his son the father spanned the years with the hope of that son's future greatness and named the boy "Warren Webster." A more fitting name could not have been selected, for Warren Webster Duncan yielded to no man in his patriotism and love of his country. He honored its institutions and its laws, and became one of the great constitutional lawyers and judges of his day.

Judge Duncan in his youth was a powerful man in all respects. Physically he was well built, with a sturdy frame, and had excep-

tional strength in his arms. Wrestling at that time was in great favor, and at this sport Judge Duncan had no masters. But he was not content with exhibiting the powers of the body. At an early age he began to show an eagerness and aptitude for learning far beyond the ordinary, and until near the time of his death his desire to learn never abated.

The common schools of that pioneer community were necessarily limited, and after receiving a common school education he attended Ewing College at Ewing, Illinois. He was graduated with honors in 1879, receiving the degree of Bachelor of Arts. As was quite customary at that early day, young Duncan became a schoolmaster. Desiring to increase his store of learning he again attended Ewing College, and received the degree of Master of Arts in 1883. While working for his Master's degree he taught higher mathematics at Ewing, and thus laid the foundation of his long and brilliant legal career, for it is often and well said that there is no subject that tends to strengthen and develop the reasoning and analytical powers of the mind more than higher mathematics. At about this time perhaps the father's vision began to dawn upon the son, for Warren Webster Duncan decided to become a lawyer. He read law in the offices of Judge W. H. Williams in Benton, Illinois, and Judge George W. Young in Marion, Illinois. Later he attended the St. Louis Law School in St. Louis, Missouri, where he was one of the honor graduates. On February 25, 1885, he was admitted to the Illinois Bar and began the practice of his profession at Marion, Illinois.

Hardly had Judge Duncan's legal career started until his judicial career began. In 1886 he was elected county judge of Williamson county, Illinois, for a term of four years.

It may be said that Judge Duncan's actual career as an attorney commenced in 1890, when he again resumed the practice of law at Marion, Illinois. Southern Illinois had long been favorably known for its many outstanding lawyers, and as the Damascus blade is sharpened to a razor edge by fire and hammer, Judge Duncan, by competing in the forum with the best legal brains of that day, became one of southern Illinois' most outstanding lawyers. He continued his practice in Marion and southern Illinois with a rising reputation until the year 1903, when he was elected to the circuit bench of the first judicial circuit. He continued as circuit judge

until 1915. In 1909 and 1910 he was an Appellate Judge for the Fourth District; from 1911 to 1915, Appellate Judge for the First Appellate Court District. In 1915 he was elected to the Supreme Court of Illinois from the First Supreme Judicial District, and served continuously until 1933, when he did not again seek election. It will thus be noted that for thirty-four years Judge Duncan served his community and State as a county, circuit, Appellate, and Supreme Court judge.

On the circuit bench Judge Duncan was known for his intense desire to give all persons who came before him a fair and impartial hearing, regardless of race, color, or religion. While he insisted that the business of the court be dispatched with promptness, he was always courteous and fair to the attorneys practicing before him. His rulings and decisions were always respected by counsel because they felt that Judge Duncan was trying to do what was right.

In the early years of the present century there was a large coal mining development in southern Illinois. During the same period there was great activity in real estate. While he sat upon the circuit bench during those years Judge Duncan had occasion to pass upon many personal injury questions and intricate real estate problems. His studious interest in these important matters prepared him for higher office. When he was elected to the Supreme Court in 1915 he was exceptionally well versed in real estate law, and to him were assigned many cases involving intricate and complicated questions in that field.

Judge Duncan yielded to no one in his respect—yes, his love—for the constitutions of the United States and of the State of Illinois. He firmly believed that the constitution of the United States was the foundation of the American Republic and the citadel of the liberties of the people. To him the fundamental codes of State and Nation were the documentary resources of a substantial society, and his decisions were always based upon a sincere respect for them.

As a Justice of the Supreme Court he felt it was his sworn duty zealously to uphold the State constitution and to pass upon all matters as his conscience dictated. This independence of mind was frequently manifested by strong dissenting decisions, until he was

sometimes referred to as the Holmes or Brandeis of the Supreme Court of Illinois.

Both as a lawyer and as a judge Warren Webster Duncan was a tireless worker and searcher for the exact facts in issue. He delighted in analyzing and solving complicated questions of law and fact, and no task in his legal or judicial career was too large for him to undertake. The record of his work as an Appellate Court judge is found in volumes 151 to 191 of the Appellate Court Reports, and his labors as a Justice of the Supreme Court are found in volumes 269 to 353 of the Supreme Court Reports. Thus it takes many of the pages in more than one-hundred-twenty volumes of the records of our courts to contain his life's work as a judge—truly a remarkable record.

In his domestic relations Judge Duncan was equally as fortunate as in his legal and judicial career. On November 20, 1890, he was married to Ella Goodall, who remained his devoted and constant companion until his death. To this union one child, Pauline, now Mrs. Edwin G. Bolger, of Denver, Colorado, was born. As a result of several serious operations Judge Duncan's health began to fail about the time he retired from this court in 1933, and on April 11, 1938, he passed away quietly and peacefully at his home in Marion, Illinois.

After the loss of such a husband and father as Judge Duncan, there is not much consolation that words can offer to the wife and daughter. But let us console them in this thought—that Judge Duncan was indeed a fortunate man. His good fortune was the reward of a native ability and a serious, purposive ambition. For more than half a century he was actively engaged in the affairs of his community and State as a lawyer and a judge, and during all of that time he took an active interest in political and civic life. It is given to but a few men to be so engaged for so long a time without finding blot or stain upon their shields. But such can be said of Judge Duncan. Never during the course of his long and active life was his integrity or honesty as a citizen, lawyer, or judge ever questioned. His is a record of service of which Illinoisans may be proud. He belongs in that company of "sun-crowned men" who have made public office a high-principled trust.

On behalf of the bar of Williamson County, Illinois, I respectfully move that this memorial be received and spread upon the records of this court.

MR. CHIEF JUSTICE SHAW:

The court will now hear from Mr. J. Roy Browning, of Chicago, a former secretary to Mr. Justice Duncan.

MR. J. ROY BROWNING:

May it please the court—I consider this privilege to speak of my intimate friend and preceptor, the late Justice Warren W. Duncan, a great honor. Direct from law school, I entered his office and remained there for many pleasant years. Ours was not a relationship of mere employer and employee. He was my confidant, my teacher, my counsel and best friend. This close and intimate friendship thus started continued until his death a few weeks ago. Through it I knew him as well as one man could know another. I knew his ideals, his hopes and aspirations and saw his courage manifest itself. He disliked extravagant and sentimental eulogy, and out of respect for what he would want on this occasion, I shall confine my remarks to the facts proved by the record of his life.

Judge Duncan's forebears were among the early pioneers of southern Illinois. There, in Williamson county, he was born and lived his entire life of eighty-two years. Nature and heritage had endowed him with an unusually strong physique and an equally strong mind. The predominant characteristics of his nature were determination, perseverance, strength of purpose, and loyalty. As a young man these characteristics early manifested themselves, as attested by the fact that he was the best athlete and the best scholar in his community. The sciences early attracted him—first, teaching; then, medicine; then, later, the law. Although admitted to the bar and better grounded in the law than most young lawyers of his day, he was not satisfied with his preparation but continued his study first begun in a law office, at the College of Law of St. Louis, from which he was graduated with the highest honors in his class. I point this out not so much as one of his accomplishments but to emphasize that trait of methodical thoroughness which governed his entire life.

The story of Judge Duncan's successes as a lawyer, county judge, circuit judge, Appellate Court judge and Justice of this court is an everlasting testimonial of his right to stand among the illustrious

sons of Illinois. In it there is no backward step; there are no spurts, no flashes, no weaknesses to mar its progress; it is a story of consistent devotion to industry, duty and integrity, coupled with a sound ability, determination and patience. His ability as a lawyer was early recognized and he soon became the leader at the local bar. His integrity and courage earned the confidence and respect of the community, and he was elected judge of the county court. Later, he was elected circuit judge and then Justice of the Supreme Court. The Supreme Court, recognizing his judicial ability when he was acting as circuit judge, appointed him as judge of the Appellate Court for the Fourth District and later for the First District. At that time, the brilliant and able Vickers was the Justice of the Supreme Court from the First Supreme Judicial District, and after his death Judge Duncan was elected as Justice of this court to succeed Judge Watson who had completed Judge Vickers' term. Here he served two terms. In all, he faithfully and conscientiously served his commonwealth as a judge for thirty-four years. His greatest love was the law, both as a profession and as an institution. His ambition was to maintain the high respect in which this Court was held by the citizens of this State and to emulate the distinguished judges who had preceded him as Justices of this Court from the First Supreme Judicial District. To do so, he worked night and day. As I have said, he was a slow and deliberate thinker. He never ceased his researches and study. He was not fluent of expression, and he found it arduous and difficult to reduce his decisions to written opinions. Possessed as he was of a strong body and a dogged determination, he worked incessantly to perform his part of the heavy burdens of this Court. He refused to rest or to take a vacation. He neglected his health and finally his strong body gave way under the overwork, and for the last few years he served here his body was racked with pain and suffering. A less stubborn and courageous man would have surrendered, but not Judge Duncan. He finished the last assignment from this court with as much care and responsibility as the first. The seven hundred thirty-seven opinions in eighty-four volumes of the Supreme Court Reports and the two hundred forty-seven opinions in forty volumes of the Appellate Court Reports are everlasting monuments to his ability, industry, and loyalty to the principles of law and justice.

Aside from Judge Duncan's contributions as a judge, he was a respected and valuable citizen in his community. Unlike the prophet who was not without honor save in his own country, he was best thought of and most respected by those who knew him best. He loved the institutions of his State and Nation and especially those calculated to protect and preserve our liberties and our individual freedom. When any attempt was made to invade or deprive any citizen, however humble, of any of these rights, Judge Duncan was his ready ally and his able and aggressive defender. His charities were many. In politics he was a partisan, but at no time did he allow his partisanship to influence or control his judicial acts or his judgment in matters pertaining to the welfare of his community or country. He had no patience with hypocrisy or self-aggrandizement. To ask was to learn his frank and sincere opinion upon any question. He did not equivocate. Perhaps to a fault, he vigorously championed that which and those whom he thought were right, and condemned that which and those whom he thought were wrong.

There may be those who say Judge Duncan had his faults. I do not seek to cover up whatever shortcomings he may have had. Whatever they were when compared with his virtues, they become small and insignificant—and so I say:

"His faults we write upon the sands of time; his virtues we carve upon the tablets of our love and memory."

So a full and useful life has passed. The great love and respect he had for his widow and daughter, who so tenderly and patiently cared for him in his last long illness, will ever remain in their hearts and memories and will comfort them in their sorrow. They have every right to proudly cherish the heritage that is justly theirs. We of the First Supreme Judicial District reverently cherish the memory of Breese, Baker, Mulkey, Boggs and Vickers. Today, we proudly add the name of Duncan, confident in the belief that his valuable contributions to this great Court shall endure throughout the ages.

Mr. CHIEF JUSTICE SHAW:

The memorial to Mr. Justice Samuell will be presented on behalf of the Illinois State Bar Association by one of its former presidents, the Hon. Walter M. Provine.

HON. WALTER M. PROVINE:

May it please the court—I desire to present the following memorial:

“Henry Paul Samuell was born on October 2, 1886, near Havana, in Mason county, Illinois, the son of Hickman B. Samuell and Sarah Estep Samuell. He received his preparatory education at the Whipple Academy, in Jacksonville, and attended Illinois College, in the same city. He received the degree of Bachelor of Laws from Illinois Wesleyan University in the year 1910. He was admitted to the Illinois bar in 1910, but removed with his family to Three Forks, Montana, in that year and was likewise admitted to the bar of that State, engaging in the general practice of law in Montana for three years. He returned to Jacksonville in 1914, and in 1918 was elected county judge of Morgan county, being re-elected in 1922. Upon expiration of his second term in this office he became a member of the law firm of Bellatti, Samuell and Moriarity, in Jacksonville. In 1929 he was appointed to the Supreme Court to fill the vacancy caused by the death of Justice Cyrus Dietz, representing the Fourth Supreme Judicial District. He returned to private practice in 1930, and in 1932 was appointed to the Illinois Commerce Commission, occupying the office of commissioner until 1933. Following his retirement from this appointment, he was frequently called to serve as neutral arbitrator in disputes between employers and their employees.

“On June 15, 1918, he was married to Miss Millicent Rowe, of Jacksonville, who, with one son, Rowe Samuell, of Jacksonville, survives. His father, Hickman B. Samuell, of Roundup, Montana, and two sisters, Mrs. Blanche Kessen, of Havana, and Mrs. Ida Thomas, of San Diego, California, also survive.

“Judge Samuell died suddenly at his home in Jacksonville on March 22, 1938.”

I move that this memorial be spread upon the records of this court.

MR. CHIEF JUSTICE SHAW:

The court will now hear the Hon. Hugh Green, of Jacksonville, speaking in behalf of the Morgan County Bar Association.

HON. HUGH GREEN :

May it please the court—As you pause from your labors, to pay suitable tribute to the life, character and public services of former Mr. Justice Paul Samuell, the Morgan County Bar Association respectfully acknowledges and gratefully accepts the invitation to participate in these memorial exercises and has designated me as its spokesman. The occasion provides me with an opportunity to speak of one with whom I was intimately acquainted for nearly one-third of a century and for almost two-thirds of his lifetime.

To those who knew Paul Samuell longest and best, his seemingly untimely death brought great sadness of heart, but just as it is said that "every cloud has its silver lining" so may we say that the pleasant recollections which cluster about his memory, will always remain. Ambitious to merit the esteem of his fellow men, he enjoyed the love and affection, earned the respect and confidence and fairly won the admiration of multitudes at home and abroad.

Having determined, early in life, to become a lawyer he spared no effort to improve and equip his keen legal mind for first-class service in his chosen profession. After he practiced for nearly twenty-eight years, it can be said that as a lawyer he was honest, earnest, able, practical and public spirited. Beginning in a small office, he soon occupied a position as an outstanding member of the local bar and later became a partner in the leading law firm of the city of Jacksonville.

It was the office of county judge to which he was twice elected, that disclosed his marked judicial ability, poise and temperament and the facility with which he solved the problems presented to him.

Voluntarily retiring from the bench, he re-entered the practice, representing persons in all walks of life, from the worthy poor to large mercantile establishments. From that practice he was called to the Supreme Court of the State and thereafter to the Illinois Commerce Commission, in both of which positions he served well.

As a Justice of the Supreme Court, Judge Samuell showed remarkable adaptability for the work. His opinions speak for themselves. They are short and concise yet clear and complete. It was said that he did nearly twice the amount of work expected of him as a Junior Justice. In quality and volume his work will stand the acid test.

Toward family and friends he was attentive, thoughtful, loving and lovable. Unswerving in devotion to them, he faithfully discharged every duty which the relationships involved.

Although Judge Samuell is no longer with us in the flesh, the precious faculty of memory enables us to re-create the image of our neighbor, associate and friend, a gentleman in the finest sense of the word. To know him was to love him; to remember him is to emulate him.

It is easy to feel the presence of his spirit here and now, because he worshipped at the shrine of justice. If he could speak to us, I fancy that he would say: "Integrity of the courts is the bulwark of freedom and the guarantee of liberties is independence of the judiciary."

I move that this memorial be received and spread upon the records of this court.

MR. CHIEF JUSTICE SHAW:

The court will now hear Mr. Paul W. Gordon of Springfield, former secretary to Mr. Justice Samuell.

MR. PAUL W. GORDON:

May it please the court—I am grateful for the opportunity of being here today and for the privilege of paying my tribute, however slight, to the memory of Paul Samuell, a former Justice of this court.

It was my great good fortune to serve as secretary to Judge Samuell during his service upon this court and to work in close association with him during that period. It was during those arduous months that I came to know his worth and to appreciate the personal qualities which so eminently fitted him to sit upon the highest tribunal of this commonwealth. Out of respect for what I know would be his wish, I refrain from profuse eulogy, although I could, with complete sincerity, praise his life, his character and his achievements.

Judge Samuell brought to his task as a Justice of the Illinois Supreme Court a splendid legal mind, combined with a rare courage and devotion to duty, and an untiring energy. Possessed of an open mind, a fine judicial temperament and an inborn sense of fairness, he was extraordinarily well equipped to carry on the work

of the Supreme Court. His service upon this court, although brief in point of time, was outstanding not only by reason of the volume of work accomplished, but also by reason of the clarity and sound reasoning of his opinions.

To him, his service upon this court was the consummation of his life's ambition, and to the task which he had assumed he gave all he had of ability, energy and deep human understanding. He realized that the work of the Supreme Court required long hours of arduous labor and these he gladly gave. His capacity for work was seemingly unlimited. Moreover, he felt the obligation to have a thorough understanding of every phase of his work to be one which he was unwilling to shirk. This quality was typical of his entire career. As a private practitioner, on the bench, and as a member of the Illinois Commerce Commission, Judge Samuell was a seeker after truth, for he realized that only by that beacon light could the devious path to complete justice be followed. He was never content to examine the superficial aspects of any subject with which he happened to be dealing. Instead he felt it his duty to delve into all the inner recesses and the dark corners in order that the truth might be brought to light. As evidence of this eternal search for truth, I have known him many times to spend long laborious hours poring over the original record of cases brought to this court for review, in order that each bit of evidence might be weighed and balanced and that the truth might prevail.

Perhaps the most outstanding of Judge Samuell's characteristics, however, were his innate courtesy and kindness. For his other characteristics and qualities, he was admired and respected by all who knew him, but it was his kindness of spirit which endeared him to all with whom he came in contact, and made him loved by those of us who knew him well. But for all of his kindness, he was firm in purpose and few there were who mistook his kindness for weakness. Those who did, did not make the same mistake again. Staunch in his determination to follow the path of duty, he refused to allow friendship or political considerations to deviate him from the course he had chosen. Painstaking in his analysis of the cases assigned to him, deliberate in forming his judgments, nevertheless, once he had determined upon his course of action, he was unswerving in his determination to follow that course.

Judge Samuell's untimely death is deep tragedy to his family and friends, and takes from the bar of Illinois one of its most

distinguished members,—one whose place it will be difficult to fill. He is worthy of every word of praise we can speak; he is worthy of our veneration, our admiration, our respect and our love. Of him we can truly say, as of few men; "His life was an inspiration, his memory a benediction."

MR. CHIEF JUSTICE SHAW:

On behalf of this court I have requested our senior member, Mr. Justice Stone, who served with both of the deceased Justices, to respond to these memorials.

MR. JUSTICE STONE:

There have been presented here today, in these memorials and addresses,—each as an epitome of a great life,—all that can, in fact, be said of any lawyer or any judge who, in consecration to a high concept of duty, discharges that duty well. To say of each of them, as may truthfully be said, that he was preeminently a judge, is to indeed pay the highest tribute; for, when taken in all its implications, no greater compliment can be paid an occupant of the Bench. To say that Justices Duncan and Samuell were preeminently judges is to say of them that their services here were controlled by the highest judicial concept. Such may indeed be said of them. But the lasting tribute to a strong character is found not so much in the sentiments expressed by his friends and acquaintances as by the influence of his able and industrious career. To discharge in full the duties of a judge demands not only a definite conception of human justice, but a personal conviction of the importance of the judiciary in the discharge of its functions as a part of constitutional government. No more definitely can we honor them than to recur to those vital fundamentals cherished by them.

I know from association with those whose memory we honor today, that the principles to which, in these brief remarks, I shall allude, were doctrines of human life and human government to which each had welded his very being and upon which his official action was at all times based. I feel that, in such allusions, I am speaking what I know to have been their convictions, and that realizing the great importance not only of deciding cases upon the principles of justice and the record only, unaffected by any other consideration, but, also, the great importance of a jealous care that

such shall be the reputation of this court, their efforts here will always bear testimony of their devotion to these principles.

The sentiments expressed by Lord Mansfield, Chief Justice, in the *Wilkes case*, point the path for all judges. Though badgered by a libelous press, he spoke those foundation principles with such clarity and courageous conviction as to make his utterances a masterpiece. Of the duty of judges he said, in part: "The constitution does not allow reasons of State to influence our judgment. We must not regard political consequences, how formidable soever they might be. * * * We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences."

In the early years of the nineteenth century James A. Bayard, then a United States Senator, in a discussion of a bill pending before the Congress, again stressed the importance of that doctrine so essential to a continuance of free government. "The essential interest, the permanent welfare of society, require this independence; [of the judiciary] not, sir, on account of the judge; that is a small consideration, but on account of those between whom he is to decide. You calculate on the weaknesses of human nature, and you suffer the judge to be dependent on no one, lest he should be partial to those on whom he depends. Justice does not exist where partiality prevails. A dependent judge cannot be impartial. Independence is therefore essential to the purity of your judicial tribunals."

Principles such as these may well be stressed on an occasion when, as now, we honor the memory of men led by those principles. Judges need not be more than human. It is not demanded of them that they never be mistaken, but the people who have placed their liberties under the protection of the courts demand, and have a right to demand, that those rights and those liberties shall not be bartered away by the courts, either for the judge's individual gain, material or political, or for any other reason.

I know, from conversations with them and contact with them in the conference room, that our former associates realized the importance of remembering always that the lawsuits to be decided, and the human rights to be passed upon, are the suits and rights of others in which the judge has no interest other than that justice shall be done. I know, from conversations with them at times

when the stress of cases before the court was eased for the time, that they felt those principles to be the highest and yet the most fundamental purpose of a judge, and that he who cannot so control his judicial action is not competent to act in that capacity. These fundamental requirements, so espoused by them, set out in bold relief the necessity for judicial independence. As pointed out by Lord Mansfield and by Senator Bayard, courts cannot be independent if their judges are dependent.

It has always been the pride of a liberty-loving people that our scheme of government contemplates an independent judiciary. Nothing so nearly reaches the very fireside of all men and women as the powers vested in the courts of the land, and no greater crimes against a People have in all history been recorded, than those committed in centuries gone by, in the name of law, by judges wholly servient to the will of Kings or ecclesiastical powers. An independent judiciary has been America's outstanding contribution to the governments of the world, and accounts more than any other one thing, for the continuation of free government here, while in other nations of the world human freedom has died. There is a determination, as has been demonstrated by the people of this country, that the courts of the country shall not be subjected to the assaults of the demagogue nor the exigencies of politics. To one who sits on the Bench this is a source of very great encouragement. There is quite enough difficulty in a judge's endeavors to determine the law and facts of the case, and if the time ever comes when it is considered necessary that a judge first find out what is popular, or what is politically safe, before rendering a decision, every judge who appreciates the merely elemental principles of judicial honor will forthwith quit the Bench. It is by the devotion of the people to the ideals of freedom and justice that the coming of such a time shall be avoided.

In the experience and service of these our two former associates whom we honor today, this court has been peculiarly fortunate. Their fine legal training and deep devotion to the principles of human justice and human freedom stamp those services as of a high order, and in days when peoples of the world have been willing to give up their liberties and to submit to monarchies and dictatorships for a fancied security, the courts and the bar of this State do well to honor the memory of men who stood foursquare in

the protection of the fundamentals of democracy, in the preservation of independence of the courts and a realization of their part in the work of protecting human rights. It is from a more or less intimate knowledge of their convictions concerning justice and freedom that I speak today of fundamentals in government. It is fitting that reference be made to those principles which motivated their lives.

Mr. Justice Samuell's tenure in this court was but brief, but in that short time he, by his legal ability, his helpfulness, kindly disposition and clear honesty of purpose, endeared himself to all his associates. His chief concern while here was the good reputation of the court, and his fervent desire was to contribute what he could to that good reputation by honest, conscientious effort on his part. He had in him many elements which would have made him a great judge. To be privileged as I was, to know him through close association and confidential conversation, both in the court and out of it, was to be afforded the picture of a man of superb kindness of nature, and of staunchest convictions as to duty. His friendliness toward his fellows and their higher aspirations marked him as a man whom one should be proud to call friend. His work, as recorded in the Reports of this court, will stand always as a monument to a fine legal mind and a patriotic devotion to duty.

The services of Mr. Justice Duncan were much more extended. For eighteen years he sat as a member of this Court. At all times his work characterized him as a strong man. He was a man of deep convictions. His fine sense of honor and social friendliness endeared him to us. To have been closely associated with him for fifteen of his eighteen years of service was indeed a rare privilege. There were combined in him to a marked degree many elements which set him apart from other men of ability. Gifted with a retentive memory which he developed, in some ways most unusual, and which he reinforced with searching analysis, he brought to the problems before the court unusual strength and clarity of thinking. His devotion to duty was such that even when attacked by severe and prolonged illness, his associates obtained from him only with the greatest difficulty, consent that others of the court do work theretofore assigned to him. He felt he would soon be able to carry on and rebelled at the thought of others doing that which he felt he should do. His traits of character, always strong—sometimes quaint

—but always definitely his own, showed him to be not only a pillar of strength but a lovable companion and a friend whose devotion was never affected or qualified by considerations of his own welfare. His splendid foundation in the law and his clear conception of the principles of free government made him one of the strong members of this court throughout long years of service.

And so this court today, in its response to the splendid sentiments here expressed by those presenting the memorials to these our former associates, feels that the life of each of these men stands out as that of one who has made a substantial contribution to the government of his State.

Mr. CHIEF JUSTICE SHAW:

Each member of this court approves and joins in the remarks of Mr. Justice Stone. We each regret the passing of these esteemed gentlemen who were such able judges and beloved public servants.

The clerk will spread of record these memorials and addresses and the Reporter of Decisions of this court is directed to publish the same in the bound volumes containing our decisions. Out of respect to the memory of our departed associates, this court will stand adjourned until nine o'clock tomorrow morning.

REPORTS
OF
Cases at Law and in Chancery

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VOLUME 369

CONTAINING CASES IN WHICH OPINIONS WERE FILED IN FEBRUARY,
APRIL, JUNE AND OCTOBER, 1938, AND CASES WHEREIN RE-
HEARINGS WERE DENIED AT THE JUNE, OCTOBER AND
DECEMBER TERMS, 1938.

SAMUEL PASHLEY IRWIN,
REPORTER OF DECISIONS.

BLOOMINGTON, ILL.
1938.