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Because of its length and the work it embraced, the judicial career of James F. Byrnes on the Supreme Court of the United States is one of the most unusual careers in judicial history. When Justice McReynolds of Tennessee resigned from the court in 1941, President Roosevelt nominated Mr. Byrnes, a Democrat and senator from South Carolina, to fill the vacancy. The nomination was sent to the United States Senate on June 12 and on the same day, the Senate confirmed the appointment. Justice Byrnes took his seat on the court October 6, 1941.[1] He resigned from judicial office on October 3, 1942. With one exception, his career on this bench is the shortest in the history of the court.[2]

The recorded work of Justice Byrnes can be found in volumes 314, 315 and 316 of the United States reports and a review of the cases therein shows that he wrote sixteen opinions representing the decision of the court. Although he authored no dissenting opinions, he concurred in dissenting opinions of others on twelve occasions. During this period, the court found no occasion to invalidate any act of Congress, so there is no *cause celebre* to shed light on Justice Byrnes' theory of constitutional government.

During the term of court in which Justice Byrnes sat on the bench, the United States entered World War II. Justice Byrnes was concerned that he could not be of more service to his country. After argument of *United States v. Bethlehem Steel Corporation*,[3] a case heard two days after the attack on American ships at Pearl Harbor, Justice Byrnes told the President that with the nation facing the greatest crisis in history and when he (Byrnes) was thinking so much about the ships at Pearl Harbor that it was difficult to concentrate on arguments of counsel, the best he could do was spend hours listening to argument over ships built in 1918. Half in jest, he remarked to the President that justices of the Supreme

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1. Named when sixty-two, Justice Byrnes was one of the oldest men ever appointed to the court.

2. Justice Byrnes served almost sixteen months but the term of Justice Thomas Johnson, who served about six months, is shorter. John Rutledge served approximately twelve months as associate justice and four months as chief justice.

3. 315 U.S. 289 (1942).

Court should not be appointed until they reached the age of seventy, implying that they would in time of war be more content to carry on the retiring life of a judge. The President took the justice seriously, for Mr. Roosevelt suggested a plan whereby war legislation was to clear through the Attorney General and he asked the Attorney General to consult with Justice Byrnes concerning it. During the balance of the court term, Justice Byrnes, in addition to court duties, consulted with congressional leaders and executive department officials regarding needed war legislation.[4] A precedent for his extra-judicial work was available. Years before, Justice Charles Evans Hughes had served as chairman of a commission created by Congress to investigate second-class mail rates.

The court opinions of Justice Byrnes are not brief, cryptic or terse, nor are they long and verbose. They can be termed opinions of average length. Commencing with a statement of facts and proceeding to the development of argument, the opinions demonstrate a style of writing in which there is no striving for adornment, for novel words, for epigrams. While his sentences are sometimes short and staccato, there is variation and continuity in Justice Byrnes' legal writing.

Two of Justice Byrnes' opinions deal with civil rights. Where an ignorant Texas negro was charged with murder in one county and without a warrant was taken by night and by day into other counties and persistently questioned in three different jails on three different days until he "confessed", Justice Byrnes wrote an opinion declaring that this procedure was a denial of due process of law under the fourteenth amendment of the Constitution.[5] Again, when a case arose involving a law of Georgia making it a misdemeanor for one not to perform work for which he was paid in advance, Justice Byrnes said that the necessary consequence of the statute was that one receiving an advance of pay for services he could not repay was bound by threat of penal sanction to remain at work until the debt was discharged. He pointed out that such coerced labor amounted to "peonage" and was, therefore, a form of involuntary servitude forbidden by the thirteenth amendment of the Constitution.[6]

On the other hand, when federal agents in order to overhear con-

4. Byrnes, *Speaking Frankly*, p. 13. While Justice Byrnes no doubt felt himself capable of handling extra-judicial duties, it is apparent that Chief Justice Stone was perturbed that a justice of the Supreme Court would undertake governmental duties not having a direct relationship to the work of the court. (Letter of Harlan Fiske Stone dated December 30, 1941 cited in HARVARD LAW REVIEW, December 1953, p. 199.)

5. Ward v. Texas, 316 U.S. 547 (1942).

6. Taylor v. Georgia, 315 U.S. 25 (1942).

versations used a detectaphone which they placed against a wall of defendant's office and thus procured evidence, Justice Byrnes, although he did not write the opinion, felt that this procedure did not violate the fourth amendment of the Constitution and he voted with the majority in a five-to-three decision.[7]

In the field of interstate commerce, Justice Byrnes wrote one opinion and joined in one dissent. He wrote an opinion dealing with a law of California making it a misdemeanor to bring into the state any nonresident indigent person, the act being invoked with respect to a defendant who brought his penniless brother-in-law from Texas to California to live. Justice Byrnes reasoned that transportation of an individual from one state to another was interstate commerce and that the California law placed such a burden upon this commerce that it was an unconstitutional interference. Mentioning that the statute reflected the social phenomenon of large-scale interstate migration, he pointed out that this phenomenon did not admit of diverse treatment by the several states. The matter was of national concern, he declared, and the California law which was intended to prevent migration was an invalid use of the state's police power.[8]

In another case involving interstate commerce, Justice Byrnes approved the dissenting opinion. The case dealt with an Alabama statute which authorized state inspection of packing stock butter prior to its becoming an ingredient of renovated butter sent into interstate commerce. Since renovated butter had been subjected to federal regulation and taxation, a majority of the court decided that state regulation authorized by Alabama was inconsistent with federal law and that the state law was unconstitutional. Justice Byrnes felt that the state law did not interfere with federal regulation of the finished product and was one of four dissenters.[9]

In the field of labor relations, Justice Byrnes wrote two of the court's opinions during this term. Where seamen on an American ship berthed away from home at a port in Texas, in order to obtain recognition of union demands, refused to obey orders and were discharged, Justice Byrnes felt that their acts violated federal law regulating crews at sea, that their discharge was justified and that under the circumstances the National Labor Relations Board had no authority to compel their re-employment. He said that it was sufficient in this case to observe that the board had not been commissioned to effectuate policies of the Labor Relations Act so single-mindedly

7. Goldman v. U. S., 316 U.S. 129 (1942).
8. Edwards v. California, 314 U.S. 160 (1941).
9. Cloverleaf Butter Co. v. Patterson, 315 U.S. 148 (1942).

that it could wholly ignore other and equally important congressional objectives.

"Frequently," said he, "the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another and it is not too much to demand of an administrative body that it undertake this accommodation without excessive emphasis on its immediate task."[10]

However, where a New York city truck drivers' union and its members were convicted of conspiring to violate the federal anti-racketeering law, Justice Byrnes wrote a majority opinion holding that the statute did not proscribe traditional practices of unions and that the conviction could not stand. The case resulted from efforts of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers of America to compel out-of-town truckers to employ union men to drive out-of-town trucks in and about the city of New York. It appeared that in a number of instances union members by violence and threats forced truckers to pay sums of money to the union in order to keep their trucks moving. Justice Byrnes declared that since the purpose of the law was to prevent gangsterism and since the union tactics were such as could have been found to be traditional among unions, it was improper for the trial court not to have submitted to the jury the question whether the union actions were carried out along lines of recognized union activity. While the acts of violence perpetrated by union men were not punishable under the anti-racketeering law, he said bluntly that such acts were subject to the ordinary criminal law.[11]

A celebrated case before the court during Justice Byrnes' term of service was *Bridges v. California.*[12] In this case, it appeared that a C. I. O. union in California had been enjoined by court decision from controlling or attempting to control a local union. While the court was considering a C. I. O. motion for new trial, Bridges, the west coast director for the C. I. O., sent a telegram to Secretary of Labor Perkins declaring that attempted enforcement of the decision would tie up the port of Los Angeles and involve the entire Pacific coast and that his union did not intend to allow state courts to override a majority vote of union members. Bridges gave out this telegram for publication in newspapers and was convicted of contempt of court. A majority of the Supreme Court reversed the conviction in a five-to-four decision. Although he did not write the dissenting

10. Southern Steamship Co. v. N. L. R. B., 316 U.S. 31 (1942).
11. U. S. v. Local 807, 315 U.S. 521 (1942).
12. 314 U.S. 252 (1941).

opinion, Justice Byrnes voted with the minority on the theory that although the fourteenth amendment embraced free speech and free press, it recognized that the administration of justice should be impartial and one attribute of impartial justice was power of courts to resist newspaper threats to pending decisions by punishing those who made such threats.

Two of Justice Byrnes' opinions dealt with the question of priority of debts and taxes due the United States from insolvents, and in both opinions, he decided in favor of the government. In one opinion, he concluded that a government tax on gasoline had priority over a state tax on gasoline, notwithstanding the fact that the state law made its gasoline taxes a preferred lien.[13] In a second opinion, he decided that a debt due the government on a note had priority over claims for wages.[14]

In addition to those mentioned, Justice Byrnes wrote two opinions dealing with war risk insurance,[15] one opinion concerning social security taxes owed by a bankrupt corporation[16] and one opinion relating to the terms of a consent decree in an anti-trust case.[17] None of his opinions dealt with income tax, admiralty or patent law, but he wrote a lengthy opinion concerning the land rights of the Sioux Tribe of Indians in South Dakota and Nebraska.[18]

To Justice Byrnes, one custom of the court seemed of particular value. Commenting on the custom of justices in shaking hands with one another each day, Justice Byrnes said that the custom was of great value in promoting good feeling in the conduct of court affairs.

Shortly before the October 1942 term of court began, President Roosevelt asked Justice Byrnes to obtain a leave of absence, become Director of Economic Stabilization and administer a law aimed at strengthening the domestic economy — a law, incidentally, whose passage Justice Byrnes had furthered. Justice Byrnes pointed out that no one had power to give a justice of the Supreme Court a leave of absence. Then he added:

"If you think this appointment is important to the prosecution of the war, I will, without hesitation, resign from the Court and accept." The President pressed the justice to take the post and the latter

13. U. S. v. Texas, 314 U.S. 480 (1941).
14. U. S. v. Emory, 314 U.S. 423 (1941).
15. Halliday v. U. S., 315 U.S. 94 (1942). U. S. v. Citizens Loan & Trust Co., 316 U.S. 209 (1942).
16. U. S. v. New York, 315 U. S. 510 (1942).
17. Chrysler Corporation v. U. S., 316 U. S. 556 (1942).
18. Sioux Tribe v. U. S., 316 U.S. 317 (1942).

agreed to accept it. Within an hour, his resignation from judicial office was on its way to Mr. Roosevelt.[19]

It was no easy task, commented Byrnes later, to leave the bench, for he liked the work there and liked his associates for whom he professed genuine respect and affection. He resigned, said he, from a sense of duty. He felt that his becoming an official in the executive branch might aid the President to achieve the dream Woodrow Wilson had for world peace.

Since his opinions deal with legislation which augmented federal power, it might appear on superficial view that Justice Byrnes favored increased federal power. Actually, he was opposed to increased federal power, but where federal legislation was under consideration, he felt that his duty was to declare what the law was, and not what it should be. The views he expressed were conservative ones, but for a newcomer on the court, his record of dissents shows a high degree of independence and his decisions appear as if he had long been accustomed to the writing of judicial opinions.

19. *Supra*, note 4, p. 18.