

In Re: MEMORIAL SERVICES FOR:
J. DOUGLAS FACKENTHAL, ESQ.
CLAYTON T. HYMAN, ESQ.
GEORGE A. MOORE, JR., ESQ.
BERNARD V. O'HARE, JR., ESQ.
THOMAS E. BUTTERFIELD, JR., ESQ.

Memorial Services held in Courtroom No. 1 in the Northampton County Government Center, Easton, Pennsylvania, on Wednesday, September 5, 1990.

HONORABLE ALFRED T. WILLIAMS, JR., PRESIDENT JUDGE
HONORABLE ROBERT A. FREEDBERG, JUDGE
HONORABLE JAMES C. HOGAN, JUDGE
HONORABLE F. P. KIMBERLY McFADDEN, JUDGE
HONORABLE ROBERT E. SIMPSON, JR., JUDGE

JUDGE WILLIAMS: This day is annually set aside to permit the members of the Bar and the Bench to note on the records of this Court and to recall some of the accomplishments of those of our members who have died during the past year. For that purpose, the Court recognizes the President of the Northampton County Bar Association, Donald F. Spry, Esquire.

MR. SPRY: May it please the court.

JUDGE WILLIAMS: Mr. Spry.

MR. SPRY: Your Honors, ladies and gentlemen:

It is a melancholy, yet privileged, annual duty as President of the Northampton County Bar Association to participate in the honoring of the members of the Association who have passed away during the last year. We are here this morning to remember and eulogize five of our colleagues who have died during that time. Those five are Attorneys J. Douglas Fackenthal, who died on September 1, 1989; Clayton T. Hyman, who died on September 28, 1989; George A. Moore, Jr., who died on March 9, 1990; Bernard V. O'Hare, Jr., who died on June 8, 1990; and Thomas E. Butterfield, Jr., who died on July 28, 1990.

The purpose of this morning's memorial service is to remember and to pay final tribute to our deceased colleagues. Our profession pauses and takes this time to recall the contribution of all of these lawyers to their profession, the law, the courts and the public. This service to eulogize each of them is a way of paying our respects to their assembled family members and to thank the families for the support given to each of them and to further recognize the richness of their lives and the way they have touched us all with their unique and varied careers, interests and talents.

On behalf of the Northampton County Bar Association, I wish to thank the judges for setting aside this specially designated time this morning for this memorial service and for the Court's participation in it. On behalf of the Association, I want to acknowledge and welcome and pay our respects to the families and friends of those being eulogized here today. Finally, I want to thank the eulogists. Those individuals are Attorneys Stanley E. Stettz, Sandor Engel, Thomas P. Stitt, George A. Heitzman and Jonathan Butterfield.

JUDGE WILLIAMS: The Court recognizes George A. Heitzman, Esquire.

MR. HEITZMAN: May it please the Court.

JUDGE WILLIAMS: Mr. Heitzman.

MR. HEITZMAN: Members of the Bar, members of the O'Hare family and friends, and members of the families and friends of the other deceased members of the Bar:

In the short time I have today, I cannot dwell on Bernie's love for his wife and family; or on his military history, his capture in the Battle of the Bulge in World War II and internment as a prisoner of war; or about his love of music, as evidenced by his season tickets to the Metropolitan opera, his serving as a member of the Board of the Lehigh Valley Chamber Orchestra, and his sponsorship of the Musikfest; or even on his prowess as a sailor.

Bernie loved sailing, and on one occasion he was lost, or thought to be, although he knew where he was at all times. He was late returning from the trip—a little over a week it was—and he was told that the Coast Guard had been alerted. He said if they had really wanted to find him, they should have notified the IRS.

If I had the time, I could not tell you very much about Bernie as District Attorney, as he was in our county for four years, because that was before my time with him.

But I can tell you something of the practice of law with Bernie O'Hare because I started practicing with him, and practiced with him until the time of his death. He had the soul of a poet and the heart of a lion.

Bernie was enthusiastic in everything he did, not the least of which was the representation of his clients. It is said that the skill of a lawyer is analysis, the ability to take the facts and the law which come into the office as a mishmash and make something out of them. Nobody got to the heart of a problem and planned the strategy and executed the strategy like Bernie.

Bernie was a well-loved and respected member of the Bar. He used his skills as an advocate as the sword of a warrior, never as the dagger of an assassin.

Bernie was very well known for his wit both in Court and out. On one occasion he was defending a man charged with driving under the influence. The man, who happened to be Irish, had a reading of .23, which was more than twice the legal limit. Bernie told the jury that they must disregard that reading because the Irish are born with a reading of .23. The jury acquitted.

Bernie was simply the best lawyer that I ever knew. He had a real feel for people. I used to ask him, "Bernie, how do you select a jury?" He would say, "I just smell them out." He had a way of reading people, of being able to tell them what he needed to tell them, and knowing what he needed to know about them.

No one could tell a story better than Bernie O'Hare. He would be outside a courtroom in the hallway and start telling one of his famous stories—which I couldn't possibly repeat on the record because I'm not Bernie O'Hare—and people would gather around him, and soon there would be a crowd. When he tried a case in this courtroom or others, when he opened and when he closed to the jury, if you looked around you saw a lot of lawyers sitting in that courtroom—and not just young lawyers.

Bernie had no qualms about standing up to any opponent in any Court. He did not fear to speak truth to power. That is not to say he was uncivil, because he never was, but neither was he servile. He defended his clients with all that was in him. And although he was physically a small person, he once told me, "In this firm we measure height from the neck up."

Bernie's highest and best skill was his skill in cross-examination. Absolutely no one could cross-examine the way Bernie O'Hare could. I learned this

in the very first case I saw him try. I was not even a young lawyer, because I had taken the Bar exam but had not yet received the results. I was in his office, and he had been assigned a murder case. Back in those days, the Public Defender didn't handle murder cases. The Court appointed a team of a more experienced lawyer and a younger lawyer to try the case. Bernie's client had been accused of committing a murder a very short distance from where we now stand, at the top of Northampton Street. There were eyewitnesses who allegedly saw Bernie's client shoot the decedent, and a lot of witnesses who saw him running down the street. They remembered this because it was a warm summer evening and all Bernie's client had on was a pair of red pants. No shirt, no socks, no shoes. It's easy to see how the sight of a person wearing red pants, running down the street, might stick in your memory. I could not understand why it was not going to be a guilty plea until Bernie told me, first of all, his client was innocent; and, second, "We'll see what happens at the trial." At the trial, Bernie cross-examined the witnesses, and it turned out that the eyewitnesses had not really seen what perhaps they thought they had seen. When he got done, that jury returned a verdict of not guilty. The young lawyer working with Bernie in that case, by the way, hasn't done too badly. You now know him as the Honorable William Moran, a Judge of this Court.

In thinking of something specific to tell you about Bernie and about the measure of his abilities as a lawyer, two things occurred to me.

Bernie was involved in criminal cases and in civil cases for both plaintiff and defendant, and was also often involved in multi-party cases, where there were a number of lawyers on Bernie's side of the case. In each and every such instance, all of the other lawyers looked to Bernie for guidance and leadership. Not because he insisted upon it or even wanted it, but because they all respected him so much.

The other measure is that it was not uncommon for a new client to walk into our offices and say they came to our offices because they had seen Bernie try a case, or they had been on a jury in a case Bernie had tried and, as a result of seeing Bernie perform, they wanted him to represent them. Bernie represented them, as with all the rest of his clients, with humor and with good sense and good taste and good judgment. And yet he never took himself or even the system too seriously. Bernie once defined for me the word "Courthouse" as "A building erected at public expense to provide a convenient place for the public to gather and tell lies."

I would like to pass along just one bit of wisdom that Bernie imparted to me that was imparted to him by his father, who had been a lawyer in the Shenandoah area. He said, "You'll get involved in cases where you don't know where to turn anymore and things just become a mess. When that happens, file another _____ paper."

None of us here can fill Bernie's shoes; but we would all do well to follow in his footsteps.

If the Court please, I move that when this Court recesses today, it does so out of respect for and in honor of the memory of Bernard V. O'Hare, Jr.

JUDGE WILLIAMS: Thank you, Mr. Heitzman.

JUDGE WILLIAMS: Judge Freedberg will speak for the Court this morning.

JUDGE FREEDBERG: Thank you.

My colleagues, members of the Bar, honored guests, ladies and gentlemen:

Today's memorial service allows us to reflect on the achievements of deceased members of the Bar of this Court and to express gratitude for their contributions to the law and the community. While their law practices varied, each was a lawyer worthy of emulation. Their careers call to mind the words of Justice Oliver Wendell Holmes, "Every calling is great when greatly pursued." Bernard V. O'Hare, Jr., was one of the premier trial lawyers in the history of the Northampton County Bar. His superb trial skills and his delightful wit assured that he will have the status of legend as years go by. Douglas Fackenthal was a leading member of the Bar in his day, an accomplished civil trial lawyer. Most importantly, he was a gentleman respected by his clients, his colleagues and this court.

Clayton Hyman combined the intellect of the scholar with the persuasiveness and forcefulness of the advocate. George Moore was highly regarded and respected in corporate law and labor law. His decisions impacted on the welfare and prosperity of those who relied on his judgment.

Thomas Butterfield was a practitioner trusted by his clients to order their affairs and resolve their disputes. His colleagues so respected him that they chose him to serve as President of the Northampton County Bar Association.

Among this group were public servants who held important public offices, there were advisors to municipal governments, and there were volunteers for worthwhile religious, charitable and community organizations. These men touched the lives of others, and from their careers we learn what a good lawyer is.

It has been said that a lawyer has many roles. He must be "a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice." Those we recall today ably fulfilled those obligations.

They were trusted advisors relied on for their knowledge and good sense.

They were zealous advocates under the rules of the adversary system.

They were skilled negotiators resolving disputes in the best interests of their clients and consistent with honest dealing.

Each placed his client's interest above his own, as it is the lawyer's obligation to do.

They used the legal system for legitimate ends rather than to harass or intimidate.

They showed respect for this Court by always being well prepared and acting ethically.

They treated adversaries in a dignified manner.

And above all, they understood that the law is a profession entailing special responsibilities, rather than a business driven solely by the profit motive.

These men have been ably eulogized today, and the Court joins in the tributes that have been paid to them.

We respected and valued our contacts with them, and they have brought honor to themselves, their families and the law.

The resolutions of the Bar Association are unanimously adopted by the Court En Banc. It is ordered that a transcript of these proceedings shall be filed and copies sent to the families of our deceased members.

The Court now stands adjourned in honor of and out of deep respect for our deceased members.

JUDGE WILLIAMS: We will be in recess to permit the members of the Bench and Bar an opportunity to meet with the families of our brethren.