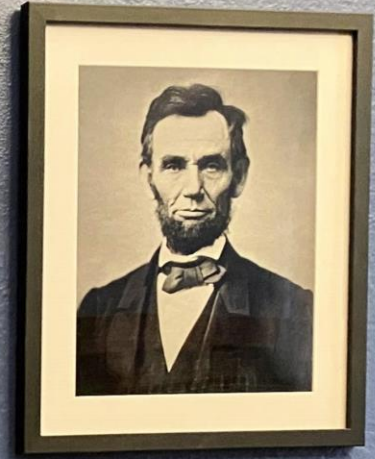
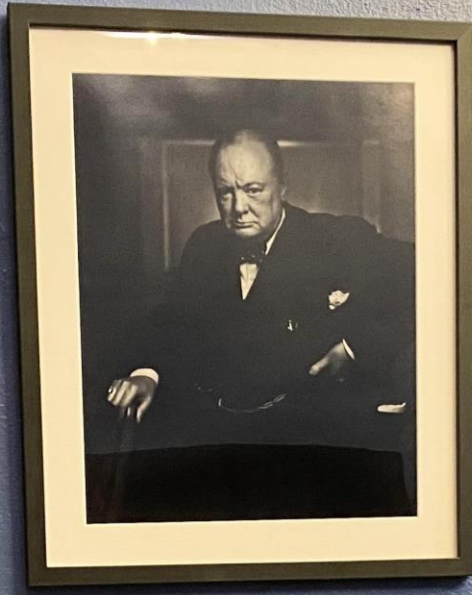
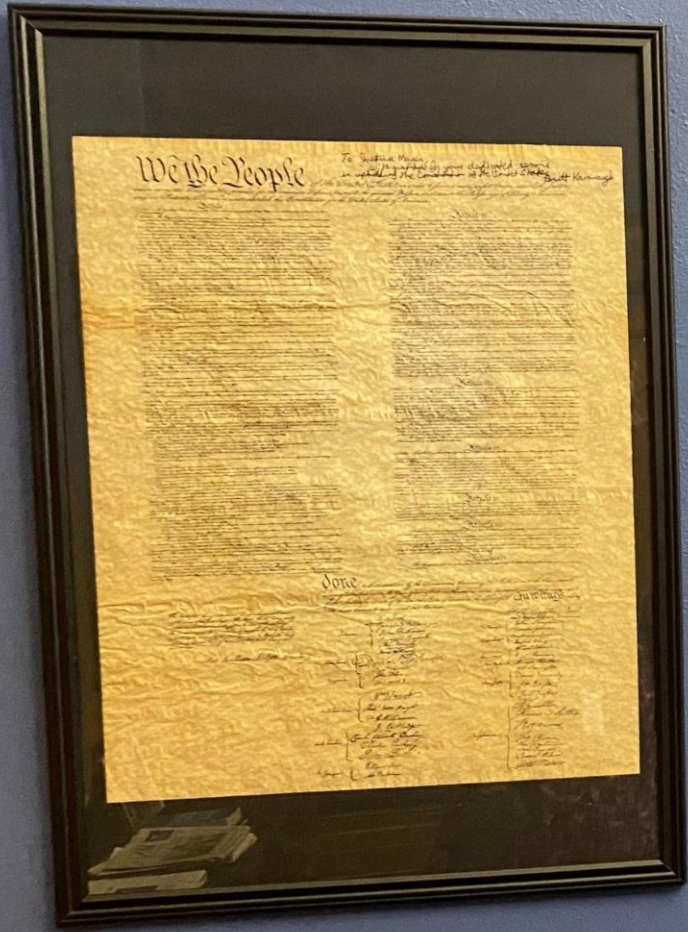




# JUSTICE ROBERT H. JACKSON

PUBLIC INTEGRITY – PUBLIC TRUST



# THE FDR CONNECTION



A young Franklin Delano Roosevelt

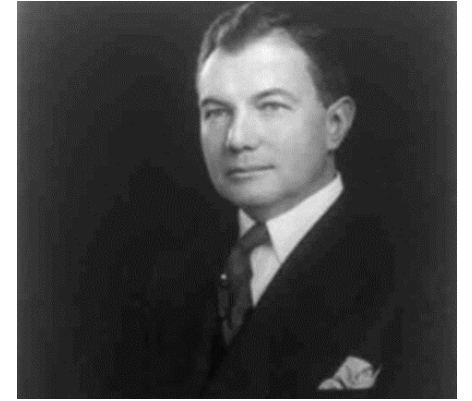


RHJ (on left) as Assistant Attorney General, Anti-Trust Div.



## SOARING LIKE A ROCKET

- **1934:** General Counsel to U.S. Treasury's Bureau of Internal Revenue
- **1936:** Assistant Attorney General of Tax Division of the Dep't of Justice and later the Antitrust Division
- **1938:** U.S. Solicitor General
- **1940:** U.S. Attorney General
- **1941:** 82<sup>nd</sup> Associate Justice U.S. Supreme Court
- **1945:** U.S. Chief Counsel, International Military Tribunal
- **1954:** Died in Washington, D.C. at the age of 62





# Justice Department Chiefs Can't Get Enough of the Patron Saint of the Rule of Law

Robert H. Jackson is the rare figure whose reputation transcends partisanship



The official portrait of Justice Robert H. Jackson inside William Barr's conference room at the U.S. Department of Justice.

PHOTO: LEXEY SWALL FOR THE WALL STREET JOURNAL

By  
[Sadie Gurman](#)  
July 13, 2019





## The Federal Prosecutor

BY ROBERT H. JACKSON\*

"The qualities of a good prosecutor are as elusive and as impossible to define as those which mark a gentleman. And those who need to be told would not understand it anyway."

It would probably be within the range of that exaggeration permitted in Washington to say that assembled in this room is one of the most powerful peace-time forces known to our country. The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous. He can have citizens investigated and, if he is that kind of person, he can have this done to the tune of public statements and veiled or unveiled intimations. Or the prosecutor may choose a more subtle course and simply have a citizen's friends interviewed. The prosecutor can order arrests, present cases to the grand jury in secret session, and on the basis of his one-sided presentation of the facts, can cause the citizen to be indicted and held for trial. He may dismiss the case before trial, in which case the defense never has a chance to be heard. Or he may go on with a public trial. If he obtains

ate of the United States. You are thus required to win an expression of confidence in your character by both the legislative and the executive branches of the government before assuming the responsibilities of a federal prosecutor.

Your responsibility in your several districts for law enforcement and for its methods cannot be wholly surrendered to Washington, and ought not to be assumed by a centralized department of justice. It is an unusual and rare instance in which the local district attorney should be superseded in the handling of litigation, except where he requests help of Washington. It is also clear that with his knowledge of local sentiment and opinion, his contact with and intimate knowledge of the views of the court, and his acquaintance with the feelings of the group from which jurors are drawn, it is an unusual case in which his judgment should be overruled.

Experience has demonstrated that



(1967) WASHINGTON, JUNE 12--JACKSON BEADS CONGRATULATORY MESSAGE ON NEW JOB--NOMINATED BY PRES--  
OFFICE OF THE U.S. SUPREME COURT ATTORNEY-GENERAL

## THE FEDERAL PROSECUTOR

“The prosecutor has more control over life, liberty and reputation than any other person in America. His discretion is tremendous...While the prosecutor at his best is one of the most beneficent forces in our society, when he acts from malice or other base motives, he is one of the worst.

“Because of this immense power to strike at citizens, not with mere individual strength, but with all the force of government itself, the post of federal district attorney from the very beginning has been safeguarded by presidential appointment, requiring confirmation of the senate of the United States. You are thus required to win an expression of confidence in your character by both the legislative and the executive branches of the government before assuming the responsibilities of a federal prosecutor.”

*Remarks delivered to the Second Annual Conference of United States Attorneys - April 1, 1940*



## THE FEDERAL PROSECUTOR

“If the prosecutor is obliged to choose his cases, it follows that he can choose his defendants. Therein is the most dangerous power of the prosecutor: that he will pick people that he thinks he should get, rather than pick cases that need to be prosecuted...It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to...the prosecutor himself.

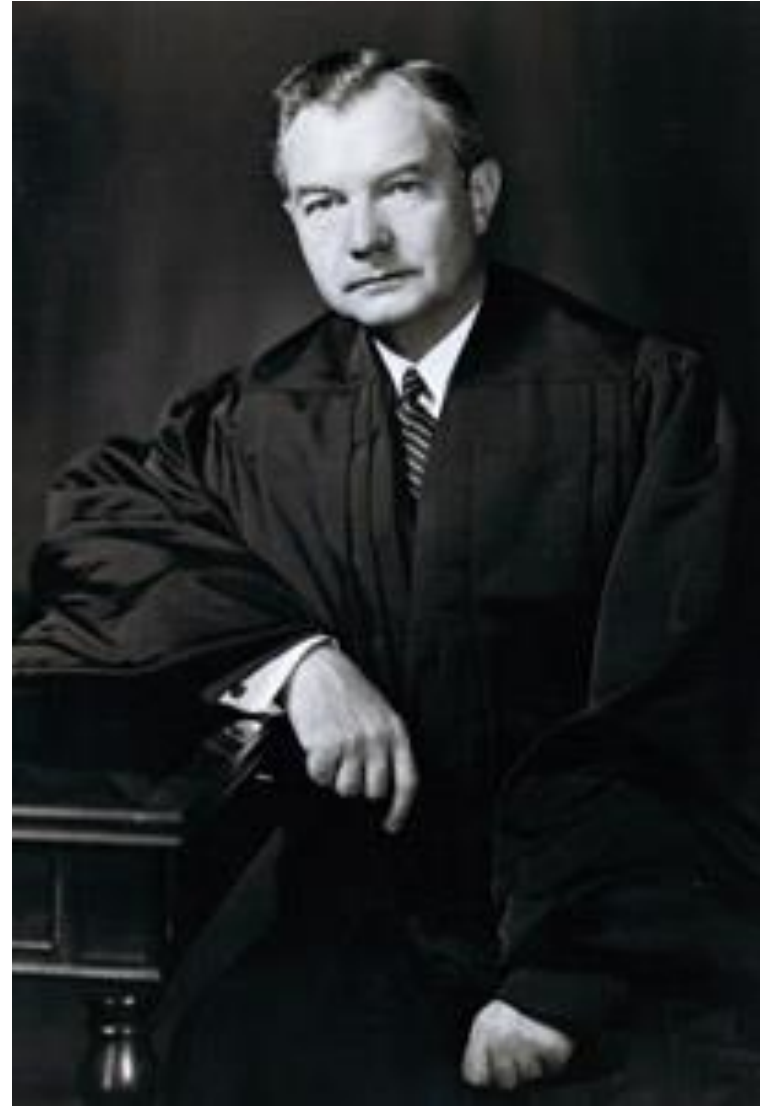
“In times of fear or hysteria, political, racial, religious, social, and economic groups...cry for the scalps of individuals because they do not like their views.”

But, “the citizen’s safety lies in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches the task with humility.”

*Remarks delivered to the Second Annual Conference of United States Attorneys - April 1, 1940*



**ROBERT H. JACKSON**  
ASSOCIATE JUSTICE OF THE U.S.  
SUPREME COURT  
JULY 11, 1941 – OCTOBER 9, 1954







*Minersville Sch. Dist. v. Gobitis, 310 U.S. 586 (1940), overruled by  
W. Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).*

“IF THERE IS ANY FIXED STAR IN OUR CONSTITUTIONAL CONSTELLATION, IT IS THAT NO OFFICIAL, HIGH OR PETTY, CAN PRESCRIBE WHAT SHALL BE ORTHODOX IN POLITICS, NATIONALISM, RELIGION, OR OTHER MATTERS OF OPINION OR FORCE CITIZENS TO CONFESS BY WORD OR ACT THEIR FAITH THEREIN.”





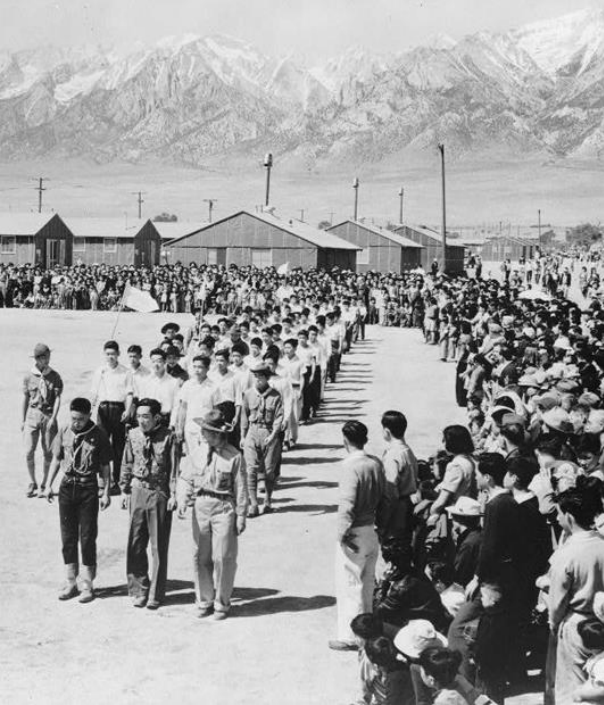
“ONE’S RIGHT TO LIFE, LIBERTY, AND PROPERTY, TO FREE SPEECH, A FREE PRESS, FREEDOM OF WORSHIP AND ASSEMBLY, AND OTHER FUNDAMENTAL RIGHTS MAY NOT BE SUBMITTED TO VOTE; THEY DEPEND ON THE OUTCOME OF NO ELECTIONS.”



“THOSE WHO BEGIN COERCIVE ELIMINATION OF  
DISSENT SOON FIND THEMSELVES EXTERMINATION  
DISSENTERS. COMPULSORY UNIFICATION OF  
OPINION ACHIEVES ONLY THE UNANIMITY OF THE  
GRAVEYARD.”

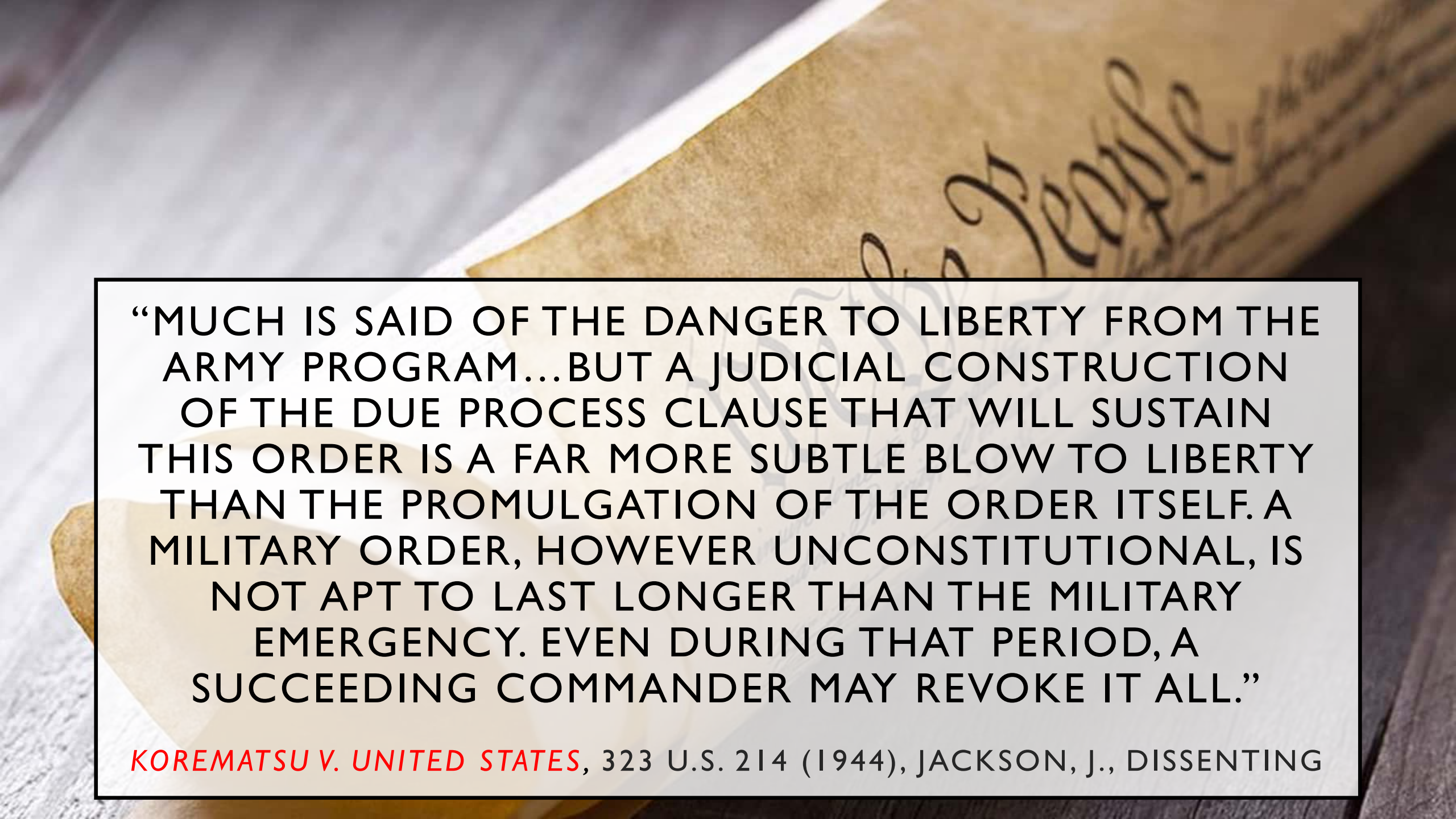






INTERNMENT CAMPS





“MUCH IS SAID OF THE DANGER TO LIBERTY FROM THE ARMY PROGRAM...BUT A JUDICIAL CONSTRUCTION OF THE DUE PROCESS CLAUSE THAT WILL SUSTAIN THIS ORDER IS A FAR MORE SUBTLE BLOW TO LIBERTY THAN THE PROMULGATION OF THE ORDER ITSELF. A MILITARY ORDER, HOWEVER UNCONSTITUTIONAL, IS NOT APT TO LAST LONGER THAN THE MILITARY EMERGENCY. EVEN DURING THAT PERIOD, A SUCCEEDING COMMANDER MAY REVOKE IT ALL.”

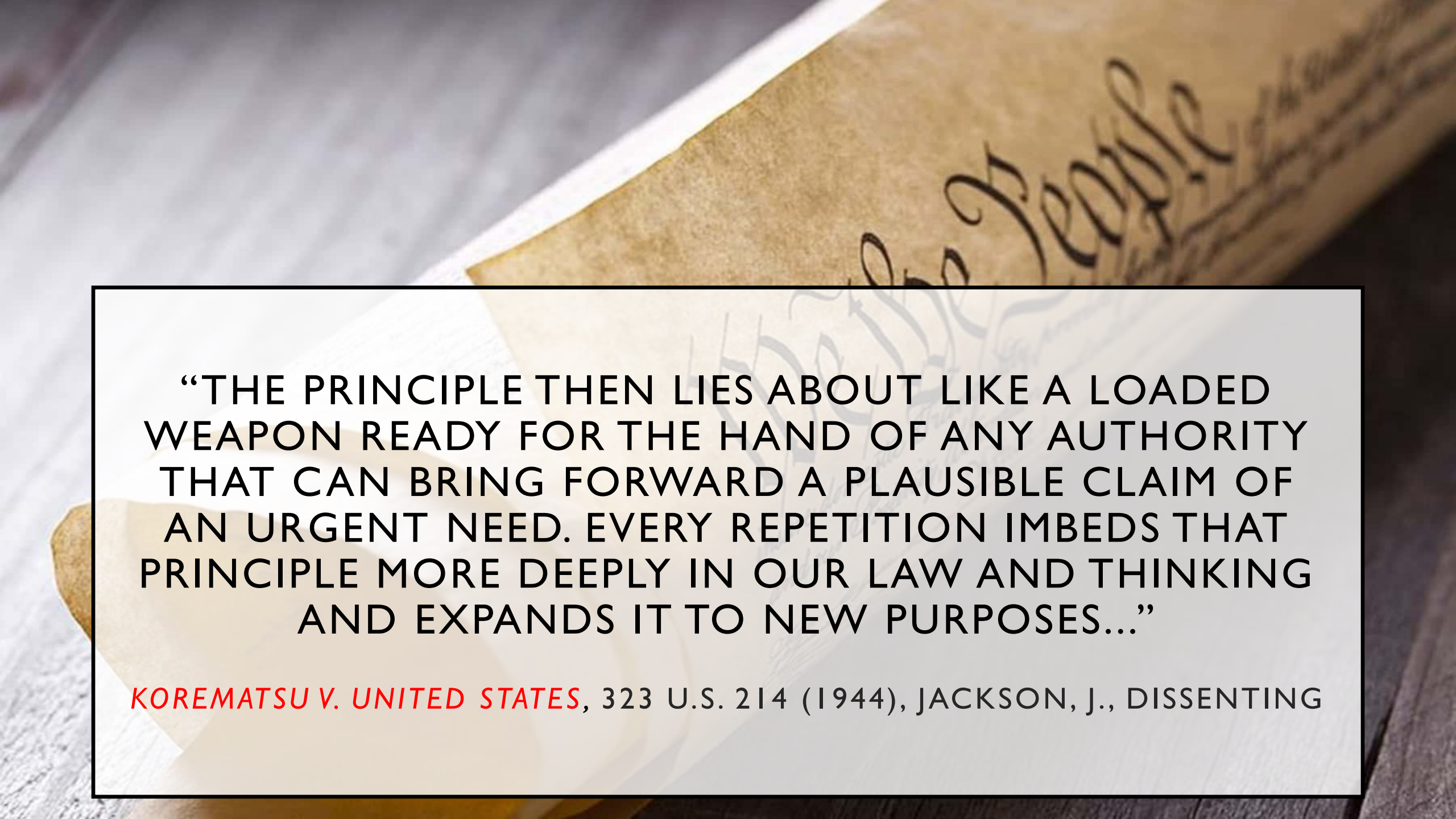
*KOREMATSU V. UNITED STATES*, 323 U.S. 214 (1944), JACKSON, J., DISSENTING

The background features a close-up of a document with cursive handwriting, likely from a historical legal case. A portion of a seal is visible on the left side. The text is overlaid on a semi-transparent white box.

“BUT ONCE A JUDICIAL OPINION RATIONALIZES...THE  
CONSTITUTION...TO SANCTION SUCH AN ORDER,  
THE COURT FOR ALL TIME HAS VALIDATED THE  
PRINCIPLE OF RACIAL DISCRIMINATION IN CRIMINAL  
PROCEDURE AND OF TRANSPLANTING AMERICAN  
CITIZENS.”

*KOREMATSU V. UNITED STATES*, 323 U.S. 214 (1944), JACKSON, J., DISSENTING





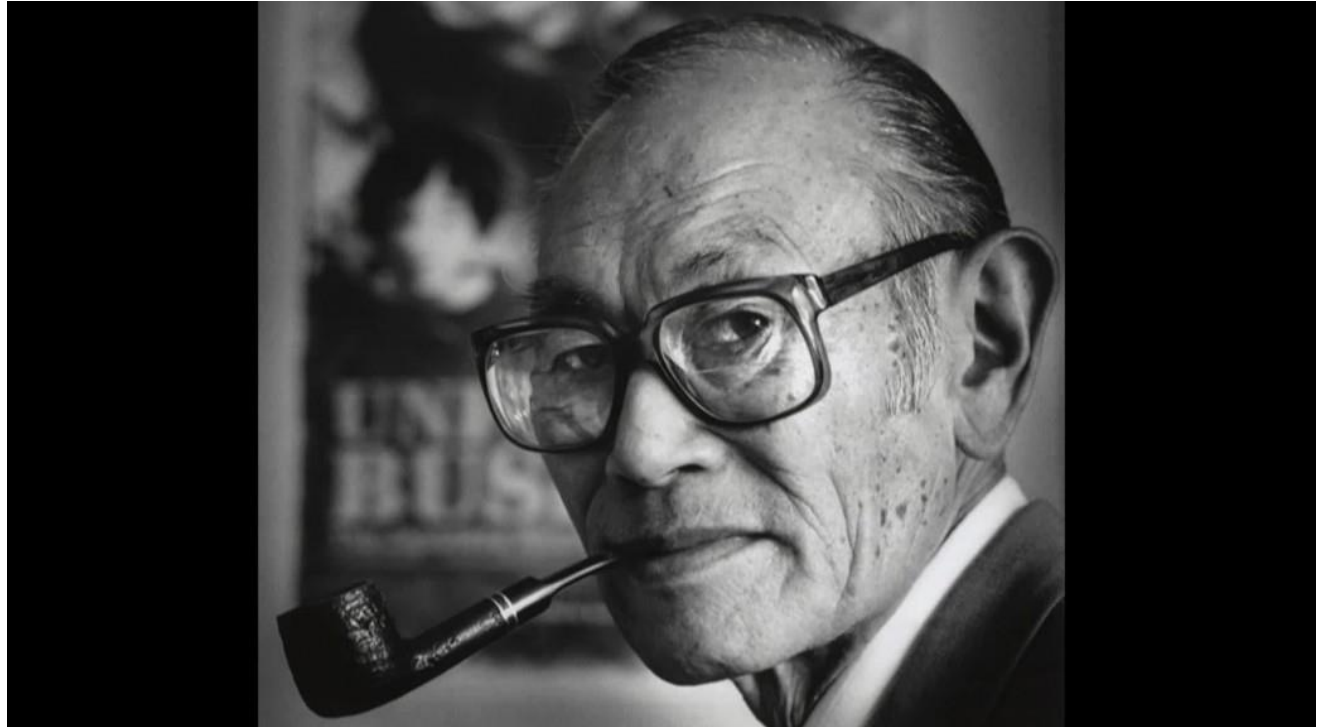
“THE PRINCIPLE THEN LIES ABOUT LIKE A LOADED WEAPON READY FOR THE HAND OF ANY AUTHORITY THAT CAN BRING FORWARD A PLAUSIBLE CLAIM OF AN URGENT NEED. EVERY REPETITION IMBEDS THAT PRINCIPLE MORE DEEPLY IN OUR LAW AND THINKING AND EXPANDS IT TO NEW PURPOSES...”

*KOREMATSU V. UNITED STATES*, 323 U.S. 214 (1944), JACKSON, J., DISSENTING

# REPUDIATION

“Korematsu was gravely wrong the day it was decided, has been overruled in the court of history and—to be clear—‘has no place in law under the Constitution.’”

– Chief Justice John Roberts for the majority in *Trump v. Hawaii*, 138 S. Ct. 2392 (2018) (quoting *Korematsu v. United States*, 323 U.S. 214 (1944), Jackson, J., dissenting.)



## YOUNGSTOWN: JACKSON, J., CONCURRING

“That comprehensive and undefined presidential powers hold both **practical advantages** and **grave dangers** for the country will impress anyone who has served as legal adviser to a President in time of transition and public anxiety.”

“The opinions of judges...often suffer the infirmity of confusing the issue of a power’s validity with the cause it is invoked to promote, of confounding the permanent executive office with its temporary occupant. The tendency is strong to emphasize transient results upon policies...and lose sight of **enduring consequences** upon the **balanced power** structure of our Republic.”





## YOUNGSTOWN: JACKSON, J., CONCURRING

“The executive action we have here originates in the individual will of the President and represents an exercise of authority without law. . . . We do not know today what powers over labor or property would be claimed to flow from Government possession if we should legalize it, what rights to compensation would be claimed or recognized, or on what contingency it would end.

**With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations.”**

# WWII IN 60 SECONDS





BABI YAR







# WWII IN 60 SECONDS

**1941**

U.S. enters war after Pearl Harbor.

**1945**

Germany surrenders,

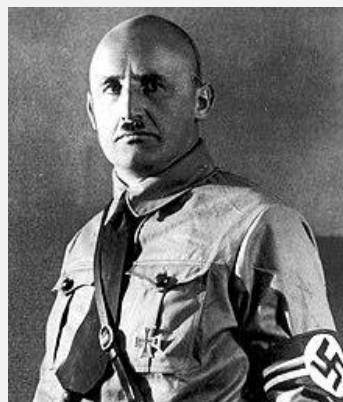
**1944**

Allies invade France (D-Day).





# THE ACCUSED



OPENING ADDRESS TO THE  
INT'L MILITARY TRIBUNAL  
AT NUREMBERG  
(11/10/1945)

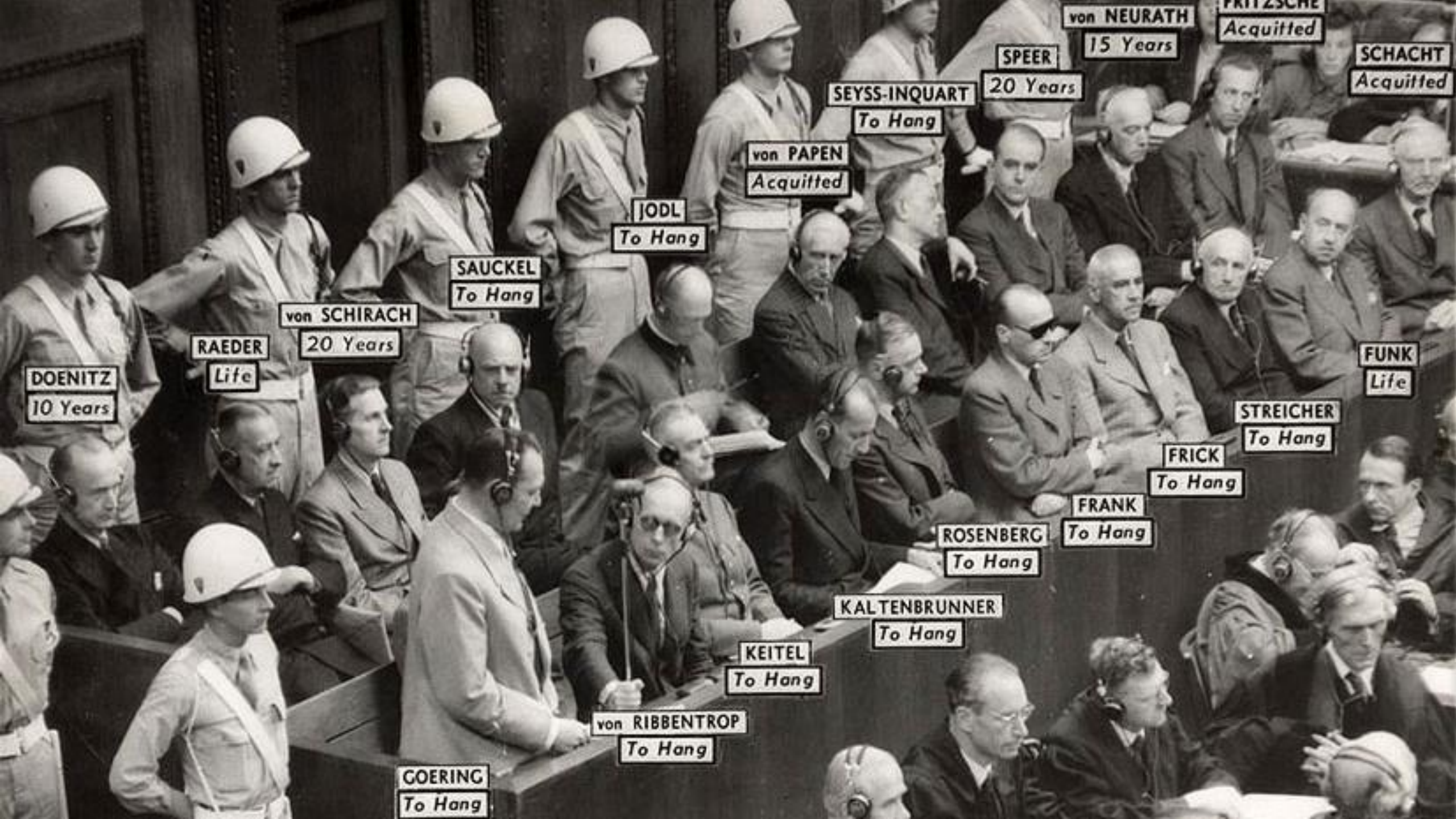
“The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stay the hand of vengeance and voluntarily submit their captive enemies to the judgment of the law is **one of the most significant tributes that power has ever paid to reason.**”





“Nuremberg” starring Alec Baldwin  
(TV Mini-Series, 2000)





DOENITZ  
10 Years

RAEDER  
Life

von SCHIRACH  
20 Years

SAUCKEL  
To Hang

JODL  
To Hang

von PAPEN  
Acquitted

SEYSS-INQUART  
To Hang

SPEER  
20 Years

von NEURATH  
15 Years

FRIETZSCHE  
Acquitted

SCHACHT  
Acquitted

FUNK  
Life

STREICHER  
To Hang

FRICK  
To Hang

FRANK  
To Hang

ROSENBERG  
To Hang

KALTENBRUNNER  
To Hang

KEITEL  
To Hang

von RIBBENTROP  
To Hang

GOERING  
To Hang

JACKSON  
RETURNS





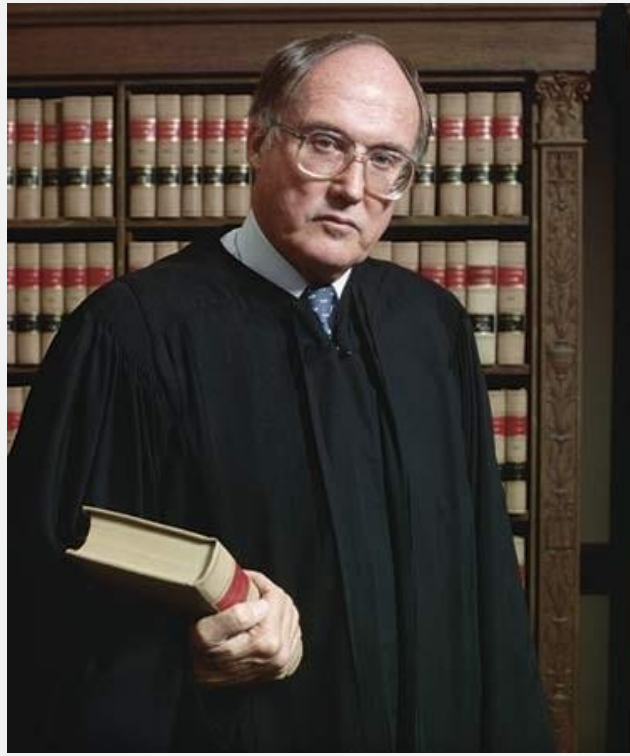




ROBERT H. JACKSON CENTER  
IN JAMESTOWN, N.Y.



ROBERT H. JACKSON U.S.  
COURTHOUSE IN BUFFALO,  
N.Y.



William Rehnquist (left) as a clerk to Justice Jackson



John Roberts (far right), law clerk to Chief Justice Rehnquist

## SUGGESTED REFERENCES

- The Robert H. Jackson Center's online archives ([www.roberthjackson.org](http://www.roberthjackson.org)): A comprehensive repository of RHJ's writings, speeches and opinions
- The Jackson List ([www.thejacksonlist.com](http://www.thejacksonlist.com)): selected pieces of RHJ, the Supreme Court, Nuremberg, and related topics, written and compiled by John Q. Barrett, Professor of Law at St. John's University
- Powerful Eloquence: Celebrating the Words of Justice Robert Jackson, by Bryan A. Garner (*ABA Journal*, Oct. 2016)
- Robert H. Jackson, Attorney Gen. of the U.S., The Federal Prosecutor: An Address to the Second Annual Conference of United States Attorneys (Apr. 1, 1940) (transcript available at <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/16/04-01-1940.pdf>).
- The Anatomy of the Nuremberg Trials: A Personal Memoir, by Telford Taylor (Skyhorse, 2013)
- Nuremberg: Infamy on Trial, by Joseph E. Persico (Penguin Books. 1995)

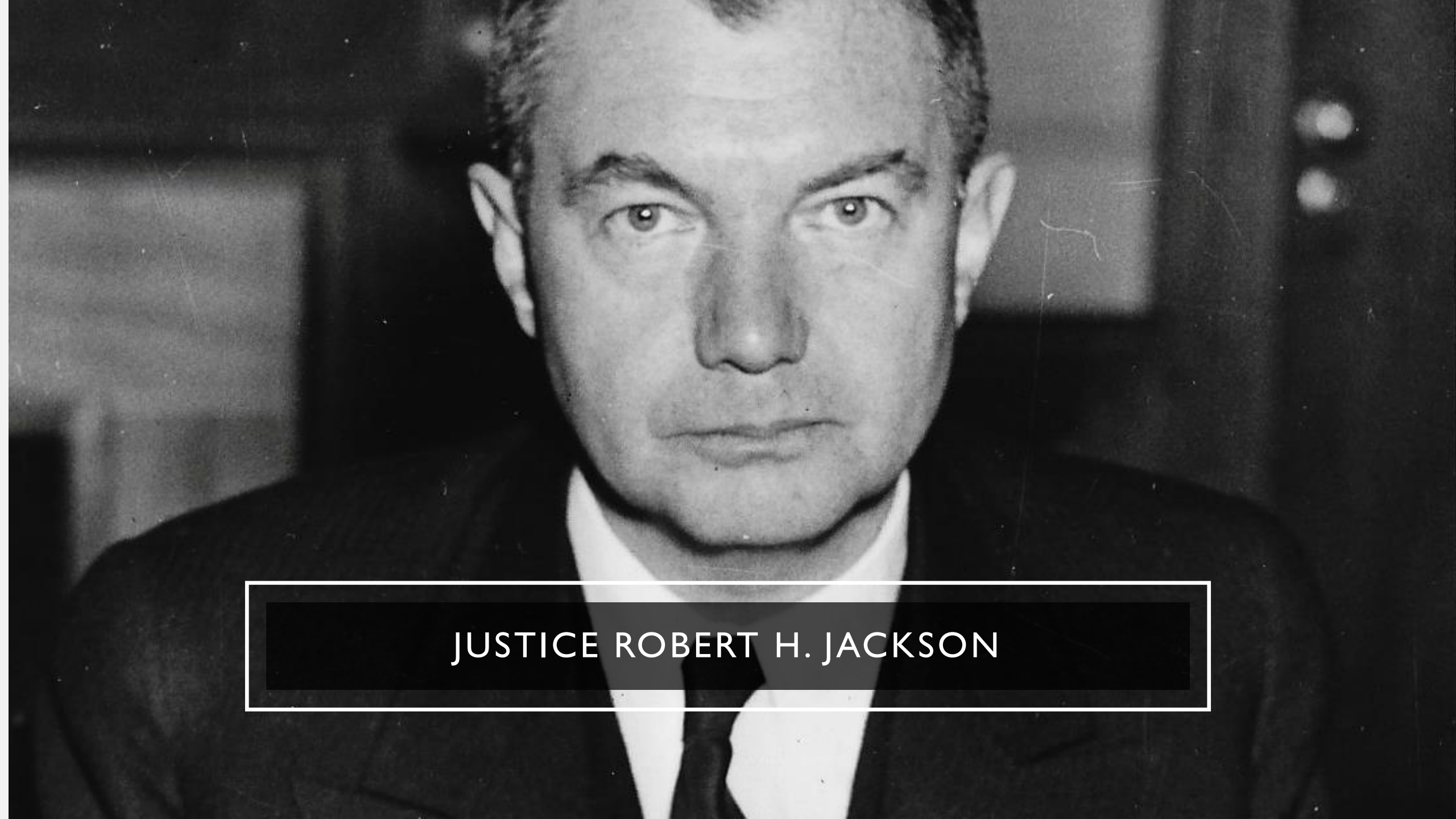


STEPHEN E. AMBROSE

“The past is a source of knowledge and the future is a source of hope.”

“The love of the past implies faith in the future.”





JUSTICE ROBERT H. JACKSON