

Judge Alexander Holtzoff —A Vignette

by Judge Matthew F. McGuire*



Judge Holtzoff



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Early in the fall of 1934 when I had been in the Department of Justice only a few short months, I was sent to see a gentleman in the office of the Assistant to the Attorney General. The purpose of my mission escapes me now, but I do remember that what I first saw upon entering his office was a small man, as, indeed, he was, but only in stature, sitting behind a gigantic desk. The face was full and rubicund, with eyes hidden behind the glint of glasses perched precariously on the nose, with a long, black silk ribbon flowing down and disappearing decorously into the recesses of his coat. His name was Alexander Holtzoff. It was our first meeting.

His position was unique. He was a residuary legatee of problems which had fallen into a temporary limbo not actually the specialty of any departmental division. He also handled matters relating to the Bureau of Prisons and the Division of Investigation (known now as the Federal Bureau of Investigation). Legislation in which the Department was specifically interested was also his forte, as well as that which the Congress referred for opinion as to language and content. Executive Orders also fell within his domain. The Office of Legal Counsel was not yet in being.

At the time we met he had been in the Department some ten years, having left his practice in New York at the invitation of Harlan Stone, his former mentor at Columbia University, who was later to become the Chief Justice of the United States.

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His formal rank was "Special Assistant to the Attorney General," a title he held until Attorney General Tom Clark made him his Executive Assistant.

I came to know him intimately, and when some years later I became chief in command of the division of which he was so important a part, I felt never so fortunate.

Updating the Courts

In 1940, after it was decided it would be wise to seek legislation to update the courts of the District of Columbia, Attorney General Jackson gave me the authority to implement the plan, and after consultation with a committee of the Bar Association of the District of Columbia of which the late John J. Carmody, Esquire, was Chairman, work was begun in which Alexander Holtzoff took the laboring oar and drew up the legislation which became law in 1942. Thus began a change of momentous importance which was finally to culminate in the creation of a separate local court system for the District of Columbia which he advocated from the very beginning when it was first suggested, even when subsequent opposition within the Court threatened its final achievement. He was a very valuable ally.

When Francis Biddle became Attorney General it was hinted that he would be nominated a judge of the new Municipal Court of Appeals (now District of Columbia Court of Appeals). Fortunately, however, for the federal judiciary, this did not come about, for in 1945 Attorney General Clark recommended him for appointment as a judge of the United States District Court for the District of Columbia. Thus began his real career.

He loved the law. He was familiar not only with its origins, its development and its history, but up and down its manifold waysides and bypaths, and its literature, too. He was a classicist, and his general knowledge was broad. Music, religion, philosophy, history, were but signposts along the familiar roads he traveled, stopping here and there to greet old and valued friends, or make new ones.

He probably wrote more opinions than any federal trial judge, the nature of whose work requires few. Such as he wrote were masterpieces of lucidity and economy of expression. For him it was the right word in the right place—nothing more nor less would suit him—since the word should be the perfect mirror of the thought.

He regarded the place of justice as a holy place and insisted

on decorum, preparedness and punctuality, and this was no mere rubric. He admired the professionally competent as the artist admires the true virtuoso. One lawyer, then young, summed it up some years ago when he said: "I went in a boy and came out a man."

Responsibility

He was a firm believer, also, in a man's responsibility for his acts. This, as he often said, was the core of the Judaeo-Christian tradition and upon which our law is based, or, as Rabbi Stanley Rabinowitz, in his eulogy to his memory, so succinctly put it: "Alexander Holtzoff was of the school which believed that man is a responsible creature and must be held accountable for his actions . . ." *Durham*, which was proclaimed in 1954 as the new rule for the defense of criminal insanity in the District of Columbia, left him cold. Like Learned Hand was alleged to have said, it taught him nothing, and besides, it was "old hat" having been taken practically verbatim from an old New Hampshire case that had been, it was thought, decently interred for almost 100 years. He correctly forecast that it would finally fall into innocuous desuetude either by direct reversal or by constant refinement, and that what came in with a trumpet blare would fade out in silence, although, as he often said, he felt that the effort made by the Court of Appeals ought not in any way be inveighed against but that what resulted as an alleged solution simply would not work.

He predicted, too, that psychiatric medicine would soon

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abandon the field of the courts to the behavioral psychologist and that the end result would be to blame crime not on its perpetrator but on society itself, the environment, and economics, since it was society in its desire for vindication and revenge, so it was said, that was sick, not the criminal.

Socially, in large groups he appeared shy and, indeed, diffident, yet with friends he was gregarious and very humanly so. On occasion, when he gave a small dinner or party he was the most gracious of hosts, and about his table conversation sparkled like rich and heady wine.

He was a religious man, adhering to and dying in the faith of his fathers, although he belonged to no Congregation. He was ecumenical long before the word had descended into common parlance.

His personal life was saddened not only by the death of an only child shortly after its birth, but the companion of his youth was stricken and became an invalid. For nearly forty years he visited her weekly, a trip some little distance from Washington, no matter what the weather or inconvenience. He was as loyal and as solicitous as the day he took her as his bride and this, although it was quite certain that for the most part she never recognized him. When finally she received her blessed release, he made full arrangements for proper services, although she was of a different faith than his, observing at the time: "There will be nobody here except my secretary, my messenger and myself." He was mistaken. The whole Court House, practically, turned out en masse, jurists and staffs, lawyers and others. Then his eyes filled and tears trickled down the kindly face, and all he could say in a choking bewilderment was: "I didn't know people could be so good!"

Service to the Court

For almost a quarter of a century he served the Court, combining in his person, humanity, compassion, dignity, understanding and learning, those essential qualities that make the great judge. Writer, scholar, lecturer, judge—he was more than all these—he was a great gentleman, fulfilling to the letter Newman's famous definition:

"... He has too much good sense to be affronted at insults, he is too well employed to remember injuries and too indolent to bear malice. He is patient, forbearing and resigned, on philosophical principles; he submits to pain,

because it is inevitable; to bereavement, because it is irreparable, and to desire, because it is his destiny. If he engages in controversy of any kind, his disciplined intellect preserves him from the blundering discourtesy of better, perhaps, but less educated minds; who, like blunt weapons, tear and hack instead of cutting clean, who mistake the point in argument, waste their strength in trifles, misconceive their adversary, and leave the question more involved than they find it. He may be right or wrong in his opinion, but he is too clear-headed to be unjust; he is as simple as he is forcible and as brief as he is decisive."

But he was not strictly the book man. At Columbia he was on the cross-country running team and, turned down for the Army in 1918 on account of his eyes, he insisted on a re-examination and performed his stint as a private. He loved his country and what it stood for.

He will be remembered long after most of us lesser men have come and gone. His volumes on the Federal Rules alone would seem to insure that. In retrospect there seemed to be a certain timelessness and universality about him. So much so that, if perchance one could be whisked back in time across the centuries, it would be no surprise at all to find him in old Jerusalem pondering the Halakha or Mishna, or with the Pandects of Justinian in Imperial Rome, or in the Florence of Dante and Giotto in the Italy he loved, or in a still later day, hurrying across the Strand on his way to the law courts in Victorian London, and yet, in our own time, sitting as a federal trial judge in the Capital of the Great Republic of the West. Truly, he belonged to no era—but to the best in all of them.

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