

# In Memoriam

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## HONORABLE JESSE W. CARTER

Associate Justice of the Supreme Court  
of the State of California, 1939-1959.

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The Supreme Court of California met in bank in its courtroom, State Building, San Francisco, at 10 a.m., May 6, 1959. Present: Chief Justice Gibson, presiding; Associate Justices Shenk, Traynor, Schauer, Spence, McComb and Peters; Sullivan, Clerk; C. F. Johnson, acting reporter; Bushong and Matteoli, bailiffs.

CHIEF JUSTICE GIBSON announced that before proceeding with its calendar the court would pause to honor the memory of former Associate Justice Jesse W. Carter. The Chief Justice stated that Mr. Carlos Raymond Freitas, a member of the bar of Marin County and a former Superior Court Judge of that county, would present a memorial on behalf of the lawyers of the state.

The proceedings were as follows:

JUDGE CARLOS RAYMOND FREITAS: Mr. Chief Justice, may it please the Court: It is my privilege to appear before you today to do honor to the memory of the late, and deeply lamented, Mr. Justice Jesse Washington Carter who, until his untimely death on last March 15th, was a member of this Honorable Court where he had served the people of California with great courage and distinction for almost 20 years.

Mr. Justice Carter was a native Californian, born in Trinity County on December 19, 1888, the seventh child in a family of eight children. His early background had a deep influence on his later philosophy which he has written into the law of California and which will remain as a living memorial to him so long as there are judges and lawyers.

As a child, Justice Carter walked miles to school through all kinds of weather. So eager for knowledge was he that he memorized every book which came into his hands. Unlike most of us, he never forgot anything he had once learned. His amazing memory was the source of both terror and delight to his numerous friends. In order to realize his never ending

quest for more and higher education during those early days, Justice Carter worked in mines, in logging camps and saw-mills in order to earn the necessary funds. When he had exhausted the educational facilities of Trinity and Shasta counties he came to San Francisco where he worked for the old United Railroads of San Francisco during the day while attending night law school at what is now known as Golden Gate College of the Law. Justice Carter was graduated from that law college in 1913 and was admitted to practice in this state in the same year. He practiced law in San Francisco for one year and then he opened offices in Redding where he practiced until 1939.

During this time he made an enviable record as a trial lawyer, participating as chief counsel in the trial of over 1,000 cases in the Superior Courts and handling over 300 cases on appeal. During the last 20 years of his law practice Justice Carter handled most of the important litigation in a good portion of Northern California.

He had a statewide reputation as a lawyer and when he was appointed to this Honorable Court he was the senior partner of one of the largest and most respected law offices of Northern California, the law firm of Carter, Barrett, Finley and Carlton, which maintained offices both at Redding and Yreka. In addition to his private practice, Justice Carter was elected District Attorney of Shasta County, a position he held from 1919 to 1927. He was appointed City Attorney of Mount Shasta in 1927 and continued in that position until 1939. He became a member of the first Board of Governors of The State Bar of California in 1927, serving four consecutive terms, a total of six years, the last two of which he was vice-president of The State Bar of California. From 1924 until 1932 Justice Carter served as the attorney for the State Board of Dental Examiners of California. He was City Attorney of Redding from 1937 until 1939. He was elected State Senator from the Fifth Senatorial District, comprising Shasta and Trinity counties in 1939 from which position he was appointed as Associate Justice of the Supreme Court of California by Governor Culbert L. Olson.

In 1950 Justice Carter was awarded an honorary fellowship in the American College of Trial Lawyers. In 1956 he was awarded an honorary Doctor of Laws degree by Golden Gate College of the Law because his career as lawyer and judge had "been dedicated to sustaining the right of the individual and to preserving, in the administration of justice, the great prin-

ciple of Magna Carta, 'To none will we sell, deny or delay right or justice' " and because his "vigorous opinions as a member of the Supreme Court have well earned and worthily sustained the right to be included in that select number of judges upon whom the accolade of 'Great Dissenter' has been bestowed; . . ."

During Justice Carter's first year in law school he memorized the Constitution of the United States together with its amendments. He had, earlier in life, memorized the Declaration of Independence. These two great documents, together with the personal hardships suffered by him, were largely instrumental in shaping his philosophy of the law. He firmly believed, and fought for that belief with every available instrument and argument, that every man, no matter how humble, and regardless of race, color or creed, was entitled to due process of law. He believed in, and fought for, individual civil liberties, for freedom of speech, religion, the press and for freedom of thought. While he might disagree with the opinions of others, he would fight to the death for their right to express those diverse opinions. There are lawyers who have disagreed with his philosophies but there are none who will not admit his honest and courageous belief in the principles for which he so valiantly fought.

On the day following the death of Justice Carter, all departments of the Superior Court in Marin County adjourned out of respect to his memory. I would like to quote from the remarks of the Presiding Judge of Department One of that court, as follows :

"Law is an adverse thing, else there would be no merit in the profession. And inasmuch as it is adverse, it is inevitable that the opinion of one man is exposed to differences; different concepts, different philosophies, different ideologies, different conclusions. Such a man was Justice Carter that we must believe that he understood that the vigor, the industry and the profundity with which he expounded his thinking and exposed it must have incurred criticism, and the one first to know it was the Justice himself, and therein lay the man's courage and the man's fearlessness. Out of that, and out of the dissenting opinions, he was contributing to the great body of the law. Justice Carter was imbued and guided by the philosophy, the rugged individual philosophy that, incur what it may, he would give expansion, he would give growth, he would give dimension, and he would give extension to the field of law and

thinking in that field. That is Justice Carter's great contribution to the field of the law."

In addition to Justice Carter's amazing memory and knowledge of the law, he brought to the court a fine and brilliant mind. His opinions are noted for their clarity of expression and reasoning. He was a most capable and hard working man and was never known to shirk a duty. He lived for the principles in which he believed. When he could not agree with a majority of the members of this court, he considered it one of his duties to make public his reasons for disagreement, in a dissenting opinion. He felt that the losing parties and their attorneys were entitled to know why he could not agree. He also believed that a thorough and vigorous dissenting opinion was a healthy thing in that it showed that the court had considered every aspect of the case under consideration before finally handing down a decision.

Justice Carter believed, as did that other great and often lone dissenter, Mr. Justice Oliver Wendell Holmes of the Supreme Court of the United States, that "no man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen—to dig by the divining rod for springs which he may never reach—to think great thoughts you must be heroes as well as idealists. Only when you have worked alone—when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and despair have trusted to your own unshaken will—then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought—the subtile rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army."

While much has been said of Mr. Justice Carter as the "Great Dissenter" he, like Mr. Justice Holmes, lived to see many of his dissenting opinions adopted as the law of the land by the Supreme Court of the United States. It is to be hoped that in the future an ever increasing number of his philosophies will be written into the law of this State and of the United States and that his untiring and vigilant battle for the preservation of human liberties will not have been in vain.

Mr. Justice Carter leaves surviving him his widow, Jean Woodward Carter, herself an attorney at law, and three chil-

dren, The Honorable Oliver Jesse Carter, Judge of the United States District Court, Harlan Field Carter of Redding and Mrs. Marian Carter Bui of Redding. Although realizing that mere words are inadequate to comfort them, I should like at this time to express to them my deep and heartfelt sympathy in their bereavement.

The members of the Marin County Bar Association have a very special reason for missing him. For many years last past we have been honored to have him act as the Presiding Officer at our annual installation of officers.

The people of California have lost a great lawyer and a great judge and I have lost a dear friend.

In conclusion may I quote from a letter written to his widow by Mr. Justice William O. Douglas of the United States Supreme Court: "What a great tragedy! How dreadful that his powerful voice is stilled!"

Thank you.

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The Chief Justice then called on Mr. Jerome R. Lewis, Vice-President of The State Bar of California, who read the following resolution adopted by the Board of Governors of The State Bar of California:

"The Honorable Jesse W. Carter, Associate Justice of the Supreme Court of California, and a former member of this Board, passed away on March 15, 1959, at the age of 70 years.

"Justice Carter was born in the mountains of Trinity County, to which his father, a farmer and miner, had come from Iowa in a covered wagon.

"Young Carter worked in the mines, married, moved to San Francisco, worked for the street railroad, and became a student at the Golden Gate School of Law, where he studied nights. His two sons, Oliver (Judge Oliver Carter of the United States District Court at San Francisco) and Harlan, were born in San Francisco, and his daughter, Marian, in Redding, California. After admission to the bar, he practiced law for a short while in San Francisco and then moved to Redding in 1914, where he practiced until 1939, when Governor Culbert Olson named him to the Supreme Court of California.

"Justice Carter ranked among the state's finest trial lawyers, having helped establish and settle several important principles of law governing water rights in California. He also served the public well as District Attorney for Shasta

County (1918 to 1926), as City Attorney for Mount Shasta in Siskiyou County and as City Attorney for Redding in Shasta County, as attorney for the State Dental Board, and in 1938 as State Senator. He served as a member of the Board of Governors of The State Bar from 1927 to 1933, and during a part of this period also served as Vice-President of The State Bar.

"As a citizen Justice Carter took part in many worthy activities. In addition to other activities he organized and became First President of the Redding Rotary Club and participated as a leader in inception of the Boy Scout movement in Redding.

"As a jurist, Justice Carter profoundly believed in the rights of individual citizens and, in his decisions, zealously and consistently resisted any possible infringements of such rights. Certainly, he was a most able man on the bench, and some of his decisions will long be remembered and quoted in the Courts of California.

"The Board of Governors of The State Bar of California expresses its deep appreciation for the services which Justice Jesse W. Carter rendered to the California Bar and to the State of California and joins with his many friends throughout the state in expressing its deep sympathy and condolences to the members of his family.

"The Secretary is instructed to spread this memorial on the minutes and to forward copies of it to the members of the family."

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Chief Justice Gibson requested Mr. Justice Schauer to respond on behalf of the court.

**MR. JUSTICE B. REY SCHAUER:**

It is fitting that we have paused to receive tributes to the work and character of Mr. Justice Carter.

The juridical character of our late associate was not different from his general character. Justice Carter lived life to the full. Whatever he did, he did unstintingly. For him, there was no middle ground. He spared neither himself nor others. He gave criticism; he received it. Caustic in dissent, he was jovial in companionship. Generous in giving friendship, he cherished his friends.

The friends who have just spoken of him, I am sure, will agree that anything we may enter in the records today, by

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way of memorial to Justice Carter, will be less revealing, and less important, than the memorial which he himself had written before he laid his burdens down.

He was a prodigious worker. He dug deep in the quarries of the law and he sculptured all his diggings, whether rubble or hard rock, into the form of justice as he saw it. The features of his justice are strongly chiseled; of them we can rightly say: *Res Ipsa Loquitur*. Thus, the real memorial for Justice Carter is encompassed in his opinions—whether majority, concurring or dissenting—published in the law reports of this State and Nation. They constitute an abiding monument to their author.

Chief Justice Gibson thanked the representatives of the bar for their presentations and ordered that the memorials be spread in full upon the minutes of the court and published in the official reports.