

JUSTICE JESSE W. CARTER:

Grandfather and Role Model

J. SCOTT CARTER

EDITOR'S NOTE

As an epilogue to the oral history of Associate Justice Jesse W. Carter of the California Supreme Court, which appeared in the previous issue of *California Legal History* (vol. 4, 2009), we present the following reminiscence by Justice Carter's grandson, J. Scott Carter. These remarks were delivered orally and in printed form on November 10, 2010, at Golden Gate University School of Law, from which Justice Carter graduated in 1913 when it was the YMCA School of Law. The occasion was the annual induction of new members of the school's legal honor society, the Jesse W. Carter Society.

The Jesse Carter Collection at the Golden Gate University law library includes copies of Justice Carter's speeches, photographs, newspaper clippings, case files, and a painted portrait, received primarily from J. Scott Carter. Mr. Carter is a retired instructor of history at Shasta College and a former mayor of Redding, California. He kindly provided photographs to illustrate the publication of Justice Carter's oral history, and he has provided the photographs that appear here.

Golden Gate University is also the birthplace of the new book on Justice Carter, *The Great Dissents of the "Lone Dissenter": Justice Jesse W. Carter's*

Twenty Tumultuous Years on the California Supreme Court (2010). Co-editor David B. Oppenheimer (now professor at Berkeley Law) served until 2009 as professor of law and associate dean at Golden Gate University; co-editor Allan Brotsky is emeritus professor of law at the university; and the authors of substantive chapters include thirteen current and former faculty members, as well as two lawyer graduates. The book is the subject of a review essay by Michael Traynor in this volume of *California Legal History*.

— SELMA MOIDEL SMITH

My grandfather, Jesse Washington Carter, was born in a log cabin. He was raised in rural Trinity County, California, and his strong work ethic was forged as a young man who was required to contribute for many years to the hard labor and responsibility of living apart from the conveniences and conventions that most of us enjoy today.

I was born in 1939, the year he was appointed to the California Supreme Court. I understood, even as a child, that he was a highly unusual and gifted man. To amuse family members, he often recited lengthy passages of poetry around the table at Thanksgiving. His colorful stories, some centered on his experiences as a young lawyer in Redding, were told to us in the long evenings around campfires at our summer retreats in the Trinity Alps. In his later years, even despite his busy schedule, he managed to keep in touch with us through letters — a forgotten art, it seems.

His life as an attorney has been well documented and you may be quite familiar with the more prominent cases he has tried, particularly the



JULY 1946 (LEFT TO RIGHT): J. SCOTT CARTER AT THE AGE OF SIX, JUSTICE CARTER WITH AN AXE OVER HIS SHOULDER, AND SCOTT'S LATE BROTHER KENT CARTER, AS THE FOUNDATION LOGS WERE BEING SET FOR JUSTICE CARTER'S CABIN IN THE TRINITY ALPS OF CALIFORNIA.

Courtesy J. Scott Carter

dissenting opinions he submitted as a member of the California Supreme Court. Yet you may not be as well informed about his personal philosophy about his life's work.

He opened his first law practice on February 5, 1914, at age 24. In the beginning, he had very few clients — primarily those the older attorneys didn't want. But, as he stated in his oral history:

I followed the advice of my friend Edward Hohfeld, a very able lawyer, to outwork the other fellow, put in more time, prepare cases better. So I would get down to my office at seven o'clock in the morning and I would make a very thorough study of every case that I had, even though it was of very minor importance. I would go into court well prepared and I took a lot of the older lawyers by surprise who were resting on their laurels of long experience and recognized legal ability and who expected to win their cases on their ability to speak without preparation. It wasn't very long before I won some cases that surprised not only the lawyers, but a lot of people in the county.¹

As a result of his hard work, he was elected as the Shasta County District Attorney in 1918 and reelected in 1922. He tried a multitude of cases, ranging from prohibition to prostitution and was regarded as a very "vigorous" prosecutor. He chose to return to private practice in 1928 because of the poor pay (he made only \$175 or so a month). He estimated that he lost \$15,000 to \$20,000 per year working for the county.

By 1931, his private practice had grown to seven lawyers, and they were quite busy, mostly with cases involving water rights and numerous lawsuits against one of California's private utilities. In 1938, they tried 52 cases and won 50 of them. The remaining two were won on appeal. His reputation, by that time, had spread throughout the state.

He entered the arena of politics in 1939 and was elected to the California State Senate. In that same year, a vacancy occurred on the California Supreme Court, a position that he enthusiastically sought. His appointment by then Governor Olson was confirmed, and so began his "twenty tumultuous years" as a member of this judicial body.

¹ "Oral History of Justice Jesse W. Carter," 4 *California Legal History* (2009), 213.

If there was a consistent theme while he was on the Court, it embraced the concept of due process of law and the protection of individual liberty for all citizens. Underlying this theme was his view that restraints should be placed on government officials who overreach their powers and authority, and that large corporations who pursue abusive policies should also be restrained.

I can recall one special case where my grandfather's principles and character were tested by a very controversial and sensational event that took place in the 1950s dealing with a notorious criminal, Caryl Chessman. It is difficult to describe the tension and negative atmosphere caused by press reports of Chessman's scheduled execution date on July 30, 1954. The case was mired in controversy and my grandfather believed that both the trial court and California Supreme Court had erred in not upholding Chessman's due process claims. Certain appeals had failed and the die was cast for Chessman's execution on that date.

Jesse and I were working at his cabin in the Trinity Alps wilderness when, on July 29, 1954, two exhausted men appeared at the outskirts of his property. They had driven over eight hours from the Bay Area and walked four miles through the wilderness to plead Chessman's case before Justice Carter. One of the two strangers was Ben Rice, Chessman's chief attorney. Mr. Rice was seeking a stay of execution so that the Supreme Court of the United States could review Chessman's due process claims.

I was only 14 years old but quickly understood the gravity of the claim and, since time was of the essence, it was a life or death issue. I remember my grandfather sitting down on a tree stump and, in longhand, writing out the details of the stay of execution. I learned many years later that he was quite concerned about criticism from his six fellow justices on the Court but felt he had no choice in the matter but to follow the Constitution and do the right thing.

Even more dramatic for me was my presence with Jesse in mid-June of 1957 when he was visiting Redding to give a commencement speech at the local college. On the following day, I believe it was on a Saturday, he asked me to drive down to the local newspaper office as he was expecting a teletype report. To this day I can remember the news item as it appeared from Washington, D.C., stating that the Supreme Court of the United States had essentially vindicated his position on the due process issue. I know,



J. SCOTT CARTER WITH DEAN DRUCILLA RAMEY OF
GOLDEN GATE UNIVERSITY SCHOOL OF LAW, NOVEMBER 10, 2010.

Courtesy J. Scott Carter

and this is an understatement, that he was elated by the Supreme Court's decision.

Jesse never backed away from critical public opinion or doubts about his actions. Throughout the several years of the Chessman controversy, it became apparent to me that he had gone through some emotionally difficult times. In his later public statements, he indicated that he had been roundly criticized by those in the press, not to mention those members of the Court who disagreed with his position.

I can remember many other examples of Jesse's rock solid character and fortitude. I was always inspired by his word, his actions on the bench and his focus on promoting and protecting the concepts outlined in the Bill of Rights.

For my part, Jesse's actions have profoundly influenced my life, my day-to-day conduct and my teaching. On some occasions, when answers to current events and controversies have not been clear, I've sometimes re-read his oral history to gain perspective and direction, as well as his letters and the mimeographed copies of his speeches that he had sent to me over the years. Toward the end of this history is one of my favorite passages summarizing his judicial philosophy:

The soundness of a decision must be tested by the reasons given as its basis. The thing that means more to me than anything else is being able to transmit to posterity through my decisions, both majority and dissent, something that will be a guide to the future. If I depart from logic and reason and common sense in writing my decisions, either majority or dissents, those decisions are not going to be accepted; they are going to be repudiated. If I get any satisfaction out of doing this work, it is in the thought that what I say is going to receive not only contemporary approval but what it will mean in the future. A decision that stands for all time means something. If a hundred years from now a lawyer gets up in court and says, "This very lucid and illuminating decision was written by Mr. Justice Carter in 1955," well, I won't be there to hear it, but it is the thought that a hundred years after I am dead and forgotten, men will be moving to the measure of my thoughts.²

[The printed text of J. Scott Carter's remarks ends with the note: "If you are interested in learning more about Justice Carter, please refer to the following excellent texts that can be found in the Golden Gate University School of Law Library," and he cites Justice Carter's oral history in *California Legal History* and Oppenheimer and Brotsky's *Great Dissents*.] ★

² Ibid., 298-299.