OWEN J. ROBERTS—MASTER ADVOCATE

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What goes into the making of a great court lawyer? Analysis of the problem presented by each case? Untiring industry and meticulous care in preparation for trial or argument? A wide knowledge of the law? A comprehensive memory for the facts as they develop? A fearless yet adroit approach to cross-examination, entailing an instinct when to press on and when to stop? A respectful attitude toward the court coupled with a self-respectful assertion of his own position? A friendly, though never a familiar relation to the jury? A positive and evident belief in the righteousness of the cause he represents, and his confidence that such belief is—indeed must be—shared by the court and the jury? Yes, all of this, and something more. Something which cannot be acquired, as most of the foregoing elements can. I refer of course to personality, to that compelling, God-given stature which comes by inheritance and which must be possessed by preachers, teachers, statesmen and advocates before they can be called great. It is the indescribable yet very real quality which enables a man possessing it to dominate a room or an audience without effort and without intention. Few men are endowed with it. But when one is, he has a colossal advantage over his antagonists—one which is recognized at the first crossing of swords, and which influences the contest continuously—even to the bitter end.

I do not believe that I paint too vivid a picture when I assert that all of the elements in this analysis are to be found in a portrait of Owen J. Roberts, the advocate. Tall, robust, with strongly cut features, under a great shock of black hair, possessed of a flashing eye, a lightning comprehension and response, and a carrying yet pleasing voice, he was a striking figure in any assembly. He was an outstanding figure in a court room, for that was where he loved to be. That was his life. He avoided, whenever possible, invitations to speak at public affairs. He often remarked that some people had said of him, truly, that the only speeches he made which were any good were those he was paid to make—meaning, of course, his appearances in court. The supreme moments of his life were those in which he ap-

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peared before an appellate tribunal in cases of real consequence. It was toward such moments that his life's training had been directed. From his earliest days at the bar, he was retained by other lawyers to present difficult cases for important clients, and he did it with such aplomb that even his failures (and what lawyer does not have them?) did not dim the brightness of his effort. What wonder then, that as his practice grew with the years, and his court appearances became so frequent as to be almost continuous throughout the terms when court was in session, that he found his metier absorbing and that he came to realize his pre-eminence.

Such was not always the case. Of a modest, almost a retiring disposition and strongly inclined to a pessimistic view of life, it was years before he believed that he would get anywhere. Not that he had any doubt as to his native ability. Why should he have? Had he not made Phi Beta Kappa as an undergraduate; had he not graduated from the University of Pennsylvania Law School with the highest honors and won the fellowship; had he not been appointed instructor in the law school a year or two after graduation and first assistant district attorney of Philadelphia five years after he came to the bar? But he had not been taken into a large firm—there were very few in Philadelphia in 1898 when he hung out his shingle—and he had neither social, political nor economic influence upon which to rely. He felt, and with some justification, that at least one of these stepping-stones must be available to a young lawyer if he were to succeed in Philadelphia. So it was that he was the most astonished man in the firm when the big cases commenced to pour in on him. We all believed they would come in course of time. We felt that they must come for his rivals were so few. But it took him quite a while to comprehend that he had become known as one of the outstanding advocates, first in his city, then in his state, finally in the nation.

How he gloried in it! But not in the praise, the recognition, or even the adulation which began to be heaped on him. All of that he took with a slight shrug. The opportunity, the privilege of serving great clients and sometimes great causes, intoxicated him. He could think of nothing else. He was extremely fond of his family and of his friends of which he had a plentiful supply, and he enjoyed social gatherings, particularly those of interesting men—when they did not interfere with his work. But the absorbing figures in his life were his clients and the cases they brought to him. All else was of slight significance. The first inquiry he made of an applicant for a position in his office was the robustness of his health, and the second was whether he was willing to work at night. He could not understand

why a lawyer should not only be willing but eager to devote his evening hours, as well as those in the daytime, to his advancement in the profession. He himself took home a brief-case almost every evening and spent much of the time after dinner studying its contents. When engaged in the trial of a case lasting more than one day, he invariably spent the evening at the office, preparing to plug holes or tie up loose strings in the evidence. Any of us who were assisting him in the case were there with him. I remember being with him in one case, involving a complicated building contract, which was on trial for three full weeks. Every evening of those three weeks, except Sunday evenings, we were in the office together until eleven o'clock. We won that case.

I am not prepared to say that this is the only way an advocate can become supreme. Other men have attained lofty eminence in the profession without resorting to this stark regimen. Nor am I prepared to say that such industry is the complete answer. Many a lawyer has burned huge quantities of midnight oil without reaching the top. But to Owen J. Roberts it was not merely the only way—it was the most alluring, the most irresistible way. He could not deny himself the ecstasy of this complete absorption. Immersed in an important case he was like an inventor on the verge of a discovery. Nothing must be permitted to interrupt, much less to interfere; and the moment that case was disposed of, he was eager to plunge into another.

This habit of working day and night was acquired during the three years he spent in the district attorney's office. He was there associated with a remarkable group of young men. The newly elected district attorney, John C. Bell, had assembled an extremely competent team. He was a hard driver, though one who inspired firm loyalty. He expected results from his staff, and results he obtained. It was a small staff, not over eight or ten in number, serving a county containing over a million inhabitants. This meant that much of the work was done under pressure, and pressure meant night work—late night work. Thus Roberts learned early how much could be accomplished by industry of this calibre. He came to believe that it was the only way. Resigning after three years in that office, he carried the pattern into his private practice and never abandoned it. Rather it grew, with the extent and importance of his interests. At the time of his elevation to the Supreme Court, it had begun to leave its mark upon him, but he was completely in its groove—he could not get out.

For a number of years after leaving the district attorney's office, Roberts served on the trial staff of the Philadelphia Rapid Transit Company, and most of his work consisted of defending accident cases.

Here again he was part of an extraordinarily able team, assembled by Thomas Leaming, then chief trial counsel for the Company. Nearly all of these men later attained high standing at the Philadelphia bar, and being a member of that group was training in fast company. It did a lawyer no harm to obtain experience in the rough and tumble of jury trials through the representation of such a client and under such a chief as Mr. Leaming. Too many years of it might have been deadening, but Roberts did not remain there for too many years. He resigned, about 1913 or 1914, to devote his entire attention to his rapidly growing private practice.

That practice was of a most varied character. He still occasionally found himself in the criminal courts, mostly as private prosecutor. He represented both plaintiffs and defendants in negligence cases and was often seen in the Orphans' Court in contested audits and will contests. He represented building contractors, and sometimes owners of property who were sued by architects or contractors. He tried a number of taxpayers' suits, mostly brought to set aside contracts alleged to have been secured through political influence. While not a tax expert, as we know them now, he tried one case, involving a very large asserted tax deficiency in which he called eighty-five witnesses to prove that the gift upon which the Commissioner was attempting to impose the tax had not been made in contemplation of death. He won that case. He successfully defended the underlying transit companies of the Philadelphia Rapid Transit system against an effort to invalidate and terminate their leaseholds. He saved the subsidiaries of the Pennsylvania Railroad Company, located in Pennsylvania, from a state tax which would have amounted to a double tax against the parent company on those properties. One of his most notable victories was the setting aside of a great number of contracts between wholesale grocers and sugar refiners on the defense of the Statute of Frauds. Some of the clients he represented in those cases might have been unable to continue in business if they had been required to accept and pay for the sugar for which they had orally contracted at the fantastic prices caused by a world shortage of sugar that year. He successfully defended the estate of a former governor of Pennsylvania against a charge of defrauding a company of which he was president.

These were only a few—a very few—of the great number and variety of litigated cases in which he was engaged. It is hoped, however, that they present some idea of the scope of his practice. No case was too small, and none too large, for him to accept. He believed that it was the duty of a lawyer to accept any proper retainer, if he did not represent the other side.

All of this practice was of a distinctly private nature. He held no political office after resigning in 1906 as assistant district attorney, nor did he represent any political group or faction. It was not until some time during the first world war that he received a government retainer. At that time he was appointed Special Attorney-General to prosecute, under the Espionage Act, the editors and publishers of two foreign language newspapers published in Philadelphia. He obtained several convictions and jail sentences for these men, and for the first time came to the notice of the national public. It was not until 1924, however, that he became a national figure. In February of that year, President Coolidge appointed him, together with former Senator Atlee Pomerene of Ohio, to endeavor to set aside the Navy oil leases at Elk Hills, California, and Teapot Dome, Wyoming, which had been attacked in extensive hearings in the United States Senate. The story of that litigation is so fascinating, and serves as such a splendid example of the manner in which he approached and attacked a difficult legal problem, that some account of it is, I believe, worth recording here. I am indebted for this history to my partner, George G. Chandler, who was with Roberts, as assistant and junior partner, throughout the trials. Much of what follows was prepared by Mr. Chandler, who is the only man, now living, familiar with the whole story.

> "Owen J. Roberts was appointed Special Counsel for the United States in mid-February, 1924, and continued in that post until his elevation to the Supreme Court of the United States in June, 1930. During those six years he tried and argued numerous civil, criminal and contempt proceedings growing out of the fraudulent and illegal leasing by Secretary of the Interior, Albert B. Fall, of the California and Wyoming Oil Reserves on behalf of the Navy.
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> "He was successful in obtaining cancellation of the lease and contract of the Elk Hill Reserves and the Pearl Harbor Naval Fuel Oil Storage Project to Edward L. Doheny's petroleum companies; he also won the case to cancel the lease and supplemental contract of Teapot Dome to Harry F. Sinclair's Mammoth Oil Company. Sinclair himself was twice indicted, tried and convicted for criminal contempt, first, for refusing to answer questions of the Senate Committee on Public Lands and Surveys, and second, for having the jury shadowed during the criminal conspiracy trial of Secretary Fall and himself. Harry M. Blackmer was convicted and fined for criminal contempt for failing to respond to a government subpoena issued under the Walsh Act and served upon him in France. Secretary Fall was convicted on the charge of accepting a bribe, but Doheny was acquitted of bribing an officer of the United States. Secretary Fall, Doheny and Sinclair were all acquitted on the charge of conspiracy to defraud the United States.

"The two salient badges of fraud in the oil cases were the $100,000 cash advanced by Doheny to Secretary Fall, and the $230,500 United States Liberty Bond transaction between Sinclair and Secretary Fall. The first was disclosed by the Senate hearings and has been widely publicized. The second was revealed by Special Counsel but is known by very few.

"When Special Counsel for the United States were appointed in February of 1924 by President Coolidge and directed to bring suit for the cancellation of the leases and contracts, the public hearings before the Senate investigating committee had already brought to light the following facts: Fall had spent the greater part of Doheny's $100,000 to purchase lands adjoining his New Mexico ranch; after the purchase, costly and extensive improvements had been made; Fall had no known source of income, had supposedly grown poor in a lifetime of public service and, like every other ranchman in the Southwest, was reputedly busted by the protracted droughts; finally, the sole fee earned by Fall after his resignation from the Interior Department in March of 1923 had been the $25,000 paid in United States Liberty First 3½% Bonds for his Russian trip and oil negotiations on behalf of Sinclair.

"Although every circumstance pointed to Sinclair as the most probable source of Fall's sudden wealth, further investigation by the Committee had been blocked by Fall's refusal to testify upon the ground of self-incrimination and by Sinclair's refusal to answer further questions, for which refusal he had been adjudged in contempt of the Senate and was awaiting indictment.

"Special Counsel immediately sent to the Southwest secret agents of the Treasury Department, whom President Coolidge had directed to help. These agents first reported from El Paso, Texas, to confirm Fall's recent sale for ranch expenditures of the $25,000 of Liberty Bonds paid him by Sinclair for services in Russia; the serial numbers of these bonds fell unconsecutively within the 1,144,100 group or the 1,222,400 group. They then unearthed in New Mexico and Colorado an additional $230,500 of bonds within these two serial groups that had been received by Fall through his son-in-law, Everhart, and had likewise been sold for ranch purposes.

"The discovery that Fall was financing his expensive ranch improvements through the sale of Liberty Bonds was of the highest significance. The magnitude of the improvements, together with the detection of the succeeding serial numbers in New Mexico and Colorado indicated to Special Counsel a common source of the bonds, but Everhart refused to disclose who had given him the bonds.

"With the aid of grand juries at Washington, D. C., and elsewhere, and the assistance of the Treasury Department, Special Counsel thereupon undertook to trace the bonds and coupons.

By a stroke of good fortune, they requested the Treasury Department to check the cancelled coupons one day before the scheduled incineration of millions of those coupons in order to make room in the vaults of the Treasury.

"Special Counsel traced the bonds by first procuring from the Treasury Department the names of the original wartime subscribers and then following every subsequent sale and transfer of the bonds through the complete records of certain New York bond houses and brokerage firms. Although untold thousands of these Liberty Bonds were being bought and sold every day, every bond number was recorded by the selling as well as the buying house or firm. This two-fold recording of bond numbers enabled Special Counsel to trace the bonds down to the last sale and transfer before their appearance in Fall's bank accounts, and also to ascertain the names of the subsequent holders after their sale by Fall.

"Special Counsel next traced the coupons by asking the Treasury Department to furnish the names of the local banks, national or state, in which the coupons had first been deposited for payment, and the dates thereof. Upon receiving the names of the local banks, and the dates, Special Counsel checked the several deposit slips in order to learn the names of all depositors of Liberty Bond coupons. Thereafter, it was only a question of elimination.

"While tracing the bonds and coupons, Special Counsel discovered that between the fall of 1921 and the spring of 1923, the Continental Trading Company, Ltd., of Canada, through the New York agency of the Dominion Bank of Canada had purchased in New York and subsequently distributed as dividends to undisclosed stockholders approximately two million dollars of United States Liberty First 3½% Bonds, including the $230,500 of such bonds owned by Fall.

"Compulsory disclosure of the bond distributees was blocked by claims of professional privilege and feigned ignorance or by a refusal to testify. Exhaustive bond and coupon tracing and the study of numerous financial records failed to show Sinclair had ever possessed any of the Liberty Bonds ultimately found in Fall's hands,[1] but the collateral consequences from the chance discovery by Special Counsel that the Continental Trading Company had owned those bonds were far reaching. The secret contract under which Continental purchased, at $1.50 per barrel, 33,333,333⅓ barrels of crude oil which it resold free of any costs to the Prairie Oil & Gas Company for $1.75 per barrel was assigned to the latter

1. This link was ultimately established by the testimony of Everhart in a subsequent trial. Theretofore he had refused to disclose the source of the bonds, claiming his privilege under the fifth amendment; but in the meantime Roberts had induced the Congress to restore the former two-year period of limitations for war frauds, which period had in 1918 been extended to six years to permit prosecution of war fraud cases after World War I. This shortening of the period of limitations barred Everhart from thereafter claiming his privilege. He testified that he had been the messenger who had received the bonds from Sinclair and delivered them to Fall.

company for a nominal consideration at a time when things grew too hot, even though there was a sure profit of at least another $6,000,000 under it. The select inner ring of American oil executives, who had organized Continental, turned back to their respective companies upon the exposure of this oil deal the $2,000,000 of secret profits they had taken down in Liberty Bonds."

Mr. Chandler's comments upon the attributes which distinguished Justice Roberts as an advocate of the first rank, distilled from his long and intimate relation with him in the trial of these cases, are also worth recording. He says:—

"The many legal attributes, with which Justice Roberts was so richly endowed, are well known to the bench and the bar, but some were especially prominent in the oil cases. First, Justice Roberts was a well rounded Philadelphia lawyer with a broad legal background. His early training as an assistant district attorney fitted him to oppose the outstanding criminal lawyers of the defense on at least an equal footing in rough and tough criminal battles. His subsequent years of experience in daily trying and arguing almost every type of civil action, at law and in equity, gave him an unrivaled, co-equal ability before a trial and an appellate court that no defense lawyer could even approach, much less match. He alone enjoyed the tremendous advantage of personally prosecuting every oil case from start to finish.

"Second, Justice Roberts had an infallible memory, both oral and visual, that permitted him to recall instantly, for use in cross-examination, oral argument and briefing, the pertinent evidence without the aid of a single note. He could, therefore, give his uninterrupted attention to the witness on the stand. He could also argue a case or dictate a brief without lengthy preparation or trial notes.

"Third, Justice Roberts was a master of clear and concise English, whether speaking or writing. He could state and explain intricate facts or complex points of law with clarity and brevity. By nature a fast talker, he was neither handicapped nor prejudiced by any time limitation, however short, upon oral argument, as defense counsel too often were.

"Fourth, Justice Roberts possessed tireless energy and infinite perseverance. This is best illustrated by his uncovering of the $230,500 Liberty Bond transaction between Fall and Sinclair despite the intervention of numerous seeming dead-ends and the repeated interposition of dilatory tactics by the parties being investigated.

"Finally, Justice Roberts was an unusually fast worker and quick thinker, with an extraordinary capacity to absorb readily the work delegated to others. These faculties allowed him, with two

> legal assistants at the very beginning and thereafter only one, to outdo the combined efforts of three imposing batteries of defense counsel."

In 1929, Roberts was appointed to represent the Commonwealth of Pennsylvania in the pending original proceedings brought by the State of New Jersey against the State and City of New York to enjoin their proposed daily diversion of 600 million gallons of water from the New York tributaries of the Delaware River. Because the interests of Pennsylvania in the waters of that river did not accord with those of either New Jersey or New York, Justice Roberts sought and was granted leave for Pennsylvania to intervene in that litigation, not as party plaintiff nor as party defendant but solely *pro interesse suo* with the right to cross-examine the witnesses of New Jersey and New York and to offer such independent proofs on behalf of Pennsylvania as the intervenor saw fit. This unique intervention, which both New Jersey and New York vigorously opposed, was conditioned upon the filing by Pennsylvania of a statement of interest, which Justice Roberts prepared. It later formed the basis of the proofs and factual and legal contentions of Pennsylvania, a majority of which were adopted and followed by the special master and the Court. Roberts' participation in the actual trial was cut short by his appointment by President Hoover to the Supreme Court of the United States, effective June 2, 1930.

Little more need be said of this remarkable court lawyer. Those who knew him from his youth had long seen in him the mark of a man of destiny. When opportunities were presented to him, he was equipped to seize them, and he possessed an infallible instinct which prompted him in selecting those to be embraced and those to be rejected. He distinguished almost instantly, when cases were offered to him, between those that were real, of substance, and those that existed only in someone's imagination. This quick perception saved him from following many a false scent. Yet he never shrank from accepting a retainer because of the difficulties involved. The greater the problem, the keener was his interest, if the case was a meritorious one, and he never allowed himself to get into a case in which he could see no merit.

The life of such a man is not necessarily an enviable one. Few men would enjoy it to the extent that he did. In a sense it is a narrow life, concentrated as it is in one pursuit, even though that pursuit may have countless interesting angles. Success, such as that which he attained, must be paid for—in anxiety, in strain, in weariness from long and exhausting effort, in bitter disappointments when the breaks

go the wrong way. Yes, and in the absence of leisure, of avocations, of social activities, of all the things that go to make up a well-rounded career. Yet the law of compensation is such, that when a man is destined to reach the pinnacle, and does so, there come to him thrills which are never experienced by those who lead placid, comfortable, and even highly enjoyable existences in the pleasant valley below. Few of us have the choice, for few have the vision, the equipment, the stamina required to reach the summit. Owen J. Roberts had all of those qualities. He also had a perfect family life and a host of admiring friends. He might have spent his time very differently and still attained success and a great deal of collateral pleasure. He simply could not do it, when the call to pre-eminence was ringing in his ears. All other sounds were drowned out.

After his resignation from the Court, his interests widened. He became president of the American Philosophical Society; president of the Atlantic Union, in which he was deeply engrossed; an active trustee of the University of Pennsylvania and, for three years, dean of its law school; a working member of the educational committee of the Ford Foundation. Into all of these important activities he threw himself with his accustomed energy. But during this period he was no longer an advocate.

Only occasionally does such a man pass before us in this complicated, rapidly changing civilization of which we are a part. The call for specialization is so insistent that the general practitioner of former days, in law as in medicine, finds many obstacles to overcome before he can reach the top. There is a real question as to how long the future will render possible a career such as that of Owen J. Roberts. Perhaps there will always be room for such a man. It is hard to tell. But to those of us who knew this man, and knew him well, the recollection of his shining presence will ever remain an inspiration and a joy.