

In Memoriam - Chief Justice E. Harold Hallows

Robert F. Boden

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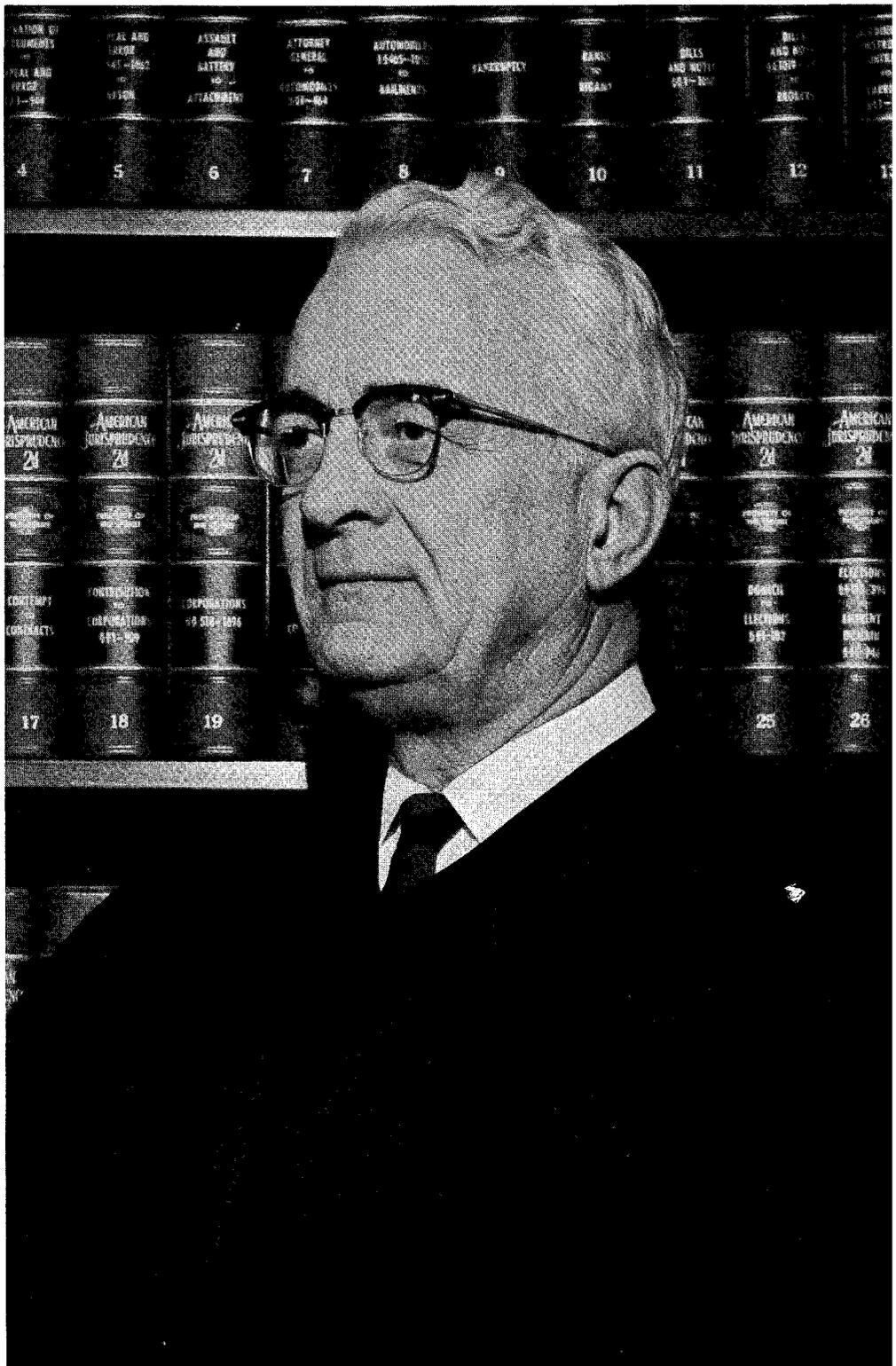


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IN MEMORIAM

CHIEF JUSTICE E. HAROLD HALLOWS

DEAN ROBERT F. BODEN
Marquette University Law School

E. Harold Hallows, professor of law at Marquette University from 1930 to 1958 and recently retired chief justice of the Wisconsin Supreme Court, passed away on September 11, 1974, after a year and a half struggle with the dread disease leukemia. He was seventy years of age and had retired as chief justice only forty-five days prior to his death. In a remarkable display of courage and stamina, and despite extended periods of hospitalization in the terminal year of his life, he managed to assume his full share of the burden of the court's work during the 1973-74 term and at the same time to conduct a vigorous campaign for adoption in Wisconsin of a plan of court reorganization looking to a unified court system and an independent judicial branch of government.

Professor Hallows was born in Fond du Lac, Wisconsin, on April 20, 1904, the son of Hugh B. and Lillian Martin Hallows. After receiving his primary and secondary education in Fond du Lac, he enrolled in the College of Liberal Arts at Marquette University in 1922, receiving the A.B. degree in 1926. After a year of graduate study at Columbia University in 1926-27, he began his legal studies at the University of Chicago in 1927. At Chicago, he was an honor student and a member of the *Chicago Law Review*. He received the J.D. degree *cum laude* from Chicago in 1930. In an unprecedented appointment, Hallows was named to the Marquette law faculty in the year of his graduation from law school, and he taught in the law school as a member of the part-time faculty until his 1958 appointment to the Wisconsin Supreme Court, rising to the rank of full professor in a time when those ranks were open to part-time faculty members.

In the difficult years of the Great Depression, and the equally trying times during World War II, when the law school had fewer than a dozen students and only four faculty members, part-time teaching often involved service which today would be considered by any standards full time. The catalogues of that era reveal, for example, that, as a part-time teacher, Professor Hallows was, in the early 1940s, teaching three courses per semester. But for stating

it in this memorial, his accomplishments in later life might hide this great contribution of his early career.

After the war, Professor Hallows concentrated his teaching on the single subject of Equity. He devoted, in all, twenty-eight years to teaching at Marquette, at the same time building a distinguished reputation as one of the leading members of the Milwaukee Bar. He served as president of the Milwaukee Bar Association in 1948-49 and of the Wisconsin Bar Association in 1953-54. He served in the House of Delegates of the American Bar Association from 1954 to 1968. In recognition of his many professional achievements and community services, he was awarded honorary Doctor of Laws degrees by Mount Mary College in 1951 and by Marquette University in 1970.

In 1958, Governor Vernon Thompson appointed Professor Hallows an associate justice of the Wisconsin Supreme Court. The new justice demonstrated early in his sixteen year career that he was both legal scholar and independent thinker. Never a slave to *stare decisis*, he was accused by some of trying to destroy it. Once at a luncheon speech of the Dane County Bar, the justices had to leave early to return to the court. The speaker, Circuit Judge Richard Orton, a scholar of great stature himself, remarked, "There goes the supreme court, back to their legislative chamber." "Sure we make law," Hallows was often heard to say, "that's our job." In his years on the court, Justice Hallows participated in a mammoth overhaul of Wisconsin law, concentrated in tort and criminal law. He wrote over 700 opinions, often as dissenter, and seventeen of these found themselves the basis of commentaries in the *American Law Reports*.

Justice Hallows, as senior member of the supreme court, became the chief justice in January, 1968. He served as the leader of the Wisconsin judicial system for six and one-half years, during one of the most critical periods in its history. It has been in these recent years that the greatest need for reforming and unifying the court system has been felt. It was during this time that the workload of the supreme court became so great that a backlog of cases developed, suggesting the need for an intermediate appellate court in Wisconsin. The chief justice responded aggressively to these matters of concern, and it was at his suggestion that Governor Lucey, in 1971, created a blue ribbon task force which recommended sweeping changes in the judicial department in a comprehensive study released in 1973. The chief justice literally died fighting for these reforms.

The influence of E. Harold Hallows as teacher has been and will be felt far beyond his classes at Marquette. All his life he taught by example. His was a lifetime of dedication to improving the administration and quality of justice. His goals were those to which every lawyer should aspire, whether he be practitioner, law professor or judge; service in the cause of justice beyond the daily discharge of practice responsibilities at the bar or the bench. In his forty-four years as a member of the bar, the voice of Harold Hallows was heard in connection with every significant matter involving the improvement of the judicial system to arise in that time, and he personally was the one who raised many of them. Many a man would have been content to have participated in just one of the causes and projects he espoused in the interest of better justice. Consider a few, such as judicial compensation and retirement, court reorganization, integration of the bar, judicial education programs, reform in methods of judicial selection, client security funds, creation of the Judicial Council and service on it in procedural law revision.

Few people agreed with Harold Hallows all the time, and some fine legal minds disagreed with him most of the time. And the tenacity with which he stuck to his guns generated a good deal of quite healthy argumentation and debate over the years. History has proved him right on more occasions than most can claim. Agreement with "the Chief" was never necessary to conclude that here was a lawyer of gigantic stature demonstrating by his example the huge contribution to the cause of justice which every lawyer is capable of making if he will expand his horizons beyond the narrow confines of his daily "job in the law" and look to the greater responsibility which all of us as professionals should assume. Chief Justice Hallows did it with a magnificent flair, aided of course by his sound legal scholarship and the prestige of his well-deserved high office.

In the year of his graduation from law school, 1930, Professor Hallows married his college sweetheart, Mary Vivian Hurley, whom he met during his student days at Marquette. Mrs. Hallows shared her husband's professional interests and was actively involved as founder and early president of both the Marquette Faculty Wives club and the Lawyers' Wives of Wisconsin. She died in May of 1973, at the same time that the chief justice learned of his affliction with leukemia. Justice Hallows is survived by his son, Joseph, and his daughter, Mary Elizabeth. Joseph followed in his

father's footsteps, and graduated from Marquette University Law School in 1964.

The entire State of Wisconsin is in the debt of Chief Justice E. Harold Hallows and mourns his passing. All of us in the Marquette legal family, students, faculty and alumni, can take pride in his achievements, for he was one of us. May he rest in peace.

[Editors Note: In memory of Chief Justice E. Harold Hallows, the Marquette University Law School Student Bar Association has established the Chief Justice E. Harold Hallows Fellowship. This fellowship will be administered by the Student Bar and the Law School faculty. It will be granted to members of each class for books or tuition on the basis of financial need and contribution to student life. The Student Bar has made an \$800.00 donation and is seeking contributions which can be made by check payable to Marquette University and sent to:

Marquette University Law School
Student Bar Association
1103 W. Wisconsin Ave.
Milwaukee, Wisconsin 53233]

IN MEMORIAM

CHIEF JUSTICE E. HAROLD HALLOWS

JUSTICE NATHAN S. HEFFERNAN
Associate Justice, Wisconsin Supreme Court

To write a short memorial tribute to Chief Justice E. Harold Hallows is an impossibility. He was a complex man—a deep and philosophical thinker who, aside from his religious convictions, saw few absolutes or cut-and-dried solutions to any problem. He was an empirical thinker, willing to innovate on the basis of the time-tested principles of the common law; yet, on occasion, he readily gave up old and accepted precepts of the common law. He was a great and positive force for the improvement of the profession of the law and the craft of judging. When Winslow's *Story of a Great Court* is revised and updated, as it surely will be, the work of E. Harold Hallows during his tenure on the Wisconsin Supreme Court will require and deserve exhaustive treatment. He was a good man in the best sense of the word; yet he would be, and was, the first to admit that all men are fallible and that all men who try will stumble.

As a member of the court, he frequently decried the stereotyped and wholly laudatory memorials to the great lawyers and judges that appear in our Reports. He liked to read not only of the genius of Chief Justice Edward G. Ryan, but also of his irascibility. E. Harold Hallows, though acutely conscious of his earned place in Wisconsin legal history, would be the last to want a memorial that pictured him as less than a human being. I made that promise to him.

Harold was a powerful man. Powerful in personality, intellect, and position. With power often comes the corrupting vice of arrogance. Harold was sometimes an arrogant man—but his arrogance came from his intolerance of evil and injustice and of ignorance. He was intolerant, not of creed or color, but of ideas that he considered ill-founded or out of step with the times, and of people who refused to face the real problem. He sometimes missed the mark, both in his judgment of men and their ideas. Having said this, and I think Harold would want me to say it, these deficiencies are trivial. The good that Chief Justice Hallows has done will live after him.

The career of E. Harold Hallows in his personal and professional life is an exemplar for all. He was a religious man. He rendered unto God those things that were God's and unto Caesar those things that were Caesar's. Yet, even in his dealings with Caesar, his opinions were imbued with overtones of a reverent and religious man.

He was a loving father and husband. In addition to his concern for his duties on the court, during the last few years his principal concern was to retain his own health and strength so that he could help his beloved Mary Vivian.

His courage during the days of her incapacitating illness and his own is unparalleled in my experience. Only once did any member of this court see him yield to despair, and then only momentarily. That was the day on which he announced to the court that Mary Vivian had only a short time to live and that his condition had been diagnosed the day before as incurable leukemia.

Despite the shock of the death of Mrs. Hallows and his own acute illness, he continued to perform his work as chief justice. During the last year and a half of his life, much of his court work was done from his hospital bed.

His career as one of a handful of great justices of this court began on May 1, 1958, when he took the oath as the 50th justice of this court. In view of his reverence and dedication to our legal system, it was not surprising that he selected that day—the first Law Day U.S.A.— as the date for assuming office.

His words on that occasion are worth repeating, for he then set his goals and dedicated his future to the judicial system.

There is a special incentive for universal rededication to the rule of law at this time. Freedom and justice for every individual, grounded upon a just system of laws and protected by the courts, are the keystones of American strength, and its main claim to moral leadership in the world. The new era of space has created a need for new scientific and technological concepts in the world. But there is also a greater need to re-emphasize and guard those unshakable fundamental concepts which preserve individual freedoms and free governments. . . .

Individual freedom under law and equality before our courts distinguish our system of government and our whole way of American life. . . . The preservation of equal justice to all under law and the independence of our courts are the responsibility not only of the bench and bar but of all citizens. . . . The whole complex of our social order is erected upon a framework of law and justice. The inalienable rights, with which our Creator has

endowed each human being, form its enduring foundation. It is to these concepts and our system of law that we owe the preservation of freedom, characteristic of our democratic form of constitutional government. . . .

. . . [T]oday it is my great privilege and opportunity, to zealously rededicate myself, to those divinely inspired ideals and principles by taking the oath as a member of this court, the fiftieth justice in one hundred five years of its history. May I be worthy of the past and equal to the opportunities of the future.

He was worthy of the past and was equal to, yes the master of, the challenges that confronted him as a judge.

Although I did not know E. Harold Hallows well before I joined the court in 1964, his reputation as one of Wisconsin's great lawyers was well established by the time I was admitted to the bar. The rich promise of his intellectual and spiritual qualities had been realized in full measure before he came to the bench.

Born in Fond du Lac in 1904, he attended Marquette University, where as an undergraduate he met his red-headed, life-long Irish sweetheart, Mary Vivian Hurley. He attended law school at Columbia University, and in 1930 graduated cum laude from the Law School of the University of Chicago, where he was a distinguished editor of the law review. He chose to practice in Milwaukee. From 1930 until he came to the bench, he was a professor of law at Marquette University. His precepts of equity and his legal and personal philosophy have been the pole-star for literally thousands of Wisconsin lawyers who were enriched and elevated by being his students.

During his career as a practicing lawyer, he was recognized by being the president of the Milwaukee County Bar Association and the State Bar Association. He was a national officer of the American Bar Association. He served on numerous significant national committees of the A.B.A. and was a member of its House of Delegates. His career at the bar was marked not only by personal success but also by his dedication to the improvement of the legal profession. He was a charter member of the Wisconsin Judicial Council, and even before he became a justice of this court he was a driving force behind the judicial reorganization of 1959 that came to fruition at about the time he came to the bench.

During this time he was also active in a multitude of civic, religious, and charitable organizations. It can indeed be said of E. Harold Hallows that he was a man of many interests and talents, "the elements so mix'd in him that Nature might stand up and say to all the world, 'This was a man!'"

But it is of his career on the bench that I have asked to write. His achievements overshadow those of all but a few American judges of recent times. He was the founder of the National Appellate Judges Conference; a member and chairman of the Judicial Administration Section of the American Bar Association; a member of the American Law Institute and the Institute for Judicial Administration; and a director of the American Judicature Society and the recipient of its annual Herbert Lincoln Harley Award in 1973 for distinguished service for promoting the administration of justice. He made the program of continuing education for Wisconsin judges a reality.

This listing of but a few of his many accomplishments reflects his superb record as a justice and chief justice of this court.

He was, however, a people's judge and a lawyers' judge even more than he was a judges' judge.

He sought, and succeeded in his efforts, to make the law an instrument of greater fairness in its dealing with our citizens whether it involved a victim of a personal injury or a defendant in a criminal case.

He was keenly aware of the inherent possibility of injustice when the ignorant, the injured, the poor, or the mentally ill were obliged to meet the challenges of our society. While a patient during his terminal illness, he insisted on being taken by wheel chair to the ward where prisoners from Waupun State Prison were being treated. He assured himself that the chief justice of the State of Wisconsin and convicted felons were receiving equal care and treatment in the same hospital. Yet, he showed great concern that the law be construed to protect the business interests of society where those interests were compatible with our laws and constitution and with the interests of social justice.

As a judge he was concerned about the increasingly complex problems that confronted the practicing lawyer. He encouraged the educational programs of the Wisconsin State Bar Association. He continued to be an outspoken advocate of the integrated bar. It was his opinion that placed this court's imprimatur upon the integrated bar.

He was a progressive judge who fashioned and remolded the ancient precepts of the common law to serve our modern society. He was an inventor of new techniques that made our judicial system work better.

Yet he realized that mere tinkering with our judicial system was not enough. In 1971, in his annual address to the Wisconsin Judi-

cial Conference, he called upon the Governor to organize a judicial study committee to explore the problems of the Wisconsin courts and to suggest any necessary reorganization. That committee reported and recommended that there be created an intermediate appellate court and a single level of state trial courts. E. Harold Hallows dedicated the remainder of his life to the implementation of these proposals—not because he felt that justices of the supreme court were overworked, not because he felt that some judges in the system were doing equal work for less pay, but rather because these changes would improve the quality of justice for the average Wisconsin citizen. He did not live to realize the final implementation of these important changes, but the work which he initiated will be accomplished, and the principal credit for the establishment of a modern system of justice in Wisconsin will surely fall to the memory of E. Harold Hallows.

This is not the place to detail the specifics of his accomplishments as a writer of opinions and as a leader of progressive thinking for courts everywhere. His sense of justice and keen scholarship has altered for the better the law of comparative negligence, religious liberty, conflicts of law, consumer protection, workmen's compensation, criminal law (including the advocacy of the A.B.A. Standards of Criminal Justice and the enlightened A.L.I. rule for testing the defense of insanity), tort immunity, evidence, freedom of speech, and libel and slander.

In the last years on the court, he wrote the opinion in the nationally recognized case of *Just v. Marinette County* (1972), 56 Wis. 2d 7, 201 N.W.2d 761, which recognized the importance of swamps and wetlands to our society and which held constitutional the regulations that protected the public interest in wetlands even on private property.

He was always a champion of children's rights. He clarified the law of adoption, and successfully persuaded this court to afford remedies for the tortious invasion of the rights of unborn children. Contrary to the position taken by this court, he urged that recognition be given to the rights of the father of a child "born out of wedlock." (The phrase was his. No child was illegitimate; only its parents were.) His view was adopted on appeal by the United States Supreme Court.

During his career on this court, seventeen of his decisions were recognized to be of unusual importance and were made the basis of full annotations in the American Law Reports.

Chief Justice Hallows was a man of great conviction. This is

demonstrated by his numerous dissents and concurrences. There have been times I, and all of his colleagues, have felt the lash of his dissents and the force of his disagreement in conference. He did not suffer fools easily. I have mentioned that his judgment in this respect was not infallible. Part of his occasional temperamental errors were, no doubt, the result of a life-long curse—a serious hearing deficiency. Our altercations were too often the result of our difficulties to communicate easily in the give and take of the conference room. Yet, whatever the reason for our occasional heated differences, we all knew that E. Harold Hallows was a searcher for truth. The sharp disagreements were not motivated by personal animosity. Rather, they were indicative of Harold's conviction that all ideas should be sharply challenged, so that only the best justified ideas and theories survived the crucible of conference and finally appeared in the published Reports.

Because of Chief Justice Hallows' aggressive search for the truth, coupled with sound scholarship, he was the writer of great opinions. I suppose to some lawyers one case, if it fits the facts, is as good as another. I do not believe this to be true. Those who are on the bench rely more heavily on the precedents of some judges than on others. This is because our daily reading and deep familiarity with the work of all our predecessors leads us to the conclusion that some judges uniformly produce opinions that are the result of diligent research, philosophical understanding, and the application of a first class intellect. These are the judges to whom we pay the most attention. Such a judge was E. Harold Hallows. His opinions reflect the work of a dedicated master of his craft.

In one of his last statements to the press, Harold stated that judges come and go, only the court goes on. He was concerned not with himself but with the future of the court. A justice of this court, with the rare qualities possessed by E. Harold Hallows, assures the future of this court—that it will go on. He was a writer of precedential opinions. His opinions will guide this court and the legal profession for generations yet to come.

Although on instances more numerous than I like to recall, Harold and I raised our voices in sharp disagreement, I was honored by his friendship and counsel. The relationship of teacher and student is not always a comfortable one. In many respects I was Harold's student on the court. But I, like my brothers on the court, was his colleague, and he was our student, too. He was an apt student—to the last, eager to learn. Therein lies in part, at least, an explanation of his greatness.