

# THE SAUNDERS LAW FIRM

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April 2, 2019

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Mayor Justin Wilson  
and Members of City Council  
City of Alexandria  
Alexandria, Virginia 22314

**Re: 619 South Lee Street,  
BAR appeals 2018-00410 and 2018-00411**

Dear Mayor Wilson and Members of City Council:

I am writing to register my objection to what I understand to be the proposed redevelopment of the property at 619 South Lee – the home until his death of Justice Hugo L. Black and Elizabeth Black. I served as a law clerk to Justice Black from 1960 to 1962 and was privileged to deliver one of the addresses on the occasion of the memorial services for him at the Supreme Court (a copy of which is attached hereto). I know the property at 619 South Lee and spent many hours working with Justice Black there. The Judge (as his law clerks called him) loved that property, including particularly the tennis court on which he spent many hours teaching some of his clerks the humility that comes from being bested by a septuagenarian and ultimately even by an octogenarian.


Because he lived and worked there for decades, as well as entertained Presidents, judges and dignitaries of his era, his imprint elevated 619 South Lee to a historic place even beyond the antiquity of the building itself. In fact, I know that Justice Black and Elizabeth even executed a document putting their property in a historic and open-space easement, and later his heirs reaffirmed that the protection extended to the unique side yard, garden and his beloved tennis court as well. His very clear intentions are certainly a further reason to weigh in preserving this very historic property, which in addition has officially been designated a Virginia historic landmark. Until now, all subsequent owners have respected those intentions and that history. To impose now a giant addition, nearly as big as the historic building itself, would erase history and destroy the garden area. I have been informed that your body has the power and duty to consider any proposal to alter the property in accordance with all these and related factors and the public interest.

I strongly believe that you should act to block the proposed construction. That construction would radically change the nature of this property as it was respected, preserved and maintained by the Judge. In my opinion, that would be a tragedy for anyone interested in the

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history of our Supreme Court and for the City of Alexandria. Justice Black was a seminal figure in the history of the Supreme Court –a great, if not the very greatest, Justice ever to sit on that Court. I believe that in time his greatness will be fully recognized and his home, if preserved, will rival Mount Vernon as a site to be visited by everyone interested in American history. It should be preserved in its current state.

Respectfully,

  
George L. Saunders, Jr.

Enclosure

# In Memoriam

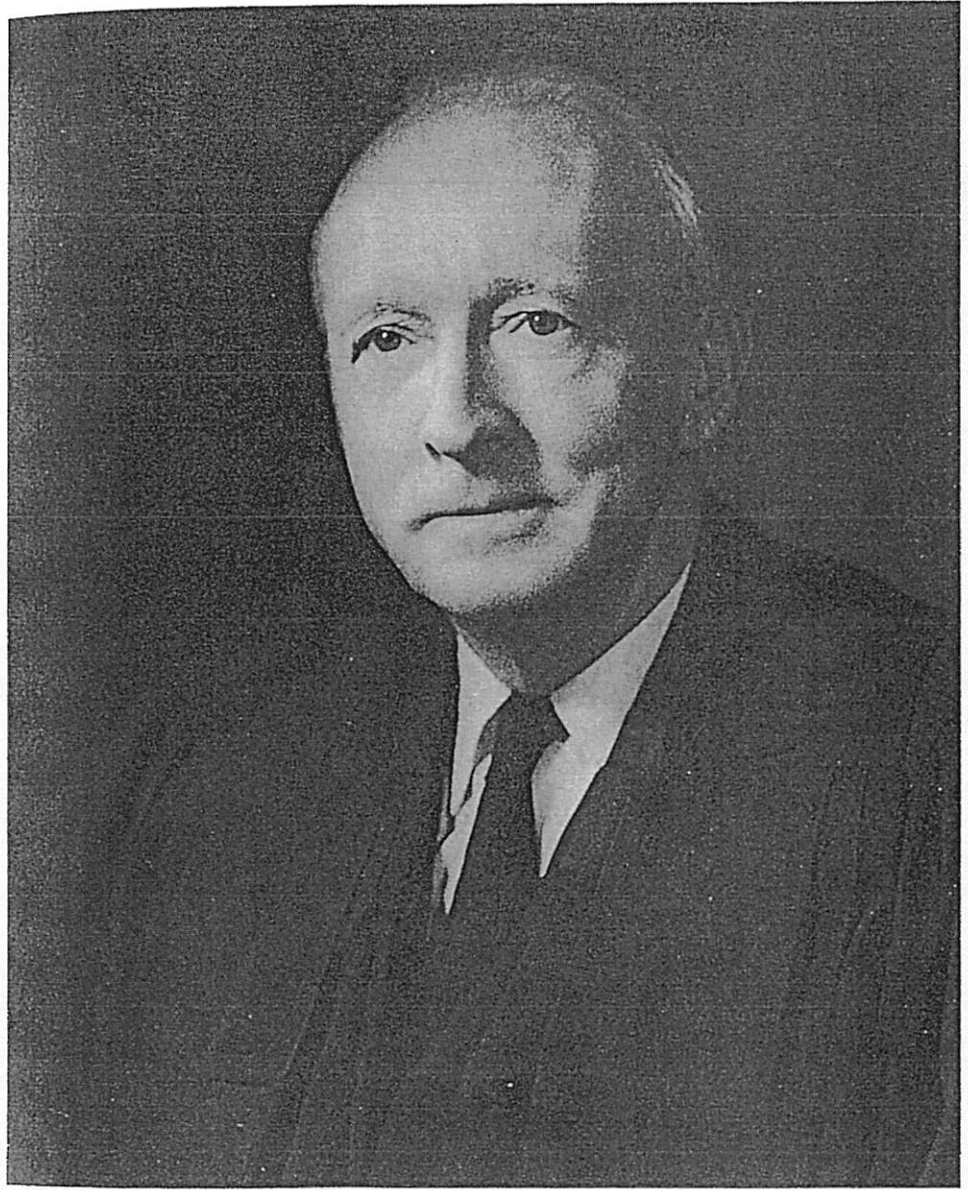
HONORABLE HUGO LAFAYETTE BLACK

Proceedings of the BAR and OFFICERS of the  
SUPREME COURT OF THE UNITED STATES

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Proceedings Before the  
SUPREME COURT OF THE UNITED STATES

Washington, D. C.  
April 18, 1972



HONORABLE HUGO L. BLACK

## IN MEMORIAM

The Chair recognized GEORGE L. SAUNDERS, ESQ.

Remarks  
of  
MR. SAUNDERS

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Mr. Chairman, Mr. Attorney General, Mr. Solicitor General, Mrs. Black, Hugo, Josephine, other members of the family, and friends of Mr. Justice Black:

In every generation, there exist a select few individuals to whom the privilege and responsibility of extraordinary perception and understanding is given, upon whom—as Hermann Hesse put it—the “mark of Cain” is apparent. Hugo Black was such a man.

From his early childhood in Alabama, Justice Black was set apart from the people with whom he grew up by his recognition that the way of life they accepted without question was both unjust and self-destructive. Bigotry and racial prejudice were totally foreign to his nature, not because of any liberal impulse to sympathize with those less fortunate than himself, but because to him, as to Thomas Jefferson, all men were in fact created equal and common sense required that they be treated as such.

The same clarity of vision and willingness to act upon what he saw to be right set Justice Black apart in virtually every endeavor of his life. As a public official in Alabama, he took actions that rarely, if ever, had previously been taken by a public official in that State—as a prosecutor, when he convened a grand jury to investigate police brutality toward blacks; and as a police judge, when he refused to convict blacks for gambling on street corners because no effort was being made to prosecute whites who were equally guilty of gambling at the local country

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club. As a Senator, he found himself at odds with the vast majority of his fellow Senators when he launched one of the first effective investigations into the lobbying activities of powerful corporations, and then shocked the legal world by issuing subpoenas to some of the most prestigious law firms in the country. As a member of this Court, he completely confounded many constitutional scholars, and most of his own judicial brethren, by insisting that the Constitution meant what it said and that it ought to be applied according to its terms.

Justice Black's unwillingness to go along with the established customs and officially accepted wisdom of the day did not stem from any fondness for change for the sake of change. He respected—indeed, revered—the institutions of this country and devoted most of his life toward preserving them. But he insisted that those institutions must be made to work the way they are supposed to work—he refused to be deluded into accepting glossy excuses for their failures. When the President sought to seize the steel mills without legislative authority, he wrote the opinion for the Court condemning the action and restricting the President to his proper executive function. When the House Un-American Activities Committee sought to conduct trials under the guise of making legislative inquiries, he condemned such proceedings as modern-day versions of the old bills of attainder and urged the Court to force Congress to stay within its constitutionally-defined legislative function. And when the Social Security Board terminated the old-age benefits due to a person who had been deported for having been a member of the Communist Party in the 1930's, he condemned its action as an infliction of punishment totally beyond the proper powers of any administrative agency.

Justice Black's concern that the institutions of our Government stay within their proper constitutional limits was nowhere more forcefully expressed than in connection with the decisions of his own Court. Justice Black realized the awesome power of the Supreme Court and the need to confine that power within precisely defined boundaries. He despised the interpretation of the Due Process Clause which would permit the Court to con-

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demn as unconstitutional any law it found to be arbitrary. To Justice Black, this amounted to nothing "more nor less than a judicial foray into the field of governmental policy"—a foray for which the Court is neither well equipped nor properly constituted. In his view, the Court's job is to apply the law as written, and leave the problem of establishing governmental policy to the people and their *elected* representatives.

It is ironic that despite Justice Black's overriding and constantly reiterated concern with the necessity of keeping this Court's power confined within its proper boundaries, he is almost universally regarded as a "judicial activist" by his friends and detractors alike. Those who agree with his opinions frequently do so on the ground that the results reached were good for the country and no other way of achieving those results was available. On the other hand, he has frequently been criticized for his opinions, particularly in cases involving the Bill of Rights, as being too permissive toward obscenity and sedition, and too soft on those accused of crime. In my judgment, these evaluations of Justice Black's work reflect a basic misconception of his judicial philosophy, both by his friends and by his foes.

The cornerstone of Justice Black's philosophy was his commitment—not to any particular law or set of laws—but his commitment to the concept of the rule of law in a democratic society. As much or more than any Justice in the history of this Court, he sought to keep his own personal views out of his decisions. He worked tirelessly to develop a judicial philosophy that was both internally consistent and faithful to the language of the laws he was sworn to uphold. He was "activist" where the law applicable to the situation required action. But where the law, as he saw it, placed no power or responsibility in the Court, he would not interfere with responsible branches of Government, however unwise he might personally view their action to have been. To Justice Black, this was required not by any doctrine of "judicial restraint" but by the simple principle that courts should apply law, not create it.

It has often been said that Justice Black "loved" the Constitution and the Bill of Rights, and no one can deny that he be-

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lieved those documents represented the greatest achievement in law-making in the history of man. But Justice Black never questioned the power and right of the people to amend any provision of the Constitution—even the First Amendment. Indeed, when the storm of protest struck following his decision in the *Regents' Prayer* case and it appeared for a while that a constitutional amendment was imminent, the only reaction I ever heard Justice Black express was that it was the people's Constitution and they were entitled to amend it if they saw fit. The important thing to Justice Black was that the people have an opportunity to hear all sides of such issues and to decide freely what laws they want to live by. Once that is done, the responsibility of the courts is to enforce the laws upon which the people have decided—whether the judges like the laws or not.

It was this view that led Justice Black to place such heavy emphasis upon the First Amendment as the basic law guaranteeing the right of the people to open discussion of public issues. And the same view underlay his insistence that the law be enforced in the precise terms in which it is written. Justice Black believed that the whole notion of the rule of law necessarily presupposes an ability to make laws that are simple and intelligible to the average person and which the courts can enforce without rewriting. He saw the rule of law as the only alternative to a rule of force and violence in society and he realized that the rule of law will only work if people understand the law and accept it as a viable alternative.

Much has been said about Justice Black's contributions to the people of this country over a lifetime of public service. Those contributions were many and varied—this was a man of whom it could truly be said that the world is better for his having lived here. There will, of course, be disagreement as to which of his contributions was the most important, and only time will provide a definitive answer. But at the risk of being later proved wrong, I would like to suggest that Justice Black will be remembered longest for awakening the courts to their responsibilities



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to protect the freedoms of the people. From his earliest opinions, this was the major recurring theme—never more eloquently stated than in his 1939 opinion in *Chambers v. Florida*, where he said:

“Under our constitutional system, courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement. \* \* \* No higher duty, no more solemn responsibility, rests upon this Court, than that of translating into living law and maintaining this constitutional shield deliberately planned and inscribed for the benefit of every human being subject to our Constitution—of whatever race, creed or persuasion.”

No higher praise need be given nor asked for on behalf of Justice Black than that he fully discharged this “solemn responsibility.”

Justice Black’s ideas are still very much with us. Indeed, his ideas will, in all probability, dominate the law for generations to come; for I believe—as Justice Black believed—that those ideas are implicit in, and necessary to, the rule of law as we know it.

But the man who combined those ideas with the warmth and gentleness of a country boy from Alabama; the man who for 45 years walked with the most powerful leaders in our land yet never lost touch with its humblest citizens; the man who could contend with rulers yet never felt enmity for any man—that beautiful man is gone. And while those of us who were closest to him miss him and grieve for his family, we take heart in the fact that his life enriched us all. On behalf of the many law clerks who had the privilege of working with Justice Black over 34 years—and their families—all of whom he regarded and treated as his sons and daughters:

“Good-bye, Judge. We thank you for having had the chance to walk a part of the way beside you. We will miss you. But you go with the love of each and every one of us.”