

Preface

Frank Murphy was a mayor of Detroit, a governor of Michigan, an attorney general of the United States, and a Supreme Court justice. As a trial lawyer, he projected with a “bell-clear” voice in packed courtrooms, where he was known to speak for up to seven hours.¹ He was adored by women’s groups, the African-American community, and union card holders. When he died in 1949, an estimated 20,000 people viewed his body in Detroit’s City Hall in a five-hour period, many coming straight from their factory jobs in “shirt sleeves and with dinner pails.”²

Throughout his career, Murphy influenced the country’s values in tangible ways, cementing its focus on individual dignity and liberties at a time when this country could have moved in a far more authoritarian direction.³ He supported the use of the federal government to solve problems in ways never seen before. He was present at one inflection point after another in the country’s development during the early twentieth century. Through his words and deeds, he played a part in inoculating the political and judicial system from darker forces that are always present in the United States, benefiting us to this day.

I will give just a few examples. In 1925, he was a young Detroit criminal court judge assigned to the murder trial of Ossian Sweet. Based in part on the way Murphy ran the trial, an all-white jury twice refused to convict Sweet and the other Black defendants in the killing of a white man. Because of this positive result, Black leaders decided they could place some faith in the court system in pursuing a civil rights agenda, thus helping to start the slow march to *Brown v. Board of Education* in 1954.

Then, as an incorruptible Detroit mayor, Murphy provided crucial cover for Franklin Delano Roosevelt (FDR) during his first presidential run. With the charismatic Murphy as his prime example, Roosevelt could demonstrate to the heartland that he was not beholden to the crass ethnic city bosses associated with

the Democratic Party. Murphy energetically crisscrossed the country, giving rousing speeches on behalf of FDR. From that point forward, the two men were close, with Roosevelt supporting Murphy's meteoric political rise, to the jealous bewilderment of others in his administration.

In 1935, Murphy was FDR's man in the Philippines as that United States possession moved to independence. The Philippines had a potentially volatile brew of ethnic and religious minorities. Although he had no template to follow—much of the colonial decoupling happened after World War II and not before—Murphy ensured that the process was largely peaceful. And his innovations to the Philippine Constitution reflected his conception of an ideal democratic system. He predictably insisted that the Philippines adopt a constitution with an executive and legislative branch fashioned after the United States model but with some surprisingly significant modifications. Under his guidance, the Philippine president could only serve for one six-year term, and that president would be elected by a straight vote of the people. The legislature was unicameral and had nothing like the United States Senate.

As the governor of Michigan, Murphy mediated a peaceful resolution to the great sit-down auto strikes in 1937 and cemented the role of unions in the American workplace. Here too he was in close contact with FDR, who remained safely in the background while Murphy took the heat from business leaders and conservatives.

Murphy loudly sounded the alarm about the Nazis in the late 1930s, pointing out their treatment of Jews at a time when few in this country were focused on the disturbing events taking place abroad. During World War II, he used his bully pulpit as a Supreme Court justice to voice his concerns over the loss of civil liberties in this country, culminating with three significant opinions in December of 1944, including his dissent in *Korematsu v. United States*.

Given Murphy's involvement in many of the defining moments that created modern America, why have those who should know better ignored or marginalized his accomplishments? Why is he largely unknown by the American public? These are questions I

seek to answer in this book. Much of the conventional wisdom about Murphy is negative: He was strange. He lacked intellectual heft. He was lazy. I hope to debunk many of the falsehoods that have latched onto Murphy and so hurt his historical standing. I will unearth the origins of these misperceptions and reintroduce a man I have grown to admire greatly.

Murphy is rightly known for his dissent as a Supreme Court justice in 1944. Executive Order 9066 was President Roosevelt's World War II-era directive that placed more than 120,000 Americans of Japanese origin in internment camps for much of the war. Most were American citizens, effectively jailed without any semblance of due process. The internments could not compare to the atrocities in Europe, but as many recognized even at the time, these actions against a vulnerable minority directly contradicted a set of ideals (democracy, civil rights, liberty, opportunity, and equality) that most Americans held with pride.

The Supreme Court meekly blessed the constitutionality of the internments when the issue finally made its way to the High Court in 1944, a full two years after the Japanese Americans had been shipped to the interior of the country. Murphy was now a justice on the Supreme Court, and he filed a scathing dissent. He was never one to mince words. In the first paragraph of his *Korematsu* dissent, he called the policy of internal displacement a descent "into the ugly abyss of racism."⁴

He continued by mocking the logic of the executive order. Murphy highlighted the fact that, between the time of the attack on Pearl Harbor in 1941 and the issuance of *Korematsu* in 1944, Japanese Americans had not engaged in even a single act of treasonous behavior. Germany and Italy were also at war with the United States, and no such general order was issued against the American descendants from these countries. He pointed out that the government had ample resources to deal with individual acts of disloyalty.

How brave was Murphy in standing up to the establishment? Significantly, Murphy was a firm and devoted ally of Roosevelt, and a New Dealer to his core. Murphy owed his position on the Supreme Court to FDR and regularly competed with others in FDR's orbit for the president's approval. Justice Felix Frankfurter

and others told him that a strongly worded dissent would be used as propaganda to criticize the president and the country. Yet as a matter of conscience, he moved forward.

Other great men, with full knowledge of the facts behind the internments, fell short of their ideals. Earl Warren was the future chief justice who heroically arm-twisted the other justices to sign on to a unanimous decision in *Brown v. Board of Education*, thereby ending “separate but equal” in public schools. But during World War II, as the attorney general and then as the governor of California, Warren was an enthusiastic supporter of Roosevelt’s executive order. He wanted to rid his state of its Japanese-American inhabitants, whom many there regarded as an economic threat. At the time, California was a state with seven million people, of which a grand total of 90,000 or so were of Japanese descent. In Warren’s view, this small population had to go, and he deployed language we recognize today as shocking and vile to espouse his views.

Justice William O. Douglas was lauded by *Time* magazine upon his retirement in the 1970s as the greatest civil libertarian to serve on the Supreme Court.⁵ Justice Felix Frankfurter, another of Murphy’s colleagues on the Supreme Court, was a founder of the American Civil Liberties Union (ACLU).⁶ Yet Justices Douglas and Frankfurter voted in *Korematsu* to uphold the eviction of the Japanese Americans from the West Coast. Frankfurter, Douglas, and Warren have all been the subject of laudatory books and articles as befitting important Supreme Court justices and their decisions in the World War II-era cases have been ignored or downplayed.⁷

As a justice on the Supreme Court, Murphy used the word *racism*—or some variation thereof—in three different cases on the same day in December 1944. Certainly, *Korematsu* remains the best known of the three. But the fact that he used that word in two other cases shows that his word choice was not a fluke. The second case decided that day also related to the Japanese-American internment. Mitsuye Endo was a United States citizen who had lost her California state job due to her national origin and was transported to Utah with her family under FDR’s expulsion order. In *Ex parte Endo*, Murphy wrote a separate opinion, calling out

Endo's confinement as "another example of the unconstitutional resort to racism inherent in the entire evacuation program."⁸

The third case that came down that day had nothing to do with the Japanese-American internments. In *Steele v. Louisville & N.R. Co.*,⁹ a union local bargained away the rights of Black employees, placing them first in line if there was a need for staff reductions and lower salaries. Murphy agreed with his brethren that the local's actions were wrong. But Murphy was the only one to brand the union action as *racist*, and indeed he was the only Supreme Court justice to employ that word during his time on the court, or for many years thereafter.¹⁰ In *Steele*, Murphy risked alienating his great political allies in organized labor, but he plunged ahead.

As I will argue, Murphy was doing on that day in 1944 what he had done his entire life. He believed it was his duty to protest whenever American values—individual due process, assumption of innocence, a welcoming attitude toward the "other"—were trampled. This country was a grand experiment. People from all corners of the globe had to live together and thrive. He was determined to ensure its success. And he had faith that his allies, whether Roosevelt or the unions, would respect him on those occasions they needed to be called out.

Murphy had an impressive, diverse political resume and also an interesting personal life. He always found excuses not to marry and remained a bachelor his entire life. Even FDR tried to play the matchmaker. After Germany had invaded Poland in 1939, Roosevelt took time out of his schedule to introduce Murphy to a Tennessee widow, with FDR writing, "Is there anything I can do to help? . . . I am, as you know, highly discreet and my fees are reasonable!"¹¹ But nothing came of this or any other attempts to pin Murphy down.

Much has been made of his relationship with Edward Kemp, and specifically whether they were romantically linked. Both were lifetime bachelors. They were companions from their college years until Murphy's death. They went on long trips together, including a six-week cruise to Europe when both were young men. The existing evidence on whether they were romantic partners remains inconclusive. But if we are to speculate on Murphy's romantic inclinations and sexual preferences, we must also

consider that he had serious girlfriends. Joan Cuddihy was prominent in the last four years of Murphy's life. Murphy affectionately referred to her as his "lamb" and wrote poetry for her. These relationships were covered by the press, but their letters also reflected intimate moments they shared. Perhaps most intriguingly, Beulah Young, a groundbreaking publisher of Black newspapers and a close political ally of Murphy, wrote Murphy at least one passionate love letter, which she asked him to destroy. That letter, however, survives in the Murphy papers at the Bentley Library.

What is clear is that Murphy easily connected to people, on an intellectual and physical level. In this regard, he was particularly effective in communicating with the common laborer and the vulnerable ethnic groups crowding the cities. A key to his popularity was his ability to speak the truth during dark times and, simultaneously, to provide hope. During the depths of the Great Depression, he was known as the "Dew and Sunshine" mayoral candidate in Detroit. But his charisma was such that those in the top echelons of society also wanted his friendship and approval.

Murphy had a peripatetic career. Unlike other towering figures, he did not spend 30 years in one job, clawing his way to the top. This is no doubt another reason he is largely forgotten today. Although he had a large impact on America, his achievements were spread in different areas as the United States was entering the modern era. His life did not follow a clean narrative arc. And it was unfortunate that he died relatively young, right before the Supreme Court started to really focus on the inequalities in United States society. He would have been a fiery presence on the Warren Court in the 1950s and 1960s.

Every American, whether arriving by first class or shackled in the galley of a slave ship, fell under Murphy's definition of those entitled to the full benefits of the American dream. He adhered to the notion that everyone had a right to keep, and take pride in, their hyphenated past, their Irish traditions, their Catholicism or Jewish faith, their heritages—whatever they might be. He was a proud Catholic and enjoyed attending mass at his local Harbor Beach church during his frequent visits throughout his life. But this allegiance to religion or country of origin was not a blind

one. Murphy regularly supported politicians outside his “clan” that articulated his conception of American liberty, tolerance, and individual autonomy, as when he backed FDR over the Catholic and half-Irish Al Smith in the 1932 Democratic Party primary.

Murphy engaged in a tricky balancing act. The issues he grappled with, the contours and limitations of constitutional freedoms, are the subject of bitter fights in the twenty-first century. From a distance, we can see that the landscape has shifted from Murphy’s time. For all the current disagreements, the country has become more inclusive and the government more active in solving economic and social problems, which is not to suggest that the country has solved its problems of racial and economic inequality. In his own small way, Murphy contributed to those significant changes in how the United States views itself.

Acknowledgments

I am a New York–based lawyer. To be successful with this project, I needed access to Murphy’s personal papers, which are located at the University of Michigan. Here, I benefited from a farsighted project funded in part by the National Endowment for the Humanities. Back in the early 1990s, a great effort was made to place many of Murphy’s collected papers on microfilm. I obtained special permission from the Bentley Library to ship sections of this microfilm collection to the New York Public Library. I am grateful to the University of Michigan Library staff for all their help and innumerable courtesies.

Back in New York, I reviewed the microfilm in the Milstein Microform Reading Room at New York Public Library’s main building on 42nd Street, spending many fruitful weekends over the course of a year.

Barbara McGowan, a youthful spirit, runs the Frank Murphy House and Museum in Harbor Beach. She was always willing to speak to me and speculate about all matters relating to Murphy. She knew why I asked questions before I had to explain myself. She let me bring in Matthew Leppek, a talented photographer from nearby Bad Axe, who photographed almost every inch of the big house and law office. From these photos, I was able to

scour artifacts, memorabilia, letters, and newspaper clippings from that amazing collection as though I were there.

Then there is the indefatigable Holly Yasui, the daughter of Minoru “Min” Yasui. Her dad was the named plaintiff in Japanese-American internment cases during World War II. She was generous with her time and in sharing anecdotes about her father. We spent an enlightening and emotional evening with students at the New York University Law School. There, at an Asian-Pacific American Law Students Association event, I had the privilege to introduce Holly (via Zoom, before Zoom was the way to communicate) and Professor Karen Shimakawa, also the daughter of internment camp survivors.

I pulled in favors from friends around the country to complete this project. Sean Murphy and his children Kyle and Keely (no known relation to Frank) were kind enough to visit the Wilson Library at the University of North Carolina close to where they now live. There, they reviewed the papers of Eugene Gressman, Murphy’s favorite Supreme Court clerk and later a significant scholar in his own right.

By luck of geography, I grew up in the beautiful Hudson Valley, about 10 miles from Franklin Roosevelt’s home. His estate is also a quick train ride from New York City. My parents and various teachers took me there on many occasions. Revisiting the archives for this project, I found the librarians and archivists there to be supremely helpful, and they were also forthright in explaining the gaps in their collections, mostly caused by FDR himself. Roosevelt was not someone who kept diaries or allowed his staff to take notes during meetings. Luckily, the library in Hyde Park contains extensive papers of people associated with FDR, including original letters from Frank Murphy.

Many people were generous with their time after receiving a random email from a lawyer in New York (me). To cite just a few examples, I communicated with Scott O’Brien, the biographer for Ann Harding, one of Murphy’s girlfriends. Scott confirmed her handwriting on a note to Frank Murphy dated 1933, well after her move to Hollywood and marriage to an actor. And Michael Goldfield, a labor historian at Wayne State University, described his views on whether unions would have survived if the Supreme

Court had overturned the National Labor Relations Act (NLRA) of 1935 (also known as the Wagner Act), as was expected by many at the time. He and graduate student Cody Melcher shared with me a draft article on the subject, which has since been published.

Detroit lawyer Lillian Diallo provided some context for the grand jury proceedings of the kind conducted by Frank Murphy. Bruce J. Schulman of Boston University and Richard Gamble of Hillsdale College answered questions on the topic of “civic nationalism.” Tim Retzliff, professor of history and LGBTQ studies at Michigan State, gave me guideposts for describing Frank’s personal life. Bruce Travis Fisher confirmed certain facts about his mother Ada Sipuel Fisher, who desegregated the law school at the University of Oklahoma, where Professor Melissa Mortazavi connected me to Mr. Fisher.

Leslie Woodcock Tentler, professor emerita of history at Catholic University and an expert on Catholic American history, was generous with her time. And I was doubly fortunate to learn that her mother knew Josephine Gomon, who passed stories of Frank Murphy down to her. Professor John T. McGreevy at Notre Dame also took time to email me; his book, *Catholicism and American Freedom: A History*, published in 2003, is a wonderful resource. And I enjoyed speaking to Professor Catherine O’Donnell, another expert on Catholicism in colonial and early American history.

On Philippine affairs, University of Michigan professor emerita Adelwisa Agas Weller and her working group catalogued Filipino items now found in the Frank Murphy Museum in Harbor Beach. They reviewed a draft chapter in my book on Murphy’s tenure in the Philippines.

I benefited greatly from the research of Timothy Parker at the Walter P. Reuther Library of Wayne State University, who came highly recommended, and, as I discovered, whose reputation was well warranted. He catalogued and sent me files and papers from the labor collection where Frank Murphy was well represented. Lisbeth Rubin, a University of Michigan student, reviewed documents in Ann Arbor.

Then there are the many libraries that have put their priceless collections online, allowing me to scoop up articles and memoranda

that would have been unavailable to biographers even 20 years ago. These online resources include the Library of Congress Prints and Photographs Division, the Smithsonian Institution, the National Parks website, the Columbia University Libraries, the Detroit Public Library, the Harry S Truman Presidential Library, the Princeton University Libraries, the Kent State Libraries, the University of Massachusetts at Amherst, the Henry Ford Museum, the United States Holocaust Museum, the Charles and Margaret Hall Cushwa Center for the Study of American Catholicism, the Catholic News Archive, the Jewish Telegraphic Agency, the UC Irvine Libraries, the Detroit Historical Society website, *Automotive News*, the *Philippines Free Press Online*, the American Presidency Project at UC Santa Barbara, the George C. Marshall Foundation, and Professor Douglas O. Linder's Famous Trial website. Jstor.org and ibiblio are online collections of importance. And, Wikipedia is a resource of extraordinary reach. Newspapers.com, with its diverse library of newspapers from around the country, helped immensely to take me back to the time Frank Murphy visited this or that small town.

I am sorry that I took on this project too late to meet J. Woodward Howard and Sidney Fine, both biographers of Frank Murphy whose names appear often in my book, and Eugene Gressman, his law clerk who defended Murphy against his critics for a half-century after his death. I wish they had the opportunity to read my manuscript and fill in gaps and correct my errors. The book would have been much better with their input.

Finally, a special thanks goes to my editors, including Scott Ham and Danielle Coty-Fattal at the University of Michigan Press. My wonderful and brilliant Aunt Anita Weiner was insightful in her close review of the manuscript. She has been a positive presence for my entire life, and I am grateful that this project has allowed me to reconnect with her in a meaningful way. My nephews Sam and Alex Zipes ably helped me on certain research questions I had. And Nils Kuehn, a first-rate proofreader, scrubbed my final draft. The people listed in this section do not necessarily endorse my viewpoints and all errors remain my own.

A Note on Labels and Names

I faced a fundamental problem in quoting from newspapers and documents from Murphy's era. These sources often used words and terms that we recognize today as shocking, hurtful, patronizing, or improperly euphemistic. When I felt that I could not avoid terms as Murphy and his contemporaries used them, I put these terms in quotes and tried to provide context.

More generally, in this book, I frequently refer to race, religion, gender, and sexual orientation. These subjects justifiably evoke strong feelings. At all times, I have tried to be sensitive in my word choice and to humanize those who have been marginalized or persecuted for simply living their lives. This is obviously hard to do, regardless of best intentions. Complicating matters further, the very concepts of what it means to be a member of a certain group shifts over time. A person reading this book 20 years hence (I should be so lucky!) might have significant problems with my word choices or my antiquated scientific assumptions.

The important women and local Detroit Black leaders, among others, in Murphy's life do not receive their due in a biography such as this one, because often times their words were not saved for posterity. Their side of the story must be created in other ways, and like a reflection of a reflection, their viewpoints get blurred. This is a horrible injustice, and one that I struggled with as I wrote this book. I hope the reader can understand that my intentions were good.

Endnotes

1. "Character of Michigan's 'Labor Governor' Analyzed," *TTH*, June 2, 1937 (describing his voice).
2. James S. Pooler, "'The Forgotten Man' Remembers Murphy," *DFP*, July 22, 1949, 1.
3. "Late Justice Murphy Honored in Capital," *NYT*, Mar. 7, 1951. (As Supreme Court Chief Justice Fred Vinson stated in a eulogy to Murphy, through Murphy's own character, "The democracy that we loved gained compassion and vigor.")
4. *Korematsu*, 323 U.S. at 233.
5. William O. Douglas became the longest-serving Supreme Court justice. He was appointed in 1939 and served into the 1970s. "The Law: The Court's Uncompromising Libertarian," *Time.com*, Nov. 24, 1975, accessed Apr. 19, 2020, <http://content.time.com/time/magazine/article/0,9171,913732,00.html>.

6. Roger Baldwin to Felix Frankfurter, Feb. 28, 1920, Princeton University Libraries, American Civil Liberties Union Collection: Roger Baldwin Years (1920–1950), accessed Apr. 19, 2020, <https://i2.wp.com/blogs.princeton.edu/mudd/wp-content/uploads/sites/41/2012/07/MC001.01.120.30.jpg?ssl=1>.

7. Upon Justice Douglas' death in 1980, President Jimmy Carter said, "William O. Douglas was a lion-like defender of individual liberty. He was fiercely certain that the simple words of the Bill of Rights were meant to protect the humblest citizen from an exercise of arbitrary power, and he never deviated from that passionate conviction." Spencer Rich, "William O. Douglas Dies at 81," *Washington Post*, Jan. 20, 1980. Justice Black's *Korematsu* decision was dismissed by his admirers as "aberrational." "Justice Black, Champion of Civil Liberties for 34 Years on Court, Dies at 85," *NYT*, Sept. 26, 1971. The Harvard Law School established a chair in Frankfurter's honor for his role as "the foremost spokesman for the judicial conservative wing, famous for his sharp dissents to 'activist' Court decisions, such as in the Tennessee reappointment case." School Plans Frankfurter Chair of Law, *The Harvard Crimson*, Apr. 29, 1963, accessed May 30, 2020, <https://www.thecrimson.com/article/1963/4/29/school-plans-frankfurter-chair-of-law/#:~:text=The%20Law%20School%20has%20announced,School%20faculty%20for%2025%20years>. As will be discussed, Frankfurter's philosophy was on full display when he filed a concurrence in *Korematsu*, supporting the Japanese-American internments.

8. *Ex Parte Endo*, 323 U.S. 283, 307-308 (1944).

9. *Steele v. Louisville & N.R. Co.*, 323 U.S. 192 (1944).

10. Murphy used the word for the last time in *Duncan v. Kahanamoku*, 327 U.S. 304, 334 (1946), in connection with his criticism of the use of military trials in Hawaii during World War II. Hawaii was placed under martial law during World War II. In his concurrence, Murphy expressed his views that martial law was imposed on Hawaii solely because of its large Japanese-American population: "Racism has no place whatever in our civilization. The Constitution as well as the conscience of mankind disclaims its use for any purpose, military or otherwise. It can only result, as it does in this instance, in striking down individual rights and in aggravating rather than solving the problems toward which it is directed. It renders impotent the ideal of the dignity of the human personality, destroying something of what is noble in our way of life. We must therefore reject it completely whenever it arises in the course of a legal proceeding."

11. FDR to Frank Murphy, Mar. 15, 1940, FDRL, PSF, Supreme Court, 1938–1944, Box 166.