

December 8, 1941

*John Q. Barrett**

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On Sunday, December 7, 1941, Robert H. Jackson was the Supreme Court's junior justice. President Franklin D. Roosevelt had nominated Attorney General Jackson to serve on the Court in June and, following the Senate's confirmation of the nomination, Jackson had taken the oath and become a justice on July 11th. Since the start of the Court's Term in October, the justices had heard oral arguments in many cases, but they had issued relatively few opinions. Jackson personally had announced and filed only two opinions, first a dissenting opinion in a case about federal court jurisdiction¹ and then, eloquently and with lasting significance, a concurring opinion in Edwards v. California, the case concerning California's "anti-Okie immigration" criminal statute.²

That cold, clear Sunday in Washington marked the end of a recess between Supreme Court sittings. The justices last had heard oral argument on November 19th. They last had announced a decision—the Edwards decision, with Jackson's fellow (but slightly senior) rookie colleague Justice James F. Byrnes announcing his opinion for the Court and then Justices William O. Douglas and Jackson each announcing their respective concurring opinions—on Monday, November 24th. For Monday, December 8th, the Court had called nine cases for oral argument.

Justice Jackson was spending that Sunday afternoon at Hickory Hill, his home in McLean, Virginia, reading (probably legal briefs) while listening in the background to music (probably the National Symphony) on the radio. At 2:22 p.m., the President's press secretary Stephen Early announced to the press corps at the White House that Japan had bombed Pearl Harbor and Manila. Jackson, like most Americans, soon learned that shocking news when an announcer interrupted the musical broadcast.

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¹ Indianapolis v. Chase National Bank, 314 U.S. 63, 77-84 (1941) (Jackson, J., joined by Stone, C.J., and Roberts and Reed, JJ., dissenting).

² Edwards v. California, 314 U.S. 160, 181-86 (1941) (Jackson, J., concurring in the result).

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The next morning, Jackson drove from Hickory Hill to the Supreme Court. He worked in his chambers and then, at noon, took the bench with his eight colleagues. The Court admitted 32 attorneys to practice before it and then promptly recessed to attend a joint session of Congress.

At the same moment that the justices took the bench, President Roosevelt left the White House on the arm of his son, Capt. James Roosevelt. The president descended the steps, got into a limousine and traveled to the Capitol. He entered the Speaker of the House's private entrance and waited briefly in his office. At 12:17 p.m., Vice President Henry A. Wallace and the Members of the Senate entered the chamber of the House of Representatives and took seats. At 12:20 p.m., the nine Supreme Court justices, wearing their black robes, entered the House chamber and took seats along the edge of the well near the rostrum. At 12:28 p.m., the members of the President's Cabinet arrived and, after Speaker Sam Rayburn announced the President, he was escorted by a House-Senate delegation, and still on his son's arm, to the rostrum.

President Roosevelt spoke for seven minutes.³ As he spoke, First Lady Eleanor Roosevelt and former First Lady Edith Bolling Galt Wilson, the widow of the previous World War president, watched and listened from the executive gallery.

FDR's words were powerful and his delivery was clear and forceful. He described the Empire of Japan's attacks on Pearl Harbor and throughout the Pacific. He identified December 7th as "a date which will live in infamy." Some listeners, including Justice Hugo L. Black, shed tears.

FDR, who had battled American isolationists, sought military preparedness, and achieved military aid to allies and enactment of a military draft, did not gloat—as James Reston reported the next day, "[b]y not the slightest indication did [Roosevelt] suggest that the facts of the world situation had finally justified his policy, as even his opponents were admitting ... he might very well have done."⁴ The President simply vowed that the United States would achieve "absolute victory" and called on Congress to declare that the United States was at war with Japan (and not,

³ For the text and an audio file of President Roosevelt's December 8, 1941, speech, see <http://americanrhetoric.com/speeches/ldrpearlharbor.htm> (visited Dec. 8, 2006).

⁴ James B. Reston, *Capital Swings Into War Stride; Throngs Cheer for the President*, N.Y. TIMES, Dec. 9, 1941, at 5.

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as even some Members of Congress had expected, also that the United States was at war with Germany and Italy).

After the President made his slow exit from the House, the Senators returned to their chamber. Before 1:00 p.m., the war resolution was introduced in the Senate and, after very few statements by Senators, it was approved 82-0 at 1:07 p.m. The House acted with similar dispatch, voting within the hour, and 388-1, to approve the resolution. (Representative Jeanette Rankin (R.-MT) voted no, as she had in April 1917 when President Wilson obtained the declaration that brought the United States into the World War.) After Speaker Rayburn and Vice President Wallace each signed the enrolled resolution at the Capitol, it was carried to the White House. At 4:10 p.m., President Roosevelt signed the war resolution.

The Supreme Court, in the meantime, had returned to its work. At 2:30 p.m., the Justices took the bench. Justice Jackson then announced his first majority opinion for the Court: in the *Nickel Plate Railroad* case,⁵ the Court decided 5-4 that it would not disturb the Interstate Commerce Commission's treatment of the consolidated Railroad's assumption of one of its predecessor component company's indebtedness. Jackson's opinion is highly technical and, frankly, not very interesting—his distinctive voice comes through only once or twice, and readers may well find Justice Douglas's concurring opinion or Chief Justice Harlan Fiske Stone's dissenting opinion to have the better of the arguments. The only historical interest of the case might well be, in addition to its status as "Jackson's first," the presence of another significant figure: the lead lawyer for the *Nickel Plate*, who now was the losing advocate in the Supreme Court, was New York lawyer William J. ("Wild Bill") Donovan. He soon moved exclusively into war and intelligence work, later founded the Office of Strategic Services, and in spring through fall 1945 became Jackson's top colleague in preparations to prosecute the surviving Nazi war criminals at Nuremberg in Allied-occupied Germany.

Following Jackson's announcement of the *Nickel Plate Railroad* decision, the Justices announced decisions in ten other cases, released a list of orders and then began to hear oral argument in the first of the nine cases that were waiting to be argued. In the late afternoon, and at mid-argument in that case, the Court adjourned for the day.

⁵ *New York, Chicago & St. Louis Railroad Co. v. Frank*, 314 U.S. 360 (1941).

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At that moment and over the next months, Justice Jackson chafed at the reality of serving in the judicial branch. “After the attack on Pearl Harbor,” he later recalled, “it was impossible for one who had recently been active to serve on the Court without feeling a certain sense of frustration and dissatisfaction.” He soon explained directly to the President “that on the Court, I felt I was in sort of a back eddy. I was not doing anything that promoted the war effort and not much that seemed to be very important in contrast with the great issues at stake in world.”⁶ Indeed, Jackson offered to FDR to leave the Court and return to the executive branch (as Justice Byrnes in fact did⁷).

But FDR told Justice Jackson in 1942 to stay put. The President told Jackson that he had “further prospects in connection with the Court,” and “that when the peace came and the time for settlement arrived, there would be important things that [Jackson] was particularly qualified to do.”⁸

⁶ ROBERT H. JACKSON, *THAT MAN: AN INSIDER’S PORTRAIT OF FRANKLIN D. ROOSEVELT* 106-07 (John Q. Barrett ed., 2003).

⁷ In 1943, Justice Wiley B. Rutledge was appointed to succeed Byrnes on the Supreme Court.

⁸ JACKSON, *THAT MAN*, *supra* note 6, at 107.