

The Stomach for Judicial Service

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When Robert Jackson moved from Jamestown, New York, to join the Roosevelt administration in early 1934 as General Counsel of the Treasury Department's Bureau of Internal Revenue, he was planning to stay in Washington only briefly. Jackson thought that his future would be in New York, in law or politics or both. He was not alone in having those ideas.

One Jackson scenario, a New York political one, developed promptly. In September 1934, he was discussed publicly and considered seriously by the State Democratic Party as a prospect for its nomination to be a candidate for election as an associate judge of the New York Court of Appeals (the State's highest court).¹ The Party convention moved in another direction, however, and Jackson remained, and rose, in Washington.

Two years later, Jackson's political prospects in New York were, thanks to his New Deal prominence and successes, even brighter. When New York Governor Herbert Lehman decided in spring 1936 not to seek reelection to a third term, attention focused immediately on Jackson as the leading prospect to succeed him as the Democratic Party's nominee.² Later, after Lehman had been persuaded to change his mind, speculation shifted to the prospect that he and the Democrats would dump the lieutenant governor from their ticket and replace him with Jackson. The idea was that victory in 1936 would groom Lieutenant Governor Jackson to succeed Lehman as the Democratic candidate for governor in 1938.

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¹ See, e.g., James A. Hagerty, *Democrats Swing to Finch for Bench*, N.Y. TIMES, Sept. 25, 1934, at 1, 6 ("A boom for the nomination of Robert H. Jackson of Jamestown, Chautauqua County ... for an associate judgeship was started by friends in the western part of the State. Mr. Jackson is highly regarded as a lawyer and, it was said, he could count upon bar association support in his section.")

² See, e.g., W.A. Warn, *Lehman Not to Run Again; Blow to Party in State; Jackson Likely Candidate*, N.Y. TIMES, May 21, 1936, at 1.

An alternative New York scenario for Jackson during summer 1936 focused again on him running as a Democratic candidate for the New York Court of Appeals. That August, one Hascal Taylor Avery, a Jackson friend and fellow western New York State native who had become a New York City lawyer and businessman, noted in a letter to Jackson the newspaper reports that he might be heading for the Court of Appeals.

Jackson, then forty-four years old and serving as Assistant Attorney General of the United States heading the Tax Division, was flattered by and interested in this attention, but the idea of judicial service gave him pause. To Avery, Jackson dictated a candid, concerned response:

The trouble is, Hal, that I don't know as I want to be a Judge of the Court of Appeals. Of course, if the thing came without question, I should probably take it. I suppose it's just conceit, but I hate to think of becoming a pot-bellied judge yet. There is a time in life for that, but have I reached it? Sometimes it's almost disheartening when I hear people suggesting me for the bench when I seem to think I'm still fit for the 100 yard dash.³

Jackson, in the end, sought none of these nominations, in 1936 or ever. His future turned out to be not as a political candidate or in New York State, but as an executive branch official and then, starting in 1941, as a Supreme Court justice in Washington (and also, of course, as a diplomat, administrator and prosecutor during 1945-46 in Washington, London and Nuremberg).

In time, Robert Jackson reconsidered more than his resistance to judging. In February 1948, his seventh year on the Supreme Court, he celebrated his birthday at dinner with his Court chambers' family. As Justice Jackson took his seat that evening, he noted the coming feast, tucked his napkin under his chin with a flourish and said he was ready for anything. Antoinette Marsh, the wife of Jackson's law clerk, saw how the napkin flowed out over Jackson's chest. Despite her superb manners, Toni Marsh, then a mother of two young children who knew what she was talking about, could not stop herself—she blurted out, "Mr. Justice, if I didn't know you better, I would say you are pregnant."

³ Robert H. Jackson letter to Hascal T. Avery, Aug. 21, 1936 (carbon copy), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 9, Folder 2.

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Jim Marsh, thinking that his chance of being offered a second clerkship year with Justice Jackson had just evaporated, was shocked. Antoinette froze, mortified at having insulted a Supreme Court justice to his face.

Justice Jackson, apparently accepting that he had reached the “time in life for that” type of physique, exploded in laughter. The evening was a great success and, as Jim Marsh later realized, his second clerkship year was assured.⁴

⁴ See James M. Marsh, *The Genial Justice: Robert H. Jackson*, 68 ALBANY L. REV. 41, 48 (2004) ([click here for PDF file version](#)).