

Fahy to Jackson (1941): Friendship & Thanks

*John Q. Barrett**

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Charles Fahy, born in Georgia in 1892, came to Washington, D.C., after attending Notre Dame University for a year—that was all that his family could afford. He worked as a legal secretary while studying law at Georgetown University, graduating in 1914. After briefly practicing law in Washington, he joined the new United States Navy air corps, flew bombing raids in The Great War, crashed numerous times but survived, and was awarded the Navy Cross for bravery.¹

Fahy returned to law practice in Washington but, having contracted tuberculosis, he moved in 1924 to the drier climate of Santa Fe, New Mexico. He practiced law there, was active in Democratic Party politics and, in 1932, became the city's attorney.

The inauguration of President Franklin D. Roosevelt and the start of the New Deal brought Charles Fahy back to Washington. In 1933, he became first deputy solicitor in the U.S. Department of the Interior. In 1934, he became chairman of the Petroleum Advisory Board. In 1935, Fahy became general counsel of the new National Labor Relations Board (NLRB), serving for five years, litigating the constitutionality of intensely contested new federal laws and the legality of Board policies, and winning landmark court decisions.

In 1940, Fahy joined the U.S. Department of Justice as assistant to the solicitor general. In early 1941, on special assignment, he became a member of President Roosevelt's Naval and Air Base Commission to London. Later in 1941, after Attorney General Robert H. Jackson was appointed to the Supreme Court and Solicitor General Francis Biddle was

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¹ See generally Sherman L. Cohen, *Fahy, Charles (1892—1979)*, in THE YALE BIOGRAPHICAL DICTIONARY OF AMERICAN LAW 191-92 (Roger K. Newman, ed., 2009).

elevated to succeed Jackson as attorney general, Fahy was appointed to succeed Biddle as solicitor general.

President Roosevelt sent to the Senate on October 29, 1941, his nomination of Charles Fahy to be solicitor general.² Justice Jackson, a Fahy contemporary, colleague and friend, immediately wrote his congratulations. On November 4th, Fahy wrote back, longhand:

Dear Bob:

Several years ago, after a series of victories, came “black Monday” for the Labor Board in the Supreme Court.^[3] I listened while the Chief Justice [Charles Evans Hughes] vigorously emphasized the errors of the Board,^[4] and Justice [Owen J.] Roberts delivered the Sands decision.^[5] Then I rose to move an [attorney’s] admission [to the Supreme Court bar], still thinking of the renewed and widespread attacks that would follow. As I turned to go back to my seat you, sitting just to the right, caught my eye and you seemed to say, “Keep your chin up, Charlie.” I felt better. At another time, in the midst of the aftermath of the first Morgan decision^[6] and particularly in connection with our fight with the old Third Circuit, when so much of our work seemed to turn on the success of our extraordinary move for writ of mandamus, you were a source of steady courage and strength and the tide was turned back. If you had not stood with us then, we would have been in a bad way. Again, and later, in our distressing troubles with the

² A newspaper editorial the next morning applauded this action: “When a man gets a high Government appointment by sheer merit, the fact warrants particular mention. ... [Fahy] used no political pull. His record spoke for him, and it was eloquent enough to persuade the President to pass over other less-qualified bidders.” *Solicitor General*, WASH. POST, Oct. 30, 1941, at 12.

³ Fahy is referring to Monday, February 27, 1939.

⁴ This refers to *National Labor Relations Board v. Fansteel Metallurgical Corp.*, 306 U.S. 240 (1939). Fahy argued this case on January 12 and 13, 1939. Chief Justice Hughes announced the Court’s judgment on February 27, 1939. See Lewis Wood, *Board Denounced—Its Order to Re-employ Fansteel Strikers Is Held High-Handed*, N.Y. TIMES, Feb. 28, 1939, at 1, 12 (describing Fahy and others sitting in the courtroom and listening to Chief Justice Hughes, and calling this and other decisions of the day “stunning blows ... to the National Labor Relations Board in its administration of the Wagner act”).

⁵ *National Labor Relations Board v. Sands Manufacturing Co.*, 306 U.S. 332 (Feb. 27, 1939). Justice Roberts announced this decision just minutes before Chief Justice Hughes announced the Court’s *Fansteel Metallurgical Corporation* decision. See *supra* note 4.

⁶ *Morgan v. United States*, 304 U.S. 1 (Apr. 25, 1938). Solicitor General Jackson was the losing advocate in this case.

FAHY TO JACKSON (1941): FRIENDSHIP & THANKS

Smith Committee (distressing beyond measure for many fine people) your decency and rare courage meant more to me than I can ever say.^[7] But I shall never forget it.

I mention these few incidents of a nature to some extent personal as a way of trying to say how I feel about you, and therefore how deeply I appreciate your letter.

The Solicitor Generalship is a wonderful office, and I am very grateful for the opportunity. Had you not brought me into the Department in my present position I should not have had it.

Fondest regards,

Charlie⁸

Charles Fahy served as Solicitor General of the United States from late 1941 until 1945. He then became Director of the Legal Division of the Military Government for Germany (U.S.) during 1945-1946, where he again worked closely with Jackson as he served as U.S. Chief of Counsel and prosecuted Nazi war criminals in Nuremberg.

Fahy later served as Legal Adviser in the U.S. Department of State, as a senior U.S. official at the United Nations, and as chairman of the presidential commission that recommended what became President Truman's order desegregating the U.S. armed forces.

In 1949, Fahy was appointed a judge of the United States Court of Appeals for the District of Columbia Circuit. He and Jackson continued to be friends for the rest of his life.

⁷ The Smith Committee, known officially as the U.S. House of Representatives Special Committee to Investigate the National Labor Relations Board, was established on June 20, 1939.

⁸ Charles Fahy to Robert H. Jackson, Nov. 4, 1941, *in* Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 12, Folder 9. An image of this letter is attached at the end of this file.

Washington

Nov. 4, 1941.

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