

Chief Justice in Summer (1941)

*John Q. Barrett**

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Just before noon on Monday, June 2, 1941, the Chief Justice of the United States, Charles Evans Hughes, sent a letter to President Franklin D. Roosevelt. The letter announced that Hughes, age 79 and chief justice since 1930, was retiring “effective on and after July 1, 1941.”

At noon, Chief Justice Hughes and the Associate Justices took the bench. They announced their final decisions of the Term and then recessed for the summer.

Later that week, Associate Justice Harlan Fiske Stone, dictating a letter to his friend Sterling Carr in San Francisco, described his (Stone’s) summer plans:

We [Stone and his wife Agnes] leave here [Washington, D.C.] on the 11th, spending a few days with [our son] Lauson at his home, 41 Garden Place, Brooklyn. We leave [New York] on the evening of the 15th for Chicago and then over the Union Pacific [railroad] for Denver, [Colorado,] where we arrive on the morning of the 17th. We shall probably spend a day or two in Denver, then go to Estes Park[, Colorado,] for a week, stopping at the hotel, whose name I will append to this letter. From there we rather expect to go to Sprague’s Lodge, Estes Park, where we hope to remain for a couple of weeks or more. From there we will proceed west, and ultimate see the Carrs in San Francisco, which, for a number of years now, has been the topnotch experience of the summer.

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You have no doubt read the news of the Chief Justice's retirement. There is much talk about his successor who I think is likely to be Attorney General [Robert H.] Jackson. He is young [age 49], able and has rendered great service, political and otherwise, to the Administration, and is naturally indicated for the appointment. There is some talk about me, inspired mainly by friendship and generosity. Being chief justice is a good deal like being the dean of a law school—he does what the janitor is unable or unwilling to do. Personally I prefer to study the cases and write as passable opinions as I can.

...

Yours sincerely,

Harlan F. Stone.¹

Justice Stone's journey turned out to be somewhat different than he had planned. The very next day, first President Roosevelt (it seems) and then Attorney General Jackson (definitely) telephoned Stone at his Washington home. They each informed him that the President would be nominating Stone to be chief justice.

The next week, Stone kept to his plan, travelling to New York City. FDR also kept to his plan, nominating Stone to be chief justice and, simultaneously, nominating Senator James F. Byrnes (D.-SC) to fill an associate justice position (vacant since Justice James C. McReynolds had retired more than four months earlier) and Jackson to succeed Stone, assuming his appointment as chief justice, as an associate justice.

On June 21st, a subcommittee of the Senate Judiciary Committee held a hearing to consider Stone's nomination. After no witness appeared to testify, the subcommittee approved the nomination without dissent. Two days later, the full Committee did the same.

On June 27th, the full Senate considered the nomination. Senator George W. Norris (Ind.-NE), who in 1925 had voted against then-Attorney General Stone's confirmation when President Coolidge had nominated

¹ Letter from Justice Harlan F. Stone to Sterling Carr, June 5, 1941 (unsigned carbon copy of typed letter), Harlan Fiske Stone Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 9. Stone knew about "being the dean of a law school"—he served as the Dean at Columbia Law School in 1906 and as a Professor of Law and Dean there from 1910 until 1923.

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Stone to be an associate justice, gave a brief but dramatic Senate floor speech. Norris spoke, he said, to “rectify the wrong I did” to Stone in 1925. The Senate then confirmed by voice vote Stone’s nomination to be chief justice.

On July 1st, Chief Justice Hughes’s retirement took effect. Justice Stone by then was in Colorado. On July 3rd, in a log cabin in Rocky Mountain National Park, Stone became Chief Justice by taking his oath of allegiance and then his judicial oath from the U.S. Commissioner for the Park.²

Chief Justice Stone served until his death in 1946. In addition to handling his administrative duties (however he regarded them) as Chief, he studied cases and wrote opinions, many more than passable and some of great significance.

² See generally ALPHEUS THOMAS MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 573-74 (1956).