

Campaigning in Cleveland (1938)

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On Monday, October 3, 1938, the Supreme Court of the United States began its new Term with a brief public session. The main order of business was Chief Justice Charles Evans Hughes paying tribute to the late Associate Justice Benjamin N. Cardozo, who had died on July 9.¹

The Court began to hear oral arguments that Term on the next Monday, October 10. During that week and the next one, the Solicitor General of the United States, Robert H. Jackson, made oral arguments to the Court in three cases. He began to argue one case on October 10, completing it the next day.² He argued a second case on Wednesday, October 19.³ And he argued a third case on October 20 and 21.⁴

On Monday, October 24, the Court adjourned for two weeks. During that break, Robert Jackson travelled from Washington to his adult hometown, Jamestown, in Chautauqua County, New York. While there, Jackson visited family and friends and worked on cases. He also remained in close contact with Washington colleagues and consulted with New York State officials and political and other leaders.

Solicitor General Jackson, a leading New Deal official and prominent national figure perhaps destined for higher political office, also made side trips from Jamestown during this period to support Democratic candidates in upcoming federal elections.

On Monday, October 31, 1938, Robert Jackson made a series of high profile political appearances in Cleveland, Ohio. Jackson's objective

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¹ See 305 U.S. v-vi (1938).

² See *Chandler v. Wise*, 307 U.S. 474 (1939).

³ See *Shields v. Utah Idaho Central Railroad Co.*, 305 U.S. 177 (1938).

⁴ See *United States v. Morgan*, 307 U.S. 183 (1939).

was to support Democratic Party candidates, including incumbent U.S. Senator Robert J. Bulkley in his reelection race (against lawyer Robert A. Taft) and former Ohio lieutenant governor Charles W. Sawyer in his race for governor (against John W. Bricker).

During that day, Jackson met at the Hotel Cleveland (today's Renaissance Cleveland) with local Democratic leaders, officeholders, labor union leaders and others. His remarks, which he delivered or at least released in time to make the afternoon newspapers, were partisan and direct:

We need Senator Bulkley's ability, high character and intellectual integrity in Washington. He is a statesman who enjoys the esteem of the whole country.

Ohio should support Mr. Bulkley because his opponents are using Robert Taft to drive a wedge into the New Deal and prevent it from carrying out its program which has meant so much to the masses of people in this country.

Bulkley has, without sacrificing his independence, found his principles generally in agreement with those of the President. The whole purpose of the Taft campaign is to discredit the New Deal.

They do this by vague promises of economy which they refuse to itemize. Of course, everyone knows they couldn't economize in the ordinary expenses of government. The only place they could keep their promises would be in cutting relief.

...[S]pecial groups ... through the Taft movement [are] trying to set the government back 30 years.⁵

That evening, Robert Jackson attended political rallies, including with Bulkley and Sawyer. Jackson spoke, including from prepared remarks entitled "A Leadership With Vision,"⁶ at multiple locations: the

⁵ *Retain Sen. Bulkley and Continue Progress, New Dealer Jackson Appeals on Visit Here*, CLEVELAND PRESS, Oct. 31, 1938, at 1.

⁶ For a typescript copy of Jackson's speech that was distributed to press in advance but embargoed until Jackson gave the speech, see Thomas G. Corcoran Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 221.

Oak Pythian hall, Shaw High School in East Cleveland, the Alliance of Poles Hall, Slovenian Hall and the Carpenters' Hall.

Press accounts show that Jackson, in his evening speeches, took additional shots at Republican senatorial candidate Taft (whose late father of course had been a Jackson predecessor as Solicitor General and, later, Secretary of War, then President, and later Chief Justice William Howard Taft). Robert Taft, said Jackson, "inherited a vast fund of reaction and has steadily increased that inheritance". In seeking to unseat Senator Bulkley, Taft is part of Republican efforts "to turn time backward to the good old days of 'normalcy' and privilege".⁷

Jackson also spoke that evening for the President, Franklin D. Roosevelt, who then was completing the first half of his second term. "Representative democracy," said Jackson,

can only function effectively by choosing and supporting leaders who are strong and courageous. In America we do not vote for laws. We choose leaders to make our laws. And the people who want to weaken the power of the people are always going about the country trying to destroy the people's confidence in any popular and effective leadership. If they can drive a few reactionary wedges between the President and the people, they can kill two birds with one stone. They weaken the progressive program of the President and also they weaken the people's control over the government. You, of Ohio, are now asked to assist in striking down the only leadership which has the widespread confidence of the masses of the people.

The leadership of President Roosevelt is open, visible and responsible. No leadership ever has submitted its views and policies to people more frequently and in more direct fashion that he has. Under his administration the leadership is known to you. You can put your finger on. You can write letters to it. You can find fault with it. And you can know what it is doing.

The control of the Republican Party is invisible, shifting and shifty. No one knows whether Robert Taft or

⁷ *Jackson Speaks for Bulkley Here*, CLEVELAND PLAIN DEALER, Nov. 1, 1938, at 1.

[Philadelphia publisher] Moe Annenberg will have more influence in its councils. Is it [former President] Herbert Hoover or [1936 Republican presidential candidate, Kansas Governor] Alfred Landon from whom you get real Orthodox Republicanism? Or is the authentic doctrine to come from [Republican Party chairman] John Hamilton or the [former University of Wisconsin president and Republican Party official] Glenn Frank brain trust of 150 [men] that set out a year ago to find the Republican Party's lost principles and now has become more hopelessly lost than the principles they were hunting?⁸

* * *

For FDR and Jackson, Election Day (Tuesday, November 8, 1938) brought some political successes. In New York State, for example, Governor Herbert Lehman (D.) defeated prosecutor Thomas E. Dewey (R.), U.S. Senator Robert F. Wagner (D.) defeated John Lord O'Brian (R.) and, in a special election for the other Senate seat, James M. Mead (D.) defeated Edward F. Corsi (R.)—and, Jackson noted proudly “Chautauqua County gave a good account of itself....”⁹

But many of the results were, for Democrats, negative. In Ohio, Robert Taft unseated Senator Bulkley and, in the race for governor, John Bricker defeated Charles Sawyer.

In later years, these lives continued to intersect in interesting ways. In 1946, for example, immediately following the Nuremberg international tribunal verdicts on the principal Nazi war criminals, Senator Robert A. Taft publicly attacked the legitimacy of the trial,¹⁰ which was largely the work of U.S. Chief of Counsel Robert H. Jackson. (At the time, people understood that this speech and related remarks, which were very poorly received and are embarrassing in their substance, were less an attack on Nuremberg than a profile in Taft seeking early points in a possible presidential race against Jackson—which race of course never occurred.)

⁸ *Id.*

⁹ Letter from Robert H. Jackson to Francis Shea, Nov. 9, 1938 (unsigned carbon copy of typed letter), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 20, Folder 3.

¹⁰ See, e.g., Walter W. Ruch, *Taft Condemns Hanging for Nazis as Unjust Verdict*, N.Y. TIMES, Oct. 6, 1946, at 1, 45.

Charles Sawyer, Jackson's candidate for Ohio governor in 1938, failed to gain his support in a later contest of even greater prominence. In spring 1952, when Sawyer was U.S. Secretary of Commerce, he carried out President Truman's order to seize and run the U.S. steel mills because a strike threatened to shut them down during the Korean War.¹¹ The Supreme Court soon held, 6-3, that the seizure was unconstitutional—see *Youngstown Sheet & Tube Company v. Sawyer*,¹² including Justice Jackson's important, historically lauded concurring opinion.



Robert H. Jackson in Cleveland, October 31, 1938
(*Cleveland Press* photograph)

¹¹ See generally CHARLES SAWYER, CONCERNS OF A CONSERVATIVE DEMOCRAT 255-77 (1968) (a memoir chapter on his role in the 1952 "Steel Seizure").

¹² 343 U.S. 579 (1952), available at www.law.cornell.edu/supct/html/historics/USSC_CR_0343_0579_ZS.html.