

A New Justice (1939)

*John Q. Barrett**

Copyright © 2014 by John Q. Barrett.
All rights reserved.

On Monday, February 13, 1939, Louis D. Brandeis, age 82 and more than twenty-two years an Associate Justice, took the bench of the Supreme Court of the United States for the last time.

Justice Brandeis moved with a steady step. After the Justices were seated, they announced two decisions. The Court then heard the conclusion of oral arguments in a case it had started to hear late on the previous Friday. When the final advocate, Solicitor General Robert H. Jackson, concluded his rebuttal argument, Justice Brandeis and his colleagues left the bench. By letter, Justice Brandeis communicated his retirement decision to President Franklin D. Roosevelt.

The next month, the President nominated William O. Douglas of Connecticut, age 40, chairman of the Securities and Exchange Commission, to succeed Brandeis on the Court. On April 4th, the Senate confirmed Douglas's nomination by a vote of 62-4. On April 15th, he received his commission.

Justice Douglas's first Supreme Court session occurred on Monday, April 17, 1939. His official day began late that morning. In a private gathering in the Court's conference room, Chief Justice Charles Evans Hughes administered the constitutional oath to Justice Douglas.

At noon, the Justices entered the courtroom. Justice Douglas, robed and smiling faintly, was with them. The courtroom was filled with Douglas family and friends, including Solicitor General Jackson.¹ Eight

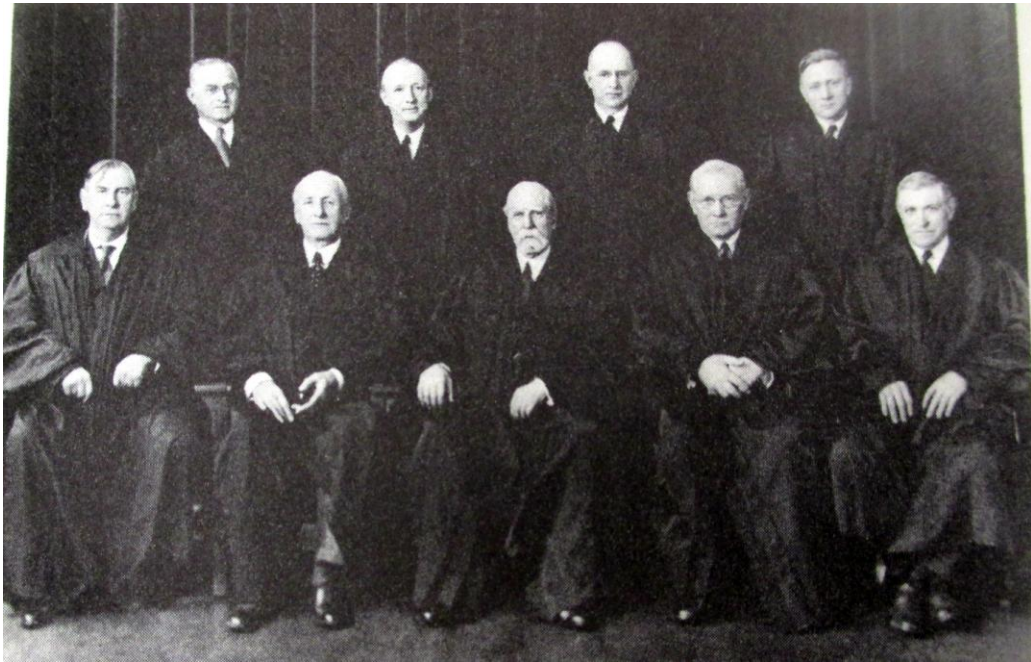
* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). I emailed an earlier version of this essay to the Jackson List on April 16, 2014. This updated version is dated September 9, 2014. I thank Franz Jantzen, Collections Manager, Office of the Curator, Supreme Court of the United States, for assisting my research.

For an archive of selected Jackson List posts, many of which have document images attached, visit <http://thejacksonlist.com>.

To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send "subscribe" to barrettj@stjohns.edu.

¹ See *Douglas Sworn In As Friends Watch*, N.Y. TIMES, Apr. 18, 1939, at 17.

Justices took their seats—they were, as viewed left to right from the audience, Associate Justices Felix Frankfurter, Hugo L. Black, Harlan Fiske Stone and James C. McReynolds, Chief Justice Hughes, and Associate Justices Pierce Butler, Owen J. Roberts and Stanley Reed. The chair to Reed’s left was empty.



May 6, 1939: L-R, Associate Justices Stone, Frankfurter, McReynolds and Black, Chief Justice Hughes, and Associate Justices Reed, Butler, Douglas and Roberts.

Chief Justice Hughes announced that the President had, with the advice and consent of the Senate, appointed Douglas to be an Associate Justice, and that he was present. The Clerk of the Court, Charles Elmore Cropley, then read Douglas’s commission, signed by the President and attested to by Attorney General Frank Murphy.

As all members of the Court then stood, Mr. Cropley administered the judicial oath to Justice Douglas. His hand shook as he read it from the piece of paper he held. The Marshal then escorted Douglas to the far left of the bench, next to Reed. They shook hands as Douglas took his seat.²

² See Associated Press report, *Douglas Is Sworn In as Youngest Justice To Take Place on Supreme Bench Since 1812*, WASH. POST, Apr. 18, 1939, at 2.

The rest of the session was substantive and long—the Court announced twenty-one(!) decisions, issued orders in pending cases and heard oral argument in one case.

Justice Douglas’s career also was substantive and long. He served on the Court from April 1939 until his retirement on November 12, 1975—the longest tenure of any Justice in the Court’s history.

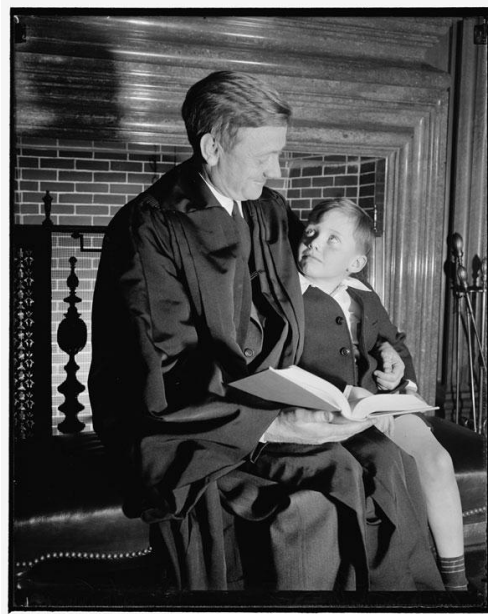
* * *

Justice Douglas wrote, in longhand, this diary account of his first day on the Court:

April 17, 1939. I took the regular oath in the conference room a few minutes before noon, the C.J. administering it. As we filed in from the conference room to the court room, I bringing up the rear as the junior[,] I could not help recalling with a smile Stone’s words of greeting when I was nominated – “Welcome to the chain gang.” Shortly after I took the oath in open court + was escorted to my seat, my son, who was seated with my wife, daughter, sister + brother, caused great merriment on the bench by insisting on leaving the courtroom for the very obvious purpose of going to the toilet. He had violently objected to attending the ceremonies because they would cause him to miss gym at his school. My daughter less violently objected because she would miss French at school. I told Felix that I thought each of them showed excellent judgment and revealed a sense of relevancy and importance of events.

In the presence of McReynolds none of the judges smokes. Roberts gave me a bit of advice. He said that at his first conference he light[ed] a cigar. In a moment McReynolds passed him a note saying “Tobacco smoke is personally objectionable to me.” Van de Vanter [retired Justice Willis Van Devanter, who coincidentally celebrated his 80th birthday on this date], so I am told, used to move over once in awhile to a far corner of the conference room and take a puff or two on a pipe – McReynolds or no McReynolds. Apparently tobacco smoke is not the only thing McReynolds dislikes. He seems to dislike all of his

colleagues, judging by his crusty manner. He thoroughly disliked Brandeis. Why even this is told which I am certain is true. During conference whenever Brandeis spoke, McReynolds would get up and leave the room and stand outside the door leaving it barely open so that he could tell when Brandeis had finished. Then he would return. He also disliked [former Associate Justice John H.] Clarke whom I never knew. He was a paramount reason for Clarke's resignation [in 1922]. What torture he could not apply by complete disregard of Clarke's presence he made up for by badgering. McReynolds also dislikes thoroughly the Roosevelt administration. As I was talking to him about a mutual friend, [Professor] George Bates of Harvard [Business School], he let loose some cracks about the New Deal, terming its program as nothing but "moonshine." I said to myself, "What a great state of mind for a judge!!"³



April 17, 1939: Justice William O. Douglas with his son, William Jr., in the East or West Conference Room in the Supreme Court building.

³ Philip E. Urofsky, ed., *The Diary of Wm. O. Douglas*, JOURNAL OF SUPREME COURT HISTORY at 80, 81-82 (1995). Sheldon Cohen, Justice Douglas's friend and the executor of his estate, preserved his 1939 diary and insured its availability in the Library of Congress. See Sheldon S. Cohen, *The Court Diary of Justice William O. Douglas*, *id.* at 77.