

Hugo L. Black, Born February 27, 1886

*John Q. Barrett**

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Saturday, February 27, 2016, marked the 130th anniversary of the birth of Hugo Lafayette Black, late Associate Justice of the Supreme Court of the United States.

Black was born on Saturday, February 27, 1886, the last of his parents' eight children, in their house in the small hamlet of Harlan in Clay County, on the eastern side of central Alabama. At birth, he was named Lafayette Hugo Black, after his father William Lafayette Black and, it seems, French novelist Victor Hugo. Because the father was known by his nickname "Faet," the baby was called "Hugo" and, in time, he used that as his official name.

Hugo Black rose swiftly from his humble start. Although he never graduated from high school, he studied medicine briefly and then law, graduating from the University of Alabama in 1906. He practiced law in Ashland, Alabama, and then in Birmingham, where he also served as a part-time police court magistrate. In 1914, he was elected prosecutor in Jefferson County, Alabama. After military service (stateside) during World War I, Black became a successful trial lawyer in Birmingham. In 1926, he was elected to the United States Senate, and he was reelected in 1932.

In summer 1937, following the retirement that June of Justice Willis Van Devanter after twenty-six years of service, President Franklin D. Roosevelt nominated Senator Black to the Supreme Court. This was the first of Roosevelt's nine appointments to the Court. When the Senate received the nomination on August 12th, it referred it to a subcommittee. The next day, the subcommittee voted 5-1 to send the nomination to the

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Senate floor. On August 17th, the full Senate debated Senator Black's nomination for six hours and then voted, 63-16, with seventeen other Senators present but not voting, to confirm the appointment.¹

Justice Black, age 51, received his commission the next day. He served on the Court for thirty-four years, retiring on September 17, 1971 (Constitution Day) and passing away, at age 84, just eight days later.

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Robert H. Jackson met Senator Black in Washington in the 1930s. It seems that between 1934 and 1937, Senator Black voted to confirm President Roosevelt's first three (of six) nominations of Jackson to hold senior U.S. government offices. Black and Jackson became acquaintances, then friends, and in 1941 they became Supreme Court colleagues—Justice Black was Justice Jackson's senior and a colleague for his entire tenure, 1941-1954, on the Court.



circa 1936: U.S. Department of Justice official Robert H. Jackson and Senator Hugo L. Black, speaking in a Senate office building corridor.

¹ The Supreme Court Historical Society's Justice Black biography page, including a link to audio of him speaking during an oral argument: http://supremecourthistory.org/timeline_black.html.

During Justice Black's and Justice Jackson's first years together on the Court, their mutual admiration cooled and then stopped. Each came to disapprove of the other's approach to judging.

In Spring 1946, Justice Black and others communicated criticisms of Jackson to President Truman, persuading him not to elevate Jackson, then working in Nuremberg as Truman's appointee to prosecute Nazi war criminals, to fill the chief justiceship left vacant by the sudden death of Chief Justice Harlan Fiske Stone. Thereafter, Jackson defended himself publicly by blasting Justice Black, attacking his ethics and conduct, exposing Court confidences, and causing a serious, if brief, controversy in the work and reputation of the Supreme Court.²

After Justice Jackson returned from Nuremberg to the Supreme Court, this breach, in time, healed. Jackson served with Justice Black for eight more years, during which they became friends again and often were allies in judging.

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In 1968, Justice Black became the Supreme Court justice to give a television interview. CBS reporters Eric Sevareid and Martin Agronsky interviewed Justice Black at his home, on camera. On December 3, 1968, the interview was broadcast as a CBS News Special, "Justice Black and the Bill of Rights."

During the broadcast, Justice Black mentioned Robert Jackson once, in response to a question about oral advocates before the Court:

Sevareid: In your long term on the Court, who would you say were the ablest lawyers to plead before you?

Black: Well, there have been so many good lawyers. You're kind of putting me on the spot, to tell them that they are not the best. I would say, just off-hand, that two lawyers who've argued before us who were excellent, as others are excellent, but these come right straight to my mind: John W. Davis,

² For a 2011 Jackson List post, "Judicial 'Inauguration,' Judicial Independence (1946)," which discusses this topic, see <http://thejacksonlist.com/wp-content/uploads/2014/02/20110703-Jackson-List-Judicial-Inauguration-Judicial-Independence.pdf>.

who was a great speaker, and a great man to discuss the law. Just a great advocate. And Bob Jackson, who argued cases before us as Solicitor General. He was always magnificent. His language was fluent. His knowledge of the law was good, and he never objected to your asking him a question which most people would think was too hard to answer. I do not recall that Bob ever declined when some Judge would say: "Do you mean to say this?" I don't recall an instance when Bob didn't say, "That's exactly what I mean."³

³ For background on this CBS interview, see ROGER K. NEWMAN, HUGO BLACK: A BIOGRAPHY at 583-87 & 706-07 nn. 11-12 (1994). For a published transcript of the program, see *Justice Black and the Bill of Rights*, 9 SOUTHWESTERN UNIVERSITY LAW REVIEW 937-51 (1977). For a video excerpt, visit www.youtube.com/watch?v=HAgQdeup2v0. For an audio excerpt of another segment, visit www.loc.gov/item/afcca1000209/.