

# **New Month, Quiet; Full Court, Ready (August 1941)**

*John Q. Barrett\**

Copyright © 2016 by John Q. Barrett.  
All rights reserved.

Seventy-five years ago, in August 1941, Justice Robert H. Jackson, newly-appointed, settled into the summer work of the Supreme Court of the United States.

Jackson had relinquished his responsibilities as Attorney General of the U.S. in June, when he had been nominated to the Court. Following his Senate confirmation in July, he was commissioned as a justice and resigned formally from the Cabinet.

Justice Jackson then spent three weeks visiting family and friends in his hometown, Jamestown, New York, and its region.

In August, Jackson returned to Washington. The Court was in summer recess. His first law clerk, John F. Costelloe, formerly a Department of Justice lawyer, began to work in mid-August. Costelloe reviewed and wrote recommendations for Jackson regarding petitions asking the Court to review lower court judgments—to issue writs of certiorari and thereby add cases to the Court’s fall docket.

Writing to his friend and colleague Justice William O. Douglas, then vacationing in the West, Jackson reported that “[t]he story which I am trying hard to cultivate is that I am at labor day and night on certioraris, but somehow there seems to be a suspicion that it isn’t so.”<sup>1</sup>

---

\* 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](http://www.roberthjackson.org)). I emailed an earlier version of this essay to The Jackson List on August 1, 2016.

For an archive of selected Jackson List posts, many of which include document images, visit <http://thejacksonlist.com>. This essay is posted there as a PDF file with “live” hyperlinks.

To subscribe to The Jackson List, which does not display recipient identities or distribute their email addresses, send “subscribe” to [barrettj@stjohns.edu](mailto:barrettj@stjohns.edu).

<sup>1</sup> Letter from Robert H. Jackson to Honorable William O. Douglas, Aug. 5, 1941 (original), in Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 11, Folder 15. It seems that Justice Douglas, who was vacationing in La Grande, Oregon, never received this letter because Jackson’s secretary Ruth Sternberg mistakenly addressed and mailed it to La Grande, Washington (a real place, but not where Douglas was). When the postal service returned the letter to Jackson’s chambers, Sternberg sent him a note of explanation, on which he

Jackson was not very busy. He supervised renovations at Hickory Hill, his new home in northern Virginia. What he actually cultivated was a large garden there. He also kept somewhat busy in Washington, attending events outside the Court—with his friend and new colleague Justice Hugo L. Black, for example, Jackson went one noontime to the National Press Club to hear visiting British statesman Alfred Duff Cooper speak about the Nazi war in Europe.<sup>2</sup>

In the first half of 1941, the Supreme Court—by statute, a nine-justice body—had begun to shrink. The depletion began with Justice James C. McReynolds’s retirement in February 1941. And in June, as the remaining eight justices were finishing their 1941-1942 term work, Chief Justice Charles Evans Hughes announced that he would retire on July 1<sup>st</sup>.

President Franklin D. Roosevelt then nominated, and the Senate then confirmed, Associate Justice Harlan Fiske Stone to succeed Hughes as chief justice. Senator James F. Byrnes (D.-SC) was appointed to succeed McReynolds. And Robert Jackson was appointed to succeed Stone as associate justice.

President Roosevelt, when he signed and gave Justice Jackson his judicial commission, commented that the Court was again “filled.”<sup>3</sup>

Press noted that “[t]he Supreme Court bench is now filled with nine members for the first time in several months. It will be possible at the fall term to settle a half-dozen cases which encountered a 4-4 split court when there were but eight members.”<sup>4</sup>

---

jotted “No great disaster.” Note from “RJ” [Robert H. Jackson] to “RS” [Ruth M. Sternberg], in *id.* Images of these documents are at the end of this file.

<sup>2</sup> This event occurred on Thursday, August 14, 1941.

<sup>3</sup> *A New Justice Joins the Supreme Court*, N.Y. TIMES, July 12, 1941, at 14.

<sup>4</sup> *It’s Justice Jackson, Now*, WASH. POST, July 12, 1941, at 2.

Supreme Court of the United States  
Washington, D. C.

August 5, 1941

Dear Bill:

Thanks a lot for your letter.

The story which I am trying hard to cultivate is that I am at labor day and night on certioraris, but someway there seems to be a suspicion that it isn't so.

Irene is north, and I have been for about three weeks, and am back to try to get somewhat adapted to our ideas and ready for occupancy by October 1, a home that we have bought on the Virginia side of the River.

A lot is happening here, and a lot isn't happening that ought to.

I shall look forward to seeing you when you get back.

With best wishes,

Sincerely yours,

*Bob*

Honorable William O. Douglas  
Associate Justice of the Supreme Court  
La Grande, Washington

Supreme Court of the United States.  
Memorandum.  
-----, 194

This should have  
been sent to  
Oregon instead of  
Washington. Sorry.

R.S.  
No great disaster  
Ry

er.  
g hard to  
and night on  
s to be a sus-  
been for about  
get somewhat  
occupancy by  
ht on the  
nd a lot isn't

I shall look forward to seeing you when  
you get back.

With best wishes,

Sincerely yours,  
Boz

Honorable William O. Douglas  
Associate Justice of the Supreme Court  
La Grande, Washington