

# Political Summer (1938)

*John Q. Barrett\**

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In 1938, after the Supreme Court of the United States recessed for the summer, U.S. Solicitor General Robert H. Jackson and his wife Irene left their rented house in Washington, D.C. and returned “home” to Chautauqua County, New York. Although the Jacksons owned a large house in West Ellicott, New York, just over the city line separating West Ellicott from Jamestown, they had rented that house to a long term tenant because they had been living in Washington since 1934. So they rented a house that summer in nearby Lakewood, where they also owned a horse farm overlooking Chautauqua Lake.

That summer, the Jacksons saw friends and relaxed. In early July, Robert Jackson and some friends went on their customary trip to fish in Canada.

Jackson also did some work. Some of it no doubt related to his responsibilities as the number two official in the U.S. Department of Justice.

In late July, the Jacksons attended the American Bar Association’s 61<sup>st</sup> annual meeting, held that year in Cleveland, Ohio. On one afternoon, Solicitor General Jackson spoke at an ABA section meeting on “The Rise and Fall of *Swift v. Tyson*,” explaining how the Supreme Court that Term, in *Erie Railroad Co. v. Tompkins*,<sup>1</sup> had confessed and corrected, on its own initiative, a doctrinal error of 96 years earlier.<sup>2</sup>

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

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<sup>1</sup> 304 U.S. 64 (1938), available at [www.law.cornell.edu/supremecourt/text/304/64](http://www.law.cornell.edu/supremecourt/text/304/64).

<sup>2</sup> See Robert H. Jackson, *The Rise and Fall of Swift v. Tyson*, 24 AM. BAR ASSN. JOURNAL 609-14 & 644 (Aug. 1938), republished at <http://roberthjackson.org/the-man/bibliography/the-rise-and-fall-of-swift-v-tyson/>.

A few days later, Jackson, still in Cleveland, spoke at a Knights of Columbus luncheon. He might have been upstaged there by another guest, Philadelphia Athletics baseball manager Connie Mack, who gave a brief speech praising the Cleveland Indians team, manager and vice president.<sup>3</sup>

Much of Robert Jackson's work that summer was explicitly political. It was the summer before Congressional midterm elections in President Franklin Roosevelt's second term. Jackson was a nationally prominent Democrat who was being mentioned as a New York gubernatorial prospect for that Fall (the Democratic Party's state convention to choose its nominee would not occur until late September), and as a presidential prospect for 1940. When Jackson spoke in July at the ABA meeting, *The Cleveland Plain Dealer* reported his speech, described him as "a New Yorker considered by some to have presidential possibilities" and published his photograph—he wore a white, three-piece suit—on its "Photos" page.<sup>4</sup> When Representative Martin L. Sweeney (D.-OH) introduced Jackson at the Knights of Columbus lunch, he said, "It is not unlikely that there may be two Jacksons in the White House just as there have been two Roosevelts, if you get what I mean."<sup>5</sup>

So Jackson worked to help his political party, including in his home city and region. (This was, of course, before the 1939 enactment of the Hatch Act, a federal law prohibiting some executive branch officials from engaging in partisan political activities, and before the development of more recent views that some political appointees, including perhaps Solicitors General, are not actors in politics.) In early August, his close New Deal colleagues and political advisers Thomas G. Corcoran and Benjamin V. Cohen came to stay with the Jacksons in Lakewood. Tommy, Ben and Bob went boating and probably also planned some of Jackson's next political activities.

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On Sunday, August 14, 1938, Robert Jackson had a typical day of local political activities. Because of who he was and where he might be going in public life, his speeches also had national focus and significance. (And you might see, as you read them, that they have significance down to today.)

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<sup>3</sup> See *State "Invasion" Denied By Jackson*, CLEVELAND PLAIN DEALER, July 29, 1938, at 4.

<sup>4</sup> See *Finds High Court in Error 96 Years*, CLEVELAND PLAIN DEALER, July 26, 1938, at 3, 20.

<sup>5</sup> *State "Invasion" Denied By Jackson*, *supra* note 3.

Jackson spent that day in Celoron, New York, a small village on Chautauqua Lake not too far from Jackson's West Ellicott house or his Lakewood summer rental home. At Celoron's Greek Club, following a morning sports program and then a luncheon program with music, Jackson spoke at a union picnic (District No. 65, International Association of Machinists). He spoke from this typed page of text—

I am glad of an opportunity to talk to the working men and their families at this picnic of your Union. The whole family should be interested in government, for the best test of public measures is the effect which they have upon the home of our people.

For many years we lived under the administrations of eminent and conservative gentlemen who believed in the trickle theory of prosperity. They thought that if the government would adopt tariffs and taxing policies and other measures to make the rich rich enough, they would let some of their prosperity trickle through to the working people. Many editors and politicians still believe that.

This [FDR] administration has not followed this trickle theory. It has determined to place the national welfare on a broader and sounder and more permanent basis. Such measures as Unemployment Insurance and Old Age Pensions [i.e., Social Security] are directly for the protection of the homes of wage earners against the misfortunes of unemployment and dependent age. Measures like collective bargaining which is guaranteed by the Wagner Act are intended to enable the working men to enter into the same association to hold wages up that employers have long entered into to keep them down.

Unfortunately there is still bitter opposition to collective bargaining. There are still those who think they can make time march backwards. Instead of accepting and trying in good faith to make these measures work, there are still those who are trying to throw sand in the machinery.

All of these laws are in a measure experimental. They are measures that will require time to perfect. And you

are not likely to entrust their improvement to their enemies. As one of your members told me the other day, “Every working man’s home feels safer because Roosevelt is President.”

“This is why we voted to put him back there, and this is why we are going to keep him there.”<sup>6</sup>

Late that afternoon, Jackson spoke again in Celoron, this time to a large crowd at the annual “Democratic Day at Celoron Park” event. After opening remarks by Jamestown’s Democratic Party chairman, Jackson spoke. His picnic-wear was a light colored three-piece suit with a dark tie and a matching pocket handkerchief.<sup>7</sup> He again spoke from typed remarks,



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<sup>6</sup> This typewritten text, from which Jackson presumably spoke, is in the Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. (“RHJL”), Box 36, Folder 8. *Accord Robert H. Jackson Addresses Union Men at Gathering*, JAMESTOWN POST, Aug. 15, 1938, at 6 (publishing these Jackson remarks).

<sup>7</sup> See *At Democratic County Rally in Celoron Park*, JAMESTOWN POST, Aug. 15, 1938 (photograph, reproduced above).

which this time were slightly longer. His focus was President Roosevelt and then the next speaker, whom Jackson was introducing, Representative James M. Mead (D.-NY) of Buffalo—

FELLOW DEMOCRATS:

At our Victory Dinner [in Jamestown] shortly after the 1936 election, I said that the victory was so sweeping as to be unwholesome to the Democratic Party.

The appeal which brought these tremendous majorities was clean, progressive, liberal and humane government and a fighting opposition to the elements which had controlled the government for many years.

We must not forget that these tremendous majorities were not made up entirely of born Democrats like you and me who will vote the party ticket because of their old loyalties. Our majority consists in large part of independent voters and young people who have been attracted by the kind of program President Roosevelt has given. They will leave the Democratic party the day it fails to keep faith with the leader who won them.

The President of the United States is the only officer in Washington who is elected by all the people of the United States. Senators and Congressmen are elected to represent districts or states. The President alone makes his appeal to the whole nation. He is, therefore, the only leader to whom the party can look for a national vision and a national program. We must look to him therefore to keep the party true to its faith even if he breaks with other Democrats who are of other opinions.

If the Democratic party is not going to drift into decay and defeat, it must support the fighting leadership and program of the President. This is no time to go before the people with “Yes, But” candidates. This is no time for colorless good fellows. You can’t back-slap your way into majorities in these days.

The Democrats of Chautauqua County support the leadership of the President of the United States.

In Chautauqua County we have followed the work and career of Congressman James M. Mead and, having no Democratic Congressman of our own, we have adopted him as our representative. Proud of his courage always, and confident of his genuine interest in the objectives of the New Deal, we have followed with great satisfaction his faithful support of the aims of President Roosevelt. He is the type of man, as a candidate for any high office, whom we can support with confidence that his fighting democracy will appeal to the same independent majorities that elected President Roosevelt, and that after he is elected he will not become a Republican. It is a great pleasure for me today to present our neighboring Congressman and one of the most outstanding of our Democratic leaders, James M. Mead.<sup>8</sup>

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That Fall, the New York Democrats nominated Governor Herbert H. Lehman for another term and he was elected.

Representative Mead did not, in the end, seek reelection to his House seat. Instead, he ran that Fall for an open United States Senate seat and he was elected.

Jackson ran for no office, in 1938 or ever. He served as Solicitor General for another year-plus, then moved up to serve as Attorney General, and then became a judge.

He always, throughout his life, enjoyed picnics, political and otherwise.

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<sup>8</sup> These two pages of typewritten text are in RHJL, Box 36, Folder 7. *Accord Jackson and Mead Speak to Democrats of County*, JAMESTOWN POST, Aug. 15, 1938, at 5, 14 (publishing these Jackson remarks).