

# Joining the Supreme Court, and Thereafter Leaving the Cabinet (1941)

John Q. Barrett\*

On Friday, July 11, 1941, President Franklin D. Roosevelt met at 2:00 p.m. with his Cabinet. Then he signed the commission and watched the oath-taking that made one of its members, Attorney General Robert H. Jackson, an associate justice of the Supreme Court of the United States.

193		JULY 11	
Fri.			
APPOINTMENTS		RETURN APPOINTMENTS	
8.00	8.15	2.15	00.5
8.15	00.5	2.30	8.15
8.30	8.15	2.45	00.9
8.45	00.9	3.00	8.15
9.00	8.15	3.15	00.8
9.15	00.8	3.30	The Atty. Gen. et al
9.30	8.15	3.45	(Induction Ceremonies)
9.45	00.8	4.00	8.15
10.00	8.15	4.15	00.01
10.15	00.1	4.30	8.101
10.30	8.15	4.45	00.01
10.45	00.1	5.00	8.101
11.00	8.15	5.15	00.11
11.15	00.1	5.30	8.11
11.30	8.15	5.45	00.11
11.45	00.2	6.00	8.11
12.00	8.15	6.15	00.01
12.15	00.2	6.30	8.11
12.30	8.15	6.45	00.01
12.45	00.2	7.00	8.11
1.00	8.15	7.15	00.1
1.15	00.1	7.30	8.11
1.30	8.15	7.45	00.1
1.45	00.2	8.00	8.11
2.00	8.15	8.15	00.2

White House Stenographer's Diary

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*JOINING THE SUPREME COURT, LEAVING THE CABINET (1941)*

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The President's office was crowded for the occasion. Jackson was accompanied by his wife Irene and their daughter Mary. Others present included Secretary of War Henry L. Stimson; Secretary of Treasury (and Jackson's 1934 first boss in Washington) Henry Morgenthau, Jr.; presidential aides Harry Hopkins, Tommy Corcoran, and Lowell Mellett; FBI director J. Edgar Hoover; Supreme Court Justices William O. Douglas and James F. Byrnes; and Senator George W. Norris (Indep. Rep.-NE)—each a Jackson friend and admirer. Reporters and photographers also were present, covering the event, which was filled with good feeling.



July 11, 1941: L-R, President Roosevelt, Treasury Secretary Morgenthau, Mary Jackson, Irene Jackson, Robert H. Jackson (reading his oath), and U.S. Supreme Court Clerk Charles Elmore Cropley (holding the Bible).

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President Roosevelt spoke during Jackson's commissioning. He said that the Senate had "stood by" the Constitution in confirming Jackson, and that the Court was now "filled." The President, smiling, said that he wished that he could cut Jackson in half so that he could sit simultaneously on the Court and in the Cabinet. F.D.R. also noted that the day was a double ceremony, because Senator Norris, one of his oldest friends, was there celebrating his 80<sup>th</sup> birthday alongside 49-year-old Jackson, one of his youngest friends.

The President's "wish I could cut him in half" line was a compliment to Jackson, of course, but it also was a familiar part of F.D.R.'s repertoire. He had said the same thing three days earlier about Justice Byrnes, then serving as a Senator, when signing his commission at his swearing-in as a Supreme Court justice. The President also had said more or less the same thing in August 1937 to Senator Hugo L. Black when appointing him to the Supreme Court: "Hugo, I wish you were twins because [Senate Majority Leader Alben] Barkley says he needs you in the Senate; but I think you'll be more useful on the Court."

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The President's idea that he would need to cut a Cabinet officer in half to enable that person to serve simultaneously on the Supreme Court was, alas, legally and historically incorrect. Nothing in the U.S. Constitution prohibits such dual service. And it has happened a number of times. In fact, beginning on the afternoon of July 11, 1941, Robert H. Jackson was *both* U.S. Attorney General and a U.S. Supreme Court justice.

That dual status did not last long. It was the product of forgetfulness, not Roosevelt's or Jackson's plan.

The next day, Justice Jackson remembered that he needed to resign from the Cabinet and he did so, sending this letter to the President.

July 12, 1941

My dear Mr. President:

I find that I have neglected to tender my resignation as Attorney General and in consequence thereof am in danger of occupying two offices. According to the precedents, for which you will note I am showing an increased deference, qualification as a Justice of the Supreme Court does not in itself vacate a Cabinet post. Jay and Marshall each served as Secretary of State and as Chief Justice at the same time. Accordingly, I hereby tender my resignation as Attorney General.

I take the opportunity to tell you how deeply I have appreciated the opportunities you have given me to serve in capacities of great interest -- as Solicitor General at a critical time in the evolution of constitutional law, and in your Cabinet at a critical time in the life of the nation, as well as the present opportunity for permanent service on the Supreme Court. Any success that I have

had has been due to your unfailing inspiration to do one's best and to your charitable consideration when that proved inadequate.

To have sat in your councils has been the high spot of life; to have your generous personal friendship is riches beyond price.

Respectfully yours,

The President  
The White House

Soon thereafter, President Roosevelt formally accepted Justice Jackson's resignation from the Cabinet. His reply was unique to their history and relationship.

Back in February 1937, President Roosevelt had unveiled his proposal to "pack" the Supreme Court by creating new seats that younger justices would fill alongside older justices who chose not to retire. He explained it as an act of kindness to the aged and overloaded. He said that the justices were behind in their work, including their review of petitions seeking writs of certiorari—requests for Supreme Court review.

But that explanation was spin—indeed, it was untrue. And then-Assistant Attorney General Jackson told the President that, privately. In that process, Jackson became one of the key advisers who persuaded F.D.R. to shift his explanation for the Court reform plan to the truth. Beginning in March 1937, Roosevelt explained his Court proposal as an effort to move the Court from its incorrect, politicized interpretations of federal and state powers under the Constitution to more restrained, democracy-respecting interpretations.

In summer 1937, the Court-packing proposal got shelved. It became unnecessary because the Supreme Court had changed course, upholding the constitutionality of major federal laws (the National Labor Relations Act; the Social Security Act—a Jackson oral argument victory) and state minimum wage laws, and after justices had begun to retire and Roosevelt, then in his second term, finally had an opportunity to appoint a new justice.

In July 1941, that all was shared, treasured, and amusing personal history between the President and new Justice Jackson. When President Roosevelt dictated his July 15, 1941, letter accepting Attorney General Jackson's resignation from the Cabinet, the President, no doubt smiling, referred back subtly to 1937.

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THE WHITE HOUSE  
WASHINGTON

July 15, 1941.

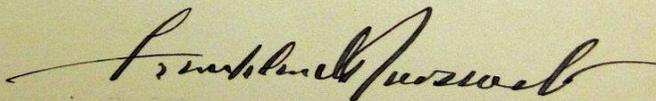
Dear Bob:-

Ever so many thanks for your note. I do wish you could occupy both posts at the same time, especially because it might save you from that terrific volume of certiorari proceedings which, of course, will keep you occupied every minute of the day and night all Summer.

I do not need to tell you again how much I hate to have you leave the Cabinet, and what a real delight it was to have you with the Administration all these years. At least you and Irene will still be here in Washington and we shall see much of you.

My affectionate regards,

As ever yours,



Honorable Robert H. Jackson,  
Supreme Court of the United States,  
Washington, D. C.