

# Robert H. Jackson

*The Man Who Has Always Been a New Dealer*

by MARQUIS W. CHILDS

**I**T WOULD BE difficult to give any abstract definition of that convenient Washington figment, the New Dealer. Ardent Administration sympathizers invoke an almost incredibly noble individual when they use the phrase. On the lips of the enemy, the term has sulphurous connotations. Lacking a definition, perhaps the New Dealer can be defined by example. And the best example, most Washington observers agree, is Robert H. Jackson. If there is any single individual who represents all the qualities that commonly inhere in the term, it is the man who has just been made Attorney General of the United States.

President Roosevelt is, of course, the creator, the author, of the New Deal. But the embodiment of his ideal is Jackson. In part, at least, both officialdom and the press have recognized this fact. Many people in and out of the government have said since 1936 that Jackson would be Roosevelt's ideal successor. From time to time there has been the suggestion that the President himself inclined to this view. Often this suggestion has been linked to rumors that steps would be taken to build Jackson up with the public so that he might have a chance for the nomination.

Even now these rumors have been revived in connection with his appointment as Attorney General. Actually, of course, if the President had wanted to groom Jackson as his successor — as Roosevelt I groomed Taft to run in his place — he would not have waited until this eleventh hour to put him in a cabinet post. If he had been sincerely interested in seeing Jackson acquire the attributes of eligibility, he would have appointed him Attorney General at the time of Homer Cummings' resignation, more than a year ago. To follow on the political administration of the amiable Cummings was, for a New Dealer, the perfect opportunity.

Frank Murphy stepped into that situation and took for himself the sweetest publicity bouquet of the entire Roosevelt Administration. Garnering a harvest of headlines, Murphy tended to neglect many of the far-reaching functions of the Department of Justice. Acting in certain income-tax cases, notably that of "Boss" Pendergast, he postponed others with even more serious political implications, in spite of the repeated urging of the Treasury. He let loose a series of doubtful espionage prosecutions, talking loosely of deporting "boatloads" of undesirable aliens. Friction, confusion, and delay seriously hampered the flow of work in the vast department under his care. Those behind the scenes in Washington, including President Roosevelt himself, it appears, were aware of the somewhat unhappy situation developing in the Department of Justice while the legend of Murphy the boss buster was growing to heroic proportions.

## II

**I**T IS INTO this situation that Jackson has now been precipitated. Within less than a year he must resolve a number of thorny problems involving political potentialities and sensitivities in various key States. How such an appointment could serve to build him up, even for the vice presidency, on which rumor now centers, it is difficult to see.

In many respects this is typical of his experience in the New Deal. This is not the first time he has been told off to do an unpleasant front-line job. Invariably he has responded with the selflessness which has characterized his public service. In Jackson, the Washington climate has not produced that elephantiasis of the ego which has been, perhaps, the occupational disease of the New Deal. He has retained a remarkable balance through it all. If

## ROBERT H. JACKSON

the rise and fall of his personal fortunes have concerned the new Attorney General, he has shown no sign of it, perhaps because he has been too busy.

In the latter days of the New Deal's diminution it was Jackson who as Solicitor General held the fort for the ideals and objectives that were part of the very fiber of his being long before the New Deal was heard of. The term of the Supreme Court ending in June of last year saw the making of legal history of a nature so far-reaching that only close students of the Court are aware of its implications for the future. And it is these same students of the Court who realize how much Jackson had to do with the legal pioneering written into opinion after opinion.

Under his persistent, intelligent attack, the meaning of the "commerce" clause of the Constitution has been enlarged and extended to cover functions of government essential in a complex and swiftly changing world. On almost the only front left to the New Deal he constantly pushed ahead, at the same time exerting every effort to prevent the legal sniping that has so often in the past cut down the structure of reform.

It was an unspectacular task, endless days and nights of preparation and then the long grind of the court term itself. During the term ending in June, Jackson argued twenty-four cases, more than any solicitor general in the history of the government. And, of those twenty-four cases, the government lost only one, a record perhaps never before equaled by any of the distinguished legal lights who have occupied the solicitor's office.

In a similarly unspectacular fashion Jackson has exerted an influence on the course of the New Deal far greater than persons on the outside have realized. He has worked for the appointment to high office of men whom he believed worthy. He has raised his voice in defense of New Deal aims and objectives at times when the cause seemed lost. And he stepped into the breach knowing very well what it might mean in terms of his own immediate political future.

The Washington columnists were inclined, prior to his recent appointment, to write him off the books. Politically, they said, he was as dead as a doornail. However true that might have been for the moment, it is also

true that in a curious way he stands head and shoulders above most of those who have survived within the Roosevelt Administration. Perhaps this is because he has sacrificed nothing for position or place. Ambition has overtaken many in the inner New Deal council — amateurs who have been drawn into the orbit of power politics. And the consequences have not been too happy. Many contemporary Washington figures seem to have been eroded by the passage of time. But Jackson's stature has not been impaired.

### III

THE REASON may lie in the fact that he has his roots deeper in a solid background of experience. He is identified by birth and achievement with that corner of northwestern New York and Pennsylvania lying along the shore of Lake Erie, a country with a sharp flavor of its own, rolling and fertile. The first Jacksons to move into the region were a hardy pioneering tribe who brought with them a belief in an elementary democracy diametrically opposed to the Federalist assumptions of their fellow settlers.

The Jacksons were to remain Democrats through a century and a half in a sternly Republican neighborhood. That fact and the Dutch inheritance from his mother's side of the family, the Houghwouts, may explain the Attorney General's stubborn determination to fight it out on what he believes to be the American line if it takes a lifetime. This stubbornness is concealed beneath a natural ease of manner. Behind his genial friendliness, the warm blue glint of his eyes, is an understanding of human motives and desires that may come out of his background.

Robert Jackson was born on the Jackson farm at Spring Creek, Pennsylvania, on February 13, 1892. A precocious youngster, he absorbed all the learning available in the neighborhood, and while still in his middle teens was sent off to study law at Albany, New York. At twenty-one he hung out his lawyer's shingle in Jamestown, New York, the metropolis of his native region.

Every variety of case was to come his way in those early years. Labor unions and substantial corporations in the community were among his clients. The range of his practice was such as few young men in this day of specializa-

tion ever know. Many of the bright young men brought down to Washington by the New Deal went directly from Harvard and Yale to a specialized niche in some great New York firm. At thirty or thirty-five they would not know as much law as Jackson knew at twenty-five.

His close associate in the early years was Ernest Cawcroft, a lawyer with a deep sense of the public responsibility of his profession, one of a now almost vanished species. An attorney at law, in Cawcroft's view owed a duty of leadership, both moral and intellectual, to the community. They made an interesting pair, the older man and the younger. In between cases there was time for argument and discussion about the way the world was going. Its course was not altogether to their liking. They decided between them that it was wrong for the United States to enter the World War and during all the beating of the tom-toms after 1917 they held to this point of view. In a town where everyone knows you, that takes a great deal of courage.

At the outset of the present war in Europe, Jackson was concerned over the shrill cries of alarm that came from the Administration in Washington, with all attention diverted away from domestic issues, as indeed it had been for a number of months before the declaration of hostilities. Jackson's effort has been to switch attention back to unsolved national problems of the gravest importance. Inheriting perhaps the earthy realism of his pioneering ancestors, Jackson is aware that, if Americans are completely diverted again by the tragedy of Europe, it may finally be too late to put our own democracy in order.

As his practice grew, Jackson was more and more identified with the business life of Jamestown. Repeatedly he found himself on the side of the local enterprise, the native industry, that was fighting for independence, resisting the encroachments of monopoly control. For years he fought the battles of the Jamestown Telephone Corporation, which is still an independent company.

Other companies succumbed to outside control. Jackson watched the stores along Jamestown's main street fall before the chains. It was a deeply disturbing sign of the times. Local firms were no longer considered good risks at local banks. What would this mean to the life of his town? How could there be any independ-

ence of mind in a community that had been forced to surrender its economic autonomy to outsiders? If this same thing was happening all over America, then what was the future of democracy? Questions such as these troubled the prosperous young lawyer.

Always there was a sense of his place in the community, an integral relationship that he valued. It worried him when furniture factories migrated to North Carolina for cheaper labor and cheaper resources. He was beginning to be more and more aware of the significance of these trends when the depression hit. After the crash in 1929, he directed the consolidation of Jamestown's three banks, and was made a director of the new institution.

#### IV

**I**T WAS NOT that he had taken the troubles of the world on his shoulders. His own life was full and rich. After getting a start in the law at Jamestown, he had married Irene Gerhardt of Albany, and they had a son and a daughter. Jackson bought a farm lying along nearby Lake Chautauqua, and here, with growing prosperity, he went in for trotting horses. A love of the out-of-doors has been one of the sustaining forces in his life. Under stress and strain he has managed to get away for a swift ride of half an hour or so that has made it possible for him to return to the job with his mind clear and his spirit refreshed.

After the grueling term of court that ended in the spring of 1938, Jackson went out to San Francisco to make a brilliant speech before the convention of the American Bar Association (a speech the Association failed to print in the convention annals which contained every word of a bitter attack on the New Deal by Frank J. Hogan, Association President). Then with his daughter, Mary Margaret, Jackson went on a pack-horse trip in the Sawtooth Mountains in Montana. For two weeks the small party, conducted by the American Forestry Association, saw no other human beings. For Jackson it was the ideal vacation, and he returned to his desk in Washington completely restored. On the wall behind that desk, incidentally, is a photograph of the Attorney General with a thoroughbred, out of his own stables, that his daughter trained.

For all the intense burden of work that has been put on him in Washington, Jackson has

## ROBERT H. JACKSON

found time for relaxation. One relaxation is ice skating. He and his gay and charming wife were at one time champion figure skaters on Lake Chautauqua. A skating rink does not provide quite the same opportunity, but the pair are to be found there at every opportunity.

They also dance together as well as they skate, which is saying a great deal. Last year they took dancing lessons with a small group of friends to keep their technique up-to-date.

A temperate man, Jackson does not smoke but takes a drink, though rarely, with friends. There is about him a quality of buoyant health and well-being. He is moderate in everything but his capacity for work. When he is working on a tough brief or preparing an important speech he sometimes shuts himself away for two or three days.

### V

**F**ROM THE BEGINNING it was more or less inevitable that he should come into the New Deal. He was named counsel of the Bureau of Internal Revenue, and that marked the beginning of a postgraduate course in American economics. The principal lesson was the case of the Commissioner of Internal Revenue vs. Andrew W. Mellon.

As counsel for the Bureau, Jackson explored the infinite ramifications of the Mellon empire, preparatory to bringing a tax claim aggregating, with penalties and interest, more than three million dollars. Proconsuls and satraps within this empire knew particular provinces, but their knowledge stopped at the borders of their authority. Perhaps no one except Mellon himself and two or three of his intimate attorney-advisers ever before had such comprehensive knowledge of the amazing structure put together by the man who had a stake in virtually every field of industry and finance. Above all there was revealed by the Bureau the power of monopoly

control over a vital commodity, aluminum.

For nearly eight weeks, first in Pittsburgh and then later in Washington, the hearing before the Board of Tax Appeals continued. Mellon was on the stand for several days. Under Jackson's good-natured but firm tute-

lage, he seemed almost to enjoy telling of his early struggles and later triumphs. It was a fascinating study in character to watch the two men—Mellon, sure of his own powers, outwardly a little bored and weary but slyly amused beneath this exterior; Jackson, tough and resilient, his good humor never failing him but determined to understand what this was all about.

Many phases of the case—and particularly

the sale of the McClintick-Marshall Corporation to Bethlehem Steel—were so involved that it was almost impossible to translate them into terms understandable by an ordinary person. Step by step through this tangled thicket Jackson followed the growth of Mellon's millions. It is doubtful if any American fortune has been documented so thoroughly as was done in this case. Not only Mellon's financial life but much of his private history went into the volumes that contain more printed words than any encyclopedia.

As a climax to the story Jackson got from Mellon an account of the fabulous treasure of pictures he had put together at the end of his life—out of the Hermitage when the Soviets were hard pressed for foreign exchange, out of the castles of ruined aristocrats, by way of superagents. Many of these pictures were hanging in Mellon's Washington apartment; others were in the homes of his children; still others were in warehouses. But they had been presented several years before, through an elaborate legal formula, to the A. W. Mellon Educational and Charitable Foundation. Jackson challenged this whole formula as a fiction intended to enable Mellon to pass on the collection to his heirs free of duty. Immediately



Block prints by Susan Flint

Mellon aides and attorneys came forward with rough drawings of a museum to be constructed in Washington. Still Jackson was doubtful. Impish New Dealers say that, when the Mellon collection and the museum that will house it are finally presented to the nation, Jackson should have the privilege of making the presentation speech.

The final vote of the Board of Tax Appeals was almost strictly on political lines, with one New Deal appointee going over to the Republican side to approve a decision reducing the tax liability to about \$750,000. In a dissenting opinion, the minority paid high tribute to the case that Jackson had built up. Considering the enormous difficulties that such an action inevitably presents, this was not an unsatisfactory outcome.

Long before the Board of Tax Appeals got around to handing down its final decision, Jackson had been moved over to the Securities and Exchange Commission to prepare the government's vitally important Electric Bond & Share case to test the holding-company law of 1935. This was another exploration of the intricate ways of big business. Jackson's career thus far was an ideal preparation for his next advancement, to the Department of Justice to be an assistant attorney general in charge of the antitrust division.

He had decided ideas about antitrust procedure and he began at once to put them into effect. His predecessors had acted for the most part on complaints from business, and such complaints arose only when two firms were engaged in mortal combat. Jackson, from the first, based his policy not on what one corporation thought should happen to another corporation but on the interest of the public in the prosecution of monopoly. He started the case against Mellon's Aluminum Company of America, the case against the big oil companies, and the case against the motor finance firms.

The then Attorney General, Cummings, was inclined toward the antitrust school that holds it is the function of government to sanction those "virtuous" monopolies which are inevitable in any event. Powerful figures, including several of Washington's most successful politician-lawyers, were advocating such a policy. Jackson stoutly opposed any suggestion that monopoly be sanctioned, feeling this would

mean merely a repetition of the major mistakes of the NRA. By this time he had won friendly recognition at the White House, and his word carried no little weight.

Although there were more and more demands on his time and energy, he gave personal supervision to the big antitrust suits and particularly to the oil case that was to be tried at Madison, Wisconsin. With a limited staff, he assigned several of his best men, younger men, to this fight on the oil behemoths and their apparent control of prices. What finally happened showed with remarkable clarity, as Jackson himself very well recognized, both the strengths and the weaknesses of the New Deal. Against a formidable array of counsel with unlimited resources, the young Department of Justice attorneys won a series of jury verdicts. Everything looked perfect for the government. But the federal judge who had presided, Patrick Stone, in ruling on points of law and passing sentence, in effect wiped out the entire victory.

Patrick Stone had been a small-town lawyer. His appointment had come about through political preferment under the patronage system of doling out federal judgeships which Cummings followed during his six years in the Department. Stone's action was a bitter disappointment to New Deal Washington but one which should not have been entirely unexpected.

## VI

**D**ETERMINED to curb the power of the Supreme Court, President Roosevelt accepted the plan hatched by his Attorney General without consulting any of his other legal advisers. Neither Jackson, although he had become a not unfamiliar figure at the White House, nor the then Solicitor General, Stanley Reed, knew a thing about the scheme until the morning the President sent it to Congress. They regarded it, subsequently, with something less than enthusiasm.

Jackson had long favored a frank, frontal attack on what he felt were unwarranted powers that the court had arrogated to itself. The unwieldy plan to enlarge the court, with its obvious subterfuges, was not to his liking. When he came to testify on the proposal, he spoke his mind, not disclaiming the Administration's measure but making it clear that he favored a more direct approach to the whole problem.

## ROBERT H. JACKSON

Because of the very frankness of his attitude, the conservatives on the judiciary committee could find no loophole for attack, and he came off better than almost any other Administration witness.

Throughout the whole fight, Jackson spoke out of the tough realism that is so strong a characteristic in him. For conservatives who said that the proper course was to amend the Constitution, he had a straightforward answer: "Judges who resort to a tortured construction of the Constitution may torture an amendment. You cannot amend a state of mind."

It was in the unhappy year of the Supreme Court bill that Jackson's friends in the New Deal inner circle began to promote him for the governorship of New York. His background, his personality, his career, everything, they felt, made him a political force to be reckoned with. The New York governorship might well prove to be a step toward a larger goal. They organized a testimonial dinner for Jackson in New York City.

While he was willing to lend himself to this move, he remained skeptical of the efforts of these ardent political amateurs. Their plans, of necessity, left out Postmaster General Farley. The Democratic National Chairman dominated the Party machinery in his own State. He would not go along on any such move for Jackson, if only because he had his own ambitious plans. The dinner failed to draw certain important politicians, who stayed away because they knew that Farley was against it. Still Jackson's chances were not entirely blighted. If he had kept quiet and played the orthodox game something might have been worked out.

But this was the time he chose to make his famous speech before the American Academy of Political Science, reiterating the objectives of the New Deal and challenging business to offer workable substitutes for New Deal measures. A few days before, in a nationwide broadcast, he had made an even more vigorous attack on business critics who constantly raised the cry of lack of confidence in the government.

The government, he pointed out, had taken business at its word and had reduced government spending during the fiscal year 1936-37 by about \$275,000,000 a month, on the assurance and expectation that business activity

would take up the slack. And this, Jackson told his radio audience, was what happened:

Monopoly prices and monopoly profits jumped beyond all reason and way above the price level that small business could get. Such articles as coke, cement, chemical products, processed meat products, and iron and steel rose in price above their 1929 price levels. These were in large part prices only big business could get, prices small business and consumers were forced to pay. When those big businesses demand "confidence" that they can continue to get such prices, their demand is that small business and buyers accept a life sentence to pay such prices.

The two speeches brought down a storm of criticism on Jackson's head. But they served, too, to stiffen the wavering New Deal line, which was precisely the effect he had hoped they would have. It was the reason why he stepped out in front at a time when the Administration gave every outward appearance of having come to a full stop. For the politicians who wanted to stop him in New York State, the opportunity was ready-made. This was the wild-eyed radical of the Administration, the Red.

Jackson has never given any sign that he regretted those two speeches. Keenly interested in the thousands of letters that came in response to his challenge, he made the discovery that they could be classified fairly accurately by the kind of stationery on which they were written. Those on tablet paper in lead pencil — and they were 90 per cent of the total — were all for the New Deal. Those on engraved stationery denounced the speaker in varying terms of rage and hate.

## VII

**I**NCREASINGLY, Jackson exerted an influence on Administration policies. Largely on his initiative, the idea of a full-dress investigation of monopoly was accepted. He was very well aware, of course, that such an investigation would not turn up anything that was startlingly new. But he was aware, too, of the need, from the practical political point of view, for another demonstration of the effect of monopoly control.

As Assistant Attorney General and later as Solicitor General, Jackson was responsible for placing many keen younger men in the Department of Justice. At his instigation, Thurman Arnold was made head of the antitrust division.

More than any other New Dealer, perhaps,

Jackson worked selflessly, subordinating his own ambitions. When vacancies occurred on the Supreme Court, he was usually "mentioned" as a possible nominee, but at least twice he worked tirelessly and enthusiastically for others.

After Senator Norris, he was the most ardent advocate of Professor Felix Frankfurter as a Supreme Court Justice. Norris and Jackson worked together for their man in mutual understanding and, it might be added, strong mutual admiration. The older man, veteran of a hundred Senate battles, early recognized the qualities that brought Jackson to the fore. Norris has said several times that his first choice for the Court was always Jackson. If for geographical or other reasons he could not have him, then he was prepared to take a second choice. When another vacancy on the Court arose with the retirement of Justice Brandeis, the Attorney General stopped all speculation by stating publicly that he was not a candidate for the Court. He threw his weight behind William O. Douglas.

Again, with the resignation of Cummings, Jackson put aside any personal ambitions he might have cherished and joined the inner New Deal circle in promoting Frank Murphy for Attorney General. It must have been a little startling to Jackson when Murphy announced, shortly after he took office, that he intended to appear personally in the Supreme Court in certain important cases. This is the prerogative of the Solicitor General, the Attorney General ordinarily being absorbed with administrative and policy-making tasks. Murphy, it is scarcely necessary to add, found his hands much too full to intervene in complex and difficult cases before the high court.

Perhaps Jackson's most conspicuous victory in the long string of triumphs he hung up last year was the decision of the majority upholding the soil-conservation act. The Court had ruled three years before that Congress did not have the right, under the "gen-

eral welfare" clause, to regulate agricultural production. Boldly Jackson came before the Court to claim the right to regulate the distribution of agricultural produce under the "commerce" clause. And the court upheld him in an opinion by Justice Roberts which so enlarged the powers implicit in the commerce clause that today it is seemingly broad enough to cover almost any regulatory activity of the federal government.

With basic principles back of New Deal measures sustained by a series of momentous decisions, Jackson realized that the most important task was to stop the whittling away of authority through decisions on administrative procedure. He has been zealous in his efforts to stop the process of gradual attrition which may be almost as destructive as an outright ruling of unconstitutionality. In the Kansas City stockyards case, involving vital administrative authority, he appealed once to the Supreme Court, and was told to return to the District Court. The District Court refused to reopen the case and sent him back to the Supreme Court. Confronting the high tribunal a second time, he won the right of appeal and, finally, achieved a clear-cut victory for the Administration.

Last May, newspapers carried reports that Jackson might soon resign. The truth was that talk of "appeasement" and the quiescence and defeatism within the New Deal had made him feel that perhaps it was futile to stay on. He is not the kind of man to hang on to a job just because it is a job. If the show was over, he wanted to get off the stage before the curtain came down. But, as in 1937, he used all his influence in an effort to restore interest in New Deal objectives. He will stay in Washington as long as he feels he is useful. At forty-seven, he has an incurable belief in the processes of democracy. Those who have watched him in Washington believe that, if the present moment is against him, his star inevitably will rise in the future.



# The Dies Committee

## A Debate

### I—A Necessary Job, Badly Done

by **RAYMOND CLAPPER**

**S**OME OF THE ACTIVITIES of the Dies committee, particularly in its earlier days, seemed to me deplorable and more likely to be harmful than beneficial in their net effect.

I see nothing to condone the conduct of the committee when it permitted itself, in the closing days of the 1938 election campaign, to be used as a sounding board for a "smearing" attack on Frank Murphy, then a candidate for re-election as Governor of Michigan. Time and again in other connections, the Dies committee sponsored disseminations of scandalous and malicious personalities parading as "testimony" by "witnesses." Chairman Dies himself has indulged in the loosest kind of talk about communism in Washington, has cheapened himself and his investigation time and again.

Yet, although feeling that way about the Dies committee, I am glad it has been continued, not because of Chairman Dies but in spite of him.

In favoring continuation of the Dies committee, I am not moved by any feeling whatever that communism or Fascism or other "un-American" activities constitute a threat to our institutions in this country. Never, I suspect, have the American people been so determined to cling to democracy. Never have they been so grateful for the freedom which we possess as now. Never have the foreign doctrines, the Fascist and communist ideas, patterns of behavior, and mechanics of government, been in such low esteem in the United States as now.

#### II

**F**OR TWO REASONS, I prefer to see the Dies committee continued.

The first reason is that propaganda activity does go on in this country. Little groups of communists and little groups of Nazis and

Fascists, inspired often by paid foreign agents, are active in disseminating their ideas, in trying to penetrate into innocent organizations which may be used as unwitting mouthpieces, and occasionally in even more sinister obstructionist tactics. Sometimes the activities are harmful although not unlawful, and these should be dealt with not by prosecution, which would become mere persecution, but through exposure.

Such information is most appropriately obtained and disseminated through a Congressional investigating committee. Occasionally out of such investigations comes information leading to direct law violations which may be turned over to law-enforcement officers. And such an investigation serves the useful purpose of keeping the public advised of sinister, underground activities which, even if not illegal, deserve to be watched. Exposure is fatal to most of this activity, for it can operate only by deception, when its real purpose and inspiration are concealed.

The second reason which leads me to favor continuation of the Dies committee is somewhat more vague, but I think it is important.

In this country we have been nursed periodically on "red" scares. We remember the Palmer raids. Politicians have found "red baiting" an easy means of winning applause. Honest American attempts to improve the functioning of our own system of government have time and again been denounced as radical and un-American.

Chairman Dies himself has been talking about the communist influences in the Roosevelt Administration. A showdown came inside the Dies committee just before the Congress met, and some members of the committee demanded to see the list of communists which the committee investigators were hinting about. Not a single name could be produced!