**Honors Practical Law**

**“FDR’s Nomination of Senator Hugo Black”**

**Mr. Fernandez**

Answer the following questions as you read the attached article:

1. Why might FDR have been frustrated with the Supreme Court prior to the decision in *West Coast Hotel* (1937)?
2. When historians say that FDR attempted to “pack the Supreme Court,” to what historical situation are they referring?
3. For what reasons did President Franklin D. Roosevelt decide to nominate Senator Hugo Black for a vacancy in the Supreme Court?
4. Describe the response of the U.S. Senate to this nomination.
5. How would you describe Senator Hugo Black’s reputation in the Senate?
6. Was Hugo Black a racist? Explain.
7. Upon what grounds did Senator Warren Austin object to the nomination? Explain.
8. What does the phrase “shall hold office during good behavior” (Article III) imply about Supreme Court justices?
9. What proof, discovered by journalist Ray Sprigle, confirmed Black’s membership in the KKK?
10. Why did FDR not address the situation immediately with the American public?
11. Was membership in the KKK grounds for impeachment? Explain.
12. In what ways was Black’s membership in the KKK marginalized politically?
13. Describe how Hugo Black decided to address this awful situation. Do you agree with his tactic?
14. How did John L. Lewis describe the speech? Why might he have approved?
15. In the end, did Black’s speech “do the trick,” as FDR said it would?

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**“Justice Hugo Black’s Nomination and Confirmation”**

**Mr. Fernandez**

**The following article written by Virginia Van Der Veer for *American Heritage* (Vol. 19, Issue 3) magazine, published in April 1968.**

Had it not been for politics, the paths of Franklin Delano Roosevelt and Hugo La Fayette Black might never have crossed. Roosevelt had been born to wealth and to a patrician, manorial legacy in the Hudson River valley. Black came from yeoman stock in rural Alabama, and his birthrights were little more than a keen mind and prodigious energy. But the Democratic party and common political convictions brought these two together, one as the President and the other as a United States senator from Alabama. Now, on the sultry evening of August 11, 1937, they sat facing each other in a cluttered upstairs study in the White House.

After a few pleasantries, Roosevelt came quickly to the point. He would like to place the name of Hugo Black in nomination for a seat on the United States Supreme Court. Holding out an official paper, the President said: “Hugo, I’d like to write your name here.” The Senator, forewarned, had talked it over with his wife, who urged him to accept. Receiving the answer he expected, Roosevelt crisply inscribed the words “Hugo L. Black, of Alabama” and sealed the nomination in an envelope.

Secretly, without consulting his usual advisers, Franklin Roosevelt had chosen his first nominee to the Supreme Court. The President evidently felt no need to inquire into the political past of a senator who had so staunchly supported most of his programs. Later, a chagrined Roosevelt would tell his friends that one normally did not ask a man “questions of that sort.”

If Roosevelt had sought the advice of that astute Democratic politician, Postmaster General James A. Parley, he might have been reminded that Hugo Black had entered the Senate with the backing of the Alabama Ku Klux Klan. If the President had talked it over with Charles Michelson, the Democratic ghost writer and former newspaperman, he might have learned of rumors that Black had actually been a member of the Klan.

But neither these men nor any of the Senate leaders knew of Roosevelt’s intention. Attorney General Homer S. Cummings was the President’s only confidant, and he had made no inquiry into Senator Black’s background either. To investigate a man twice elected to the United States Senate, Cummings insisted afterward, would have been an “impertinence.”

The President came to his decision in the closing days of a summer session of a Congress whose political debates had been as torrid as the temperature along the banks of the Potomac. The battle over Roosevelt’s plan for enlarging (his enemies said “packing”) the Supreme Court had ended in defeat for the President on July 22, after one hundred and sixty-eight days of bitter controversy. (See “F.D.R. vs. the Supreme Court” in the April 1958, AMERICAN HERITAGE.)

For Roosevelt, the loss had been costly—in prestige, in his working relationship with the Senate, and in the death of his loyal majority leader, Senator Joseph T. Robinson of Arkansas. Worn out by the strain of trying to hold fractious Democratic ranks together, Robinson, the peacemaker, died at the height of the epic struggle.

Although the game was lost, the President still had one card to play, and he wanted to make it a trump. Justice Willis Van Devanter’s decision in May to step down from active service on the court gave Roosevelt an opportunity to name a justice. This first vacancy had long been promised to the conservative Robinson; but with Robinson gone, all options were open to the President.

In choosing Hugo Black, Roosevelt was not thinking of his nominee’s political origins or looking for the country’s most brilliant legal mind. He wanted to put an ardent New Dealer on the bench of a Supreme Court that had stubbornly bucked the legislative program of his first administration. But would the recalcitrant Senate confirm such a choice? The surest way to guarantee confirmation would be to name one of its own members, since the Senate traditionally confirmed its own.

A list of sixty potential nominees, compiled by the Department of Justice, was gradually whittled down. It would be politically tactful to select a man from an area not represented on the court. The Deep South, a Democratic fief astir with political revolt, was such a region.

Furthermore, southern senators had been leaders in fighting not only the court plan but also the administration’s wages-and-hours bill, sponsored in the Senate by Hugo Black. They feared that a national scale of minimum wages and maximum hours would stunt the industrial growth of the South by putting an end to the old southern lures of low wages and a tractable labor force. Voicing this philosophy, Ellison D. “Cotton Ed” Smith of South Carolina told the Senate that conditions in the South were so kindly that one could live “comfortably and reasonably” for fifty cents a day.

Provoked to a rare display of emotion, Senator Black defended his bill against his fellow southerners. “I subscribe,” he shouted in the Senate, “to the gospel that a man who is born in Alabama and who can do as much work as a man born in any state in New England is entitled to the same pay if he does the same work.” The Black-Connery bill passed the Senate on August 1, only to become stalled in the House. There were few in Washington optimistic enough to predict that it would finally become the Fair Labor Standards Act of 1938.

Newspapermen familiar with Roosevelt’s moods described the President in those August dog days as “sore and vengeful.” He wanted to surprise the Senate and, in particular, to give its rebellious southerners a bitter pill that they would have to swallow. If his nominee pleased the administration’s powerful new allies in organized labor, so much the better. Few senators were held in higher esteem by union chieftains than Hugo Black, who had stubbornly pressed since 1932 for labor’s dream of a thirty-hour work week.

Obviously, the President’s sympathies were also aroused. Black’s loyalty to Roosevelt in the court fight and his supposed heresy to the South in the wage-hour controversy had encouraged forces in Alabama that were opposed to his re-election in 1938. Many Alabama newspapers openly demanded Black’s defeat. Lumber and industrial interests, fighting the pending labor law, stirred up Alabama farmers with the argument that higher pay in the mills would mean higher prices in the stores.

Weighing all these factors, discarding one by one the other possible nominees, Roosevelt made his choice. “And they’ll have to take him, too,” he told Parley gleefully, after the news broke.

At noon on August 12, when the White House courier arrived at the door of the Senate, the burden of the President’s message was known only to Senator and Mrs. Black and Attorney General Cummings. At the White House, Roosevelt, impatient as a small boy with a trick to play, waited for his surprise to be revealed. To see the impact for himself, he shared the news with Press Secretary Stephen T. Early. “Jesus Christ!” exclaimed Early, and the President grinned.

As the White House messenger approached the Senate podium, Black, in a white linen’suit, sat quietly at his desk, his face impassive. An observant reporter noted that the Senator held a sheaf of papers, which he was methodically shredding into small bits. From the gallery, Mrs. Black, in a dark suit and broad-brimmed hat, peered anxiously down.

Senator Henry F. Ashurst, chairman of the Judiciary Committee, asked unanimous consent to consider immediately a message from the President. Hiram W. Johnson, the progressive Republican from California who had supported Roosevelt in 1932 and 1936 but had fought against the court plan, asked the nature of the message. Told that it was a Supreme Court nomination, Johnson promptly objected to immediate consideration.

Nevertheless, at the direction of Vice President John Nance Garner, the Senate clerk opened the message and began to read: “I nominate Hugo L. Black.…” After a moment of stunned silence, Ashurst rose to plead again for immediate action in accordance with the “immemorial usage” of the Senate. But Johnson was adamant. For the first time since 1888, the executive appointment of a senator or former senator was referred to a committee for investigation.

A few of Black’s colleagues gathered around to congratulate the nominee, but many others allowed their displeasure to show on their faces. The reporter for the New York Times said the nomination of Black “dropped like salt into political wounds already rubbed raw.…” Columnist Dorothy Thompson called the choice “cheap, ” and she added: “We have finally carried the spoils system to the Supreme bench, openly and cynically.” But William Alien White wrote in the Emporia, Kansas, Gazette that the President had hit a “veritable three-bagger” by naming a liberal, a southerner, and a man whom the Senate would have to confirm.

Back ate lunch alone that day in the Senate restaurant. Even after ten years, he had few friends in the upper chamber. Washington journalists described him as a “loner” and said he suffered from an “unpopularity complex.” An ardent partisan in floor debate and a zealous investigator in committee hearings, Black had neither time nor temperament for Senate camaraderie. Committee witnesses and senators alike had felt his withering sarcasm or the quick lash of his tongue. Once, after listening to a three-hour speech by Michigan’s Arthur H. Vandenberg, Black arose, complimented Vandenberg, and gravely announced he had only one question to ask: “Is the Senator for or against the bill?”

As a Senate investigator, Black was often compared to the late Thomas J. Walsh of Montana, who had exposed the Elk Hills and Teapot Dome scandals of the Harding administration. Black set out to reveal graft and special privileges—especially during Republican administrations—in government subsidies to airlines and merchant shipping, and later to expose the guises under which lobbyists tried to influence Congress.

In this role, he won nationwide attention and set in motion several significant reforms, but his zeal provoked many an unflattering description. One newspaper spoke of his “rhadamanthine eyes,” a magazine called him a “useful Torquemada,” a fellow senator said he used the methods of the Ogpu, the Soviet secret service, and regulars in the Senate press gallery nicknamed him “the ferret.” As a cross-examiner, Black was so rigorous that a shipping-company president called to the witness stand brought along his physician to check his pulse.

In making Black his nominee, then, Roosevelt was rewarding a Senate career of zestful controversy. But there were those in the Senate who remembered its origin. Before the committee hearings began, gossip circulated in the marble corridors about events that had taken place in Alabama more than a decade earlier.

If Hugo Black thought of the Klan at all in 1937, it was as a chapter in his life that was long since closed. In the early 1920’s, as a young, politically ambitious lawyer, he liked to describe himself as a “jiner.” He taught the largest adult Sunday-school class in Birmingham, and was a Mason, a Knight of Pythias, and an Odd Fellow. On September 11, 1923, in an act of political expediency, Hugo Black took the oath as one of 10,000 members of Robert E. Lee Klan No. 1.

Wartime patriotism had provided an excuse for a rebirth of the old Ku Klux Klan, and, feeding on a postwar surge of bigotry and nativism, it grew powerful. In Alabama in the mid-1920’s its membership was estimated at between 85,000 and 95,000. There, as in many other states, the Klan ruled politics. When Oscar W. Underwood, the veteran Alabama senator, dared to oppose the order, Klan leaders vowed to retire him from political life. Birmingham Klansmen, initiating some 7,000 new Knights in an outdoor ceremony in 1924, cheered as a coffin containing an effigy of Underwood was “laid to rest” through a trap door in the speakers’ platform. Foreseeing defeat, Underwood chose not to seek reelection.

Two years later, supported by the Klan and the prohibitionists, Hugo Black, forty years of age and relatively unknown, swept past four prominent Alabama politicians to win the Senate nomination in the Democratic primary, thus virtually assuring his election. For more than a year he had campaigned in every county of the state, wearing out two cars on the dusty rural roads.

To forestall criticism of a candidate who was a Klan member, Black had prudently submitted his resignation before he began to campaign. But after his primary victory, he openly acknowledged that Klan support—more than his own energy—had won him the nomination. Speaking to a state-wide Klan rally, he thanked Klansmen and told them he was aware that, without their help, he would not be a United States senator.

Some newspapers drew the same conclusion. The New York Times attributed to Klan support the nominations of Black to the Senate and Bibb Graves to the Alabama governorship. The Montgomery Advertiser called Black “the darling of the Klan,” and the Birmingham News quoted the state’s Klan leader, rejoicing at the election returns: “We licked ‘em clean.”

But the Klan died out as an effective political force, and by 1930 Senator Black had openly broken his ties with it. He was re-elected in 1932, with remnants of the order opposing him. By 1937 the genesis of Black’s Senate career, once a familiar political yarn in Alabama, was half-forgotten.

The Supreme Court nomination resurrected it. Despite the rumors, however, the nomination of Hugo Black moved smoothly through a subcommittee, the only dissenter being Republican Senator Warren R. Austin of Vermont, who raised a constitutional point. The authors of the Constitution, Austin argued, had forbidden a senator or representative to take a civil office that had been created or for which the salary had been increased during his term in Congress. Hugo Black was ineligible, this group contended, because he was a senator when an act was passed entitling Supreme Court justices to full pay after their retirement. Moreover, Justice Van Devanter had not resigned but only retired from active service; Austin and others insisted that Black would be filling a newly created post as the “tenth justice.” Supporters of the administration replied pointedly that no such objections had been raised when the Senate had previously urged Roosevelt to name Senator Robinson to the court.

On Monday, August 16, the full Judiciary Committee held a stormy hearing, closed to the public and the press. Reporters wrote afterward that tempers “flared to a white heat” and two members had to be restrained from a fist fight.

The Klan issue had been broached by the National Association for the Advancement of Colored People and by the Public Affairs Committee of the Socialist party in telegrams asking for an investigation of Black’s Klan relationship. Norman Thomas, chairman of the Socialist group, wanted the Senate also to explore Black’s silence on the famous Scottsboro case and his opposition to antilynching bills. But such calls were quietly ignored. Without raising the Klan issue and despite Republican cries of “steamroller,” the committee voted 13 to 4 to report the nomination favorably to the Senate.

Anticipating a floor fight, spectators packed the Senate galleries the next day. It was Senator Royal S. Copeland, a New Deal opponent and a candidate for mayor of New York City, who brought the rumors into the open. He read a 1926 report from the New York Times to the effect that Black, to win Alabama votes in the closing days of his first Senate race, had attacked the presidential aspirations of Governor Alfred E. Smith, a Catholic. Black’s supporters were quick to reply that Democrat Copeland was now attacking Black to gain the votes of New York’s Negroes and Catholics for his own mayoral candidacy. Senator Edward R. Burke, Democrat of Nebraska, volunteered to produce in Washington two witnesses who, he said, had been present when Black was initiated into the Klan, but no one moved to take up his offer. Burke and Copeland urged the Senate to ask Black himself for a statement, but without success. In Atlanta, reporters sought out the Imperial Wizard of the Klan, Hiram W. Evans, who said that so far as he knew Black was neither a Klansman nor a sympathizer. “I’m hoeing my own row,” he said.

While Black awaited the outcome in an office near the Senate chamber, a group of his colleagues reportedly called upon him and actually put the question. Black, by one account, replied that he was not presently a Klansman but added that if anyone was concerned lest he might have been a Klansman in the past, that man should vote against confirmation.

After this conversation, William E. Borah, Republican of Idaho, the old “irreconcilable,” made the only statement in Black’s behalf on the Klan question. “There has never been at any time one iota of evidence that Senator Black was a member of the Klan,” Borah told his colleagues. He said that Black, in private discussion before the nomination, had stated that he was not a member of the Klan. No one, Borah said, had suggested any source from which evidence might be obtained. For himself, the Idaho senator said he would vote against any man whom he knew to be a member of a secret organization of the nature of the Klan. These remarks would come back to plague Borah.

After six hours of debate, administration lines held firm, and Senate traditions carried the day. A motion to send the nomination back to committee was defeated, and the Senate voted 63 to 16 to confirm it. Recording the outcome in his diary, Secretary of the Interior Harold Ickes summed it all up: “So Hugo Black becomes a member of the Supreme Court of the United States, while the economic royalists fume and squirm, and the President rolls his tongue around in his cheek.”

Pleased with his ploy, Roosevelt invited his nominee to lunch two days after the Senate vote and presented him with the commission of an associate justice. Leaving the White House with the cardboard cylinder under his arm, Black told reporters: “I suppose I said ‘thank you.’” Asked when he would take the Supreme Court oath, he replied that he had no idea.

By custom the Chief Justice administered the general oath, the one taken by all public servants, to a new justice in the robing room on the day he appeared to assume his duties. A second “judicial oath,” applying particularly to the court, was usually administered by the court clerk in the courtroom before a new justice ascended the bench.

Precedent (and his own statement) to the contrary, the new associate justice took both oaths late that same afternoon. The simple ceremony took place in the office of the secretary of the Senate, Edwin A. Halsey. The only person present besides Halsey and Black was Charles F. Pace, financial clerk of the Senate, who notarized a printed form from the Department of Justice containing both oaths. In the closing hours of a hectic session of Congress, the oath-taking ceremony was only briefly reported. Those who noted it at all probably assumed that Black had taken only the general oath.

Thus, on August 19, seven days after his nomination was sent to the Senate, Hugo Black became a fullfledged member of the United States Supreme Court, entitled by the Constitution to hold office “during good behavior” for his lifetime. He ordered his judicial robes, received the initial installment of his $20,000 annual salary, and left for his first trip to Europe. The court was in recess until October.

Early opinions of the new justice varied with the political leanings of those who expressed them. Herbert Hoover said the court was “one-ninth packed.” Raymond Moley, the onetime “brain truster” who had broken with Roosevelt, said he couldn’t remember a worse appointment. But labor leaders were enthusiastic, and a liberal magazine called it the most courageous nomination since Woodrow Wilson named Justice Louis Brandeis, the court’s first Jew.

While Justice and Mrs. Black were abroad, an enterprising reporter, Ray Sprigle of the Pittsburgh Post-Gazette, assisted by a large expense account and private detectives, was in Alabama searching into Black’s political past. Sprigle’s inquiries led him to the former Grand Dragon of the Alabama Ku Klux Klan, James Esdale, recently disbarred from the practice of law in Alabama and by this time also estranged from the Klan. As evidence that Black had actually been a member, Esdale showed Sprigle the note of resignation. Handwritten and dated July 9, 1925, it read: “Dear Sir Klansman, Beg to tender you herewith my resignation as a member of the Knights of the Ku Klux Klan, effective from this date on. Yours I.T.S.U.B. Hugo L. Black.” In Klan parlance, the initials stood for “In the Sacred, Unfailing Bond.”

Sprigle also wangled from Esdale’s files a stenographic transcript of the proceedings of the 1926 Klorero at which Democratic nominees Black and Graves had spoken and had been presented with Klan “grand passports.” The transcript contained the full text of Black’s “thank you” speech to the Alabama Klan. “I realize,” the future Supreme Court justice was quoted as saying, “that I was elected by men who believe in the principles that I have sought to advocate and which are the principles of this organization.”

In a series of six syndicated articles which began on September 13, 1937, Sprigle dramatically displayed his evidence for the nation to read. Newspapers all over the country spread across their front pages Sprigle’s sensational accusation that the new justice “is a member of the hooded brotherhood that for ten long, blood-drenched years ruled the Southland with lash and noose and torch.” To justify this bold statement, Sprigle contended that the note of resignation was a deliberate ruse, designed to protect the Klan’s political candidate from criticism by Catholic and Jewish voters and other anti-Klan forces. Furthermore, Sprigle claimed that by accepting the “grand passport,” Black had, in effect, accepted life membership in the Klan.

“That the White House was stunned by the exposé,” wrote one Washington observer, “is putting it mildly. From the President down, the inner circle was astounded and frightened.” Roosevelt was described as angry and embarrassed, but when a Cabinet member urged the President to clear himself by saying that he would not have named Black if he had known of the Klan membership, Roosevelt refused. He would play for time, he said, and await public reaction.

The President confided to Ickes that it had never occurred to him to ask Black about any such connection. In his diary Ickes recorded that F. D. R., an open foe of the Klan since the Democratic convention of 1924, was now in the position of having either “deliberately or carelessly” named a Klan member to the Supreme Court. “There is no doubt that this incident is very bad for the President,” Ickes wrote. “There has been nothing like it.”

With Senator Burton K. Wheeler, Democrat of Montana, demanding a presidential investigation, Roosevelt reviewed his plight with Ickes and Borah. They agreed that Klan membership was not grounds for impeachment and that the President had no more right to investigate a member of the Supreme Court than to investigate a member of the Senate. Roosevelt suggested that Black make a statement after his return from Europe; if he cleared himself in the mind of the public, he should remain on the court.

On September 14, with interest in the Sprigle series running high, Roosevelt faced the press. The President denied that he had known of Black’s membership in the Klan before nominating him. His brief No was so emphatic that one reporter described it as a categorical denial and another as a “terse negative.”

Belatedly, reporters found that the two witnesses whom Senator Burke had offered to produce were both special assistants to Attorney General Cummings himself. One, Black’s former law partner, William E. Fort, refused to comment. The other, Walter S. Brower, denied that he himself was a Klansman.

Vacationing senators were tracked down and asked whether they would have voted for Black if they had known of his former membership. Some said they had been “misled”; others passed it off as a “tempest in a teapot.” Borah, with difficulty, attempted to clarify his original statement, declaring he had not meant to tell the Senate that Black had never been a Klansman, but simply that he was not a member now.

Hundreds of other Americans joined the furor. William Alien White now said Roosevelt had “dishonored” the high court, but Senator George W. Norris continued to insist that it was a “wonderfully good appointment.” Ickes, confronted by the press, produced an embarrassed administration’s most adroit counterthrust: “I really think the greatest expert on the Ku Klux Klan is [President] Hoover. I refer you to him. He accepted their support. Nobody criticized him.” Critics of Roosevelt and the New Deal—cartoonists in particular—had a field day. The President was criticized for not having sought advice before the nomination, and Black was castigated for not revealing his Klan connection to Roosevelt or the Senate.

The new justice, Newsweek declared, must accept responsibility for his silence during the Senate debate “and for the private advice confidentially but freely passed around Senate cloakrooms that he had no actual Klan ties, however much he owed the Klan for his first nomination and election to the Senate.” But the Nation , admitting that Black had been a political opportunist when he joined the Klan, drew a distinction between opportunism and bigotry. Black, it said, had had to fight his way up from the “ignorance and bigotry of the Southern masses” to national prominence with only rudimentary schooling and without benefit of the tradition either of western populism or of the New England Brahmin. The exposé, the Nation concluded, was an effort by “powerful oligarchical minorities,” led by William Randolph Hearst, to destroy Black’s usefulness on the bench and force Roosevelt to abandon his fight to liberalize the judiciary. The Christian Century said those who raised the furor “do not fear Black the Klansman as much as they hate Black the Inquisitor.”

Meanwhile, still in Europe, the central figure of the cause célèbre tried in vain to escape pursuing reporters. Tracked down in Paris, Justice and Mrs. Black moved to London, but found their hotel surrounded by newspapermen. London papers were filled with the Sprigle series, and thereby thousands of Britishers received their first knowledge of the Ku Klux Klan. There were many notable visitors in London that season after the coronation of King George VI, but the most attention was centered upon the Blacks.

Toughened by years of experience in courtrooms, political campaigns, and Senate debates, Black was accustomed to the glare of the limelight—to pressure, harsh criticism, and a constant entourage of reporters. But his sensitive wife, Josephine, found it a searing experience. When the Blacks were unexpectedly accosted by a newspaperman in a dim hotel corridor, she was badly frightened.

On September 20 Justice and Mrs. Black eluded reporters long enough to board the mail steamer City of Norfolk, bound for that out-of-the-way Virginia port. Their names were not on the passenger list, for they had originally planned to return to New York aboard the S. S. Manhattan, on which three United States senators and another Supreme Court justice, James C. McReynolds, would have been fellow passengers.

As the City of Norfolk made its way west, the Gallup Poll reported that fifty-nine per cent of the Americans whom it interviewed thought the Justice should resign if it were proved that he had been a Klan member. Roosevelt told another press conference that he knew only what he had read in the newspapers and that there was nothing to say until Justice Black returned. When the President left for an extended tour of western states, his critics charged that he was trying to avoid Black.

The reporters at the Norfolk pier found the Justice outwardly cheerful and unperturbed. Among them was Sprigle himself, conspicuous in his customary western-style hat. Justice Black said he appreciated “this great reception,” and added only: “When I have any statement to make that’s definite and final on any subject, I will make it in such a way that I cannot be misquoted, and that the nation can hear me.”

During his European trip, Black had apparently decided to present his reply over the radio, which would assure him of a direct confrontation with the American people, one that could not be slanted by writers for opposition newspapers.

With the help of his brother-in-law and a close friend, Black composed his speech. Three nationwide networks cleared thirty minutes of time on the evening of October i for an unprecedented address by a Supreme Court justice on a controversial topic. The listening audience was estimated to be second only to that which had heard Edward VIII renounce the throne of Great Britain a year earlier. “Black radio parties” were held in many homes, and a few fiery crosses burned on northern hillsides.

Black spoke from the living room of a friend’s modest home in a Washington suburb. Several couples, the women in long evening gowns, sat in an adjoining dining room; about one hundred curious onlookers gathered outside. Seated before a cluster of microphones, Black showed no outward sign of nervousness, although Jim Parley said the Justice was in “as tough a spot as any man in public life has ever faced.” The speech lasted only eleven minutes. In contrast to his vigorous Senate style, Black spoke deliberately, as if measuring each word. Press accounts mentioned his “soft Southern voice” and his “Alabama drawl.”

Black said he was breaking Supreme Court precedent because this was an “extraordinary occasion.” He condemned what he called a “concerted campaign” to revive prejudice and religious bigotry by trying to convince Americans that he was intolerant of minority groups. He affirmed his belief in the religious guarantees of the Bill of Rights and insisted that his Senate record refuted every implication of intolerance.

Then came the admission his audience was waiting for. “I did join the Klan,” said Justice Black. “I never rejoined. What appeared then, or what appears now on the records of that organization, I do not know.” He said he had never considered the “unsolicited card” as a “membership of any kind” in the Klan. “I never used it. I did not even keep it.” Black said he had dropped the Klan before becoming a senator and had had nothing to do with it since. He told his audience he had many friends among Catholics, Jews, and Negroes. Concluding, the Justice declared firmly:”… my discussion of this question is closed.”

On the following day, public opinion began to make itself heard. Newspapers opposed to the President almost universally criticized the speech, calling it “too damned clever” and “the plea of a man caught with the goods.” Even the pro-administration New York Post, commenting on Black’s claim to many Catholic, Jewish, and Negro friends, remarked acidly: “We might reply in kind that one of our best liberal friends was a Klansman but we still don’t think he ought to be on the Supreme Court.”

But the Montgomery, Alabama, Advertiser , once Black’s foe, commented that his critics “do not give a hoot whether he was a Klansman or a Hottentot in 1925. They hate him because he was a Rooseveltian.” John L. Lewis said the speech was “powerful and straightforward,” but Norman Thomas regretted that Black had failed “openly and manfully” to repudiate the Klan. One of Black’s friends told Farley that the Justice had decided that to repudiate the Klan would be “throwing down” many who had helped him in Alabama.

It was reported that Roosevelt, in Fort Lewis, Washington, 2,440 miles away from the White House, did not hear the speech because his car had no radio. But “the man in the street,” to whom the speech had been aimed, was believed to have been favorably impressed. As the President told Farley: “It was a grand job. It did the trick. You just wait and see.” Late in October, a national poll reported that only forty-four per cent of Americans still thought Black should resign.

Three days after the speech, Black made his first appearance on the Supreme Court. Chief Justice Charles Evans Hughes, whose own nomination had once been opposed by Senator Black, greeted the new member cordially in the robing room. With Hughes sat associate justices whose philosophies and decisions had been scathingly criticized by Senator Black. Before the court were two petitions that Justice Black be barred on the constitutional grounds raised in the Senate.

Perhaps to avoid the possibility of a sensational challenge in the open courtroom, Justice Black did not choose to repeat the judicial oath publicly. Since the new member had been confirmed and had already taken both his oaths, Chief Justice Hughes considered the matter closed and planned merely to take the protests under advisement.

In view of some three hundred spectators who packed the chamber, Justice Hugo La Fayette Black, his face inscrutable, ascended the steps and took his place on the high bench.