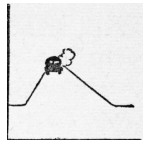

ELTON WATKINS
ATTORNEY AT LAW
FAILING BUILDING
PORTLAND, OREGON

February 2, 1954

508

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

Re: Dougall v. S. P. & S. Ry

My dear Mr. Jackson:

In view of the action of yesterday in the above matter, which closes the case and therefore it is not pending any longer, I am presuming a little on your patience to ask you what was wrong with my petition? I must not have written the kind that other lawyers write who win such certiorari.

To refresh your memory, let me recall that McDougall was helping to repair the mainline track of the railroad, and in the rough handling of the worktrain he was knocked off and injured. True, he was not on the payroll of the railroad but on the payroll of a contractor who was doing the work of the railroad in furtherance of its interstate commerce.

There is not another Circuit in the United States that holds with the Ninth Circuit. I wonder if my fears have any basis of fact, namely, that the Justices in their rush of work must rely upon their clerks to give them a brief of the case and the clerks fail to grasp the significance of the question. I simply cannot believe that under FELA a railroad can delegate its duty to anybody and get away with it as this railroad has done in much of its work and in which six men have been either injured or killed -- two awaiting trial in the District Court and the Appellate Court of the Ninth Circuit having denied relief to the others.

In closing let me thank you very much for your letter of March 11, 1952, which I used in the present case to answer the railroad on its law of the meaning of "certiorari denied," namely, that of Maryland vs. Baltimore Radio Show, 338 U.S. 912.

With regards and good wishes, I am
Sincerely yours,

Elton Watkins

EW cl

Denial and Consolation

There were 7,857 filings in the Supreme Court during the 2010 Term but only "86 cases were argued and 83 were disposed of in 75 signed opinions," according to the *2011 Year-End Report on the Federal Judiciary*. In other words, most parties seeking a hearing failed. Long ago there were fewer denials, but rejection (compounded by the absence of an explanation) was surely no less painful and frustrating then than it is now. *See, e.g.,* the letter on page 3. But for some disappointed filers, there is (or at least was) the possibility of consolation. *See, e.g.,* Justice Robert Jackson's reply below.

March 1, 1954

Mr. Elton Watkins
Failing Building
Portland, Oregon

My dear Mr. Watkins:

I have your letter about your petition in Dougall v. Spokane, P. & S. R. Co., and would not think you need have any worry that you did not present your case in the strongest light possible.

It is never possible to answer the question why certiorari was denied, for the reason that various judges may act on different theories as to denial, such as that the question is largely factual or that the concurring decisions of two courts below should be accepted here on factual questions, or that while there is a question of law it is one on which there is no real conflict between circuits, or it concerns an individual litigation and not a question of public importance requiring the attention of a third court. Sometimes a Justice believes a case presents a good question but that the record is inadequate to present it or presents it in an unfavorable light. And even if the Justices fully reveal their views at conference, I would not be at liberty, of course, to repeat them.

However, I do not think that you need feel, either in this case or the earlier one involving similar facts, that you failed to do all that could be done to protect your clients' interests.

With best wishes, I am

Sincerely yours,