

## Judicial “Inauguration,” Judicial Independence (1946)

*John Q. Barrett\**

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On June 24, 1946, Fred M. Vinson became the 13<sup>th</sup> Chief Justice of the United States. The position had been vacant since Chief Justice Harlan Fiske Stone’s death on April 22. In the interim, the senior Associate Justice, Hugo L. Black, had served as Acting Chief Justice.

On that warm June day in Washington, many people lined up outside the White House.<sup>1</sup> At 10:30 a.m., the gates opened and nearly 4,500 people walked to the south grounds. They found positions behind a roped-off area reserved for Administration officials and Members of Congress. The 85-member United States Navy Band, attired in summer whites, entertained the crowd by playing compositions by Tchaikovsky, Chopin, Saint-Saens and others.

Up on the South Portico of the White House, many more luminaries were present. In addition to the Truman Cabinet, Supreme Court justices and senior Members of Congress, the guests included former Cabinet officers Homer Cummings and Jesse Jones, former White House secretary Stephen Early, and the U.S. Army Chief of Staff, General Dwight D. Eisenhower.

Around 11:00 a.m., a Navy bugler on the Portico brought the crowd to attention. He sounded a flourish, which signaled that President Harry S. Truman had arrived. The Navy Band did not play “Hail to the Chief” as it typically would, however, for the President wanted not to be the center of

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\* Professor of Law, St. John’s University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York ([www.roberthjackson.org](http://www.roberthjackson.org)). An earlier version of this essay was posted to my Jackson Email List on July 3, 2011.

For an archive of selected Jackson List posts, many of which have document images attached, visit [www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju](http://www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju).

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<sup>1</sup> The details that follow are based on two next-day newspaper accounts, Edward T. Folliard, *Vinson Takes Oath as 13<sup>th</sup> Chief Justice*, WASH. POST, June 25, 1946, at 1, 2, and Felix Belair, Jr., *Vinson in Unusual Ceremony Takes Oath as Chief Justice*, N.Y. TIMES, June 25, 1946, at 1, 17.

attention on this occasion. Truman simply stepped forward, looked out on the crowd, smiled broadly and then stepped back.

Representative Sam Rayburn (D.-TX), the Speaker of the U.S. House of Representatives, stepped to the microphone. He said he hoped he would be pardoned for saying that it was "a deep personal pleasure for [him] to participate in the confirmation—finally—of a man who is doing a great job."

Fred Vinson, age 56, who had been serving for the past year as U.S. Secretary of the Treasury, then stepped forward. He was accompanied by his wife and by Chief Justice D. Lawrence Groner of the U.S. Court of Appeals for the District of Columbia. Vinson had served on that court, with Groner as his colleague and friend, from 1937 until 1943.

Chief Justice Groner extended toward Vinson the Bible that he and his wife had received when they married in 1923. Vinson placed his left hand upon it. Groner asked Vinson if he swore to the judicial oath specified in federal law and he, right hand raised, responded, "I do, so help me God." Vinson's throaty voice, amplified, carried across the White House grounds. Groner then read to Vinson the constitutional oath<sup>2</sup> and asked if he would swear to it. Vinson did so. Then the new Chief Justice took the Bible in both hands, raised it and kissed it.

President Truman stepped forward, shook hands with Chief Justice Vinson and spoke briefly:

This is a most auspicious occasion. Only thirteen Presidents have had the honor and the privilege of appointing a Chief Justice of the United States. That duty fell upon me. It was one on which I labored long and faithfully. I finally decided to make the Secretary of the Treasury the Chief Justice of the United States. And the one regret that I had was that I was losing Mr. Vinson from the Cabinet of the President.

We all know that one of the three branches of the Government of the United States is the branch of the Judiciary—the Judicial Branch. The Supreme Court is at the top of the Judicial Branch. All of us have the utmost respect

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<sup>2</sup> See U.S. Const., Art. VI, sec. 3.

for the courts of the country, and we know that that respect will be enhanced when Mr. Vinson becomes the Chief Justice of the United States actively on the bench.

It is a pleasure to me to have you all here today to witness this ceremony. This is the thirteenth time that this ceremony has been performed. Mr. Vinson is the thirteenth Chief Justice of the United States, and I think that is lucky [and here the crowd started to laugh—it was getting the President's joke about "lucky 13"] for the United States, and lucky for Mr. Vinson. At least, I hope it is.

After a benediction by the Chaplain of the U.S. Senate, the ceremony ended with the Navy Band playing "The Star Spangled Banner." The President and the Chief Justice walked into the White House and received congratulations in the East Room. (Later, they walked to the Treasury Department next door and Chief Justice Vinson swore in his successor as Secretary, John W. Snyder.<sup>3</sup>)

A *New York Times* headline the next day called Vinson's oath-taking an "Unusual Ceremony." *The Washington Post* reported that it was "a drama without precedent in the annal[s] of the high bench." The ceremony contrasted with Harlan Stone's July 3, 1941, private oath-taking in a vacation log cabin in Rocky Mountain Park, Colorado, and with his predecessor Charles Evans Hughes's 1930 oath-taking in the Supreme Court chamber in the U.S. Capitol. For many, the 1946 Vinson ceremony brought to mind President Franklin D. Roosevelt's fourth and final inauguration, held on January 20, 1945, also on the White House South Portico.

Three Supreme Court justices—Hugo Black, Wiley Rutledge and Harold H. Burton—were present for Chief Justice Vinson's oath-taking ceremony. The other five—Stanley Reed, Felix Frankfurter, William O. Douglas, Frank Murphy and Robert H. Jackson—were absent for various reasons, including some being away from Washington.

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<sup>3</sup> See Edward T. Folliard, *Truman Hears Snyder Sworn at Treasury*, WASH. POST, June 25, 1946, at 3.

Many people had positive reactions to the Vinson ceremony. Much of the public seems to have enjoyed the pageantry and been impressed with the stature and image of the new Chief Justice. Among government officials and reporters, many understood that the ceremony was a statement of President Truman's deep friendship with Fred Vinson.

They also saw it as an attempt to mitigate controversy regarding the Supreme Court, and perhaps damage to the reputations of the institution and its members, that Justice Jackson had caused only two weeks earlier.

Jackson, who then was in Nuremberg prosecuting senior Nazi war criminals, had been away from the U.S. and absent from the Court for all of its 1945-1946 term. On June 10, 1946, four days after Truman announced Vinson's appointment, Jackson sent and released publicly a cablegram to the chairmen of the Senate and House Judiciary Committees. In this unprecedented missive, Jackson first praised Vinson and then vigorously defended his (Jackson's) own conduct as a justice. In the process, Jackson aired some Court confidences and disparaged fellow justices.

In his cable, Jackson sought to answer what he regarded as false and outrageous public attacks on him that recently had been generated by other justices and their emissaries, especially during the period when Truman was deciding whom to appoint to the vacant chief justiceship. These reports claimed that Jackson would make a poor chief justice because he had personality-based feuds with colleagues. In fact, Jackson now stated publicly, the Court problem was improper behavior by other justices. Jackson revealed that Justice Black had in one case tried to pressure Justice Murphy to announce a 5-4 decision for a labor union before he had completed writing his opinion, so as to affect ongoing collective bargaining negotiations. Black also had endeavored, Jackson stated, to get the full Court's imprimatur on the rejection of a motion seeking Black's disqualification from a case for possible bias, even though such a motion in fact gets decided only by the justice at issue. And Jackson revealed that Black had, a year earlier while Jackson was still in Washington and early in his Nazi prosecution assignment, threatened Jackson in the justices' private conference with "war" for not signing on to the Court's *per curiam* denial of that disqualification motion. Jackson believed that Black had lived up to his threat over the past six weeks. Now that any Jackson response could not be construed as special pleading for a chief justice appointment, he explained, he was defending himself.

All of that heat and smoke metaphorically filled the Supreme Court, the White House and the Capitol in late June 1946. Many assumed that this was another reason why President Truman decided to stage Chief Justice Vinson's swearing in, and to emphasize publicly the respected stature of the Supreme Court, with pomp and majesty in the open air.

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Others, including some domestic commentators and persons who learned from afar of the irregular Vinson swearing in, saw it as blatantly, inappropriately political.

When word of the event reached Nuremberg, for example, President Truman's appointees there, including Chief of Counsel Jackson and the U.S. Judges on the International Military Tribunal (IMT), former U.S. Attorney General Francis Biddle and Chief Judge of the U.S. Court of Appeals for the Fourth Circuit John J. Parker (who the Senate years earlier had narrowly rejected for appointment to the Supreme Court), were shocked. They found the event undignified and wondered if it reflected a "hick" notion of how to emphasize the importance of Vinson's job. More substantively, they feared that it exhibited Democratic Party glee about "capturing" the chief justiceship. (Stone, although elevated by F.D.R. to chief justice, initially had been appointed an associate justice by President Coolidge and was, in Stone's days of political affiliation and activity including his own service as Attorney General, a Republican.) They also were concerned that the White House ceremony for Vinson reflected a notion that the Supreme Court was now subservient to the Executive.

A day or so after he learned of the Vinson ceremony, Jackson wrote privately from Nuremberg to his friend and mentor of thirty years, Judge Charles B. Sears, retired from the New York State Supreme Court and the New York Court of Appeals, at his home in Eden, New York (near Buffalo). Jackson was responding to Sears's June 9<sup>th</sup> letter, which informed Jackson that the University of Buffalo would be inviting him to receive an honorary degree at the final convocation of its centennial celebration in October.

In his reply, Jackson wrote these further thoughts about his June 10<sup>th</sup> public cable and the June 24<sup>th</sup> Vinson ceremony:

My dear Judge Sears:

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I have greatly appreciated your thought of me in connection with the anniversary of the University of Buffalo and I have a letter from Chancellor [Samuel P.] Capen concerning it.

I am not altogether sure that the University is wise is departing from its policy of no honorary degrees. But I know I can be perfectly candid with you. Since this invitation was extended, I have become a party to what from this distance looks like a tempest. That it would be such and would be the cause of great criticism to me, I fully understood, and knowingly took the risk for motives which I well knew would be misunderstood. Whether it was wise or unwise, and whether my reasons were sufficient, we can talk over some day in the leisure of Eden, I hope. I am certain that if the trend toward making the Court a purely political instrument is not stopped by some drastic thing, we are in for a pretty fundamental change and not unlike that which came over Germany during the early days of the Nazi regime. As I have viewed from a distance the swearing-in of the new Chief Justice at the White House with bands playing and the Democratic leader of the House of Representatives presiding, and political personalities arranging it, the whole thing looks grotesque as a political celebration.

The point of the thing at this time, however, is this: I well know how timid many people are and how they fear to appear to be taking sides when a controversy is raging, and undoubtedly it is better for a University not to get itself in the line of fire. If there is in this situation anything of embarrassment to the University, I would want you to tell me

so, and we will forget the whole thing. I will not misunderstand it.<sup>4</sup>

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Judge Sears communicated to Chancellor Capen this Jackson offer to withdraw quietly from receiving a University of Buffalo honorary degree. Capen soon told Sears to decline the offer. Sears soon wrote back to Jackson that "[t]he University not only insists on carrying out its invitation and your acceptance but reissues + reasserts its satisfaction in having you as its guest and wants you to speak at the final convocation."<sup>5</sup>

On October 4, 1946, three days after the IMT rendered its judgment at Nuremberg and Jackson left for home, he received an honorary degree and was the principal speaker at the University of Buffalo's centennial convocation.

On Monday, October 7, 1946, the Vinson Court took the bench for the first time. As viewed from the audience, left to right, Rutledge, Murphy, Frankfurter, Black, Vinson, Reed, Douglas, Jackson and Burton all were present, back in their building.

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<sup>4</sup> Robert H. Jackson to Honorable Charles B. Sears, June 29, 1946, at 2 (unsigned carbon copy), in Robert H. Jackson Papers, Manuscript Division, Library of Congress, Washington, D.C. ("RHJ LOC"), Box 44, Folder 1.

<sup>5</sup> Charles B. Sears to Robert H. Jackson, Aug. 5, 1946, at 1, in RHJ LOC Box 44, Folder 1.