

Zoom Confirmation of the Attorney General (1940)

*John Q. Barrett**

United States Attorney General Merrick B. Garland recently was appointed by President Biden, with the advice and consent of the U.S. Senate. The Senate took forty-nine days to approve Garland's nomination. That was a relatively long time in comparison to other recent AG appointments.

Here is the Garland appointment timeline:

- On January 6, the Biden transition office announced that the President-elect would be nominating Garland, then a Judge of the U.S. Court of Appeals for the D.C. Circuit, to be the next Attorney General.
- The next day, President-elect Biden publicly announced, at a televised press event in a Delaware, his choice of Judge Garland. The Judge was present. In brief remarks expressing his thanks and describing how he would approach the job if confirmed, Garland quoted from U.S. Attorney General Robert H. Jackson's famous 1940 speech, "The Federal Prosecutor," on the proper, ethical way to exercise prosecutorial power.

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- On January 20, President Biden, very shortly after his inauguration, sent Judge Garland’s nomination to the Senate.
- On February 22, the Senate Judiciary Committee began a public hearing to consider the nomination. Judge Garland testified. In his opening statement, he again invoked Jackson:

I am mindful of the tremendous responsibility that comes with this role. As Attorney General, later Supreme Court Justice, Robert Jackson famously said:

“The prosecutor has more control over life, liberty, and reputation than any other person in America. [The prosecutor's] discretion is tremendous... While [prosecutors] at [their] best are one of the most beneficent forces in our society, when [they] act from malice or other base motives [they are] one of the worst.”

Jackson went on to say:

“The citizen's safety lives in the prosecutor who tempers zeal with human kindness, who seeks truth and not victims, who serves the law and not factional purposes, and who approaches [the] task with humility.”

That was the kind of prosecutor I tried to be during my prior service in the Department of Justice. That is the spirit I tried to bring to my tenure as a federal judge. If confirmed, I promise to do my best to live up to that ideal as Attorney General.

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- On March 1, the Committee voted 15-7 to report Garland's nomination favorably to the full Senate.
- On March 9-10, the full Senate debated Garland's nomination. On March 10, it voted 70-30 to confirm the nomination.
- On March 11, Garland took his oath of office privately at the Department of Justice and became the 86th Attorney General of the United States.

In 1940, things moved faster—there was no Zoom, of course, but the Senate could and did zoom to get new officials appointed to the President's Cabinet. Solicitor General Robert H. Jackson's appointment to become AG was one such appointment. It moved as follows:

- On Thursday, January 4, 1940, President Franklin D. Roosevelt, about to begin the final year of his second term in office, nominated Attorney General Frank Murphy to fill a then-empty seat on the U.S. Supreme Court and Solicitor General Jackson to succeed Murphy as attorney general.
- Two days later, on Saturday, January 6, a five-Member subcommittee of the Senate Judiciary Committee held a hearing on Jackson's nomination. The hearing lasted three minutes. No witness testified. The subcommittee voted 5-0 to report the nomination favorably to the full Committee.
- On Monday, January 15, the Senate Judiciary Committee took up both Jackson's and Murphy's nominations. The Committee voted to approve each.
- On Tuesday, January 16, the Senate confirmed both Murphy and Jackson, each by voice vote.

- On Thursday, January 18, at a ceremony inside the White House, President Roosevelt signed Murphy's commission and Supreme Court Justice Stanley Reed administered the constitutional oath to his new colleague Justice Murphy. Jackson also was duly commissioned and then took his oath, also from Justice Reed. And the President, in a humorous touch, had Murphy and Jackson each sign a certificate that was legally required but is not usually signed at a public ceremony. Each affirmed on his certificate that he had not paid or promised to pay any money or other consideration for his new appointment.

Back at the Justice Department, employees gathered in the Department's Great Hall to greet Attorney General Jackson. As many there knew, Attorney General Murphy had mismanaged the Department during his year in that office. It was a great relief to DOJ employees that Jackson, a well-liked member of Department leadership for the past four years, had moved up from the number two job to take over and clean things up.

Attorney General Jackson, entering from the hallway behind the Great Hall onto its stage, found that his path went through a large, vertical arrangement of flowers in the shape of a horseshoe. One fairly could call it, I think, a good luck garland.

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