



# Supreme Court Oaths History and Traditions

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## INFORMATION SHEET

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The Constitution provides that the President “shall nominate, and by and with the advice and consent of the Senate, shall appoint...judges of the Supreme Court...” After Senate confirmation, the President signs a commission appointing the nominee, who then must take two oaths before executing the duties of the office. These oaths are known as the Constitutional Oath and the Judicial Oath.

### **Administration of the Oaths of Office**

Neither the Constitution nor the Judiciary Act of 1789 specified the manner of administration of the oaths. William Cushing, one of the first five Associate Justices, wrote to the first Chief Justice, John Jay, asking for guidance as to who should administer the oaths. Jay replied, “No particular person being designated by Law, to administer to us the oaths prescribed by the Statute, I thought it best to take them before the Chief Justice of this state [New York].” While Cushing must have eventually taken his oaths as an Associate Justice, no documentation has been located recording who administered them. Other early members of the Court took their oaths before various government officials. For example, James Wilson took his in 1789 before Samuel Powell, the Mayor of Philadelphia.

The early Justices were required to sit on regional circuit courts in addition to their duties on the Supreme Court. If a Justice had not taken the oaths of office locally upon receipt of his commission, he would do so on arrival at the circuit court. The presiding judge or clerk of the court would administer the oaths and endorse the back of the Justice’s commission, testifying that the oaths had been taken as prescribed by law. When the new Justice first sat with the Supreme Court, he would present his commission, which would be read aloud in open court and recorded in the Court’s Minutes. If the Justice had not yet taken the oaths, they would be administered.

### **Two Oath Ceremonies Evolve**

In the latter half of the nineteenth century, as Supreme Court Terms grew longer and circuit court duties diminished, new appointees were more likely to begin their work with the Supreme Court in Washington, D.C. Two distinct oath ceremonies developed. In the first, the Chief Justice or the senior Associate Justice administered the Constitutional Oath during a private ceremony, usually held in the Justices’ Consultation Room in the U.S. Capitol. In the second, the Clerk read the commission in open court and administered the Judicial Oath before the new Justice took his seat on the Bench.

For the most part, this process was followed until 1940 when President Franklin D. Roosevelt invited Frank Murphy to take his Constitutional Oath at the White House. On January 18th, Murphy’s Constitutional Oath was administered in the Oval Office by Justice Stanley F. Reed as the President looked on. A newspaper covering the event stated this occurrence was “without precedent.” A little more than two weeks later, on February 5, 1940, the Clerk of the Supreme Court administered the Judicial Oath to Murphy in the Courtroom and the new Justice took his seat.

By the 1950s, the practice of administering the oaths at the Supreme Court Building resumed. If the new Justice had not previously taken the oaths, the Chief Justice or senior Associate Justice

administered the Constitutional Oath privately in the Justices' Conference Room after which the Justices proceeded to the Courtroom. Upon entering, the new Justice sat near the Clerk of the Court while the Clerk read the commission aloud. Next, the Clerk administered the Judicial Oath and the new Justice took the Bench. If the oaths had already been taken, the new Justice sat at the Bench upon entering and the Chief Justice simply announced the change in membership.

### **The Investiture Ceremony**

On June 23, 1969, the Court closed its last scheduled sitting with a formal Courtroom ceremony in which retiring Chief Justice Earl Warren administered a combined oath to incoming Chief Justice Warren E. Burger. Under Chief Justice Burger, the Court began to hold special sittings to receive the commissions of newly appointed Justices. The first ceremony of this kind was held for Justice Harry A. Blackmun on June 9, 1970. During this special ceremony, referred to as the investiture, the Chief Justice generally administers the Constitutional Oath privately to the new Justice in the Justices' Conference Room, the commission is presented and read aloud in the Courtroom and the Chief Justice administers the Judicial Oath in the Courtroom. Burger also started a tradition of having the new Justice sit in the historic John Marshall Bench Chair at the beginning of the ceremony.

### **More Recent Changes**

In 1986, President Ronald Reagan revived the practice of holding a Constitutional Oath ceremony at the White House when he hosted a ceremony for Chief Justice-designate William H. Rehnquist and Justice-designate Antonin Scalia. Retiring Chief Justice Warren E. Burger administered the Constitutional Oaths to both after which Rehnquist said, "At the conclusion of the second part of these proceedings in our Court this afternoon, I will become the sixteenth Chief Justice of the United States." Later that day in a special sitting in the Courtroom, Chief Justice Burger administered the Judicial Oath to Rehnquist. Chief Justice Rehnquist in turn administered the Judicial Oath to Scalia, making Scalia the only Justice to take oaths from two different Chief Justices on the same day.

Subsequently, some oaths have been taken at the White House, or other locations as circumstances may dictate. For example, Stephen G. Breyer, confirmed during the summer of 1994, was vacationing near Chief Justice Rehnquist. Rather than wait to take the oaths, he drove to Rehnquist's location in Vermont where the Chief Justice administered them. When all had returned to Washington, D.C., Breyer retook the Constitutional Oath at a White House ceremony and an investiture ceremony was also held at the Supreme Court on September 30, 1994.

In 2009, the Supreme Court broadcast an oath taking ceremony from the Supreme Court Building for the first time. After Chief Justice John G. Roberts, Jr., privately administered the Constitutional Oath to Justice Sonia Sotomayor in the Justices' Conference Room, her Judicial Oath ceremony was broadcast live from the East Conference Room. A year later, Justice Elena Kagan took the oaths in a similar sequence at the Court, again broadcast live.