



# Supreme Court Oath Taking Procedures

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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 by majority vote, the President issues a commission to the nominee who is then required to take two oaths of office before executing the duties of the appointed office. These oaths are known as the Constitutional Oath and the Judicial Oath (see *Text of the Oaths of Office Information Sheet*).

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

Neither the Constitution nor the Judiciary Act of 1789 specified how the oaths should be administered. 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].” (Interestingly, while it is assumed Cushing eventually took his oath as an Associate Justice, no documentation has been located to show who administered it.) Other early members of the Court took their oaths before various government officials, including James Wilson who took his in 1789 before Samuel Powell, the Mayor of Philadelphia.

Once the federal circuit courts were created under the Judiciary Act of 1789, it became customary for the Justices to take their oaths when they arrived to perform their circuit court duties, if they had not already done so upon receipt of their commissions. The presiding judge or the clerk of the court would administer the oaths. It was customary for the person who administered the oaths to endorse the back of the Justice’s commission testifying that the oaths had been properly administered. When the new Justice sat with the Supreme Court for the first time, he would present his commission to the Clerk of the Court who would read it aloud in open court and record it in the Court’s Minutes.

### **Two Oath Ceremonies Evolve**

In the latter half of the nineteenth century, as Supreme Court Terms became longer and circuit court duties decreased, new appointees were more likely to come to Washington to join the Supreme Court rather than go out on circuit. As a result, 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. The second occurred in open court where the Clerk of the Court read the commission, administered the Judicial Oath, and the new Justice was seated.

For the most part, this process was followed until the 1940 when President Franklin D. Roosevelt invited Frank Murphy to take his Constitutional Oath at the White House. Subsequently, every President who has nominated a Justice has been present at an oath ceremony for at least one of his appointees. In addition, since 1986, each President who has appointed a Justice has hosted an oath ceremony at the White House. On several occasions, these ceremonies have been symbolic because the Justices had already taken the oaths at an earlier time in order to begin their duties.