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John Q. Barrett

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ATTRIBUTION TIME: CAL TINNEY'S 1937 QUIP, "A SWITCH IN TIME'LL SAVE NINE"

JOHN Q. BARRETT*

Abstract

In the history of the United States Supreme Court, 1937 was a huge year—perhaps the Court's most important year ever.

Before 1933, the Supreme Court sometimes held that progressive policies enacted by political branches of government were unconstitutional. Such decisions became much more prevalent during President Franklin D. Roosevelt's first term, from 1933 through 1936. In those years, the Court struck down, often by narrow margins, both federal "New Deal" laws and state law counterparts that sought to combat the devastation of the Great Depression.

Then, in early 1937, President Roosevelt proposed to "pack"—to enlarge—the Court, so that it would become supportive of New Deal laws. Within weeks, the Supreme Court began to change course, announcing broader constitutional interpretations of federal and state government legislative powers.

The Court's switch took the air out of the Court-packing balloon. This change became known as "the switch in time that saved nine." That line first appeared in 1937. It was repeated by many, especially in Washington. It has been quoted ever since. Just who coined it has been debated but never established.

Until now.

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* Professor of Law, St. John's University, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York. I thank William E. Leuchtenburg for great scholarship and writing, advice, friendship, and inspiration; Helen J. Knowles for posting the inquiry that prompted me to research this topic and for helpful discussion; Matthew J. Franck for helpful discussion and documents; both Helen Knowles and Matt Franck for keeping quiet about Cal Tinney for years, until I published this article; Matt, Helen, Jeff Shesol, and Brad Snyder for very helpful comments on earlier drafts of this article; Michael D. Manzo, Max D. Bartell, and Danielle M. Stefanucci for excellent research assistance; and the editors of the *Oklahoma Law Review* for their great work.

Introduction

Everyone who studies the United States Supreme Court knows that 1937 was a momentous year. It marked a dramatic change in the Supreme Court's course—until 1937, the Court was an active check on progressive legislation, but then it began to step out of the way. Almost immediately, the public, including legal scholars and historians, began to study, teach, and debate what happened at the Court in 1937 when those events were fresh, and those discussions have continued ever since.¹ Because that year brought such major changes in how the Supreme Court interprets the U.S. Constitution, we likely will always be writing and talking about 1937.

In the decades leading up to that pivotal year, at least five justices viewed themselves as charged with enforcing constitutional limits on the powers of Congress and state legislatures. This was especially true from 1933 through 1936—President Franklin D. Roosevelt's first term in office and the four “New Deal” years immediately preceding 1937. Those years marked a period of the Court striking down, often narrowly, both federal New Deal laws and state law counterparts that sought to combat Depression devastation.

Then, in February 1937, President Roosevelt proposed to pack the Supreme Court. He sought legislation that would add new seats to the problematic nine-justice Court. He then would have added New Deal-minded justices, transforming the old Court into a new one that would uphold progressive federal and state laws.

Within weeks, and with no change in Court membership, the Court changed course. In a series of decisions, it announced much broader constitutional interpretations of federal and state government legislative powers.

That Court switch took the air out of the Court-packing balloon. The Court's change was—and here is the quip that everyone learns in law school, if not earlier—“the switch in time” that “saved nine.”

1. See, e.g., *AHR Forum: The Debate over the Constitutional Revolution of 1937*, 110 AM. HIST. REV. 1046 (2005) (publishing articles by Alan Brinkley, Laura Kalman, William E. Leuchtenburg, and G. Edward White); WILLIAM E. LEUCHTENBURG, *THE SUPREME COURT REBORN: THE CONSTITUTIONAL REVOLUTION IN THE AGE OF ROOSEVELT* (1995) [hereinafter LEUCHTENBURG, *SUPREME COURT REBORN*]; BARRY CUSHMAN, *RETHINKING THE NEW DEAL COURT: THE STRUCTURE OF A CONSTITUTIONAL REVOLUTION* (1998); JEFF SHESOL, *SUPREME POWER: FRANKLIN ROOSEVELT VS. THE SUPREME COURT* (2010); John W. Chambers, *The Big Switch: Justice Roberts and the Minimum-Wage Cases*, 10 LAB. HIST. 44 (1969).

That line appeared in 1937. It was repeated by many, especially in Washington. It has been quoted ever since. Just who coined it has been debated and never established.

Until now.

Before the Switch: President Roosevelt's Court-Packing Plan

Law professors, law students, lawyers, and many others know the general story of President Roosevelt's "Court-packing" proposal. During his first term, the Supreme Court invalidated a number of progressive federal and state laws.² In November 1936, President Roosevelt was nonetheless reelected in a landslide. In early 1937, just weeks after his inauguration, he proposed that Congress pass "Court reform" legislation. The proposal included pension incentives designed to induce older, anti-New Deal justices to retire. Roosevelt also sought a new law that, in the event that any justice over age seventy—as six of the nine Justices then were—chose not to retire, would create a new Supreme Court seat alongside that justice.³ This proposal ostensibly assisted each "aged" justice by providing either for his comfortable retirement or for a new colleague who would assist him in getting the Court's work done.⁴ In fact, the proposal was Roosevelt's transparent effort to create immediate opportunities to appoint more New Deal-friendly justices who would become the new Court majority.

In the end, Congress refused to pass President Roosevelt's proposal to pack the Court. He "lost the battle" but nonetheless "won the war" against

2. See, e.g., *Panama Ref. Co. v. Ryan*, 293 U.S. 388, 433 (1935) (invalidating provisions of the National Industrial Recovery Act); *R.R. Ret. Bd. v. Alton R.R. Co.*, 295 U.S. 330, 374 (1935) (invalidating provisions of the Railroad Retirement Act); *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495, 551 (1935) (invalidating section 3 of the National Industrial Recovery Act); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601–02 (1935) (invalidating the Frazier-Lemke Act); *United States v. Butler*, 297 U.S. 1, 74 (1936) (invalidating the "tax" component of the Agricultural Adjustment Act); *Carter v. Carter Coal Co.*, 298 U.S. 238, 316–17 (1936) (invalidating portions of the Bituminous Coal Conservation Act); *Ashton v. Cameron Cty. Water Improvement Dist. No. 1*, 298 U.S. 513, 532 (1936) (invalidating an amendment to the Bankruptcy Act); *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587, 618 (1936) (invalidating a New York minimum-wage law).

3. See Franklin D. Roosevelt, *The President Presents a Plan for the Reorganization of the Judicial Branch of the Government*, 6 PUB. PAPERS 51 (Feb. 5, 1937).

4. *Id.* at 53–54 (discussing "the question of aged or infirm judges" throughout the federal courts).

the Supreme Court because, during the months following his proposal, the Court changed course in pending cases and began to hold that progressive federal and state laws were constitutional.

Justice Roberts Saves Nine

Justice Owen J. Roberts, appointed to the Supreme Court in 1930, was perhaps the leading actor in these Court events. Roberts, a Philadelphia Republican, came to national prominence in the 1920s as a prosecutor of Teapot Dome corruption. In 1930, President Hoover nominated Roberts to serve on the Court. He became a generally “conservative” justice who often was in the majority, sometimes as the decisive vote, in Court decisions holding New Deal statutes and related state laws unconstitutional.⁵ These included decisions that struck down the federal ban on interstate oil shipments above federal quotas (8-1), the federal pension system for railroad workers (5-4), the federal law authorizing the president to regulate business and labor competition (9-0), the federal law limiting banks’ powers to repossess bankrupt farms (9-0), the federal law providing price supports to farmers (6-3), the federal law setting coal prices (5-4), the federal law reducing debts of bankrupt businesses (5-4), and New York State’s minimum wage law for women (5-4).⁶

As 1937 began, this Supreme Court record caused many to expect that the justices would soon strike down additional progressive laws, such as the National Labor Relations Act and the Social Security Act, that were being challenged in federal court.

Then, in early February 1937, President Roosevelt proposed to pack the Court.

Within eight weeks of that announcement, Justice Roberts seemed to change course. On March 29, he was part of the 5-4 Court majority that held, in *West Coast Hotel v. Parrish*, that Washington state’s law imposing a minimum wage for women was constitutional.⁷ The *Parrish* decision was, quite visibly, a dramatic change of course. It expressly overruled the Court’s 1923 decision holding a federal minimum wage law for women unconstitutional.⁸ *Parrish* also distinguished a ten-month-old decision in

5. See Chambers, *supra* note 1, at 45.

6. See *supra* note 2 (citing those decisions).

7. 300 U.S. 379, 399–400 (1937).

8. See *id.* at 400 (“Our conclusion is that the case of *Adkins v. Children’s Hospital* [261 U.S. 525 (1923)] . . . should be, and it is, overruled.”).

which the Court had—with Justice Roberts voting in the majority—invalidated a similar New York law.⁹

Two weeks after *Parrish*, Justice Roberts was also part of the 5-4 Court majority in *National Labor Relations Board v. Jones & Laughlin Steel Corporation*. The Court held that Congress acted within its constitutional powers when it passed the National Labor Relations Act, which protected workers' rights to unionize.¹⁰ In that decision, the Court distinguished other recent decisions, in which Roberts had been in the majority, that struck down other New Deal laws as beyond Congress's constitutional powers to legislate.¹¹

In the context of these dramatic 1937 changes in Supreme Court voting, some clever person turned a phrase that became famous at the time and has remained famous ever since. Justice Roberts had made, it was said, “a switch in time that saved nine.” He had switched, in other words, to upholding progressive laws, a move that created a new Supreme Court majority and made it unnecessary to enlarge the Court beyond nine justices. And indeed, Roberts's switch, plus other developments, including the Court upholding the constitutionality of the Social Security Act in May 1937,¹² seemed to kill the political support for President Roosevelt's bill.

Who Was the Quipster?

So who was the person who first used the phrase “switch in time” to describe these events? In spring 1937, the “switch” line obviously was crafted by someone. It then got repeated, widely and swiftly, albeit sometimes in slightly varying words.¹³

It showed up, for example, that May in private, high-level correspondence. Professor Edward Corwin of Princeton University, writing

9. *See id.* at 389–90 (distinguishing *Morehead v. New York ex rel. Tiplado*, 298 U.S. 587 (1936)).

10. 301 U.S. 1, 43, 49 (1937).

11. *See id.* at 34 (distinguishing, among others, *Carter v. Carter Coal Co.*, 298 U.S. 238 (1936), and *A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935)).

12. *See Helvering v. Davis*, 301 U.S. 619, 645–46 (1937) (deciding Congress acted constitutionally in enacting Social Security's old-age pension system); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 573, 583–85 (1937) (upholding Social Security's unemployment insurance system).

13. *See* LEUCHTENBURG, *SUPREME COURT REBORN*, *supra* note 1, at 177 (“Within days after the [*Parrish*] decision was handed down, Washington insiders were regaling one another with a saucy sentence that encapsulated the new legislative situation: ‘A switch in time saved nine.’”).

to President Roosevelt's Attorney General Homer Cummings on May 19, asked "[a]propos of the recent shift by the Court[,] have you heard the quip, 'a switch in time saves nine'?"¹⁴ So the quip had reached Corwin in New Jersey. Back in Washington, Cummings, who had supervised the Department of Justice process that produced the Court-packing proposal,¹⁵ replied to Corwin that he (Cummings) had not previously heard the line.¹⁶

During the next month (June 1937), the quip was on many lips in Washington. In one four-day period early that month, for example, journalist Raymond Clapper heard it from four different people:

- On Wednesday, June 9, George Creel, a journalist and the former head of the U.S. Committee on Public Information during the Great War (not yet called "World War I"), told Clapper that he had heard someone say that "A switch in time saves nine." Creel "[s]aid he wished he had said it first, [he] would have given [his] right arm to have said it."¹⁷
- On June 10, Clapper told Attorney General Cummings the "switch" line that he (Clapper) had heard the previous day from Creel. In response, Cummings did not mention, it seems, that he already had seen the line in the letter he had received from Professor Corwin. Instead, Cummings asked Clapper if Creel had claimed credit for the line. When Clapper said no, Cummings said, "I told him that." Clapper replied, "So you thought it up?" Cummings repeated, "I told Creel that." It

14. Letter from Edward S. Corwin, Professor at Princeton Univ., to Homer S. Cummings, U.S. Att'y Gen. (May 19, 1937) (on file in Homer S. Cummings Papers, U. of Va. Library, Box 88) (quoted and cited in SHESOL, *supra* note 1, at 590).

15. See LEUCHTENBURG, *SUPREME COURT REBORN*, *supra* note 1, at 114–21; Matthew J. Franck, *Introduction to the Transaction Edition: Edward S. Corwin and the Emergence of "Judicial Review,"* in EDWARD S. CORWIN, *THE DOCTRINE OF JUDICIAL REVIEW: ITS LEGAL AND HISTORICAL BASIS AND OTHER ESSAYS* ix, xiii–xiv (Transaction Publishers 2014); Warner W. Gardner, *Memories of the 1937 Constitutional Revolution Part I*, 22 GREEN BAG 2D 219, 229–31 (2019).

16. See Letter from Homer S. Cummings, U.S. Att'y Gen., to Edward S. Corwin, Professor at Princeton Univ. (May 24, 1937) (on file in Homer S. Cummings Papers, U. of Va. Library, Box 88) ("I had never heard the quip referred to in the last paragraph of your letter. It is very apropos.")

17. Raymond Clapper, *Switch in Time Saves Nine* (n.d.) (typed note) (on file in Raymond Clapper Papers, Library of Cong., Manuscript Div., Wash., D.C., Box 8, Folder "Diaries 1937 (3)") (quoted and cited in SHESOL, *supra* note 1, at 590).

seemed to Clapper that the Attorney General “was trying to claim credit [for coining the line] but not actually doing so.”¹⁸

- On June 11, Clapper saw Sir Wilmott Lewis, *The Times* of London’s Washington correspondent, at a White House press conference and told him that he (Clapper) had heard a witty line that sounded like something that Lewis would say. Clapper recited the “switch in time” line, and Lewis responded, “Yes I said that back in March.”¹⁹
- On June 12, Clapper reported the “switch” line to lawyer Donald Richberg, a close adviser to President Roosevelt and, until June 1935, a New Deal lawyer. Richberg replied, “I first heard it in February at the White House.” Clapper understood Richberg to be intimating that Roosevelt himself had said the line. But Clapper also recognized that it would not have made much sense until the Supreme Court had “switched,” meaning at earliest when it decided *Parrish* on March 29.²⁰

To Ray Clapper, all of this just “[s]howed how stories travel around.”²¹ Indeed, these claims regarding “switch in time saves nine” caused Clapper to make another great quip: “It’s a wise crack that knows its own father!”²²

I have found no evidence that supports Wilmott Lewis’s private boast to Clapper in June 1937 that he uttered the “switch in time” line back in March. Nor have I found support for the idea that President Roosevelt had

18. *Id.* Cummings might indeed have been the person who told the “switch in time” line to Creel—they had lunched together two days before this Clapper-Cummings conversation. See Diary Entry of Homer S. Cummings, U.S. Att’y Gen. (June 8, 1937) (on file in Papers of Homer S. Cummings, Small Special Collections Library, Univ. of Va., Box 235) (“Luncheon at the Carlton [Hotel] with John Montgomery and George Creel.”). But as Cummings had written back to Corwin on May 24 that he (Cummings) had not heard the line until he read it in Corwin’s May 19 letter, see *supra* note 16 and accompanying text, it is clear that Cummings did not originate the line.

19. Clapper, *supra* note 17.

20. See *id.* (quoted and cited in SHESOL, *supra* note 1, at 590).

21. *Id.*

22. OLIVE EWING CLAPPER, WASHINGTON TAPESTRY 132 (1946). This book is the memoir of Raymond Clapper’s widow. He was killed, at age fifty-one, in a military airplane crash while covering World War II in the Pacific Theater. See Edward T. Folliard, *Air Crash Kills Raymond Clapper as He Covers Marshalls Invasion*, WASH. POST, Feb. 4, 1944, at 1 col. 2–4, 2 col. 6.

clairvoyantly uttered the line in February 1937, before Justice Roberts had made a vote that could be called a switch.²³

The “switch in time” line did show up prominently in a national newspaper, and pinned to Justice Roberts by name, in mid-June 1937, just days after Clapper had heard the above sequence of apparently false authorship claims. On June 14, at a dinner during Rutgers University’s annual Institute of Labor meeting, Yale University professor Abe Fortas said that “Mr. Justice Roberts’s theory must be a switch in time serves nine.” Fortas’s audience applauded the line. More importantly—at least as it became a basis for attribution—Fortas’s line was quoted in the next day’s *New York Times*.²⁴

People kept on using the line after 1937’s Court-packing saga had concluded. In March 1938, for example, when journalists Joseph Alsop and Turner Catledge published their book *The 168 Days*, an insiders’ account of the Court-packing battle, they used “A Switch in Time Saves Nine” as a chapter title,²⁵ but they did not attribute the line to anyone.

Later writers credited various people with being the original “switch in time” quipster. One credited Fortas, citing to the June 1937 *New York Times* story on Fortas’s Rutgers University speech.²⁶ Another, apparently seeing the line for the first time in Alsop’s and Catledge’s best-selling book,

23. President Roosevelt later did, in his Constitution Day speech to 60,000 people in the Sylvan Theater on the grounds of the Washington Monument, offer this comment on Justice Roberts, not by name, but by his voting significance on the divided, nine-justice-sized Supreme Court:

For twenty years the Odd Man on the Supreme Court refused to admit that State minimum wage laws for women were constitutional. A few months ago, after my message to the Congress on the rejuvenation of the Judiciary, the Odd Man admitted that the Court had been wrong—for all those twenty years—and overruled himself.

Franklin D. Roosevelt, “*The Constitution of the United States Was a Layman’s Document, Not a Lawyer’s Contract*”: *Address on Constitution Day, Washington D.C., September 17, 1937*, in *THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT, 1937 VOLUME: THE CONSTITUTION PREVAILS* 359, 364–65 (Samuel I. Rosenman ed., 1941).

24. *High Court Assailed at Labor Institute*, N.Y. TIMES, June 15, 1937, at 19. In 1965, Fortas of course was appointed to the still-nine-member U.S. Supreme Court, where he served as an associate justice until 1969.

25. See JOSEPH ALSOP & TURNER CATLEDGE, *THE 168 DAYS* 135 (1938).

26. See LEONARD BAKER, *BACK TO BACK: THE DUEL BETWEEN FDR AND THE SUPREME COURT* 173–74 (1967) (citing *High Court Assailed at Labor Institute*, *supra* note 24).

thought they originated the quip.²⁷ Harvard University historian Arthur Schlesinger gave credit to his close friend Professor Thomas Reed Powell of Harvard Law School,²⁸ but that attribution seems incorrect because Powell, in his famous December 1937 presidential address to the American Political Science Association, said explicitly that the line came from an unnamed “wag”; Powell did not take credit for the line.²⁹

In recent years, various writers have continued to investigate who deserves credit for coining “switch in time saved nine.” A law professor cataloged, from what others had published, a universe of possible “switch in time” quipsters.³⁰ A journalist did the same and then, relying on the fact that Professor Corwin told Attorney General Cummings by letter in May 1937 of the “switch in time” quip, added that Corwin was “[t]he best guess, according to scholars.”³¹ A political scientist also concluded that Corwin

27. See Michael S. Ariens, *A Thrice-Told Tale, or Felix the Cat*, 107 HARV. L. REV. 620, 623 n.11 (1994).

28. See ARTHUR M. SCHLESINGER, IN RETROSPECT: THE HISTORY OF A HISTORIAN 125 (1963) (“Though Congress rejected the [Roosevelt] plan [to add younger justices to the Court to offset the older ones], the Court, it will be remembered, in some alarm hastily reversed its course. As Reed Powell pointed the moral, ‘A switch in time saves nine.’”). Others, probably following Schlesinger’s lead, have repeated his attribution to Powell. See, e.g., PHILIP BOBBITT, CONSTITUTIONAL FATE: THEORY OF THE CONSTITUTION 39 (1982) (quoting “T.R. Powell’s cruel phrase, ‘the switch in time that saved nine’”); A. Frank Reel, Letter to the Editor, *When a Switch in Time Saved Nine*, N.Y. TIMES, Nov. 10, 1985, at E26 (“As Prof. Thomas Reed Powell of the Harvard Law School said, ‘A switch in time saves nine.’”); KENNETH S. DAVIS, FDR: INTO THE STORM 1937-40, at 81 (1993) (“Quipped Thomas Reed Powell, Felix Frankfurter’s [Harvard] law-school colleague, ‘A switch in time saves nine.’”).

29. See Thomas Reed Powell, *From Philadelphia to Philadelphia*, 32 AM. POL. SCI. REV. 1, 23–24 (1938) (“From some source has come new light about the Constitution which has penetrated the marble walls of the Temple of Justice and wrought a change in judicial attitude. . . . There may have been more than mere wit in the wag who said that a switch in time saves nine.”). This address, delivered in Philadelphia on the evening of December 27, 1937, was a leading story in many of the next day’s newspapers. See, e.g., Lawrence E. Davies, *Hails Court ‘Chastisement’ for Its ‘Prattling of Myths,’* N.Y. TIMES, Dec. 28, 1937, at 1 (reporting on Powell’s speech).

30. See Ariens, *supra* note 27, at 623 n.11 (citing publications that name Thomas Reed Powell, Joseph Alsop, and Abe Fortas as possible originators of the “switch” line).

31. BURT SOLOMON, FDR V. THE CONSTITUTION: THE COURT-PACKING FIGHT AND THE TRIUMPH OF DEMOCRACY 162, 302 (2009) (citing to 2007 conference remarks by Professor G. Edward White).

“evidently” “coined this witticism.”³² A scholar of Court-packing, by contrast, after also noting the line’s possible originators, concluded that the quipster is not known.³³

The quipster is known now, as he was known in fact to many, at least briefly, in spring 1937. The “switch in time” line was crafted that April by Cal Tinney.³⁴

In 1937, Cal Tinney was a young newspaper columnist with a humorous writing style. And he was the person who launched this excellent line in public, in newsprint. On Wednesday, April 14, 1937, two weeks after the Supreme Court’s decision in *Parrish* and two days after its decision in *Jones & Laughlin*, the *New York Post* published, quite deep inside the paper, in a small box at the bottom of page twenty-one, which was the front page of its second section, this short item by Mr. Tinney:

As a result of Monday’s decisions Mr. Roosevelt may not trade in for a new Supreme Court. He may just drive the old model with a new paint job.

Course, I don’t guess there is any doubt about the outcome if he wants to go ahead [with his Court-packing plan]. Both [newspaper columnist Walter] Winchell and [Democratic Party national chairman and U.S. Postmaster General James A.] Farley say the President’s plan will pass Congress, and what Winchell can’t find out Farley can guess.

The [anti-Roosevelt] Liberty League is plum mad about the five-to-four [Supreme Court] decisions [Roosevelt has won]. They are hollering for a constitutional amendment requiring a two-thirds majority before the Supreme Court can declare a New Deal law constitutional.

I’ve been thinking for a[n] explanation of why Justice Roberts switched from the conservatives to the liberals. Is this it?— Maybe he figures that a switch in time’ll save nine.³⁵

32. Franck, *supra* note 15, at xv. Interestingly, Professor Franck also noted that while Corwin himself “attributed the quip to an unnamed ‘columnist,’” *id.* at xlv n.21 (citing Edward S. Corwin, CONSTITUTIONAL REVOLUTION, LTD. 72 (1941)), he (Franck) had found no such publication by a columnist, *id.*

33. See SHESOL, *supra* note 1, at 434.

34. A caveat: That is my best judgment, because I have, after researching widely, found no documentation that anyone said or wrote the line before Tinney published it on April 14, 1937. Anyone who does find such evidence should please share it and supplant this article.

Within a week, student editors of the campus newspaper at New York's City College put Tinney's line, subtly amended, with attribution, in a box atop its front page:

“A switch in time saves nine.”
—Cal Tinney of the “New
York Post” referring to Jus-
tice Roberts.³⁶

To my knowledge, that is the only publication since the *New York Post* published Tinney's original item six days earlier that ever gave him credit for the line.

Cal Tinney: The Forgotten Quipster

So, who was Calvin Tinney? He was born in 1908 in Pontotoc County, Oklahoma.³⁷ In the 1920s, Tinney met fellow Oklahoman Will Rogers, the nation's leading humorist.³⁸

In 1926, Tinney got a job on a European cruise ship. He parlayed that experience into other jobs abroad. He became a journalist-humorist in the Rogers style, writing for the *New York Herald-Tribune* in Paris and the *North China Press* in Shanghai.³⁹

By 1937, Cal Tinney was a journalist at the *New York Post*. That winter and spring, he wrote two types of items. He wrote a series of “Man of the Week” columns profiling, often glibly, public officials, including Major General Malin Craig, the U.S. Army Chief of Staff,⁴⁰ U.S. Senator Joseph Guffey (D.-Pa.),⁴¹ U.S. Department of Labor official James F. Dewey,⁴²

35. Cal Tinney, N.Y. POST, Apr. 14, 1937, at 21.

36. CAMPUS (City Coll. N.Y.), Apr. 20, 1937, at 1.

37. U.S., *Social Security Death Index, 1935-2014*. ANCESTRY.COM, https://search.ancestry.com/cgi-bin/sse.dll?dbid=3693&h=62669523&indiv=try&o_vc=Record:OtherRecord&rhSource=60525 (last visited Feb. 19, 2020); see also *Cal Tinney*, FIND A GRAVE, <https://www.findagrave.com/memorial/8490856> (last visited Sept. 17, 2020).

38. Gene Curtis, *Only in Oklahoma: Colorful Tinney Emulated Will Rogers*, TULSA WORLD (Aug. 22, 2007), https://www.tulsaworld.com/archive/only-in-oklahoma-colorful-tinney-emulated-will-rogers/article_562bf516-489a-5077-b47e-e4420f4fb57f.html. After Rogers's death, Tinney portrayed him in an NBC radio tribute and on Eddie Cantor's Sunday night television show. See *id.*

39. See *id.*

40. See Cal Tinney, *Man of the Week—General Craig*, N.Y. POST, Jan. 30, 1937, at 6.

41. See Cal Tinney, *Man of the Week—Senator Guffey*, N.Y. POST, Feb. 6, 1937, at 6.

42. See Cal Tinney, *Man of the Week—James F. Dewey*, N.Y. POST, Feb. 13, 1937, at 6.

U.S. Senator Robert F. Wagner (D.-N.Y.),⁴³ U.S. Senator (and future U.S. Supreme Court justice) Sherman Minton (D.-Ind.),⁴⁴ U.S. Assistant Attorney General (and also a future Supreme Court justice) Robert H. Jackson,⁴⁵ and U.S. Ambassador to Germany William E. Dodd.⁴⁶

Tinney also wrote shorter, humorous takes on news events. Of these, eight items between January 19 and April 27, 1937 concerned the U.S. Supreme Court.⁴⁷ Four of these mentioned, directly or obliquely, the Court's hostility toward President Roosevelt.⁴⁸ Six mentioned his proposal to pack the Court.⁴⁹ Four explicitly mentioned the Court's youngest member, sixty-two-year-old Justice Owen J. Roberts.⁵⁰ And one item—the one that is the focus of this article—published on April 14, ventured “a[n] explanation of why Justice Roberts switched from the conservatives to the liberals. . . . Maybe he figures that a switch in time’ll save nine.”⁵¹

Cal Tinney later moved back to Oklahoma and became a real estate developer.⁵² In 1993, at age eighty-five, he died in Tulsa.⁵³ Nothing indicates that he ever claimed, or even that he knew that he should claim, his notable place in the history of U.S. Supreme Court-related quippery.

43. See Cal Tinney, *Man of the Week—Senator Wagner*, N.Y. POST, Feb. 27, 1937, at 6.

44. See Cal Tinney, *Man of the Week—Senator Minton*, N.Y. POST, Apr. 3, 1937, at 6.

45. See Cal Tinney, *Man of the Week—Robert Jackson*, N.Y. POST, May 1, 1937, at 6.

46. See Cal Tinney, *Man of the Week—Ambassador Dodd*, N.Y. POST, May 15, 1937, at 6.

47. Cal Tinney, N.Y. POST, Jan. 19, 1937, at 15; Cal Tinney, N.Y. POST, Feb. 6, 1937, at 13; Cal Tinney, N.Y. POST, Feb. 9, 1937, at 15; Cal Tinney, N.Y. POST, Feb. 19, 1937, at 17; Cal Tinney, N.Y. POST, Mar. 31, 1937, at 19; Cal Tinney, N.Y. POST, Apr. 14, 1937, at 21; Cal Tinney, N.Y. POST, Apr. 15, 1937, at 21; Cal Tinney, N.Y. POST, Apr. 27, 1937, at 13.

48. See, e.g., Cal Tinney, N.Y. POST, Jan. 19, 1937, at 15; Cal Tinney, N.Y. POST, Feb. 6, 1937, at 13; Cal Tinney, N.Y. POST, Feb. 19, 1937, at 17; Cal Tinney, N.Y. POST, Apr. 15, 1937, at 21.

49. See Cal Tinney, N.Y. POST, Feb. 6, 1937, at 13; Cal Tinney, N.Y. POST, Feb. 9, 1937, at 15; Cal Tinney, N.Y. POST, Feb. 19, 1937, at 17; Cal Tinney, N.Y. POST, Mar. 31, 1937, at 19; Cal Tinney, N.Y. POST, Apr. 14, 1937, at 21; Cal Tinney, N.Y. POST, Apr. 15, 1937, at 21.

50. See Cal Tinney, N.Y. POST, Jan. 19, 1937, at 15; Cal Tinney, N.Y. POST, Feb. 6, 1937, at 13; Cal Tinney, N.Y. POST, Apr. 14, 1937, at 21; Cal Tinney, N.Y. POST, Apr. 15, 1937, at 21.

51. Cal Tinney, N.Y. POST, Apr. 14, 1937, at 21.

52. See Curtis, *supra* note 38.

53. See U.S., *Social Security Death Index, 1935-2014*, *supra* note 37.

Origin of the Phrase

Where did Tinney get the line? It seems to be a slight variation on an eighteenth century (or earlier) American proverb urging action rather than delay: “A Stitch in time, may save nine; Many a little will make a mickle.”⁵⁴ Although at least one writer attributed this proverb to Benjamin Franklin’s *Poor Richard’s Almanack*,⁵⁵ in fact, that publication did not include this piece of wisdom. The original author of “stitch in time,” in other words, remains unknown.

American publications during the nineteenth century used “a stitch in time” to advocate expeditious action rather than procrastination. For example, an 1852 advertisement for cough syrup read as follows:

‘TIS STRANGE BUT TRUE, THAT MANY WILL neglect a Cough, month after month, and then wonder at last that they have Consumption. How much wiser to nip this disease in the bud, which can always be done by using DR. ROGERS’S SYRUP of LIVERWORT, TAR, and CANCHALAGUA, “A stitch in time saves nine.”⁵⁶

That same year, a New York City newspaper criticized “Two-Penny Economy.” Saving money in the short run can be, the paper editorialized, a failure to make “a stitch in time, waiting till the rent needs nine to make it whole.”⁵⁷ An 1867 news story criticized a Harlem baker for making slipshod repairs to a broken wooden awning over a sidewalk—the “repaired” awning collapsed under the weight of snow, injuring two men and proving the truth of “[t]he old commonplace proverb that ‘a stitch in

54. THOMAS FULLER, *GNOMOLOGIA: ADAGIES AND PROVERBS; WISE SENTENCES AND WITTY SAYINGS, ANCIENT AND MODERN, FOREIGN AND BRITISH* ix (London, 1732); *accord* FRANCIS BAILY, *JOURNAL OF A TOUR IN UNSETTLED PARTS OF NORTH AMERICA IN 1796 & 1797*, at 268 (Sir John Frederick William Herschel ed., London, Baily Bros. 1856) (quoting this “vulgar proverb”). Fuller was a practicing physician in Kent, England. “Mickle” is an old Scottish word that means great or much. *Mickle*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/mickle> (last visited Aug. 31, 2020).

55. See SOLOMON, *supra* note 31, at 161 (“[O]ne of Benjamin Franklin’s famous maxims that had made such a commercial success of *Poor Richard’s Almanack* [was] *Early to bed and early to rise, makes a man healthy, wealthy, and wise. A stitch in time saves nine.*”). This book includes no source note for this claim.

56. Classified Advertisement, N.Y. DAILY TIMES, June 21, 1852, at 2 col. 6.

57. *Two-Penny Economy*, N.Y. DAILY TIMES, Sept. 7, 1852, at 2 col. 1.

time saves nine.”⁵⁸ An 1889 stereographic photograph, showing a young girl sewing her doll’s dress, was sold commercially with the printed caption “A Stitch in time saves nine.”⁵⁹ In 1890, the *New York Times* put that same caption on a letter urging lawmakers to require ferryboat operators to make life preservers more accessible to passengers.⁶⁰ And early in the twentieth century, a variation on the “stitch” proverb was used to urge economic wisdom generally. The *Washington Post*, for example, editorialized in 1905 that the City of Philadelphia had “neglect[ed for a quarter century] to apply that maxim, to take the stitch in time to prevent a disastrous ripping,” leading to “scores of millions” of dollars, plus the city’s good name, being lost.⁶¹

In that same general time period, punsters fiddled with this proverb, turning “stitch” to “switch” and using it to endorse corporal punishment. In 1880, for example, an anonymous humor columnist wrote, “[o]f interest to mothers—A switch in time saves nine.”⁶² In 1902, the *New York Press* published this piece of tough wisdom: “A switch in time saves the child from the cat-o’-nine.”⁶³ A couple of years later, the *New York Telegraph* published a similar thought using both “stitch” and “switch”: “A stitch in time may save nine, but a ‘switch’ in time may save ten.”⁶⁴ And in 1908, the *Chicago News* described a predictable result of such punishment: “A switch in time makes boys whine.”⁶⁵

58. *General City News: Sad Results from Carelessness*, N.Y. TIMES, Feb. 24, 1867, at 5 col. 5.

59. This stereograph is in the collections at, and it has been digitized by, the Henry Ford Museum. See *Little Girl Sewing with Her Dolls, “A Stitch in Time Saves Nine,” 1889*, HENRY FORD MUSEUM, <https://www.thehenryford.org/collections-and-research/digital-collections/artifact/342281#slide=gs-247636> (last visited Aug. 31, 2020).

60. Letter to the Editor, *A Stitch in Time Saves Nine*, N.Y. TIMES, Aug. 31, 1890, at 14 col. 6.

61. Editorial, “*A Stitch in Time Saves Nine*,” WASH. POST, June 18, 1905, pt. 2, at 4 col. 1.

62. *Everyday Humor*, WASH. POST, Dec. 12, 1880, at 2 col. 6.

63. See *Reflections of a Bachelor*, WASH. POST, Feb. 15, 1902, at 6 col. 6 (reporting this *New York Press* item). A cat-o’-nine-tails is a whip made of nine cords knotted together.

The *New York Press* also reported in 1902 that “A switch in time saves baldness.” See *Reflections of a Bachelor*, WASH. POST, Aug. 15, 1902, at 6 col. 7 (reporting this item). I have no idea what that means.

64. See *Turf Topics*, WASH. POST, Aug. 14, 1904, pt. 2 (sporting section), at 4 col. 2 (reporting this *New York Telegraph* item).

65. See *Pointed Paragraphs*, WASH. POST, June 29, 1908, at 6 col. 7 (reporting this *Chicago News* item).

Cal Tinney grew up to become a wordsmith during the years when these “stitch” and “switch” proverbs swirled around the number nine. It makes sense that in 1937, as he thought about President Roosevelt’s proposal perhaps to change the size of the Supreme Court and then Justice Roberts’s votes causing that nine to be saved, Tinney’s clever mind thought of the proverb and tweaked it into something special.

Belatedly Crediting Cal Tinney

So why was Tinney not credited? It seems that his quip, published somewhat obscurely in New York City, was the thing that attracted all the attention. The line, not his authorship, was the memorable gem. Then the line moved quickly, apparently by word of mouth, to Princeton, Washington, Cambridge, and elsewhere. Then it was repeated by many people, none of whom, if he even knew who or what publication to credit, was taking the trouble to mention such details. Then alternative theories of authorship developed over ensuing decades, and they became conventional wisdom. The correct answer was preserved deep in *New York Post* microfilm. I have found no indication that anyone found it. Until recently, there was no database in which to find such an item. That has changed because of the efforts of Tom Tryniski, an upstate New Yorker who values newspapers and the history they document. At his home in Fulton, New York, Mr. Tryniski has scanned rolls of microfilmed old newspapers borrowed from local libraries, digitized nearly 50 million newspaper pages dating back to the 1800s, and made them available at <http://www.fultonhistory.com/>, a free, searchable database.⁶⁶

Thanks to technology, Mr. Tryniski, and the wonderful database and search engine that he created, researchers now can find Cal Tinney’s April 14, 1937, “switch in time” line—actually, he used the unusual contraction “time’ll,” which probably makes it tougher to locate by computer search—about Justice Owen Roberts’s changed votes in the face of threatened Court-packing.

The origin of “switch in time” is no longer lost to time.

66. See Alexandria Neason, *How Tom Tryniski Digitized Nearly 50 Million Pages of Newspapers in His Living Room*, COLUM. JOURNALISM REV. (Feb. 6, 2018), https://www.cjr.org/the_profile/tom-tryniski-fultonhistory.php.