

Inauguration was at noon— but who was governor?

By ELMER E. CORNWELL JR.

IT WAS New Years Day, 1957. I don't recall just when I got to the state house, but it must have been well before noon. That was the traditional hour at which the governor was sworn in before the two houses of the General Assembly meeting in grand committee in the House chamber. By 10 a.m. the corridors of the second floor had filled with a tensely waiting crowd. State troopers watched the throng.

The question posed itself to me: Where was the strategic spot from which to watch the excitement? My strategy, as I recall it, was to settle in a gallery seat above the House chamber and thus be able to view the proceedings on the floor — if and when anything proceeded.

This turned out to have been a plan of doubtful value. But then, who could have predicted the best vantage point from which to view a constitutional crisis — the most dramatic in many a year even in a state noted for crises?

As the next day's paper revealed, there *had* been no one place to go to watch the drama unfold. Governor Dennis J. Roberts had arrived at the state house just after 9 a.m., before most of the rest of us, and remained closeted in his inner office with a few close associates during much of the day. His rival, Christopher Del Sesto, chose to do his waiting at home on the East Side of Providence, where he variously chatted with the friends and supporters who

had gathered to share the vigil with him, helped a young son with a jigsaw puzzle, and preserved a remarkable calm.

There were four other key actors who shared the tension of the long ordeal with the two principals, but they were much more busily occupied that morning, having gathered several blocks away at the Providence County Courthouse at 9:30 a.m. by urgent pre-arrangement.

It should have been a holiday. But it turned out to be the opposite of a day of rest and relaxation for the four justices of the Rhode Island Supreme Court who had agreed to hear the case later cited as *Roberts v. Board of Elections*. They were working feverishly against time.

As a matter of fact they had not had a very relaxing weekend either. Their problems had begun on Friday at 10 a.m. That was when the bitter controversy which had been building up since election day in November had finally found its way into their laps. They had to make the ultimate decision. And to say that they were pressed for time would have been putting it mildly. Four days and two hours later there must be a governor ready to be sworn in before the grand committee. The court had to decide who that new governor would be.

This might have been a very difficult decision to make, quite aside from the legal complexities that had woven themselves around the issue. Two of the four justices were Democrats and two Republicans. Their fifth colleague, Democrat Thomas Roberts, brother of the governor,

had disqualified himself. Thus by 9:30 Tuesday, the first day of January, they were getting right down to the wire.

The court listened to arguments by counsel for both sides on Friday and Saturday, whereupon Chief Justice Flynn promised that the justices would try to decide who was the rightful governor by Tuesday noon. Sunday was spent by the Board of Elections rechecking the absentee ballots at the request of the court.

The Sheriff of Providence County continued his accustomed preparations for the inauguration, though trying to take into account the unusual circumstances this time. For instance, he could not yet invite the next of kin of the new governor as honored guests, for obvious reasons. A Warwick clergyman intoned from his pulpit that a direct parallel existed between "the slaughter of the innocents under Herod and the slaughter of the absentee ballots in this last-ditch attempt to save power for a few." It was a decidedly busy weekend.

This reference to the absentee ballots might well prompt a review of the factual basis of this imbroglio before we return to the anxious deliberations of the justices. Those who were in the state at the time and old enough to be aware of the world around them need little reminder of what transpired. For the less fortunate reader, let me explain that when the votes had been counted in the contest for governor the night of November 6, incumbent Governor Roberts appeared to trail Republican challenger Del Sesto by a tiny



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►14



THE LONG COUNT (above) had Del Sesto the winner.



JANUARY 1: Reporters waited, party faithful waited, and Christopher Del Sesto, leading by 427 votes, waited at home.



LONG COUNT continued

margin of 267 votes. There were, however, more than 11,000 outstanding absentee ballots. These latter fell into three categories: true absentee ballots (voted by persons who would be out of state on election day), shut-in ballots (for those physically unable to get to the polls), and service ballots for overseas servicemen.

Thursday morning's paper reported that tabulation errors had been found which put Roberts ahead by 190 votes, and that the Board of Elections would begin that morning to recheck the count on the voting machines. While this was being tediously accomplished, it was further announced, the board would begin work on the absentees November 20th. At best this would be a laborious process. It entailed a check of the postmarks on the outer envelopes, verification of the affidavits on the inner envelopes, scrutinization of the ballots themselves for errors, and ultimately tabulation of the candidate preferences.

This time, not surprisingly, the count went on for weeks. Each ballot was studied at each step by the multiple legal counsel representing both sides, and by the board members.

On December 5, less than a month before the fateful first Tuesday in January, and the date originally set for counting the servicemen's ballots, the weary group at the board offices was just completing the first ballot category. Actually it was December 14 when the service ballot counting — the last of the three categories — finally began.

By mid-December the tension level had gone up several more notches. The absentees and shut-ins were now tabulated and had switched the lead to DelSesto, but the servicemen were voting heavily Democratic. The Republican's lead again shrank. However, it did not shrink enough to save the governor. Wednesday, December 19, the *Journal* featured a photo copy of the election board's final certified report of the tally: Del Sesto, 194,974 to Roberts' 194,547. Almost simultaneously a legal bombshell was dropped by the Democrats in the form of a court challenge.

The governor's lawyers successfully sought an order, from the state Supreme Court, restraining the Board of Elections from official-

ly declaring Christopher Del Sesto elected. The chief justice set the case for a hearing on December 28 at 10 a.m., as already noted.

The legal issues involved are of little more than antiquarian interest now, but in a word, counsel argued that the procedures under which the absentee and shut-in ballots were cast violated a provision of the state constitution. This provision specified that all ballots must be cast on election day. Therefore the governor's lawyers contended, these two categories should be disallowed. (The service ballots were valid because they were specifically exempted from the election day provision.)

We shall leave the legal niceties to the judges and return to New Year's Day. The weary court had already deliberated six hours on Monday, December 31, before it gathered the next morning at 9:30 a.m. If I had not been sitting on the edge of my gallery seat at the state house, I would have been no better informed

at the court house. The reporters who were covering the court had been required to remain in the press room on the fifth floor, two floors below the scene of the deliberations. From time to time one of the group would visit the seventh floor for a quick check with court attaches and return to his brethren.

We at the state house could only surmise what was going on in the court building. A general rule of thumb in such affairs as this seems to be that the more important the crisis or decision, the harder it is to watch it being decided — or even figure out where the die is being cast.

We kept waiting for the House to convene but though eventually the chamber filled up with members (and their wives) dressed up for the occasion, they ended up waiting or wandering about in impatient boredom just like the rest of us. Speaker Harry Curvin, due to be sworn in for his ninth consecutive term as presiding officer, was also waiting.

Since gallery seats turned out not

to be in great demand, nothing prevented me from wandering out into the corridors in quest of information, or at least rumors. Many in the crowd, predictably, were office holders or their friends and relations. For them much hung on the decision. Theirs was a special brand of suspense — and it showed on their faces. Much of what we heard and said to each other as we milled about of course was rumor, as the minutes ticked away.

The morning dragged on into early afternoon and the small contingent of state troopers was increased in size. Apparently as an added precaution, a National Guard military police company arrived in white helmets and took up assigned posts. Eventually a group of Providence policemen, some with night-sticks, joined the medley of uniforms and began to patrol.

The rising tension level seemed to be paced — not accidentally, one assumes — by these various arrivals. Somehow these officials maintained a detached calm, or at least seemed



FINALLY the cry went up: 'It's Roberts!' He took the oath immediately.

to. I suppose there might have been some justification for these preparations, but the only threat of violence was an elderly woman who stormed into the governor's reception room when the decision was announced, brandishing her cane and shouting incoherently. Reporters' cameras routed her effectively, however.

Noon came and went with no decision and no convening of the House. Word had arrived in the late morning, and was passed along, that by 1 p.m. the court's ruling would be made known. Tension mounted as that hour approached. The corridors became quiet in nervous expectation — but nothing happened. Just before 2, word circulated that the court had sent its verdict to the state Board of Elections and it would be announced there. But again, nothing.

Finally, about 3, it came. The word had been phoned from the court house to the press room off the rotunda. The news sped like lightning along the corridors and shouts went up: "Roberts!" It is

said that these shouts were the first news the governor himself had, moments before one of his lawyers got through on the phone.

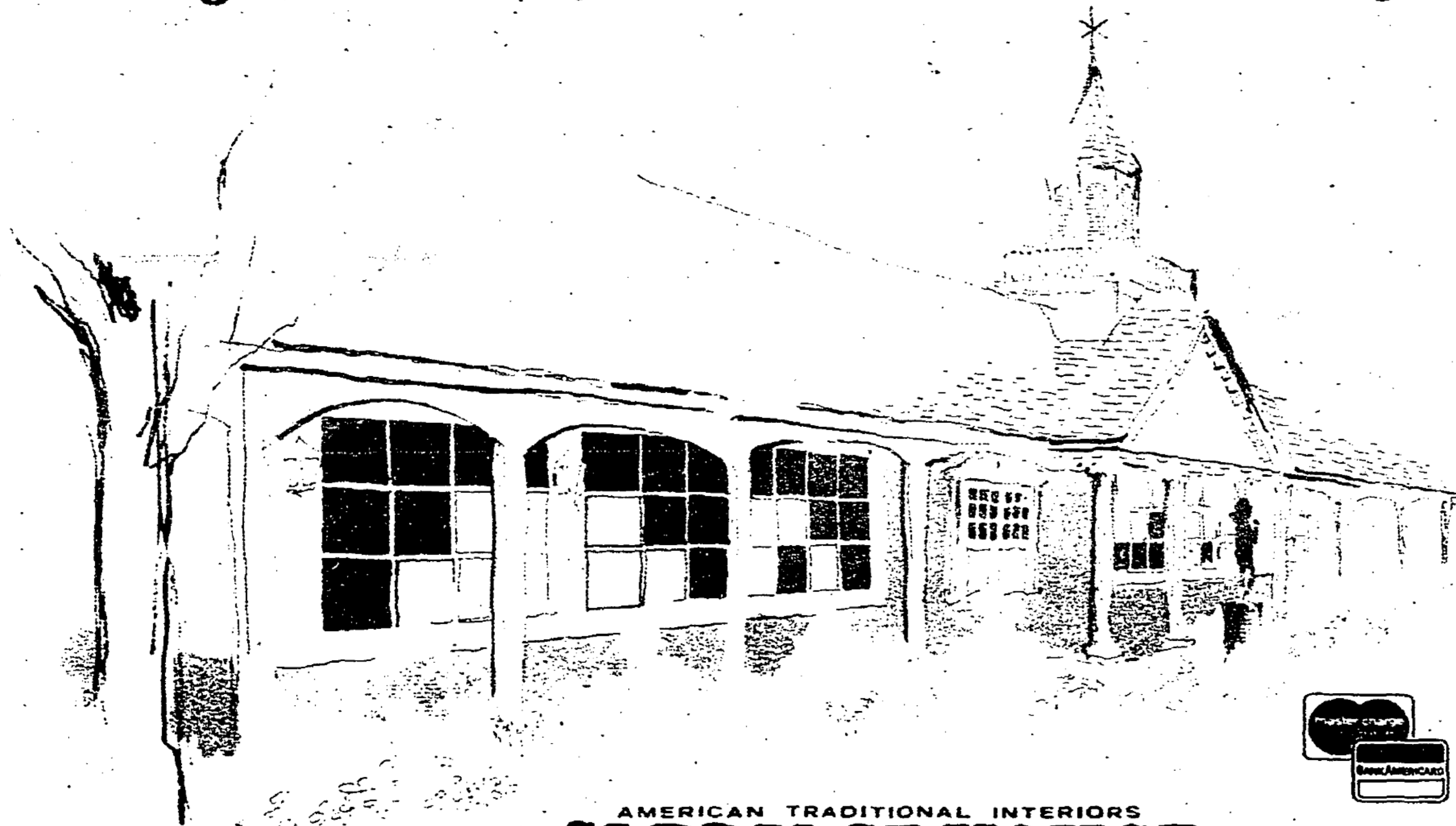
Reconstructing what had happened on Benefit Street, it seems that between visits to the seventh floor by the reconnoitering newsmen, the chief justice had instructed the court clerk to summon the attorneys involved to receive copies of the decision. The next journalistic scout to appear spied the group of Republican lawyers studying the document and asked the obvious question. "Roberts," one replied. That was it.

The rest was anti-climax. Governor Roberts was sworn in for his hard-won fourth term in the reception room outside his office, to avoid the embarrassment that might have resulted if the normal grand committee procedure had been followed. The Republican-controlled Senate had made it clear that no House invitation to such a gathering would have been welcome under the circumstances. □



AT LAST, the chair was his for another two years.

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