



## A Celebration to Honor the Historic First Term of Justice Sandra Day O'Connor on the Supreme Court

In celebration of the 30<sup>th</sup> Anniversary of the first term of Justice Sandra Day O'Connor on the Supreme Court Bench, the Society sponsored a panel discussion with all four of the women who have served on the Court. Participants in this milestone event were: Justices Sandra Day O'Connor, Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan. The program was co-sponsored by the Freedom Forum and was held in the Annenberg Auditorium of the Newseum in Washington, DC on April 11, 2012.

President Gregory Joseph welcomed the audience of 450 guests and provided a brief introduction of the Justices and the Society. He then introduced James Duff, the President of the Newseum, who served as the moderator for the discussion. Having served as Administrative Assistant to Chief Justice Rehnquist, Mr. Duff was uniquely qualified to interview the Justices and discuss their experiences and the way the Court functions.

At the outset, Mr. Duff quipped that while they were one vote short of having a quorum, there were enough Justices present to grant cert. He directed the first part of the discussion to Justice O'Connor, questioning her about the secrecy surrounding her nomination to the Court in 1981. In his memoirs, William French Smith, who was the Attorney General in 1981, described interviews with O'Connor and Cabinet members conducted at a hotel to avoid publicity about O'Connor's presence in Washington. Following the meeting, Smith told her the President would like to see her

at the White House later in the day. O'Connor told the audience: "I had never been to the White House, never even seen it, and I didn't know where it was." Smith said he could explain how to get there, but instead he would ask his secretary to pick O'Connor up, adding that the secretary drove "an old green sedan." At the appointed hour, the secretary met O'Connor at Dupont Circle and drove her to the White House. Justice O'Connor continued the story saying that "... we were admitted and made our way in due course to the Oval Office. And I was so surprised; it is so small, I mean it's such a shock and you think, oh my gosh, this is the White House and it is this tiny little oval place. We sat down and talked. . . . That's how it all started."

Photos by Steve Peteway



**Justice Sandra Day O'Connor's trail-blazing career was the subject of a panel discussion**

When asked, "Was it always one of your goals to become a Justice?" Justice O'Connor responded, "Heavens no, goodness no, it certainly was not. I wasn't sure what I ought to do because it's all right to be the first to do something, but I certainly didn't want to be the last female Justice to serve on the Court." In response to the question "Who were your role models?" Justice O'Connor said, "For what?" Mr. Duff observed that she had been a trail blazer in all her major roles.

Turning to the other panel members, Mr. Duff asked Justice Ginsburg: "Where were you in your career when Justice O'Connor was appointed?" She responded that she remembered hearing the announcement of the nomination very clearly: "It was a moment, one of those few in life

## A Letter from the President



Gregory P. Joseph

The last quarter ended two days after the close of a Term that had the nation's eyes riveted on the Supreme Court. On May 23, 2012, the Leon Silverman lecture had focused on "James Madison and the Commerce Clause, in Nation and State." Thirty-six days later, the Court handed down multiple opinions in the health care case

forming what will likely comprise, together with their sequelae, a cornerstone for a Society lecture many decades hence on the Commerce Clause in the 21st Century.

The quarter just concluded was a very busy one for the Society. In addition to the first three lectures of the Silverman Lecture Series, which is perhaps fortuitously focused this year on The Supreme Court and Property Rights, the Society's Annual Lecture was delivered on June 4, 2012, by Professor Judith Resnik of Yale Law School, in collaboration with her husband Professor Dennis Curtis also of Yale. Professors Resnik and Curtis are the authors of **Representing Justice: Invention, Controversy, and Rights in City-States and Democratic Courtrooms**, and the Annual Lecture tailored this comprehensive, illustrated history of the iconography of justice to the iconography in, and represented by, the Supreme Court Building. It was a fascinating lecture that will be featured in a forthcoming issue of the **Journal of Supreme Court History**.

The premier event of the quarter was the unique-in-history panel discussion among Justice Sandra Day O'Connor, Justice Ruth Bader Ginsburg, Justice Sonia Sotomayor and Justice Elena Kagan honoring the 30th Anniversary of the First Term of Justice O'Connor. Held on April 11, 2012, this program marked the first time that all four of the women who have ever served on the Supreme Court of the United States have appeared together in a public program. It was a captivating and open conversation ably moderated by Jim Duff, President of the Newseum. The event was broadcast live by C-SPAN, and it received extensive press coverage, as it deserved to. The lead story in this issue provides an in-depth look at the program, which you can watch via a link on the Society's website, [www.supremecourthistory.org](http://www.supremecourthistory.org).

In addition to the first three lectures of the 2012 Leon Silverman Lecture Series staged this Spring — each of which was insightful and informative — two further lectures in this year's series will be delivered this Fall. The topics, speakers and schedule for those programs appear on page 13

of this issue and on the Society's web site. The 2012 Frank C. Jones Reenactment will also be held in the Fall. It will revisit and reimagine, the landmark baseball antitrust case of *Flood v. Kuhn*. This important decision, which may be one of the few Supreme Court cases that sports enthusiasts recognize by name, continues to impact the game of baseball. In response to suggestions to take our show on the road, we hope to develop a portable version of the program that can be staged in different areas of the country.

The publications effort continues with the Society's updated **Illustrated Biographies of the Justices** to be published soon. The last edition, which was published in 1993, ended with the appointment and biography of Justice Clarence Thomas. This edition brings the volume current, adding biographies of the each of the six Justices appointed since then — Chief Justice Roberts, Justice Ruth Bader Ginsburg, Justice Stephen Breyer, Justice Samuel Alito, Justice Sonia Sotomayor and Justice Elena Kagan — and it updates the biographies of all sitting Justices as well as those of Chief Justice William Rehnquist, Justice John Paul Stevens and Justice Sandra Day O'Connor. The Society is quite pleased that publication is imminent. The volume, like all of those produced by the Society, will be available from the Gift Shop in person or online at <http://supremecourtgifts.org>.

The Society also has embarked on an ambitious new publication, a one-volume history of the federal court system. The Society is pleased to partner with the Federal Judicial Center's (FJC) History Office to produce this much-needed history. There is no comparable book available so this volume will fill a real need. Indeed, such a history is specifically identified as a mission of the Society in its 1974 charter. This book is being written for a wide audience and will, we hope, become a valuable research tool for undergraduate and graduate students, and a useful resource in academic and law libraries. The authors will have access to the Society's resources and to the valuable data that has been collected by the FJC's History Office, as well as the collections of the National Archives. The project will be shepherded by Clare Cushman, the Society's Director of Publications and author of many of its award-winning publications, and by Bruce Ragsdale, Ph.D., the Director of the FJC's History Office. The volume is intended to promote increased understanding of the Federal Courts and Federal Judiciary, and their vital role in our system of government and the nation's history. Every sitting Federal Judge will receive a copy. Producing this book entails a significant financial commitment on the part of the Society. Some crucial contributions have been received and the work has commenced. This is a multi-year undertaking and will require additional funding. We are hopeful that foundations and other organizations with an interest in national historical projects will support the project. Should you be aware of such an entity, please contact me or a member of the Society's staff.

You play a vital role in the success of the Society and we rely upon your generosity and participation as we endeavor to continue to advance the mission of collecting and preserving the history of the Court. A key goal is to promote scholarship. The Society is dependent on the

generosity of its members and public spirited organizations, and it is extremely grateful for your support.



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## Clerks' Corner

### Chief Justice Rehnquist: Reminiscences from Clerking

By Jeffrey L. Oldham, Julius N. Richardson, and Ryan A. Shores\*

We feel deeply fortunate to have had a year clerking for Chief William H. Rehnquist. There are many who knew him far better than we did, a number of whom have since his passing provided their perspectives in a variety of fora. But we have been struck by how, in each of those reminiscences, we have heard or read about the same Chief we knew: the same authenticity, humor, breadth of interests, strong leadership, and sheer intellect. At the request of the Chief's longtime and invaluable assistant, Janet Tramonte, we are pleased to provide a few thoughts about our experience.

Given the indelible mark he left on the Supreme Court as an institution, there is no better place to start than with his work. During our Term, he no longer had walks around the court building to analyze cases, but our case discussions with the Chief were every bit as detailed and intense as we'd heard they would be, constantly impressing us with the Chief's experience, analytical mind, and uncanny recollection of prior cases. We can recall the Chief stopping a discussion to ask for Volume 382 of the **Supreme Court Reporter**, which was from October Term 1975. He flipped a few pages before passing the open volume across his desk and asking why an obscure case wasn't on point. Just as often, the Chief would grab his ever-handly atlas, wanting to make sure we knew where in Colorado or Georgia certain events took place.

From late-night conversations about emergency issues to the reliable early-morning meetings about daily business, the Chief's work ethic never changed. Even the smallest details at the Court – from analyzing certiorari pool writers to critiquing minor errors in our own memos – remained important to the Chief as he fought against his disease. Minor mistakes, he reminded us, reflected on the entire chamber. And this leadership of our chamber was but a part of the Chief's strong and continued leadership over the Court. We were, and are, in awe of the Chief's ability to perform his duties without compromise while facing cancer. The Chief displayed the same fortitude when administering the oath to President George W. Bush in January 2005.

As anyone who knew him can attest, the work of the Court was by no means all there was to the Chief. Far

from it. For one, he was an immensely personable man and a tremendous mentor. He would have seemed incredibly down to earth if you had met him on the street and didn't know who he was, never mind if you knew he was the Chief Justice. He was a friend to every guard, elevator operator, and other employee at the Court. As a mentor to us, he left his mark beyond what he taught us about the law. Even as he faced his own challenges, he took the time and care to talk with each of us about our goals and to give us advice, both professionally and personally. His professional advice had a common refrain: to leave DC and return to our own roots – though having grown up in Milwaukee he had left DC and made his home in Phoenix in 1953 after clerking for Justice Jackson. And his personal advice remained consistent with what we have heard others recount: for example, that if you want to spend time with your children while they are young, you must do it while they are young. The Chief taught us to work hard and never forget the details, but also to have balance, to stop and smell the roses, to enjoy our work, and to keep a sense of humor.

The Chief also sustained his impressive level of interest in the world outside the Court. Like those who preceded us, we learned to expect questions on a variety of trivia and history, quotations from poems, songs, and plays, predictions on the weather, and gossip about current events or our own personal lives. No matter his own health, the Chief continued to critique the spread on football games,

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# Quarterly

Published four times yearly in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 224 E. Capitol Street, N.E., Washington, D.C. 20003. Tel. (202) 543-0400, [www.supremecourthistory.org](http://www.supremecourthistory.org). Distributed to members of the Society, law libraries, interested individuals, and professional associations.

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where you remember exactly where you were and how you felt. I had been on the D.C. Circuit Court for exactly one year. I was driving home and turned on the radio and heard the news and I was about to cheer, but no one would hear me. Then I found out what I could about this lady. I knew she had been the head of the Senate in Arizona, and that she had served on a trial court. And I knew that we had both attended conferences on federalism held at William and Mary.” Justice O’Connor said that she had also attended a couple of conferences with lawyers and judges from the British Isles that Warren Burger had initiated, but she said “I certainly wasn’t well known in the judicial community of America” at the time of the nomination.

Mr. Duff asked Justice Sotomayor the same question to which she responded: “I was almost at the beginning of my career, only two years after graduating from law school. I was working in the DA’s office in Manhattan. I remember having conversations in the cafeteria . . . talking about how long it would take before a woman would be appointed to the Supreme Court. Bets were being taken whether it would occur within our lifetimes. The fact that it was something we weren’t sure of bespeaks how historic it became that only two years later Sandra was appointed.”

Sotomayor continued, “When I was in law school there were no women on the Supreme Court, there were no women on the Court of Appeals in my state, New York. Indeed, there were still a number of large law firms that had no women lawyers whatsoever. Doors were opening, but they were very, very small openings so the idea that this barrier had been breached so quickly was sort of an inspiration to think that more would come and certainly that the opportunities for us would grow.”

Justice O’Connor interjected, “This is fabulous to have all these women on the Court.” She then said, “Ruth, I will say for President Reagan that when he was campaigning to be President he didn’t think he was doing too well with women voters. He made the statement that if he was elected he would put a qualified woman on the Court. He made enough of those statements that when about 4 months after [he came to office] Potter Stewart retired, he was faced with what to do.”

In response to the same question about her own career status at the time of O’Connor’s appointment, Justice Kagan said: “Well, I hate to rub it in, but I was two years shy of going to law school. But even so I knew enough to be impressed. I had just graduated from college and remember

hearing the announcement and thought ‘what a stunning thing’—I remember feeling very inspired by it.”

Mr. Duff asked Justice Kagan about her impressions of Justice O’Connor during the time she clerked for Justice Marshall. Justice Kagan reported that “She was a formidable person, even a clerk knew that she was a formidable person.” Justice O’Connor responded to the comment by saying, “Oh, I hope not.” Laughter ensued.

Justice Sotomayor then encouraged Justice Kagan to tell her “Justice O’Connor joke” from the time when she (Kagan) was serving as a clerk. Kagan told the audience of her experience.

**One of her [Justice O’Connor] achievements was founding an exercise group. She likes women clerks to come to the exercise group, and I failed to come to the exercise group. [Justice O’Connor quipped, “I noticed.”] Justice Kagan responded “Well, that’s the story, in fact. I used to play basketball instead. One day I tore something in my leg playing basketball and I was on crutches for a few weeks. The day after it happened I was going down the hallway and saw Justice O’Connor. She stopped me and asked me what had happened—I explained. She sadly shook her head and said “It wouldn’t have happened in an exercise class. [Justice O’Connor responded to her story by saying to Justice Kagan “And I’m sure that’s true.”]**

Continuing on the exercise class theme, Justice Ginsburg commented that “Sandra encouraged me to attend the class but it is at 8 AM and everyone who knows me knows I am a night person.” Justice O’Connor interjected and said that she was proud to say that the class “is still going on. It meant a lot to me to have that exercise class. I went to class this morning.” O’Connor then commented that she had succeeded in getting Justice Breyer to attend a few times “But he didn’t want to be the only man.” She told Mr. Duff “Maybe if you join too we could get him back there.”

Mr. Duff asked Justice O’Connor about the camaraderie that existed between the Justices during her time



**During the reception guests enjoyed stadium sized photographs. Justice Kagan and Mrs. Thurgood Marshall’s photo appears above.**

on the Bench and her view of its importance. Justice O’Connor commented: “I think it is vital—It is a small group of nine and it is exceedingly important that everyone be polite and kind. . . . You can disagree agreeably. . . . The Court does well on that score.” When asked why there seems to be more civility on the Court now than in previous times in history, Justice Ginsburg responded

“It’s because we’ve had women.” Justice Kagan said: “We have a tradition where we eat lunch together after conferences” so we get together fairly often. Justice Thomas once told me that if he ever went a couple of days without going to those luncheons that Justice O’Connor would appear in his door and say, ‘Clarence why aren’t you there?’

He told Kagan that Justice O’Connor encouraged all the members of the Court to meet together often to cultivate friendship among them.

Justice Ginsburg told a story that occurred after she had first joined the Court. “I came to her [Justice O’Connor] with a problem when the Chief made assignments at the end of my first term. I had been told that by tradition the Chief Justice assigned the Junior Justice an easy case where they were writing for a unanimous Court. But the old Chief gave me a miserable ERISA case in which the Court had divided 6 to 3. I went to Sandra thinking that she would persuade her good friend, our Chief, to revise the assignments. I told her my problem and she said, ‘Ruth, you just do it. Get it out before he makes the next set of assignments.’ That is her attitude toward life, she just does whatever needs to be done.”

During the course of the interview many other topics were discussed, including the occasions when an attorney arguing before the Court would fumble and confuse the identities of the two women Justices. Justice Ginsburg said the members of the National Conference of Women Judges once presented tee shirts to her and Justice O’Connor. Justice Ginsburg’s read: “I’m Ruth, not Sandra,” and Justice O’Connor’s, “I’m Sandra, not Ruth.” Justice O’Connor commented that, “One of my former law clerks made that mistake. You know he knew who was who, but they get so nervous up there anything can happen. . . . It is a tense time for the advocates; they are so concerned about everything.”

Justice Kagan commented that “I once witnessed an argument where the lawyer confused the names of the two women Justices. Twenty minutes later he confused the names of two of the male Justices. I think he realized what he had done earlier and decided to make the second mistake to be gender neutral.”

Other questions posed included what each Justice had found the most difficult adjustment for them personally upon joining the Bench. Justice O’Connor said that for her the most difficult thing was to write opinions that not only deal with the issues, but also do so in a way that will be



**Justice O’Connor (center) responds to a comment from Justice Ginsburg while Justice Sotomayor looks on.**

useful and long-lasting. “Many of these issues are issues where lower courts have been in total disagreement for a long time. When you have to put down on paper, permanently, the test that you are going to apply and see how it works, that’s a challenge every single time. You really want to do it well and won’t know until many years have gone by if you have made a good

choice.”

Justice Ginsburg observed that “Opinion writing was not new to me as I had been on a Court for some years. What was new was the death penalty. I had no idea that the Supreme Court deals with so many 11<sup>th</sup> hour appeals.”

Justice Sotomayor said that she was most challenged by finding that attending your first conference is like entering “A continuously running conversation that you are a newcomer to.” The other members of the Court have discussed positions and interpretations in previous conferences and stated views on certain issues and so they do not bother to repeat it all again. As a new participant in the conversation it “Seemed like much of it was coming out of left field.” Working with the same eight people is like conducting a long running conversation. “I was pleased that when Justice Kagan joined the Court I had learned enough to be able to explain a few things to her as other Justices had done for me.”

For Justice Kagan “every day is a challenge; it was all new to me. I had never been a judge before. I had questions like when do I read the briefs, what do I do with these four clerks and other matters.” Justice Ginsburg said she had been the beneficiary of a “chambers manual” given to her by Justice White upon her confirmation. It outlined the way his chambers functioned, outlining duties and other routine assignments. She said that she found it extremely valuable and that she asked her clerks to update her own chambers manual every year. She said she provided a copy of it to both Justices Sotomayor and Kagan upon their appointments to the Court.

At the conclusion of the event there was general satisfaction that the Society had not only followed its usual rule of contributing to the understanding of the Court’s history, but on this occasion by bringing together the four women Justices, had contributed substantially to that history.

*Visit the Society’s website, [www.supremecourthistory.org](http://www.supremecourthistory.org), and follow the link from the events page to the Newseum event where you can watch the presentation in its entirety.*

# Joseph Choate and The Imposition of Income Tax: The man whose argument won the day

By Geoffrey Platt, Jr.\*

People forget that we didn't always have an income tax. Congress first imposed one in 1862, to finance the costs of the Civil War. It was a progressive tax, assessing 3% of incomes between \$600 and \$10,000 and a higher percentage on larger incomes. It was repealed in 1872.

Through most of the 19<sup>th</sup> century, government was adequately funded by revenue generated through tariffs, and by excise taxes on liquor and tobacco. In fact there was usually a comfortable budget surplus each year utilizing that system. But tariffs designed to discourage foreign competition and thus protect big businesses and jobs, result in higher prices for the consumer. They are what economists call "regressive" affecting all citizens, even those of low income who still must purchase basic goods.

Propelled by the economic crisis of 1893 and the growing Populist political movement spurred on by the likes of William Jennings Bryan, a Democrat-controlled Congress with Grover Cleveland in the White House passed the Wilson-Gorham Tariff Act of 1894. Targeting big business and the rich, it included a 2% flat tax on gains, profits, and incomes over \$4000 a year.

To comply with the new law, The Farmer's Loan & Trust Company (NY) informed its shareholders it would not only pay the tax but also agree to submit to the Internal Revenue office the names of all its customers and shareholders on whose behalf the company acted. A shareholder from Massachusetts, Charles Pollock, sued the company to prevent it from paying the tax, alleging it was unconstitutional. He lost and appealed to the Supreme Court, which agreed to hear the case in 1895.

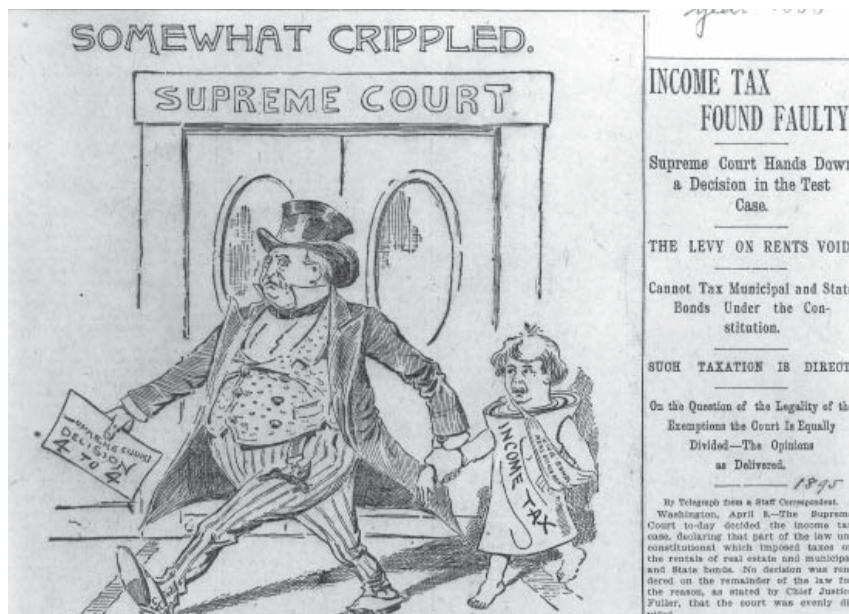
The government was not the defendant in *Pollock v. Farmer's Loan & Trust*, 157 U.S. 429 (1895) but Attorney General Richard Olney decided to appear in defense of the Act, along with the formidable advocate James C. Carter. Opposing them was Joseph H. Choate, the New York lawyer with a long record of high profile cases and famous as much for his eloquent wit and oratory as for his

courtroom success. At the apex of his distinguished legal career, Choate had represented, among others, Standard Oil, Cornelius Vanderbilt and Union Army General Fitz-John Porter (overturning his two courts-martial convictions), and had taken prominent part in New York's civic affairs, particularly in the dissolution of the corrupt Tweed Ring. He was both famous and highly respected. In his preparations Choate was aided by a noted constitutional lawyer, George F. Edmunds, an ex-Senator from Vermont

Because of the participation of Choate, Carter, and Olney, and the importance of the case, the March 12, 1895 session of the Supreme Court attracted a large crowd including

past and present members of Congress and many attorneys. Before Olney began, Chief Justice Melville Fuller announced the Court had decided there would be no time limits on presentations.

The difference between "direct" tax and "indirect" taxes was central to the case. The former is paid directly to the government by persons upon whom it is imposed, such as an income tax; the latter is centrally collected, such as a sales tax. What emerged that day were differing views on interpreted regarding



**A man leads a crippled child labeled "Income Tax" out of the Supreme Court Chamber. The man holds a paper that reads, "Supreme Court Decision 4 to 4" referencing the deadlocked vote that was the outcome of the Court's first hearing of the *Pollock* case.**

how the U.S. Constitution is to be these taxes.

Specifically at issue was the interpretation of Article 1, section 2 clause 3: "(Representatives) and direct Taxes shall be apportioned among the several states which may be included within this Union...", as well as section 8, clause 1: "The Congress shall have Power to Lay and Collect Taxes, Duties, Imposts and Excises...but all Duties, Imposts and Excises shall be uniform throughout the United States."

The Attorney General in an hour long address suggested that it was a waste of the Court's time to consider the plaintiff's arguments on constitutional grounds – they were either "perfunctory" or had been adjudicated previously by the Court. He also raised the question whether the Court had any business deciding tax policy, which was the province of the U.S. Congress. Court intervention might

violate the separation of powers doctrine.

James C. Carter, a leader in the American bar and an old friend and frequent courtroom antagonist of Choate's, spoke next in defense of the tax. He took full advantage of the Court's waiver of argument time limit by embarking on a two and one half hour address. Carter declared he was representing the Continental Trust Company, which presumably would be adversely affected if the tax was upheld, but which itself represented some wealthy men willing to contribute to the government as their obligation (the same position Warren Buffett takes today).

On every constitutional point raised by the appellants – the tax is impermissibly direct, or insufficiently uniform, -- Carter rebutted the substance but always returned to the point that Congress has the power to tax, not the Court, which, if it overturned the Act, would be arbitrarily exercising the taxing power. Humorously he regretted that the people had not sent better representatives to serve in the last Congress, but that could not be helped.

Carter admitted that the Act was an example of class taxation. He worried that if it was overturned the rich would continue to try to avoid taxation, a danger he said that could be avoided when the wealthy freely assume the rightful proportion of taxes.

Finally, noting that the Act exempted savings banks and mutual associations, he made it clear that these exemptions “were made by the Congress on the grounds of public policy and were not to be attacked.”

Carter finished his 150 minute presentation. Choate then rose—a commanding figure with a voice to match—to begin what was to be a much briefer (40 minutes) presentation. He prefaced it with his renowned and biting wit:

“If the Court pleases, after Jupiter had thundered all around the sky, and had leveled everything and everybody by his prodigious bolts, Mercury came out from his hiding place and looked around to see how much damage had been done. He was quite familiar with the weapons of his Olympian friend. He had often felt their force, but he also knew it was largely stage thunder, manufactured for the particular occasion, and he went his round among the inhabitants of Olympus,

restoring the consciousness and dispelling the fears of both gods and men that had been prostrated by the crash. It is in this spirit that I follow my distinguished friend; and shall not undertake to cope with him by means of the same weapons, because I am not master of them.”

He then recounted the conversation he had in 1891 while riding with former President Rutherford B. Hayes to the funeral of General William T. Sherman. Hayes had said to him: “You will probably see the day when at the death of any man of large wealth the State will take for itself all above certain prescribed limit of his fortune and divide it or apply it to equal uses of all the people.” Choate thought then “it was the wanderings of a dreaming man.”

Choate was passionate in his assertion that “the fundamental object of all civilized government was the preservation of the right of private property. That is what Mr. (Daniel) Webster said at Plymouth Rock in 1820 and I supposed that all educated men believed it.” Hence he declared the Act had communistic and socialistic tendencies unfairly levied on classes, in particular assaulting the very rich and four states, Massachusetts, New York, Pennsylvania, and New Jersey, which he calculated would pay 90% of the tax although they had less than 25% of the representation in the House of Representatives, where tax measures originate.

As the argument evolved, Choate's strategy became clear; he would say little more about the Act's public policy aspects, on which his adversaries had ably focused, but rather concentrate on the Constitution, in particular the definition of “direct tax” and how the Act had ignored the constitutional requirement in Section 1 that, as he described it, these revenues be “apportioned among the states according to their respective numbers.” The Act's tax on real estate income and income from personal property, such as stocks and bonds, was a direct tax. In the case of real estate, it was no different than a tax on the land from which the income was derived. Additionally he argued that the tax on income from municipal bonds impinged on States' sovereignty, for they relied on these instruments to fund their governments.



In his oral argument in the Pollock case, Joseph Choate maintained “that the fundamental object of all civilized government was the preservation of the right of private property.”

Vanity Fair, 28 September 1899 - Digitised version from : University of Virginia Fine Arts Library

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Over several weeks the Court took three votes on three subdivided sections of the case but was deadlocked 4-4 on the real property issue. Justice Howell Jackson had been absent from the first argument due to illness. Chief Justice Fuller ordered that the case be re-heard so that Jackson could be present and later vote.

Ultimately, on May 20, 1895, the Supreme Court voted 5-4 to overturn the Act, declaring it violated the Constitution. Writing for the majority, Chief Justice Fuller ruled that a tax on income from real property was a direct tax, subject to the apportionment requirement of Section 1 of the Constitution – the centerpiece of Choate’s argument. The dissenters, including Justice John Marshall Harlan, were vociferous in their opposition and the decision became highly controversial.

It also became a campaign issue in the heated presidential race of 1896, won by William F. McKinley, where the losing Democrat candidate William Jennings Bryan would taunt: “They say we passed an unconstitutional Income Tax Law; well it wasn’t unconstitutional until a judge changed his mind and we couldn’t know a judge was going to change his mind.”

The constitutional basis of the decision ultimately left proponents of an income tax with no other recourse than to work

towards a constitutional amendment specifically addressing the apportionment issue. It took years, partly because demand for government revenue had been lessened by a return to prosperity at the turn of the century. Democrat presidential platforms, however, continued to call for an income tax. In 1909 Congress adopted the necessary amendment and it was ratified by the required three quarters of the states by 1913. The Sixteenth Amendment to the Constitution was simple, striking down the constitutional apportionment requirement in Section 1. It stated:

**“The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among several States, and without regard to any census or enumeration.”**

In 1912, years after his argument, Joseph H. Choate publicly credited his partner Charles F. Southmayd, who was already ten years retired in 1895, with preparing the brief

that, as Choate put it “drove the entering wedge which by its cleavage demolished the Act.” But undoubtedly Choate’s intellectual power, passion, and eloquence in arguing the brief’s principles contributed greatly to what turned out to be an 18 year hiatus in the imposition of a national income tax, the versions of which today remain a hot topic for public debate and controversy. Many of the same issues raised in 1895, such as the nature of redistribution of wealth and fairness, remain in play. What is different today is the sheer size and complexity of the tax code, the scope of which Choate and his colleagues might have feared but could hardly have imagined, along with the tax rates involved.

Choate’s legal reputation, already well established, was enhanced by the Supreme Court Income Tax case and he continued his career at his customary busy pace, including two more cases argued before the Supreme Court,

most notably the victory preserving Stanford University’s endowment in 1896. In 1899, he was nominated by President William F. McKinley to be Ambassador to Great Britain (The Court of St. James) and he served in that capacity overseas with great distinction until 1905. Upon return to his homeland, he spent the remainder of his professional days serving his country in various high-level diplomatic assignments and the City of New York through ongoing deep

involvements in its civic affairs. He died at his home there in 1917 at the age of 85.

*\*Geoffrey Platt, Jr. spent 40 years managing non-profit organizations, such as Boscobel House and Gardens in Garrisonville, NY, and Maymont House and Gardens in Richmond, VA. Upon retirement, he opened his own consulting business, Geoffrey Platt Consulting, where his clients can draw upon his long and rich experience. In addition to his business, Mr. Platt is conducting research on his great grandfather, Joseph H. Choate.*

*Editors note: Mr. Platt is modest about the accomplishments of his great grandfather, Joseph H. Choate. Mr. Choate was much more than a prominent attorney, he was a towering figure of 19th century American law. In addition to his famous clients, he was a well known figure at the Supreme Court and his accomplishments made him one of the leading intellectual figures of the day.*



The crowded Court Room is shown during oral argument in Pollock. There was keen public interest in the case and the arguments drew a large audience.

Collection of the Supreme Court of the United States



## A Recent Acquisition: Stanley Matthews and His Wife Mary by Augustus Saint-Gaudens By Matthew Hofstedt, Associate Curator\*

Noted American sculptor Augustus Saint-Gaudens (1848-1907) portrayed several Justices over his distinguished career, including the marble bust of Chief Justice Morrison R. Waite on exhibit in the Great Hall of the Supreme Court Building. Recently, the Society acquired one of his other judicial portraits for the Court's collection: a reduction in bronze of a bas-relief depicting Associate Justice Stanley Matthews with his wife Mary.

Justice Matthews served on the Court from 1881 until his death in 1889, but it was not until 1902 that one of his daughters, Jane (Matthews) Gray, commissioned the relief of her parents. Mrs. Gray, the wife of Associate Justice Horace Gray, had come to know Saint-Gaudens while her husband sat for his own bronze relief, a copy of which is already in the Court's collection.

While researching the new piece, the curatorial staff realized that the auction catalog and most Saint-Gaudens references had identified "Mary" as the Justice's second wife, Mary Theaker Matthews. His first wife, however, was also named Mary and she was Jane Gray's mother. It seemed odd that Mrs. Gray would choose to include her step-mother in the relief instead of her birth mother. In addition, accounts of Justice Matthews' second marriage indicated that Mary Theaker was many years his junior but the woman portrayed in the relief looked much closer in age to the Justice.

In an effort to clarify Mary's identity, the staff located correspondence between Saint-Gaudens and Mrs. Gray. In 1902, she wrote to the sculptor requesting that he make two works: a bust of her father and a relief of her parents. Saint-Gaudens, perhaps trying to dissuade her from the endeavor, replied, "You must excuse my tardiness in giving you a definitive reply to your inquiry about the portraits of your father and mother...it is only within the last two days that I have been able to look at the photographs carefully and give the matter the serious consideration it deserved. It is possible to do a bust of your father from the material in hand although I shrink from working from photographs. If you desire however I will try. It is also possible to make a relief of your father and mother but that is an undertaking I shrink from even more than the bust. What I should do if I make the bas-reliefs is to take one of each of the photographs and

confine myself to copying them. I have got to a point in my life where I cannot assume the responsibility of so serious a labor without ample compensation and I think it would be well for you to know before you determine which you will have done that the cost of the bust in marble or bronze would be \$8000.00 (eight thousand dollars) and of the bas-relief of your father and mother twelve thousand (\$12,000.00)."

Mrs. Gray replied,

"I am so glad you are willing to do reliefs of my Father & Mother. The price you put them at does not deter

me as I consider it a filial act and feel that you only could make them what I desire."

Although no bust of Justice Matthews by Saint-Gaudens is known to have been made, he did complete the relief of Justice and Mrs. Matthews. Pleased with the result, Mrs. Gray had several copies made and they were distributed to her brothers and sisters. Over the years, most of these pieces found their way into museum collections, including a full size version in

marble at Matthews' alma mater, Kenyon College, in Gambier, Ohio; a full size copy in bronze at the Cincinnati Museum of Art; and another bronze reduction at the Musée d'Orsay in France.

Acquiring this fine work by Saint-Gaudens for the Court's collection demonstrates the Society's commitment to collecting and preserving objects that help illuminate the history of the Supreme Court for future generations to enjoy.

*Editors' Note: The purchase of the bas relief was made possible through generous donations made by Trustees of the Society in response to an appeal from Mr. Joseph. The piece came up for auction and on very short notice it was possible to receive pledges to cover the purchase price of the item. We would like to express gratitude to all of those who stepped forward on short notice to make the purchase of this beautiful piece possible. The piece is now displayed in an exhibit case in the Lower Great Hall of the Supreme Court Building.*

\*Matthew Hofstedt is the Court's Associate Curator and may be reached at [curator@supremecourt.gov](mailto:curator@supremecourt.gov)



The bas relief of Justice Matthews and his wife Mary by Saint Gaudens was purchased at auction recently.

Collection of the Curator of the Supreme Court of the United States

# Judicial Inauguration of Fred Vinson

By John Q. Barrett\*

On June 24, 1946, Fred M. Vinson, became the 13<sup>th</sup> Chief Justice of the United States. The position had been vacant since Chief Justice Harlan Fiske Stone's death on April 22. In the interim, the senior Associate Justice, Hugo L. Black, had served as Acting Chief Justice.

On that warm June day in Washington, many people lined up outside the White House. At 10:30 AM the gates opened and nearly 4,500 people walked to the south grounds. They found positions behind a roped-off area reserved for Administration officials and Members of Congress. The 85-member United States Navy Band, attired in summer whites, entertained the crowd by playing compositions by Tchaikovsky, Chopin, Saint-Saens and others.

Up on the South Portico of the White House, many more luminaries were present. In addition to the Truman Cabinet, Supreme Court Justices and senior Members of Congress, the guests included former Cabinet officers Homer Cummings and Jesse Jones, former press secretary for the White House Stephen Early, and the U.S. Army Chief of Staff, General Dwight D. Eisenhower.

Around 11:00 AM, a Navy bugler on the Portico brought the crowd to attention. He sounded a flourish, which signaled that President Harry S. Truman had arrived. The Navy Band did not play "Hail to the Chief" as it typically would, however, for the President did not want to be the center of attention on this occasion. Truman simply stepped forward, looked out on the crowd, smiled broadly and then stepped back.

Representative Sam Rayburn (D. TX), the Speaker of the U.S. House of Representatives, stepped to the microphone. He said he hoped he would be pardoned for saying that it was "a deep personal pleasure for [him] to participate in the confirmation—finally—of a man who is doing a great job."

Fred Vinson, age 56, who had been serving for the past year as U.S. Secretary of the Treasury, then stepped forward. He was accompanied by his wife and by Chief Judge D. Lawrence Groner of the U.S. Court of Appeals for the District of Columbia. Vinson had served on that court, with Groner as his colleague and friend, from 1937-1943.

Chief Judge Groner extended to Vinson the Bible

that he and his wife had received when they married in 1923. Vinson placed his left hand upon it. Groner asked Vinson if he swore to the judicial oath specified in federal law and he, right hand raised, responded, "I do, so help me God." Vinson's throaty voice, amplified, carried across the White House grounds. Groner then read to Vinson the constitutional oath that appears in Article VI of the Constitution, and asked if he would swear to it. Vinson did so. Then the new Chief Justice took the Bible in both and, raised it and kissed it.

President Truman stepped forward, shook hands with Chief Justice Vinson and spoke briefly:

**This is a most auspicious occasion, only eleven Presidents have had the honor and the privilege of appointing a Chief Justice of the United States. That duty fell upon me. It was one on which I labored long and faithfully. I finally decided to make the Secretary of the Treasury the Chief Justice of the United States. And the one regret that I had was that I was losing Mr. Vinson from the Cabinet of the President.**

**We all know that one of the three branches of the Government of the United States is the branch of the Judiciary—the Judicial Branch. The Supreme Court is at the top of the Judicial Branch. All of us have the utmost respect**

**for the courts of the country, and we know that that respect will be enhanced when Mr. Vinson becomes the Chief Justice of the United States actively on the bench.**

**It is a pleasure to me to have you all here today to witness this ceremony. This is the thirteenth time that this ceremony has been performed. Mr. Vinson is the thirteenth Chief Justice of the United States, and I think that is lucky [and here the crowd started to laugh—as they understood the President's joke about "lucky 13"] for the United States, and lucky for Mr. Vinson. At least, I hope it is.**

After a benediction by the Chaplain of the U. S. Senate, the ceremony ended with the Navy Band playing "The Star Spangled Banner." The President and the Chief Justice walked into the White House and received congratulations in the East Room. (Later they walked to the Treasury Department next door and Chief Justice Vinson swore in his successor as Secretary of that department, John W. Snyder.)



Fred Vinson, (left) and President Truman were close friends and Vinson occasionally appeared with him publicly. Here they are shown during a "Whistle Stop Campaign Stop," greeting the crowd from the back of a train.

Truman Library Accession Number: 58-772-02

A *New York Times* headline the next day termed Vinson's oath-taking an "Unusual Ceremony." *The Washington Post* reported that it was "a drama without precedent in the annual[s] of the high bench." The ceremony contrasted pointedly with those of Vinson's two immediate predecessors. Harlan Stone was sworn in at a vacation log cabin in Rocky Mountain Park, Colorado on July 3, 1941. Stone's predecessor, Charles Evans Hughes, had a more traditional ceremony which took place in the Supreme Court chamber in the U. S. Capitol Building in 1930. For many, the 1946 Vinson ceremony brought to mind President Franklin D. Roosevelt's fourth and final inauguration, held on January 20, 1945. Breaking with previous tradition, that ceremony also took place on the White House South Portico.

Three Supreme Court Justices—Hugo Black, Wiley Rutledge and Harold H. Burton—were present on the occasion of Chief Justice Vinson's oath-taking ceremony. The other five—Stanley Reed, Felix Frankfurter, William O. Douglas, Frank Murphy and Robert H. Jackson—were absent for various reasons, including absence from Washington.

Many people had positive reactions to the Vinson ceremony. Much of the public seems to have enjoyed the pageantry and been impressed with the stature and image of the new Chief Justice. Among government officials and reporters, many understood that the ceremony was an expression of President Truman's deep friendship with Fred Vinson. They also saw it as an attempt to mitigate controversy regarding the Supreme Court itself, and perhaps perceived damage done to the reputations of the institution and its members in the wake of an incident involving Justice Robert Jackson.

Jackson was serving in Nuremberg as the chief prosecutor in war crime cases brought against senior Nazi war criminals. This service in Europe resulted in Jackson's absence from the bench for its entire 1945-1946 term. On June 10, 1946, only four days after Truman announced Vinson's appointment as Chief Justice, Jackson sent and released publicly, a cablegram to the chairmen to the Senate and House Judiciary Committees. In this unprecedented missive, Jackson first praised Vinson's nomination to be the next Chief Justice, and then turned to a vigorous defense of himself and his absence from the Bench. His absence had been widely criticized in the Press, and on the floor of Congress. In the process of presenting his defense, Jackson aired some Court confidences and disparaged some of his fellow Justices.

In his cable, Jackson sought to answer what he regarded as false and outrageous public attacks on him that had been generated recently by other Justices and their emissaries. The attacks had increased during the period when Truman was considering whom to appoint as Chief Justice. These reports claimed that Jackson would make a poor Chief Justice because he had personality-based feuds with colleagues. In fact, Jackson now stated publicly, the problems at the Court turned on the improper behavior by other Justices. Jackson alleged that Justice Black had in one case tried to pressure Justice Murphy to announce a 5-4 decision for a labor union before he had completed writing his opinion, so as to affect ongoing collective bargaining negotiations. Black had also endeavored, Jackson stated, to get the full Court's imprimatur on the rejection of a motion seeking Black's disqualification from a case for possible bias, even though such a motion for recusal is at the sole discretion of the Justice at issue. Further, Jackson revealed that Black had, a year earlier while Jackson was still in Washington but in the early days of his Nazi prosecution assignment, threatened Jackson in the Justices' private conference with "war" for not signing on to the Court's *per curiam* denial of that disqualification motion. Jackson believed that Black had lived up to his threat over the ensuing year. Now that any Jackson response could not be construed as special pleading for a Chief Justice appointment, he explained, was writing to defend himself and his actions.

All of that heat and smoke metaphorically filled the Supreme Court, the White House and the Capitol in late June 1946. Many assumed that this was another reason why President Truman decided to stage Chief Justice Vinson's swearing-in ceremony at the White House in an attempt to emphasize publicly the respected stature of the Supreme Court, with pomp and ceremony in the open air. Others, including some domestic commentators and persons who learned from afar of the irregular Vinson swear in, saw it a blatantly



Chief Judge D. Lawrence Groner (left) administered the oaths of office to Fred M. Vinson on the South Portico of the White House.

NARA RECORD: 8451352

inappropriate political ploy.

When word of the event reached Nuremberg, for example, President Truman's appointees there, including Justice Jackson and the U.S. Judges serving on the International Military Tribunal (IMT), former U.S. Attorney General Francis Biddle and Chief Judge of the U.S. Court of Appeals for the Fourth Circuit John J. Parker (who the Senate years earlier had narrowly rejected for appointment to the

*Continued on Page 12*

Supreme Court) were shocked. They found the event undignified and wondered if it reflected a “hick” notion of how to emphasize the importance of Vinson’s job. More substantively, they feared that it exhibited Democratic Party glee at “capturing” the chief justiceship. (Stone, although elevated by FDR to Chief Justice, had been appointed an Associate Justice by President Coolidge,



A news photographer took this picture of the crowd gathered on the White House grounds for the swearing-in ceremony of Chief Justice Fred M. Vinson.

NARA record: 8451352

instrument is not stopped by some drastic thing, we are in for a pretty fundamental change and not unlike that which came over Germany during the early days of the Nazi regime. As I have viewed from a distance the swearing-in of the new Chief Justice at the White House with bands playing and the Democratic leader of the House of Representatives presiding, and political personalities arranging it, the whole thing looks grotesque as a political

celebration. and was in Stone’s days of political affiliation and activity including his service as Attorney General, a Republican.) They also were concerned that the White House ceremony for Vinson reflected a notion that the Supreme Court was not subservient to the Executive.

A day or so after he learned of the Vinson ceremony, Jackson wrote privately from Nuremberg to his friend and mentor of thirty years, Judge Charles B. Sears, retired from the New York State Supreme Court and the New York Court of Appeals. Jackson sent the letter to Sears’ home in Eden, New York near Buffalo. His letter was in response to a letter Sears had written on June 9, 1946 informing the Justice that the University of Buffalo planned to invite Jackson to receive an honorary degree at the final convocation of the University’s centennial celebration in October.

In his reply, Jackson wrote these further thoughts about his June 10<sup>th</sup> public cable and the June 24<sup>th</sup> Vinson ceremony:

**My dear Judge Sears:**

**I have greatly appreciated your thought of me in connection with the anniversary of the University of Buffalo and I have a letter from Chancellor [Samuel P.] Capen concerning it. I am not altogether sure that the University is wise in departing from its policy of no honorary degrees. But I know I can be perfectly candid with you. Since his invitation was extended, I have become a party to what from this distance, looks like a tempest. That it would be such and would be the cause of great criticism to me, I fully understood, and knowingly took the risk for motives which I well knew would be misunderstood. Whether it was wise or unwise, and whether my reasons were sufficient, we can talk over some day in the leisure of Eden, I hope. I am certain that if the trend toward making the Court a purely political**

celebration.

**The point of the thing at this time, however is this: I well know how timid many people are and how they fear to appear to be taking sides when a controversy is raging, and undoubtedly it is better for a University not to get itself in the line of fire. If there is in this situation anything of embarrassment to the University, I would want you to tell me so, and we will forget the whole thing. I will not misunderstand it.**

Judge Sears communicated to Chancellor Capen this Jackson offer to withdraw quietly from receiving a university of Buffalo honorary degree. Capen soon told Sears to decline the offer. Sears then wrote back to Jackson that “[t]he University not only insists on carrying out its invitation and your acceptance but reissues and reasserts its satisfaction I having you as its guest and wants you to speak at the final convocation.”

On October 4, 1946, three days after the IMT rendered its judgment at Nuremberg and Jackson left for home, he received an honorary degree and was the principal speaker at the University of Buffalo’s centennial convocation. On Monday, October 7, 1946, the Vinson Court took the bench for the first time. As viewed from the audience, left to right, Rutledge, Murphy, Frankfurter, Black, Vinson, Reed, Douglas, Jackson and Burton were all present, back in their building.

*John Q. Barrett is a professor of law at St. John’s University in New York City. He also is Elizabeth S. Lenna Fellow and board member of the Robert H. Jackson Center in Jamestown, NY. He is working on a biography of Robert H. Jackson. Via his “Jackson List” he sends periodic emails articles to thousands of subscribers around the world.*

*Continued from Page 3*

always believing the spread overestimated his beloved Packers or Cardinals compared with their opponent. His curiosity persisted as well, as he questioned us at length about our method in correctly predicting Giacomo's victory in the 2005 Kentucky Derby. And the Chief's robust sense of humor never waned a bit. He laughed heartily at a skit in which one of us imitated his singing, and afterward he wryly stated that he hadn't known there was such talent in chambers.

The Chief once wrote that his former boss Justice Jackson would be remembered for two primary attributes, but he might just as easily have been speaking of himself.<sup>1</sup> First, the Chief had a capacity "to profit from experience, yet at the same time to maintain a sturdy independence of view." Second, the Chief will be remembered for his sheer ability, which means not just analytical ability or the ability to charm an audience or add zest to an otherwise dull opinion, but "also . . . an element of doggedness," including

<sup>1</sup> William H. Rehnquist, *Robert H. Jackson: A Perspective Twenty-Five Years Later*, 44 ALBANY L. REV. 533 (1980)

the type of "doggedness which insisted that no matter how overwhelming the weight of authority behind a doctrine or how prestigious the signatories on a petition were, both doctrine and petition would be weighed, at least in part, with a measure of [...] common sense and with a view to the value of the [...] environs where he spent the first [...] years of his life." The Chief's Western roots, his common sense, his independence, and his sheer ability are reflected throughout his time on the Court, but never were they more on display than in his last full Term.

*\* Jeff Oldham is an appellate partner at Bracewell & Giuliani in Houston. Jeff and his wife, Melissa, have two sons. Jay Richardson is an Assistant United States Attorney prosecuting narcotics offenses and violent crime in the District of South Carolina. Jay and his wife, Macon, have two daughters and are expecting a third child this fall. Ryan Shores is a partner at Hunton & Williams, focusing on antitrust, intellectual property, and other complex commercial litigation. Ryan and his wife, April, have four sons and a daughter. Jeff, Jay, and Ryan clerked for the Chief during the October 2004 Term, which was the Chief's last full Term.*

## Reprisal of "Father Chief Justice"

This Fall members of the Supreme Court Historical Society are cordially invited to attend a reprisal of "Father Chief Justice": Edward Douglass White and the Constitution, in Boston, MA, at the John Adams Courthouse, Pemberton Square, in the auditorium of the Social Law Library. The play, written and directed by Paul R. Baier, Professor of Law at Louisiana State University, a former Judicial Fellow at the Supreme Court, will feature four Justices of the Massachusetts Supreme Judicial Court playing the parts of Chief Justice White (Justice Ralph Gants), Justice Holmes (Justice Robert Cordy), Fanny Holmes (Justice Margot Botsford), and Justice Brandeis (Justice Francis Spina). They appear in Act III of the play, "At Home," set in Holmes's living room at 1720 I Street, Washington, D.C. The date for the performance has not been determined but check the website for updated information.

The Social Law Library is a perfect setting for the play as Holmes, a native Bostonian, was a frequent visitor to and patron of what is America's oldest law library. It is reported that he used the library while preparing his first oral argument before the Massachusetts Supreme Judicial Court and later while preparing lectures that became his great written work, **The Common Law** (1881.)

The play's central figure is Chief Justice Edward Douglass White, who was the first Associate Justice to be elevated to the Chief Justiceship. Largely overlooked today, White was deeply respected in his own day. "His thinking is profound," Holmes exclaims in the play, as did in life. White's most enduring legal legacy is the "Rule of Reason"

interpretation of the Sherman Anti-Trust Act. White is the only Louisianan ever to serve on the Supreme Court, and at the time of his appointment, only the second Catholic ever to serve.

Act II, "Soldier Boys," focuses on Holmes—"Union Blue Coat of Boston"—and Edward Douglass White—"Confederate Soldier Boy of Bayou Lafourche"—during the Civil War. As the sobriquets infer, Holmes and White fought on opposing sides. But in one of the great triumphs of American history, these veterans of the Civil War served together on the Supreme Court of the United States for some nineteen years, 1902-1921.

### 2012 Fall Lecture Schedule

The **2012 Lectures** focus on the Constitution and the Supreme Court's earliest history on property rights.

The remaining lectures are:

**October 10, 2012 | 6:00 pm**

The Supreme Court and the Takings Clause

Professor Richard A. Epstein  
University of Chicago School of Law

**November 14, 2012 | 6:00 PM**

The History of Native American Lands and the Supreme Court

Professor Angela R. Riley  
Director, UCLA American Indian Studies Center

# NEW SUPREME COURT HISTORICAL SOCIETY MEMBERSHIPS

January 1, 2012 Through March 31, 2012

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 Madison Allman, Dallas  
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Ryan Owens, Madison

**WYOMING**

R. Justin Tunskey, Green River

**INTERNATIONAL****ICELAND**

Johannes Sveinsson, Reykjavik

**UNITED KINGDOM**

Robert David Sutherland,  
 Edinburgh



**A Celebration to Honor the Historic First Term of Justice Sandra Day O'Connor on the Supreme Court**

Newseum President James C. Duff presided over the forum with (left to right) Justice Ginsburg, Justice O'Connor, Justice Sotomayor and Justice Kagan