

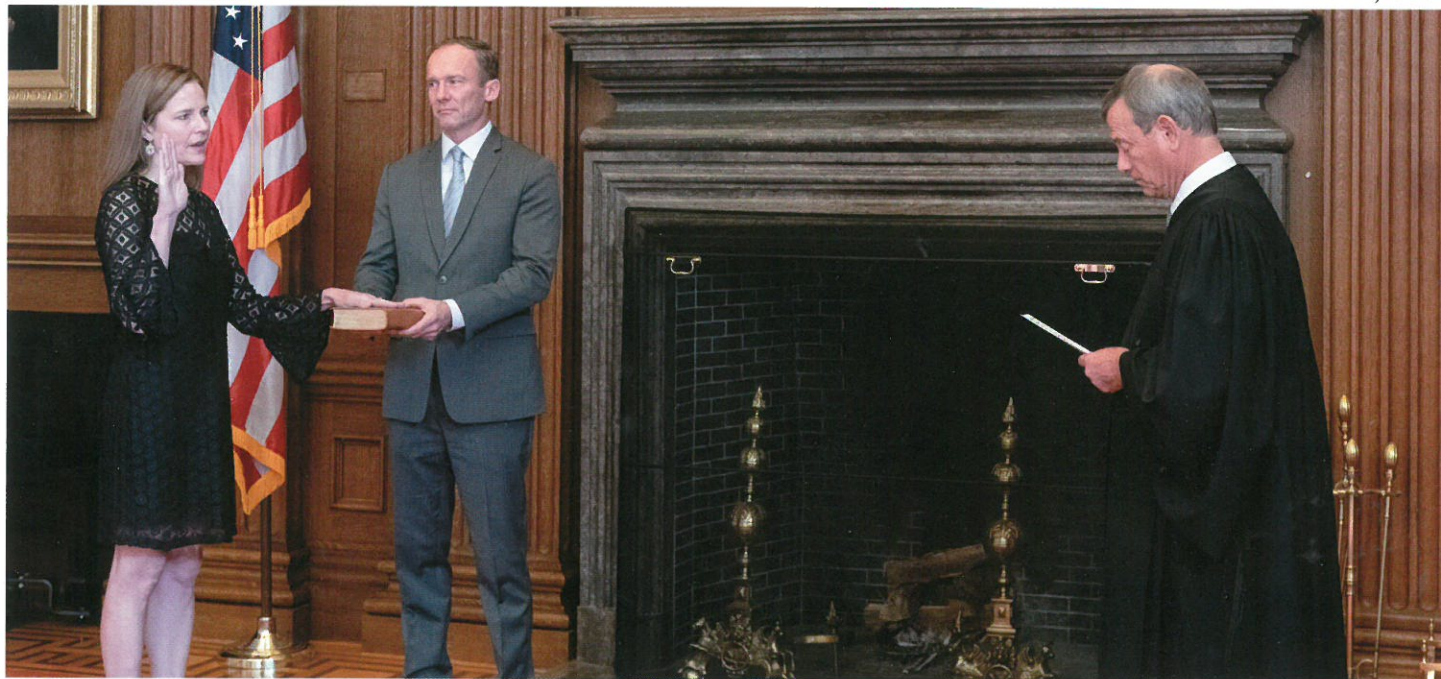


THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XLIII

NUMBER 1, 2021



*Justice Amy Coney Barrett received the oath of office from Chief Justice John G. Roberts, Jr. on October 27, 2020. Her husband, Jesse Barrett, held the Bible during the ceremony.
Photo Credit: Collection of the Supreme Court of the United States*

The 103rd Associate Justice: Justice Amy Coney Barrett

Justice Amy Coney Barrett became the 103rd Associate Justice of the Supreme Court of the United States, and the fifth woman appointed. Nominated by President Donald Trump, Justice Barrett took her seat on October 27, 2020. Prior to joining the Supreme Court, she served on the US Court Appeals for the 7th Circuit for nearly three years.

Justice Barrett was born in New Orleans, Louisiana on January 28, 1972. Her early life was spent in Metairie, Louisiana, a

suburb of New Orleans. She was educated at St. Mary's Dominican High School, a Catholic school for girls. Following graduation, she attended Rhodes College in Tennessee where she graduated magna cum laude. She was a member of Phi Beta Kappa. Academic recognition included being named the most outstanding English major and writing the best senior thesis.

Upon graduation from Rhodes, Justice Barrett attended law school at No-

tre Dame on a full-tuition scholarship. Again, she excelled academically, graduating summa cum laude in 1997, and was recognized for having the best exam results in 10 of her courses. She served as the executive editor of the Law Review and received the Haynes Prize as the top student in her class—the highest honor awarded by the law school.

Her career after graduation included two prestigious clerkships. The first was with Judge Laurence Silberman on the U. S.

Letter from the President



President Chilton D. Varner

This quarter we welcomed our new Executive Director, Jim Duff, who is working closely with other members of the staff to move the work of the Society forward using some new approaches to our work.

Much of the Society's programming has, of necessity, transitioned to virtual status during the pandemic. Our first foray into the realm of Zoom events occurred last fall when the Society partnered with the American College of Trial Lawyers (ACTL) to present an outstanding CLE program. The topic was the iconic case *Plessy v. Ferguson* and other "test cases" and their importance in the judicial system. This effort received kudos from members of both sponsoring organizations. The first segment was presented by author and journalist Steve Luxenberg, who spoke about his recent book on the *Plessy* case titled "Separate: *Plessy v. Ferguson* and America's Journey from Slavery to Segregation." The book traces the origins of the case through the lens of a wide variety of characters over more than a half-century time period. He noted that the first separate railway carriage was actually introduced in the largely pro-abolitionist North, prior to the Civil War. Following the war, this method of segregation became more prevalent. The architects of the *Plessy* case hoped that if separate seating in railway carriages was ruled unconstitutional, the door would open to expand civil rights on a broader scale. The program utilized the talents and

expertise of three Society stalwarts: Clare Cushman, our Director of Publications, and Society Trustees and outstanding Supreme Court advocates, Carter Phillips and Seth Waxman. Mr. Phillips discussed a test case he brought against the Detroit School system. The complaint argued that citizens have a constitutional right to literacy. Former Solicitor General Seth Waxman, also spoke about his experience with test cases, both as the Solicitor General of the United States, and as a Supreme Court advocate. Clare Cushman coordinated the program and served as the moderator for the question and answer period that followed each of the three segments. This presentation can be accessed through the Society's website under the media section.

The second joint seminar shared by the ACTL and the Society was presented in March. This program commemorated the 25th anniversary of the Virginia Military Institute (VMI) case, which challenged the constitutionality of the male-only admissions policy of the school. The majority opinion written by Justice Ruth Bader Ginsburg is considered by many scholars to be the most important opinion she authored during her service on the Supreme Court Bench. Program participants included Society Trustee Theodore Olson, who argued for VMI and the state of Virginia in the Supreme Court; Paul Bender, who argued the government's case in the Supreme Court as Deputy Solicitor General; and Lisa Beattie Frelinghuysen, who served as a law clerk to Justice Ginsburg and helped draft the majority opinion. Members of the Society were able to view this program live. Both programs have since been aired on C-Span3 many times and are available to view on our website. Building on the success of these programs, the Society has created a series of stand-alone virtual lectures. Whereas the Leon Silverman Lecture series has been planned on a thematic basis, these lectures are not linked to a common subject. This has pro-

vided an opportunity to invite authors of recent books who can showcase their recent works on constitutional issues and history. Each talk has been followed by a question and answer period which affords viewers the opportunity to submit questions to the authors. The lectures thus far have been outstanding and have provided our members information and education. A schedule of the past and future programs in this series is included in this magazine. Society members are invited to register and access the programs in "real time." But, as with the *Plessy* program, the complete programs are also available on the Society's website within a short time after they are presented, enabling members to view or review them at their convenience. These virtual programs have not only provided a way for the Society to continue providing enrichment to members, but also have opened our lectures to a wider audience across the country. While we miss meeting in person, we are also excited about the increased outreach.

Your Society is working hard to prevent its work from being a victim of the pandemic. On behalf of my fellow officers and trustees, thank you for your continuing support. Many of you have responded to the various appeals for donations to the Annual Fund and suggestions that you increase your level of membership to help offset the financial challenges. Your generosity is essential to the continuing success of the Society. Working together with you, we look forward to a bright future. ☀

Quarterly

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Advisory Editor James B. O'Hara



*Justice Amy Coney Barrett is the fifth woman appointed to the Supreme Court of the United States.
Photo Credit: Collection of the Supreme Court of the United States*

Court of Appeals for the District of Columbia for the period 1997 to 1998. She moved from that clerkship to serving as a clerk to Justice Antonin Scalia from 1998 to 1999. Following that clerkship she entered the practice of law at the firm of Miller, Cassidy, Larroca & Lewin in Washington, D.C., a firm that specialized in litigation. The firm merged in 2001 with Baker Botts and Barrett worked at the reorganized firm for another year, before leaving the practice of law for academia.

She then embarked on her teaching career at George Washington University where she taught law and economics for a year. In 2002, Barrett joined the faculty of Notre Dame where she taught courses on federal courts, constitutional law and statutory interpretation for 15 years. She was named a professor of law in 2010 and became the Diane and M.O. Miller II Research Chair of Law in 2014. She was also recognized as “distinguished professor of the year” three times during her tenure at Notre Dame. She published numerous articles in leading journals during her academic career.

Then-Professor Barrett was nominated to the 7th Circuit Court of Appeals on May 8, 2017. She was confirmed by the vote of the Senate on October 31, 2017. During her tenure on the 7th Circuit she continued to teach law part-time at Notre Dame.

Chief Justice John G. Roberts, Jr. administered the oath of office to Justice Barrett on October 27, 2020 and she embarked on her work immediately. Because of COVID concerns, it was a small, private ceremony. An investiture ceremony will follow at a later time when conditions allow. Justice Barrett married Jesse Barrett in 1999. Mr. Barrett is fellow alumna of Notre Dame Law School. They are the parents of seven children. ☺

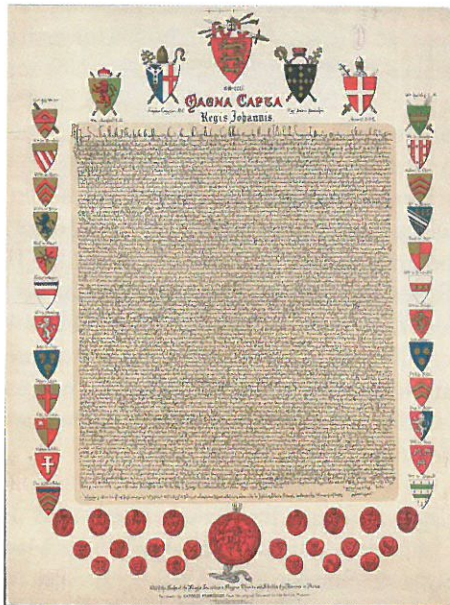


The formal group photograph of the Court taken after Justice Barrett joined the Court. (Left to right front row): Associate Justices Samuel A. Alito, Jr., Clarence Thomas, Chief Justice John G. Roberts, Jr., Associate Justices Stephen G. Breyer and Sonia Sotomayor. Back row (left to right): Associate Justices Brett M. Kavanaugh, Elena Kagan, Neil M. Gorsuch and Amy Coney Barrett.

Photo Credit: Collection of the Supreme Court of the United States

The State of Tennessee v. The United States of America in the Bronx State Court

By Norman Liss



One of the four original copies of the Magna Carta was a focal point of the exhibit titled "Roads to Liberty, Magna Carta to the Constitution." Photo Credit: Library of Congress

September 17, 1987 marked the 200th Anniversary of the U. S. Constitution. The Commission on the Bicentennial of the United States Constitution was created to commemorate this auspicious anniversary. The Commission was chaired by Chief Justice Warren E. Burger, who had retired from his role as the Chief Justice of the United States to take on that role. He was eager to use the commemoration as a way to inform the American public about the importance of the Constitution in their lives and to trace the important documents and developments that preceded it, paving the way to its creation.

One of the ways the Commission planned to disseminate this information was through the use of a mobile exhibit. The Commission created an extraordinary exhibit in a converted bus. The exhibit was

titled "Roads to Liberty, Magna Carta to the Constitution," and contained some of the most important documents in American history. The display included an original copy of the Declaration of Independence, one of the four original copies of the Magna Carta, Thomas Jefferson's draft copy of the Bill of Rights with his accompanying letter, the Mayflower Compact and other significant historical documents of our country. By utilizing a bus to display the items, the exhibit travelled to twenty-eight states, thus increasing the number of citizens who were able to view this unique collection.

On September 11, 1987, the bus was located on the campus of Lehman College in the Bronx. The Chief Justice had arranged for the display to be shown in Bronx County where I resided, to acknowledge the help I had been able to provide in arranging for the display of one of the original copies of the Declaration of Independence. To commemorate the exhibition being displayed in Bronx County, Bronx County Borough President Fernando Ferrer had declared that day to be Constitution Day in the Bronx by Proclamation.

As the sun was going down following a long day of visitation by students, faculty and local citizens, a group of staff and Commission members met with the President of Lehman College, Leonard Lief. We were with a Commissioner of the Bicentennial Commission, Fred Biebel, who was in charge of the exhibition. As the exhibition was closing down for the day, we heard

police sirens approaching, and realized that some of the arriving vehicles were blocking the entrance to the college. In a moment, we were surrounded by police officers from the New York City Police Department's 52nd Precinct, State Troopers from New Jersey and State Troopers from Tennessee! We were informed that there were other officials present including Assistant Attorneys General for the state of Tennessee, museum officials from Tennessee, sheriffs and attorneys, and as we later learned, reporters from Tennessee newspapers. In a state of shock, a stunned Biebel turned to me saying, "What the heck is going on?"

A sheriff approached the group inquiring who was in charge. Mr. Biebel responded, "I am. What is this about?" He was promptly served with an Order to Show Cause and a Summons and Complaint issued by the Bronx County Supreme Court. The pleadings and accompanying Order to Show Cause were read and called for the seizure by the State of Tennessee of the Jefferson documents as well as a Restraining Order prohibiting the documents to be transported to any other

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX : I. A. S. PART ONE

THE STATE OF TENNESSEE,

Plaintiff,

-against-

ROADS TO LIBERTY, FREDERICK K. BIEBEL,
As Chairman of ROADS TO LIBERTY, INC.
and MAGNA CARTA IN AMERICA,

Defendants.

INDEX # : 17658/87

851 Grand Concourse
Bronx, New York

January 28, 1988

BEFORE: HON. ANITA FLORIO, J-u-s-t-i-c-e

A P P E A R A N C E S :

NORMAN LISS, P.C.
Attorney for Defendants.
200 West 57th Street
New York, New York 10019

Maureen Neville, CSR
Senior Court Reporter.

Photo Credit: Courtesy of Norman Liss

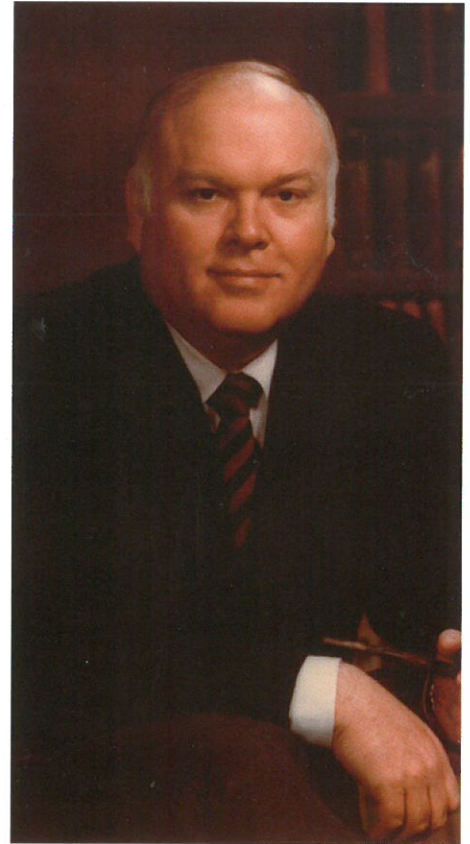
location. The Order to Show Cause made reference to a dispute concerning the right of possession of the Jefferson documents. It was all incomprehensible to us.

An attorney from New York approached us indicating that he represented the State of Tennessee. The State of Tennessee was to celebrate its Bicentennial the following day and were demanding surrender of the Jefferson documents for their celebration. He informed us that the Governor of Tennessee, Ned McWherter, and representatives of the state's museums were angered by the fact that the operator of the exhibition, intended to deprive Tennessee of the documents that had been contracted for exhibition at Tennessee's own commemoration. Believing the exhibit to be organized by a not-for-profit, private organization, the state of Tennessee was demanding surrender of the documents.

We explained to the attorney and Sheriff that although the signage on the bus read "Roads to Liberty", the bus and the exhibition were under the auspices of the United States government through

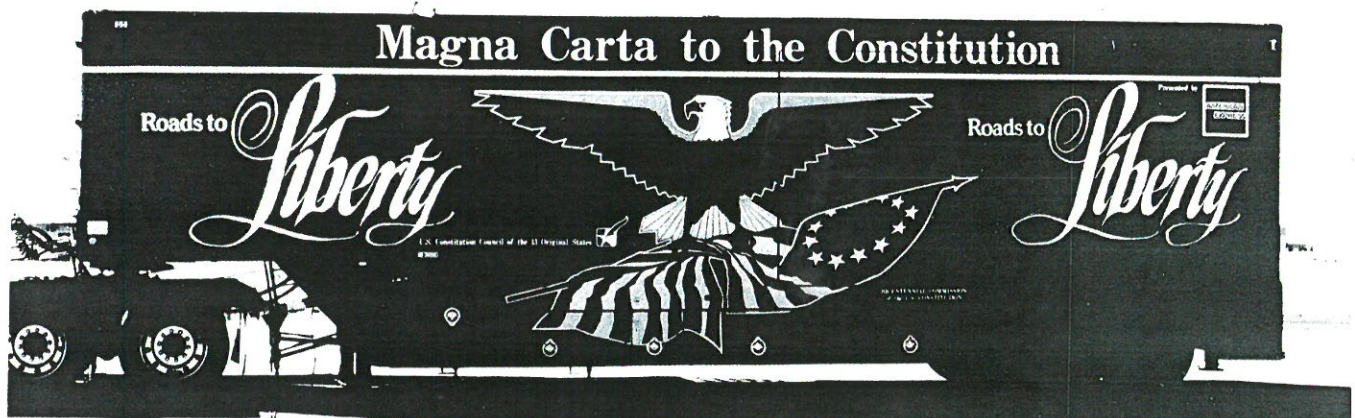
its Bicentennial Commission, and not by a not-for-profit corporation. Unimpressed, the sheriff insisted that we would have to comply with the order. When we argued that the Bronx Court did not have jurisdiction over the United States government and expressed doubt that the State of Tennessee really wanted to sue the US Commission or its Chairman, Chief Justice Warren E. Burger, someone in the group muttered, "You never met the Governor of Tennessee."

Heated conversations followed with Assistant State Attorney Generals and the Head of the Tennessee Highway Patrol, all of whom were adamant that we immediately comply with the Order. Rather stunned, Biebel suggested that we call Chief Justice Burger at home. It was 1987, and not having a car phone or a cell phone, we called Burger from a campus pay phone. When informed about the situation, Chief Justice Burger asked me, "Doesn't your Bronx court know it has no jurisdiction over the United States?" However, he calmly requested that we cooperate and resolve the matter by providing the documents. He



Tennessee Governor Ned McWherter sent sheriffs and state troopers to New York to collect the Jefferson documents that were promised to use in his state's bicentennial celebration.

Photo Credit: Courtesy Tennessee State Library and Archives



"ROADS TO LIBERTY: MAGNA CARTA TO THE CONSTITUTION"

American Express Company is sponsoring a mobile exhibit that will tour 19 states to commemorate the 200-year-old U.S. Constitution. The exhibit features an original of the Magna Carta plus other related historical documents, including the Pierce-Butler draft of the U.S. Constitution.

Tennessee goes to war in Bronx

By TOM WATSON

The last time the South invaded Northern territory over states' rights, Robert E. Lee laid siege to a little town 150 miles south of here known as Gettysburg. History repeated itself on Sept. 12 in the Bronx, as an angry horde of Tennesseans stormed the quiet campus of Lehman College to battle the federal government over the Constitution.

Led by the blazing lights of motorcycle police, the contingent came armed with the present-day equivalent of a slashing calvary in Confederate gray—two New York lawyers bearing a court order.

The Tennessee brigade demanded Thomas Jefferson's draft copy of the Bill of Rights. Governor Ned McWherter had planned a huge celebration to open a special exhibition three days later and without the documents, well, Sherman's march might seem like a hike to the beach.

The Governor dispatched his private plane, and after landing at a New Jersey airfield, the Tennessee band, including a Tennessee state trooper, two New Jersey troopers,

the New York lawyers, an assistant Tennessee Attorney General, and the director and curator of the Tennessee State Museum, drove to the Bronx.

But there were the Union men assembled at Lehman, led by Riverdalian Norman Liss, standing strong as a stone wall. He describes the ensuing scene as a madhouse, as the Tennesseans, backed by a contingent of New York sheriffs, demanded the documents, which were on display at Lehman as part of a traveling exhibit organized by the U.S. Commission on the Constitution.

The battle raged into the night. Mr. Liss and Frederick Biebel, a member of the U.S. Commission, brought in reinforcements. They called the former Chief Justice of the United States, Warren Burger, from a pay phone to ask for some legal advice. Mr. Burger, who left the court to head the Constitution Commission, upbraided the Tennesseans for "abuse of process," recalled Mr. Liss, and urged the Union forces to remain strong.

"A whole entourage of people arrived, like it was the Brink's robbery
(Continued on Page A8)

arranged for a government plane to fly to Teterboro Airport in New Jersey to transport the Tennessee officials. After landing there they had picked up New Jersey State Police, driven to New York and picked up officers from the New York City Police Department, and the sheriff and attorneys.

When eventually apprised that the State of Tennessee had mistakenly sued a United States Commission, Tennessee's Attorney General, Michael Cody issued a letter of apology to the Chief Justice. Notwithstanding that, Burger requested that I bring a proceeding in the Bronx County Supreme Court to vacate the Order. He did not want an Order on record against the Commission.

A proceeding was brought, and a Deputy Attorney General for the state of Tennessee appeared in the Bronx County Supreme Court on the return date and a Stipulation was placed on the record withdrawing the Tennessee proceeding *ab initio*.

The law firm retained by the State of Tennessee to bring its proceeding was a well-known New York firm widely recognized for its specialty: bill collecting. They were once again successful. They had collected the Bill of Rights.

It was a bizarre ending to a patriotic Constitution Day! ●

*Lehman College campus was the scene of a show down between Governor McWherter and the Bicentennial Commission. In a classic misunderstanding, the Governor initiated legal proceedings to obtain the documents.
Photo Credit: Courtesy of Norman Liss*

stated that it had been the Commission's intention to deliver the documents to the State of Tennessee for its celebration, especially since this was in fact the last day of our exhibition. But as a condition to dismantling the documents, he required an indemnification agreement from the State of Tennessee, covering any damages caused in the course of removing the documents from the existing display. Burger surmised that the controversy might be a publicity stunt as the group from Tennessee included reporters. As we later learned, he was in fact correct, inasmuch as the entire story was carried in all of the Tennessee newspapers the following day, with headlines reading "State Wins Independence for Freedom Documents".

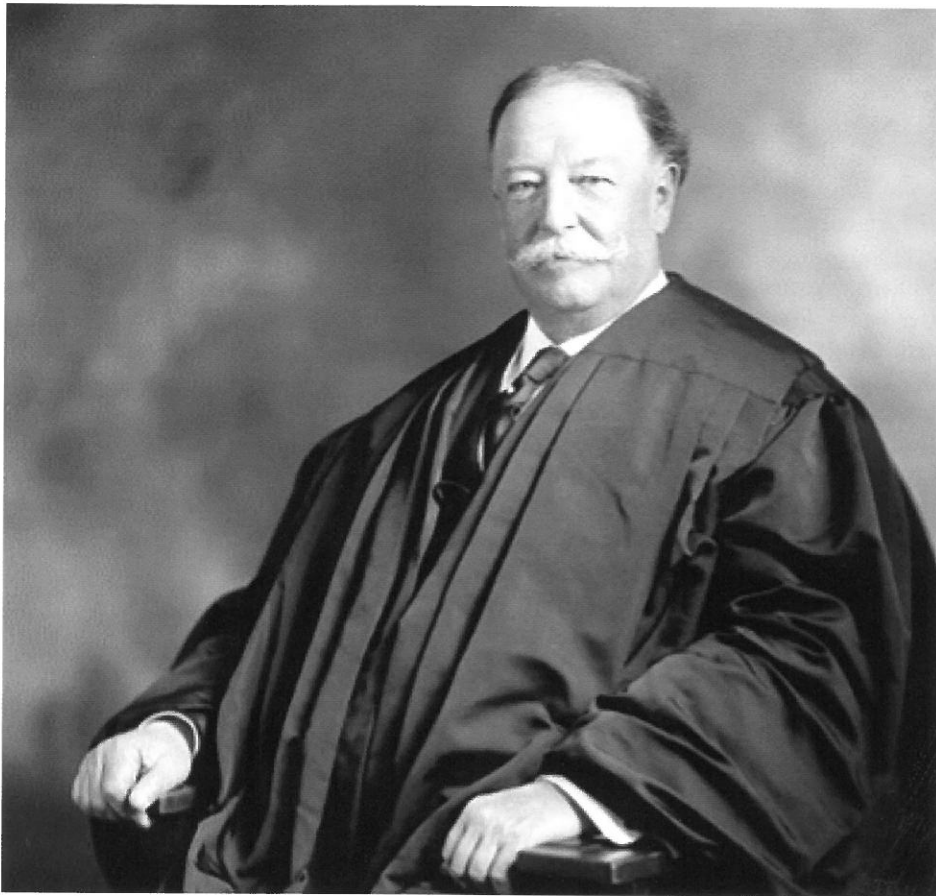
We informed the Tennessee people that the Smithsonian had curated the display and only the Smithsonian was authorized to dismantle the documents, but that Burger authorized the dismantling on the condition of the execution of an indemnification agreement. Subsequent to that document's execution, what followed was a careful dismantling, accomplished by the police officers and the Tennessee museum officials who were present. It was 2:00 AM when we left the campus and the Tennessee officials got back into their vehicles to fly back to Tennessee with the documents.

Because of the misinformation provided to the Governor of Tennessee, he had

Norman Liss is an attorney in New York and a long-time member of the Society. He served as a member of the New York City Bicentennial Commission. He is Chairman of Development of the Ellis Island Restoration Commission and Chairman of Historical Documents of the Statue of Liberty. He published an article in Quarterly No. 2, 2019 about Chief Justice Burger and the Bicentennial Commission.

The William Howard Taft National Historic Site

By Seth Frost, Park Guide



Chief Justice William Howard Taft, 1921, Library of Congress
Photo Credit: William Howard Taft National Historic Site

In 1864, Judge Alphonso Taft wrote to his close friend and colleague, Salmon P. Chase and proclaimed that “[t]o be Chief Justice of the United States is more than to be President, in my estimation.” Chase, the Secretary of the Treasury, was being nominated by President Lincoln to Taft’s dream job, the chief justiceship. Alphonso Taft was a lawyer, jurist, and founder of the Ohio Republican Party; Taft served on the Superior Court of Ohio and instilled in his children the importance of the law and justice. Alphonso also passed along his ambition to preside over the highest court in the land to his third son, William Howard Taft. Unlike his father, William’s judicial resume was used as a springboard into a successful, yet reluctant, political career at the urging of his canny wife, Helen

“Nellie” Herron Taft, the daughter of John Herron, District Attorney for Cincinnati.

Born in the Greek Revival style family home in the Mt. Auburn neighborhood of Cincinnati, Ohio on September 15th, 1857, young Will was exposed to law and politics by his father, and to the importance of education by his mother, Louise Torrey Taft, who had attended Mount Holyoke College and became the leading lady of the free kindergarten movement in Cincinnati. Both parents were intimately involved in their children’s education, encouraging William to learn German, Latin, and Ancient Greek. A determined student, William attended school nearby, at Public School 16, prior to graduating second from his Woodward High school

class. Strict and firm, Alphonso and Louise demanded high performances and excellence from their children, especially William who showed great potential; Alphonso held that “[m]ediocrity will not do, for Will.” Many of Alphonso’s associates and guests at the Taft home were politically active, such as Senator Salmon P. Chase, Governor Rutherford B. Hayes, General James A. Garfield, Senator John Sherman, District Attorney John Herron, and Congressman Aaron Perry, further exposing the Taft children to a life of public service. After leaving the bench in 1866, Alphonso went into private practice with his two eldest sons, future Congressman and owner of the Chicago Cubs Charles P. Taft and Peter R. Taft II. The senior Taft was also the first president of the Cincinnati Bar Association after its founding in 1872.

Known for his integrity, Alphonso was selected to fill the post of Secretary of War in President Grant’s Cabinet in March of 1876; serving as Secretary of War for only a few months, Taft fought corruption within the department that had plagued his predecessor and was praised by the press for his efforts. In May, President Grant moved Alphonso from the War Department to the Department of Justice, where Alphonso served as Attorney General until the end of the Grant Administration in March of 1877. As Attorney



The Taft Family Home in Mt. Auburn, 1868, NPS image. Photo Credit: William Howard Taft National Historic Site

William Howard Taft National Historic Site Cont'd

General, Taft spoke out for the rights of African Americans and sought to protect their newly acquired right to vote. George Washington Williams, an African-American law student of Alphonso, was an early African-American historian and the first African-American to be elected to the Ohio General Assembly and Legislature, said in 1879 that Attorney General Taft was "the only white man in the Cabinet of any President during the last eighteen years who had the manhood, the temerity and the humanity to exact the powers of the Constitution of the United States to protect the black man in the exercise of his constitutional rights." Alphonso failed to secure the Republican nomination for the governorship of Ohio in 1875 and 1879. President Arthur called upon Alphonso to serve as the U.S. Minister to Austria-Hungary from 1882 to 1884 and later as the Minister to Russia from 1884 to 1885, his last public position. Alphonso died in 1891 and his funeral was held in the parlor of the Taft home, Louise Taft sold the house eight years later in 1899.

In 1874, William moved from his father's house in Cincinnati to New Haven, Connecticut to attend Yale. He returned home in 1878 and was a student at Cincinnati Law School, graduating at the top of his class and was admitted to the Ohio Bar in 1880. William held many local offices, including Assistant County Prosecutor, Collector of Internal Revenue, and Assistant County Solicitor, before attaining



Attorney General Alphonso Taft, Library of Congress.
Photo Credit: William Howard Taft National Historic Site

a seat at the bench of the Ohio Superior Court in 1887.

In 1890 William Howard Taft was selected by President Benjamin Harrison as the Solicitor General of the United States. Taft resigned from the Ohio Superior Court and moved to Washington DC, where he met for the first time and befriended Theodore Roosevelt. Taft performed well in his new position, winning fifteen of his eighteen cases before the Supreme Court.

William returned to Cincinnati in 1892 after being appointed as a judge on the Sixth Circuit Court of Appeals by President Harrison. During this time Taft was also a professor and dean of Cincinnati Law School. Taft's most influential decision from his time of the Sixth Circuit was *Addyston Pipe & Steel Co. v. United States*. Chief Judge Taft's reasoning in the case was affirmed by the Supreme Court as the correct interpretation of the antitrust legislation; Taft found that the pipe industry was working together to restrict and control trade which violated the Sherman Antitrust Act. While William loved his time on the federal bench, his wife Nellie had additional aspirations for Taft's career. Since visiting the White House at the age of sixteen as a guest of her father's law partner, President Hayes, Nellie dreamed of becoming the First Lady of the United States. Nellie encouraged William to pursue a political career and in 1901 Taft reluctantly accepted the job as the first Civil Governor of the Philippines from President McKinley. In the islands, Taft used his judicial experience and expertise to form a civilian government and to prepare a constitution for the people. Although opposed to America's possession of the islands, Taft worked as an excellent administrator. In 1902, Governor Taft was tasked with acquiring land owned by the Catholic Church and set sail to negotiate with Pope Leo XIII in the Vatican. After greeting the Tafts, the Pope asked young Robert A. Taft, William and Nellie's eldest child, what he wished to do as an adult, and Robert replied that he wanted to be

the Chief Justice of the United States, like his father and grandfather had dreamed. Robert Taft would go on to graduate first from his classes at Yale and Harvard Law and was the editor of the Harvard Law Review before being elected to the Ohio State House, serving as its Speaker, the Ohio State Senate and the United States Senate where Taft was the leader of the conservative coalition against President Franklin Roosevelt's New Deal and served as Majority Leader. Senator Taft, nicknamed "Mr. Republican," ran for the Republican nomination for the Presidency in 1940, 1948 and 1952, but failed to secure it each time. After his death in 1953, Senator Taft was included in Senator John F. Kennedy's book *Profiles in Courage*.

While in the Philippines, President McKinley offered Taft a seat on the Su-



Senator Robert Alphonso Taft, 1939, Library of Congress. Photo Credit: William Howard Taft National Historic Site

preme Court of the United States. Nellie opposed Taft's acceptance of the justiceship, fearing he would never run for the White House if he were to accept the offer and become an associate justice. Taft turned down the offer and continued to work diligently as Governor until 1904 when Taft accepted his father's former position as Secretary of War under President Theodore Roosevelt, Taft's old friend. Nellie and Roosevelt encouraged Taft to run for the Presidency in 1908.

Taft easily won the Republican nomination and defeated Democrat William Jennings Bryan to become the twenty-seventh President of the United States.

As President, Taft nominated many judges to the federal bench, including six Supreme Court Justices, tying with President George Washington for the most appointments to the highest court in one term. Taft nominated Horace Harmon Lurton, Charles Evans Hughes, Willis Van Devanter, Joseph Rucker Lamar and Mahlon Pitney as Associate Justices and elevated Justice Edward Douglass White to Chief Justice. It was no secret that Taft had longed for the Chief Justiceship, Taft was well suited for the bench and had the temperament and training of a judge. Upon nominating White, Taft said "[t]here is nothing I would have loved more than being Chief Justice of the United States. I cannot help seeing the irony in the fact that I, who desired that office so much, should now be signing the commission of another man." In 1912, Taft was able to keep the GOP nomination for the Presidency despite a challenge from former ally, President Theodore Roosevelt. Roosevelt ran as a third-party candidate, splitting the Republican vote and handing the election to New Jersey Governor, Woodrow Wilson.

After leaving the White House, Taft returned to his alma mater to work as a constitutional law professor at Yale. During this time, Taft also served as the president



William Howard Taft being sworn in as Chief Justice of the United States, 1921, Library of Congress. Photo Credit: William Howard Taft National Historic Site

of the American Bar Association, the president of the League to Enforce Peace, and the chairman of the American Red Cross. During World War I, Taft functioned as the chair of the National War Labor Board. There Taft oversaw arbitrating relations and dealings between labor unions and corporations.

After the election of Republican Warren Harding in 1920, Taft's hopes of being appointed to the Supreme Court improved. Invited to President-elect Harding's home in Marion, Ohio, Taft was asked by Harding if he was still interested in serving on the Court, should a seat become available. Because two of the sitting Justices, Pitney and Devanter

were appointed by President Taft, Taft made it clear to Harding that he would only accept the chief justiceship, believing that it would be demeaning respect for the Presidency should a former President serve as an Associate Justice. Chief Justice White died on May 19th the following year and Taft was nominated to fill the vacancy on June 30th, and was confirmed as the tenth Chief Justice by the Senate later that same day.

Taft, armed with his extensive judicial training and his administrative experience, was prepared for the Chief Justice's seat and flourished in the position. He embraced the administrative duties of the office, viewing the office of the Chief Justice as a critical manager of the Supreme Court and of the federal judiciary's relationship with Congress. With the passage of the Judiciary Act of 1922, the Conference of Senior Circuit Judges, headed by the Chief Justice, was established, forming the administrative practices and procedures for a unified federal judiciary with a bureaucratic structure comparable to the other branches of government. The Circuit Court and District Courts would function as system of courts instead of a collection of independent judges.

The court that Chief Justice Taft presided over was behind in casework and the new Chief Justice wanted to decrease the Court's backlog, a topic that he first spoke of during his first campaign for the White House in 1908. Beginning in 1922, Taft and fellow Justices Willis Van Devanter, James Clark McReynolds, and George



The Taft Court, 1925; Top row left to right: Edward Sanford, George Sutherland, Pierce Butler, Harlan Fiske Stone; Bottom row: James Clark McReynolds, Oliver Wendell Holmes Jr., William Howard Taft, Willis Van Devanter, Louis Brandeis; Library of Congress. Photo Credit: William Howard Taft National Historic Site

William Howard Taft National Historic Site Cont'd From Page 9

Sutherland, drafted a bill that would allow the Court to hear and select cases of Constitutional importance, and maintained the Court's oversight over federal jurisdiction. In 1922, Chief Justice Taft travelled to the United Kingdom to investigate and research firsthand "the much simpler procedure of the English courts." bill affirmed circuit courts that would function as appellate courts, hearing the majority of federal cases. With the circuit courts assuming this work, the Supreme Court's overloaded schedule was greatly diminished. In most cases, an appeal to the Supreme Court would require a party to file for a writ of certiorari for their case to be heard by the highest court in the land. Taft actively lobbied members of Congress to pass the bill and sat before the House Judiciary Committee, stating that the speed of the Court would be greatly improved by the bill. The Chief Justice highlighted the importance of a streamlined federal judiciary and the need to reserve the Supreme Court for the most important constitutional issues. The Judiciary Act of 1925, commonly known as the Judges' Bill, would become a highlight of Taft's career on the bench and revolutionized the workings of the federal judiciary.

The major cases decided by the Taft Court include *Gitlow v. New York*, *Ex Parte Grossman*, and *Myers v. United States*. *Gitlow* was instrumental in incorporating the Bill of Rights to the states through the due process clause of the Fourteenth Amendment. The case involved a socialist,

Benjamin Gitlow, who had been arrested for advocating the overthrow of the federal government; in an 8-1 decision, the Justices found that states can restrict speech that threatens national security. *Ex Parte Grossman* questioned the president's power to commute a sentence for criminal contempt of court. Philip Grossman was charged for violating Prohibition and placed under an injunction to stop selling alcohol. Grossman continued to sell alcohol and was charged and found guilty of criminal contempt of court, he was fined \$1,000 and sentenced to one year in prison. President Coolidge commuted the prison sentence as long as the fine was paid, and Grossman was released. The Taft Court found that the Constitution does not limit the president's power to pardon. And in *Myers v. United States*, the Taft Court held that the president has the ability to remove appointed officials. President Wilson had dismissed First-Class Postmaster Frank Myers without the approval of the Senate, and Myers argued that this violate a law from 1876 that strictly prohibited the dismissal of Postmasters without consent of the Senate. The Court held that the law was unconstitutional because it violated the separation of powers between the Legislative and Executive branches.

The Supreme Court had been meeting in the Old Senate Chambers in the cramped basement of the Capitol Building. Chief Justice Taft successfully lobbied Congress for funds to build a separate home for the

Court. In 1928, Congress formed United States Supreme Court Building Commission with Taft as the chair. Cass Gilbert was selected by Taft as the architect for the new building. The site for the building was selected for its closeness to Union Station. In 1929, the final design was approved and the estimated cost for the project was \$9,740,000. Chief Justice Taft died on March 8th, 1930, shortly after resigning from the bench because of poor health. President Hoover laid the cornerstone of the building in 1932, and Chief Justice Charles Evans Hughes opened the building in 1935.

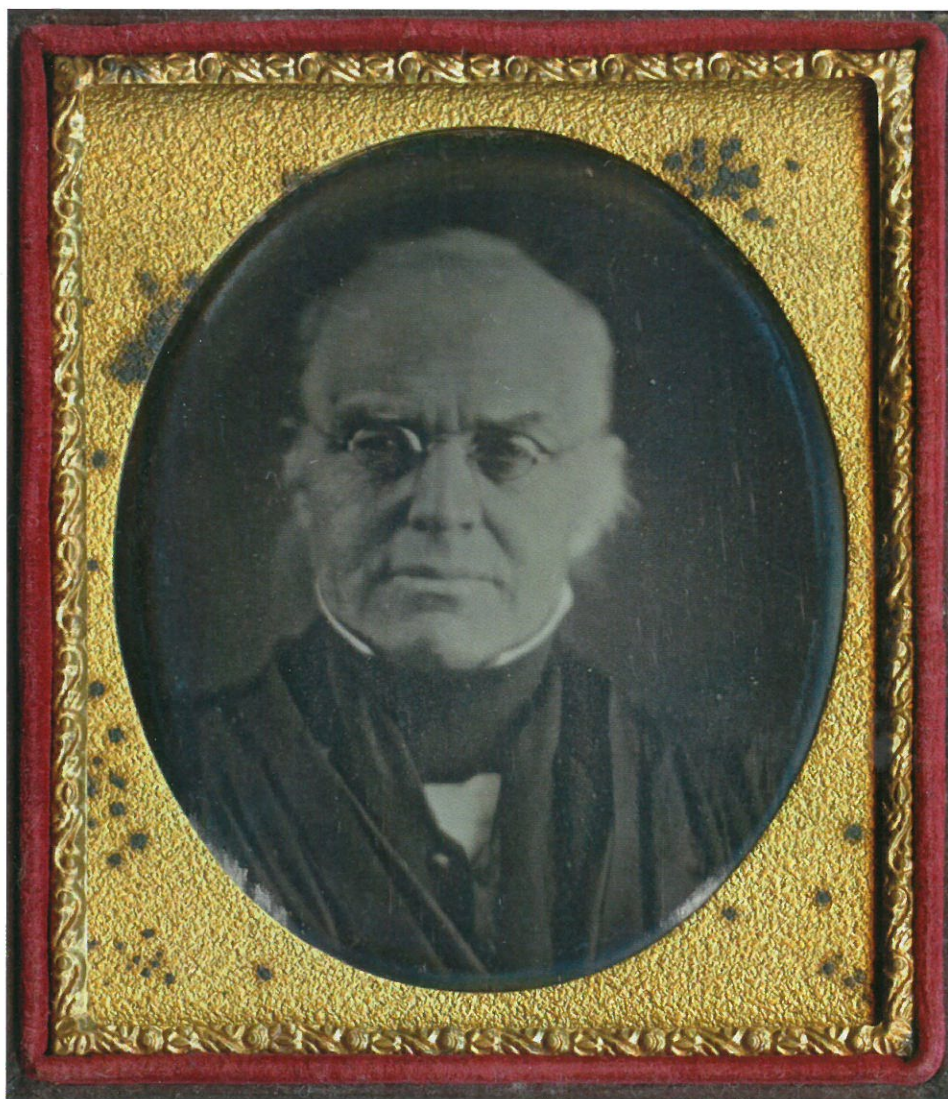
Managed by the National Park Service, the William Howard Taft National Historic Site is the birthplace and boyhood home of William Howard Taft. The site is committed to protecting and preserving the historic house for future generations, while educating the public on the life and public service of the Taft family. Located in the Mt. Auburn neighborhood of Cincinnati, Ohio, the park includes the original Taft House, built around 1845, and the Taft Education Center. In 1964, the Taft house was made a National Historic Landmark and in 1966 the home was added to the National Register of Historic Places. Former Mayor of Cincinnati Charles P. Taft II lobbied Congress to secure the management of the site by the Park Service. The William Howard Taft National Historic Site was established by Congress and President Richard Nixon signed the 2nd bill into law on December 2, 1969. After years of research and restoration, the William Howard Taft National Historic Site was opened to the public in 1988. The William Howard Taft National Historic Site is the only unit of the National Park Service dedicated to a justice of the Supreme Court. Tours of the Taft home focuses on the historically furnished parlor, library, and nursery. The Taft Education Center houses the gift shop, a gallery space, and the park orientation film. Please visit <https://www.nps.gov/wiho> for additional information and updated park hours. ●



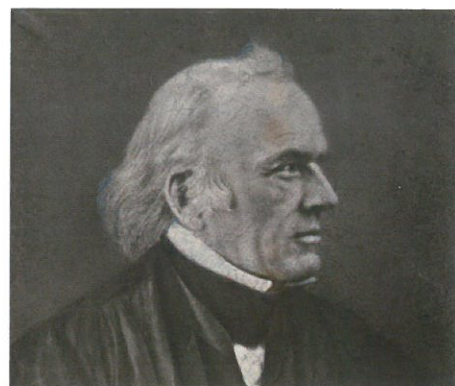
The William Howard Taft National Historic Site, Cincinnati, Ohio, NPS image. Photo Credit: William Howard Taft National Historic Site

New Acquisition: The Back Story of a Rare Joseph Story Daguerreotype

Franz Jantzen,
Collection Manager
April 2021



The newly-acquired daguerreotype of Associate Justice Joseph Story, 1842-45.



Edward Anthony's vanished plate of Justice Story, taken in 1842 and copied later by Mathew Brady

The Supreme Court Historical Society recently purchased a rare daguerreotype portrait of Associate Justice Joseph Story, one of the first Justices to ever be photographed. It was taken between 1842 and his death in 1845, and joins two daguerreotypes of Justice Peter Vivian Daniel to become the third in the Court's collection.

Daguerreotypes were the first popular form of photography, and quickly became an international phenomenon after France purchased the rights to the new invention from Louis-Jacques-Mandé Daguerre and published it "free to the world" in 1839. A daguerreotype is a photographic image captured directly on a highly polished silver plate inside the camera, and must be viewed at just the right angle for its rather magical image to appear clearly. The daguerreotype was the dominant form of photography until it gave way to negative/positive processes in the later 1850s.

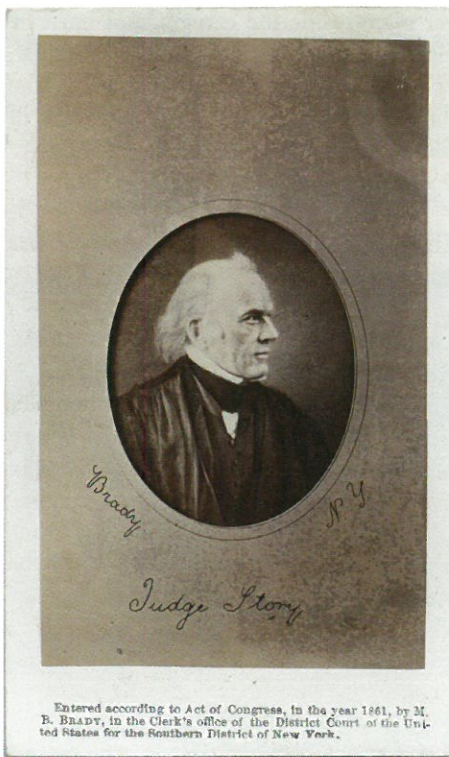
This newly-acquired daguerreotype was copied from a larger, original plate which is now in the collection of the Library of Congress. Since an original plate is inside the camera at the time the photograph is taken, the only way to copy one is to take a new daguerreotype of the original, which is what the one acquired by the Society is. A peculiarity of an original daguerreotype is that it is a mirror image of the sitter, which means their left side is seen by the viewer as their right side, and vice versa. This orientation is reversed again with a copy plate, so in the recently-acquired daguerreotype Story's features are seen properly. Interestingly, while the original plate is scratched and in fair condition, this daguerreotype is in excellent condition. Justice Story is known to have posed for three daguerreotype portraits. In this

New Acquisition: The Back Story of a Rare Joseph Story Daguerreotype Cont'd from Page 11

newly-acquired pose, Story gazes directly at the viewer with his spectacles on. In a companion plate undoubtedly taken at the same time, and also at the Library of Congress, he is not wearing the spectacles and looks slightly off to the side. In a third plate which has not been seen since at least 1861 but which, as we will see, survives in several other forms, he is seen in profile and without spectacles.

Who took this portrait of Story gazing at the viewer, where, and when? While we may never know with certainty, we do know it involves two photographers whose careers intertwined: Edward Anthony (1819-1888), a relatively unknown photographer who later founded a successful print publishing business and the largest manufacturing firm of photographic supplies in the United States in the 19th century, and Mathew Brady (1823-1896), perhaps the most famous American photographer of that century.

The profile pose is known to have been



Edward Anthony's 1842 portrait of Story, published—by Anthony—in 1861 with credit to Brady as the photographer!



FIRST PREMIUM NEW-YORK DAGUERRIAN MINIATURE GALLERY,

Corner of Broadway and Fulton-street,
Entrance third door from Broadway,

Where may be had Miniatures which for beauty of coloring, tone and effect, cannot be surpassed. By a new process, the dim and shadowy appearance of the pictures formerly so much complained of, is entirely obviated; and Mr. Brady respectfully invites the criticism of a just and intelligent public.

Likenesses in all cases warranted to give satisfaction, and colored in the most beautiful manner by a practical and competent artist.

Ladies, Gentlemen, and all strangers are invited to call at the Gallery, whether they intend sitting or not.

Miniatures taken in all kinds of weather, from 8 A. M. till 5 P. M.
The AMERICAN INSTITUTE awarded a first premium to Mr. Brady at the late Fair.

Instructions carefully given in the art.

M. B. BRADY.

1845 advertisement for Mathew Brady's first New York studio. He would eventually open a studio in Washington, D.C., and photograph nearly every Supreme Court Justice from 1849 into the 1870s.

taken by Anthony in the spring of 1842, when he set up a temporary photographic studio in the U.S. Capitol to make portraits of dozens of Senators, Congressmen, and nine current or future Justices, including Story. (Engraved versions of ninety-six of these portraits, including that of Story, appear in a massive group portrait of a full Senate Chamber published in 1846.) The two poses in which Story faces forward however, were sold by Mathew Brady as part of a larger group of daguerreotypes to the U.S. Army War College, which transferred them to the Library in 1920, and thus have long been attributed to him.

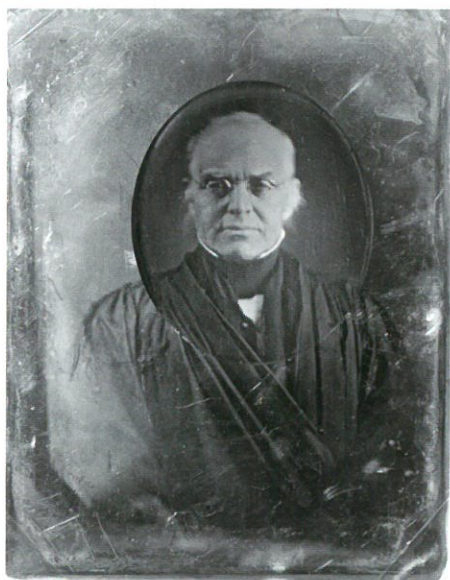
Because there are striking similarities among the three—all are half-length, the clothing appears to be identical, and the lighting is quite similar—they is a possibility they could have been taken at the same sitting, which would mean for Anthony in 1842. Brady was also known to occasionally take credit for the work of others. In fact, he did take credit for Anthony's profile of Story, photographing the original and selling copies under his own name in 1861. Those prints were, ironically, published by Anthony, who by that time had become a print publisher for Brady and others.

But other details suggest two sittings. In the poses facing forward, Story appears to be older because his wrinkles are clearer and the shadows on his face are more defined, which suggests the possibility of a later sitting. Unfortunately, the original profile plate is missing and all photographic copies of it derive from a single, heavily-retouched version which makes judging his age relative to the others difficult. Also, in the profile his vest and robes appear to be buttoned, while they clearly are not in the two other views.

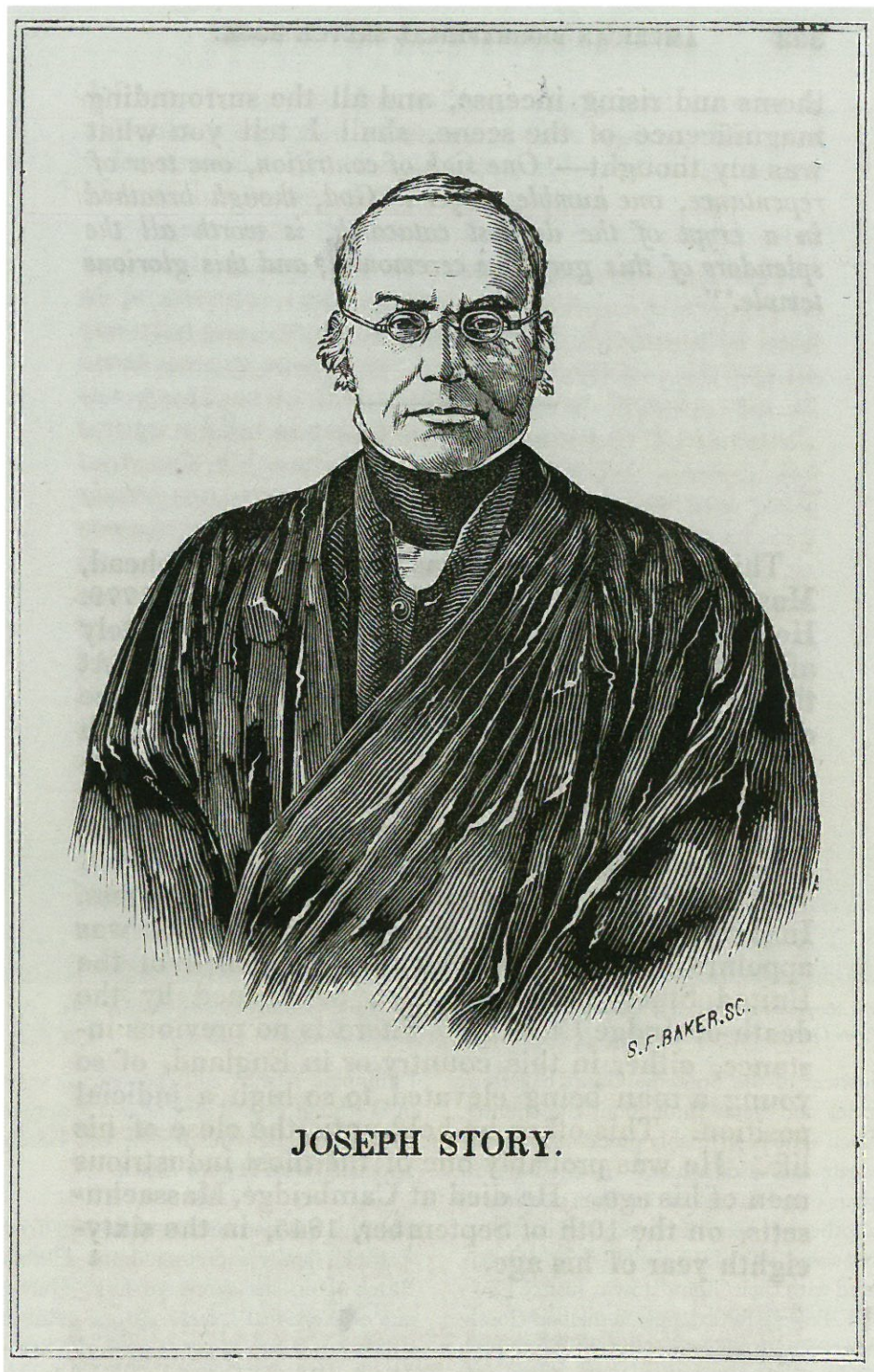
We do know that Brady opened his first photographic studio in New York City in April 1844, so it was open for over a year before Story died in September 1845. For Brady to have taken Story's portrait, Story would have had to visit the young photographer's new studio while making a stop in New York on his way between Washington and his home in Massachusetts during that relatively brief window of time.

While Anthony's profile has probably been reproduced most often over the years, the forward-facing pose of the newly-acquired daguerreotype was reproduced first. A woodcut version of it accompanied a brief biography of Story in William Hunt's *The American Biographical Sketch Book* published in 1848, three years after his death.

Whether taken by Anthony or Brady, the



The new daguerreotype of Justice Story superimposed over the original, damaged plate from which it was copied. (Library of Congress DLC/PP-1920:46153)



*The head-on daguerreotype of Justice Story, reproduced as a woodcut by Samuel F. Baker and published in *The American Biographical Sketch Book* (1848).*

most likely explanation for the excellent condition of the copy daguerreotype acquired by the Society is that it was made by the photographer of the original shortly afterwards. Making copies for the sitter was not unusual, and Story might have requested it to give to a relative or friend. Perhaps these questions will be answered in time, and hopefully this exciting acquisition will lead to the discovery of more

early portraits of Story and the other Justices from the dawn of American photography. ●

Franz Jantzen is the Collections Manager in the office of the Curator of the Supreme Court of the United States.

Frank Murphy and Harbor Beach Michigan



The Murphy home is the site of a museum celebrating the life and influence of Associate Justice Frank Murphy.
Photo Credit: Courtesy Bluewater.org

Justices of the Supreme Court hail from cities and states throughout the country. Each state is justifiably proud of their “favorite son or daughter.” In the last 150 years travel and relocation from one area to another has become much more common, but some individuals remain closely associated with their “home” town. Justice Lewis F. Powell, for example, remained closely aligned with his hometown of Richmond, Virginia, returning there to live and work after he retired from the Court. Justice Sandra Day O’Connor also returned to her home state of Arizona following her retirement and still resides there. Frank Murphy, a Justice whose career took him far afield from his hometown at various times is also remains closely associated with his hometown of Harbor Beach, Michigan. Murphy was born there, (it was called Sand Beach at the time) and although he later practiced law in Detroit and served as its mayor, served as governor of Michigan, and governor general of the

Philippine Islands and spent many years in Washington, DC serving in a variety of posts, throughout his life he was closely associated with Harbor Beach.

Murphy was born into a close-knit Irish Catholic family and community. Harbor Beach is on the shores of Lake Huron, one of the Great Lakes. At one point in its history, it was an active port with commerce between Canada and Michigan. Murphy’s religious background and varied career of public service is memorialized in the Frank Murphy Memorial Museum located in Harbor Beach. The museum encompasses five buildings, three of which can be visited by the public. The “Big House” is the focal point of the area. The house was built in the 1870’s gothic revival style. It contains furnishings and other memorabilia related to the Murphy family. Each of the ten rooms contains a crucifix, reflecting the family’s Catholic background. The site also contains a law office

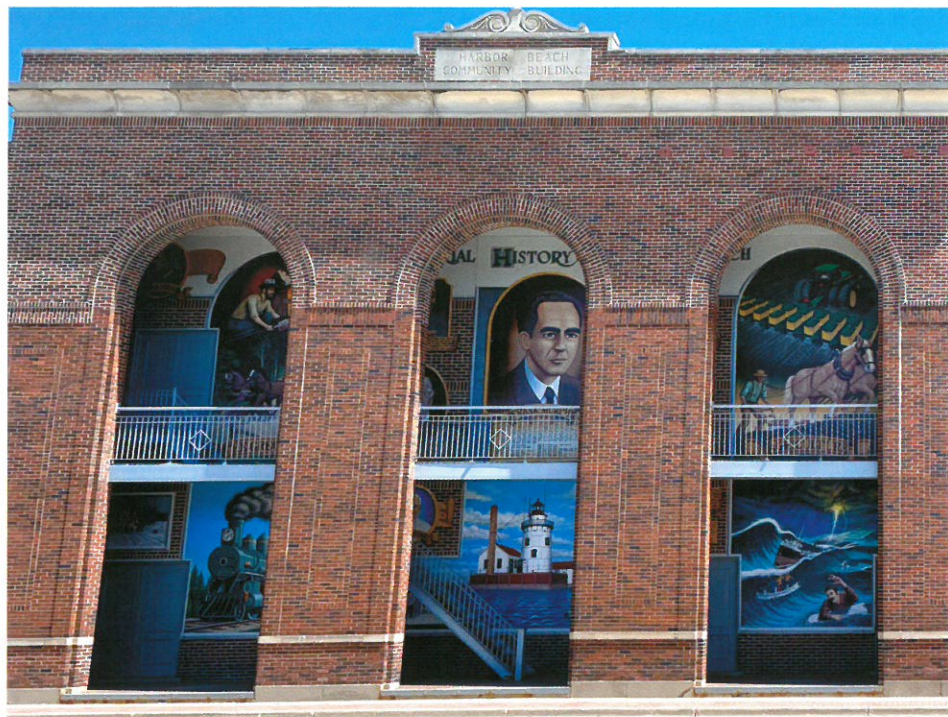
which has been restored to approximate the 1880-1926 time period during which Murphy’s father John used the building as his law office.

Crystal chandeliers and silver candelabras presented to Murphy by the new Philippine government grace the “big house.” Oil portraits of Murphy and his sister Marguerite painted by Fernando Amorsolo and some lesser renowned artists, are also displayed in the home. Amorsolo was a prolific painter, painting and sketching many scenes of the Philippine countryside, but he is best known for his portraiture. Among his other portraits of distinguished Americans is one of General Douglas MacArthur painted at the end of the Second World War.

The third building at the complex contains a Philippine Museum showcasing items collected by Murphy during his service in the Philippine Islands. In 1933, Murphy was appointed governor-general of the Philippine Islands by President Franklin Roosevelt. Murphy’s title changed after the islands attained commonwealth status in 1935. At that time, he became the first high commissioner. He returned to the United States in 1936. The museum contains autographed photographs of Philippine leaders, photographs of public ceremonies held during Murphy’s tenure, and many decorative items. Murphy was a life-long bachelor, and as his public service in the Philippines included many social duties, his sister Marguerite accompanied him to serve as a hostess for social events. On display in the museum are “tropical suits” worn by Murphy and other items of clothing including an evening gown worn by Marguerite. The collection contains many pieces of native handiwork and, perhaps improbably, is the largest museum in the United States dedicated to the Philippine culture.

Murphy was an influential “native son” of Harbor Beach and the town is proud to acknowledge his service and influence. One reflection of the esteem in which the town holds Murphy is evidenced in the Com-

munity Theater in Harbor Beach. The exterior wall of the brick building is decorated with murals containing vignettes of famous people and events in the history of the town. One of the panels contains a portrait of Frank Murphy—easily identifiable by his abundant, bushy eyebrows. Beneath his portrait is information about his life and accomplishments. Other panels contain images of the lighthouse and other scenes typical of the area. While there are a number of federal court buildings across the county that are named for Justices (indeed, there is one in Michigan named for Murphy), perhaps Murphy may be one of the few past justices pictured in an outdoor mural. It is a fitting tribute to this long-time public servant whose career encompassed, state, and federal service, including service half-way around the world, that he be so honored in his home town. 🍷



The Community center building in Harbor Beach Michigan has murals of important elements of the history of the city. Frank Murphy (center panel top row above) was recognized for his contributions to the city, state of Michigan and the nation. Photo Credit: Courtesy Bluewater.org

Virtual Lectures Explore Recent Scholarship on the Court and Constitutional Topics

The Society has pivoted during the pandemic to a series of virtual lectures offered over Zoom. The first event was held in March and featured Professor Lucas Morel, a Trustee of the Society and member of the Society's Publications Committee, on President Lincoln, the Founders and the Challenge of Self-Government.

The series has continued with lectures by Professor Brad Snyder on *Baseball, Curt Flood and the Supreme Court*, Professor Joel Richard Paul on *the Relevance of Chief Justice Marshall*, and Professor Sarah Seo on *the Automotive Fourth Amendment*. Members will receive invitations via email

to the remaining two scheduled events shortly. On June 9th, Marlene Trestman discussed Bessie Margolin: Fair Labor Lawyer and on July 14th Professor David Schwartz will be discussing *McCulloch v. Maryland*. The series will resume in September, regardless of the operating status of the Supreme Court Building and will continue even after in person events have returned.

If you are not receiving the Society's email announcements of events and news (usually sent on Tuesday mornings) please reach out so we can help troubleshoot the situation.

Please contact the Society at:
members@supremecourthistory.org

To watch the previous lectures, visit the Society's YouTube channel—a link can be found at the Society's homepage www.supremecourthistory.org

Supreme Court Historical Society New Members

October 2020 – April 2021

Arizona

Margarita Bernal, Tuscon

California

Eric George, Beverly Hills
Kay Anderle, Irvine
Martin Salvucci, Los Angeles
Vern Winters, Piedmont
Sam Allevato, Tustin
Felix Leatherwood, View Park

Colorado

Karen Brody, Denver

Washington DC

Frederick Graefe
Hannah Solomon-Strauss
Kathleen Foley
Lisa Blatt
Edward DuMont
Harriett Adams
Randy Barnett

Florida

Darcee Siegel, Bal Harbour
Paul Geller, Boca Raton
Barbara Wingo, Gainesville
Kara Stachel, Fort Lauderdale
Brian Trujillo, Miami
Samuel Nicholas, Miami
Robert Sniffen, Tallahassee

Georgia

Fred Somers, Atlanta
Shean Williams, Atlanta
Steve C. Jones, Atlanta
Leah Sears, Atlanta

Illinois

Jerome Meites, Evanston

Indiana

Nick Kanter, Fishers

Kentucky

William Norment, Henderson
Karen Caldwell, Lexington

Massachusetts

Connor Romain, Millbury

Maryland

Alison Jeanes, Earlville

New Jersey

Edward Kole, Woodbridge

Nevada

John Cotter, Fernley
Benez Z. Aldana, Reno

New York

Jamie Wine, Armonk
Dan Bachman, North Bellmore
John Buretta, Brooklyn
Andrew Goodell, Jamestown
Peter Vlachos, New York

New Hampshire

Frances Cohen, Hanover
Robert Corash, Portsmouth

Ohio

Christopher Kopin, North Royalton
Roberto Pardo, Zanesville

Pennsylvania

Patrick Abdalla, Moosic
Alexandra Kitei, Philadelphia
Richard Walk, Philadelphia
Guy Waltman, New Hope

South Carolina

David Petrick, Hilton Head

Tennessee

Alex Fardon, Nashville

Texas

Melissa Hayward, Dallas
Noelle Reed, Houston
Mark Hall, Leander

Virginia

Diane Reseska, Alexandria
Jason Manion, Arlington
Curtis Gannon, Arlington
Christine Budasoff, Fairfax
Ellen Cole Gerdes, Falls Church
David Kubal, Purcellville