Justice O'Connor Joins Court

On September 25, 1981, Sandra Day O'Connor, an appellate judge from Arizona, became the first woman ever to sit on the Supreme Court of the United States. In a short ceremony in the Supreme Court chamber, which began a little past 2:00 PM and which was attended by President Reagan, members of the Senate Judiciary Committee, and several hundred other guests, Justice O'Connor was sworn in by Chief Justice Burger after her commission was presented to the Court by Attorney General William French Smith and read aloud by the Clerk of the Court. Following her swearing in, Justice O'Connor was escorted to her seat behind the high mahogany bench, the first new member of the Court in over five years, and the new junior justice.

Date Set For Annual Meeting

By action of the Executive Committee of the Board of Trustees, the Society's 7th Annual Meeting and Dinner has been scheduled for Friday, April 30th, in Washington, D.C. Although each member will receive additional information in the mail, members interested in attending may wish to reserve this date on their calendars now.

President Reagan joins Justice O'Connor and the other members of the Court.
The Original Oliver Wendell Holmes

The Reverend Abiel Holmes was a careful, methodical man passionately interested in history and the traditions of Calvinism. He read histories of states and towns, old colonial records, clerical records and accounts of travellers and military expeditions. Fortified with all of this background material he commenced work in 1800 on a work he entitled American Annals in which he attempted to record and keep the history of the new world as American, rather than Colonial history. With his characteristic care and accuracy, he kept a personal record in which he recorded daily events. Opposite the date August 25, 1800 he wrote the following note: "Abiel's Son." This small note served to mark the arrival of Oliver Wendell Holmes: doctor, professor, lecturer, author and poet laureate of Boston, and father of Associate Justice Oliver Wendell Holmes, Jr.

Oliver Wendell Holmes was born in Cambridge, Massachusetts, the third child and eldest son of Abiel Holmes and Sarah Wendell Holmes. Abiel was the Pastor of the First Church and a member of the Calvinist congregation. Abiel's father, Captain David Holmes had fought in the French and Indian Wars and at the age of fifty, had volunteered to serve as a physician in the American Revolution. Sarah Wendell Holmes was the daughter of Judge Oliver Wendell. The first Wendell ancestor, Everett Josselen Wendell, had arrived in the new world from Holland in 1640. In the early eighteenth century, Jacob Wendell moved to Boston where he married Sarah. Sarah was the great granddaughter of Anne Bradstreet, the author of the first book of poems by an American writer.

The Wendell legacy included a talent for gracious living, good taste and culture, success and standing in the community, with more liberal beliefs than those of many of Cambridge's other residents. From the Holmes side of the family came adherence to the strict code of conduct and standards of the Calvinist beliefs, and a passionate love of learning and record keeping. Wendell, as Holmes was called, was a scrupulous observer of his family members, documenting the Calvins' beliefs, "shocked and disgustingly beyond endurance" by its tenets. As he wrote in his autobiographical "No child can overcome the early impressions without doing violence to the whole mental and moral machinery of his being. He may conquer them in after years, but the conviction, the victoria, the victor's memory leave a cripplle as compared with a child trained in sound and reasonable beliefs."

Despite his strong feelings against Calvinism, Wendell loved and respected his father and family. Holmes had one brother, John, and three sisters—Mary Jackson, Ann Susan, and Sarah Lathrop who died at the age of seven. Both Mary and Ann eventually married and left the family to raise their own families. The last of the Wendells' siblings was the youngest, the author Oliver Wendell Holmes.

From his mother, Holmes inherited a bright, vivacious personality. Early in life he developed a great love of books which he attributed to the blood of ministers in his veins. Among his father's library of doctrinal treatises and histories, Holmes also found several volumes of poetry. In searching through volumes of Dryden's poetry, he found that several pages had been torn out of the book. On the facing page his father had written "Hauts head defenders" (an omission by necessity to be corrected). This encounter with his father's censorship caused him to begin asking his father what he called "infant terrible" questions: questions which the elder Holmes could not answer to Wendell's satisfaction.

Wendell concluded that in order to live amidst the complex and beautiful world, a man must have a "home" where he could have the freedom to create his own philosophy of life. To an unusual degree, Holmes was able to live at peace with himself and the world around him and he expected others to attempt the same. As the Old Master, a character in Holmes' The Poet at the Breakfast Table responds in answer to the question "what do you consider the truest center of the universe?" Holmes answers his father's question that "it's quite as well to crack your own fiddlesticks as to borrow the use of other people's teeth.

Holmes was educated in the manner of the times and displayed a talent for poetry at an early age. Despite his godly Calvinism, Abiel Holmes read poetry, and perhaps the books Wendell found in his father's library formed the source of inspiration for his own poetry. More likely however, Abiel Holmes provided his son with a great deal more than just a library. One evening while the family was gathered in the living room singing, Abiel Holmes came into the room and with his pocketknife inscribed something on his son's forehead. Through adversity to the stars. This unexpected show of sensitivity from his father would become for Holmes one of his most cherished memories.

Upon completion of his preparatory studies, Holmes entered Harvard, the alma mater of his father. There he participated not only in the normal course of studies, but also in debate, at which he excelled. He was voted "Class Pref", writing and delivering the "wax tablet" of the day. Holmes was a poet whose poems were in the style of humorous drinking songs, but he prepared a more serious and longer poem for commencement. He frequently referred to his memory, one of which took more than an hour to recite.

Perhaps influenced by the example of his grandfather, Holmes decided to study law after completing his college degree. Harvard Honors after he began, Holmes was convinced that the law was not for him. He wrote to a college friend explaining, "I am sick at heart of this place and am not able to follow with my heart. I have to know of the temple of the law may be to those who have entered it, but to see it seems very cold and cheerless about the threshold."

Having left the law in 1830, Holmes enrolled as a medical student. Holmes remained a liberal man in Boston. In addition to his studies with the School's five doctors, he attended medical lectures and spent many hours at the Massachusetts General Hospital and Harvard Medical School. Holmes was sensitive to the pain and suffering of the people, and particularly to the horrors of operating rooms which lacked the benefits of modern anaesthesia. He coped with the more revolting aspects of medicine by developing an acute sense of observation, and a methodical, systematic process for keeping medical records. Early in his studies Holmes became intent on employing a scientifically rigorous method of studying the details of medical evidence rather than merely following the established standards of treatment which to his mind frequently proved more fatal than the disease.

In 1833, Holmes concluded that the best medical training available was in Paris, and that he would go to France to continue his studies. He lived on the Left Bank and followed the customary pattern of attending lectures, visiting hospitals, and observing medical procedures. He found the French medical approach which was based upon scientific and rational. Holmes developed three important principles while in France which would discipline all his future work. He considered the chronological test as the true method of investigating facts; not to guess when I know; not to think a man must take a physic when he is sick." Although seemingly straightforward, three of these principles represented a radical departure from traditional medical practice of the day, and would distinguish Holmes' work from that of his colleagues.

While he was a student in Paris, Holmes took the opportunity to travel throughout the Continent and to attend numerous scientific and social activities as horse races and the theater, of which his father certainly would not have approved. Holmes was forced to return to the United States as his family could no longer afford to support his education in Paris. Although disappointed that he could not complete his third year of study, Holmes continued an intense dedication to the scientific approach to medicine and to a variety of new medical instruments, among them a microscope.

Upon his return to Cambridge, Holmes was required to prepare an essay in order to receive his medical degree from Harvard. He passed his examinations the following year and was awarded his degree of Doctor of Medicine. Shortly after receiving his degree, he wrote a paper on "Direct Exploration" (use of the stethoscope) which won for him the highly regarded Boylston Medical Prize. In 1837, Holmes turned his energies towards further research rather than toward establishing a medical practice.

The medical paper for which Holmes was probably best known, however, was entitled The Contagiousness of Puerperal Fever. The disease was contracted by mothers at childbirth, and Holmes was intrigued by the possibility that it might be transmitted by instruments used in surgery, by midwives and physicians. He began an exhaustive study, relying upon records from Europe to supplement available American records. His paper, presented in 1843, scandalized many of his colleagues, as Holmes concluded that doctors were in fact carrying the disease from patient to patient. Puerperal fever was thought to be a natural phenomenon. Holmes concluded from the medical evidence that it was being transmitted in some way, either by actual physical contact, or by some other means, and urged his colleagues to be extremely cautious. Opposition from the medical profession to Holmes's findings disappeared by 1857, by which time the theory of contagion had become generally accepted in the United States.

Perhaps Holmes' most enduring contribution to medicine (continued on next page)
Holmes

(continued from page three)

was achieved in a rather indirect way. In 1846, W.T.G. Morton, a dentist, began experimenting with sulphuric ether as a way to render a patient insensible during an operation. The first operation using ether was performed in the Massachusetts General Hospital with Dr. Morton administering the ether. Holmes was not present for this historic occasion, but on November 21, he wrote to Morton with his suggestion for naming the process.

"Everybody wants to have a hand in a great discovery. All I will do is to give a hint or two as to names—or the name—to be applied to the state produced and the agent."

The state should, I think be called Anesthesia.

In addition to his many papers, Holmes was a noted medical lecturer for many years. He served briefly as the Professor of Anatomy at Dartmouth Medical College, as Professor of Anatomy and Physiology at Harvard Medical School for 23 years, and for seven years, as Dean of the Harvard Medical School. Holmes was an unusually gifted lecturer—knowledgeable, articulate, and imbued with a wonderful will and sense of humor. His students' dedication to his classes can be evaluated in part by the fact that Holmes presented his lectures during their regular lunch hour. His scientific interests extended beyond his own field, including particularly, the developing profession of dentistry. By 1860, he had perfected the composition of the first perfectible denture, which he had been working on since 1837.

Applying his keen powers of observation and characteristic sense of humor to this field, Holmes commented once with reference to Dr. George Washington Taylor: "I have a notion to have this dentistry profession perfected in the last century, we should not now see the Father of his Country in Stuart's portrait, his attention divided between the cares of the State and the sustaining of his uppers in position."

Dr. Holmes was a small, quick, irreplaceable man, self-assured, intensely observant and involved in everything around him. He listed among his non-medical accomplishments: "whistling, whispering, smoking cigars and playing the flute." Somewhat later in his life, Holmes became devoted to boating, driving fast horses and measuring trees. He described in his writings his penchant for measuring trees with a thirty-foot tape always at a height of five feet. He would go around the New England countryside measuring all the most celebrated trees because, as he expressed it, he had "a most intense, passionate fondness for trees in general," and "several romantic attachments to certain trees in particular."

Holmes was able to gratify his outdoor interests at his summer home, "Canoe Meadow," near Piscatiquis, Massachusetts, and in his later life, at a brown summer cottage under a jasmine-covered cliff near Beverly. In jest, he named his cottage "Beverly-by-the-Depot," poking obvious fun at his fashionable and socially conscious neighbors, who had their summer stationery engraved "Manchester-by-the-Sea."

But all of Holmes' talents and interests, perhaps the one at which he most excelled was the art of talking. According to his nephew, John T. Morse, Jr., the Doctor "talked better than he wrote... His thoughts, his humor, his similes rose as fast, as multitudinous, as irresponsible, as the bubbles of champagne, and nothing could prevent their coming to the surface."

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Dr. Holmes (far right) shown with his family shortly before his son, Oliver Wendell Holmes, Jr. (seated next to him), enlisted for duty in the Civil War.

Easter Sunday, 1843. She married Amelia Lee Jackson of Massachusetts, and a niece and cousin of the Jacksons with whom Holmes had studied during his medical training. Holmes was just past thirty and his bride twenty-two. They were married. Holmes himself said that he believed "talking is one of the fine arts—the noblest, the most important, and the most difficult." Holmes' love for and indulgence in talking was to last throughout his life and he frequently referred to his "tendency to lingua" in his writings.

While Holmes was still a college student, his brother, John, who often signed autographs "John Holmes, free de mon frere," (tiny brother's free) gave him some advice about seeking a spouse. He told Wendell that if he could find a girl who could shut him up, he should marry her, and marry fast. In 1840, Holmes finally found a woman that could render him speechless and he married his brother's sage advice, he married Amelia Lee Jackson. She was the daughter of Judge Charles Jackson of the Supreme Judicial Court of Massachusetts, and a niece and cousin of the Jacksons with whom Holmes had studied during his medical training. Holmes was just past thirty and his bride twenty-two when they were married. She was a woman of refined taste and grace, and capable of complementing Jackson in his own well established reputation in Boston and Cambridge.

Their eldest child, Oliver Wendell Holmes, Jr., was born March 18, 1841. Although he was destined to achieve fame and recognition in his own right for his original legal writings and distinguished judicial service, Oliver Wendell Holmes, Jr. would for his first forty years be overshadowed by his father's achievements. He was born October 20, 1843. She married Turner Sargent in 1871, and together they made their home in Boston near her parents. Their marriage was short. Her husband died only a few years after their marriage, and Amelia spent much of her time with her parents, returning to live with them in 1888. Their third and last child, Edward Jackson, was born October 17, 1846. He studied law and

...
Holmes (continued from page five)

student, achieved great popularity during his lifetime. One measure of its following was that Abraham Lincoln knew all the verses by heart. The poem was inspired by Herman Melville's grandson, Thomas Melville, who in 1831 was conspicuous on the streets of Boston by reason of his cocked hat, knee breeches and silver-buckled shoes—all remnants of a by-gone era. Holmes approached this subject with compassion and sympathy, and the closing verse was one often repeated by Holmes himself in later life.

And if I should live to be
The last leaf upon the tree,
In the spring,
Let them smile, as I do now,
At the old forlorn hatch
Where I clinched.

Holmes did in fact outlive most of his friends. On October 7, 1894, Oliver Wendell Holmes, aged 85, died at his home at 296 Beacon Street in Boston. On October 10, his funeral services were held in King's Chapel on the Harvard campus. A most fitting epitaph would come from a letter Holmes wrote his parents on the eve of his departure from Paris in 1834. Although it was written while he was a young man, its sentiments were as true sixty years later as they were when it was written:

I have lived comfortably, literally if you please, but in the main not extravagantly. I have employed my time, with a diligence that leaves no regret. My aim has been to make my faculties work for me, not for a mere scholar, but for a follower of others' opinions, for a dependent upon their authority, but for the character of a man, who has seen and therefore knows, who has thought and has therefore arrived at his own conclusions. I have lived among a great, a glorious people . . . I have drawn close the ties of social relations with the best formed minds I have been able to find . . .

Indeed, it was this legacy of an independent and responsible spirit, and of an inquisitive and engaging mind, which Dr. Holmes left his son, and which by his death had marked Oliver Wendell Holmes, Jr. for greatness.

Memorials Published

It has been the practice of the Bar of the Supreme Court to gather shortly after the death of a Justice to honor him with a series of individual eulogies, and to adopt a formal resolution of the Bar expressing its condolences. These proceedings have been preserved since 1834 through limited private publications of each memorial session of the Bar, and consequently, have not been available to the general public. The subject matter of the proceedings, the stature of the individual eulogists, and the intrinsic quality of their remarks, suggested that these materials ought to be made more available to scholars, researchers, and others who share a particular interest in the history of the Supreme Court. Accordingly, the Fred B. Rothman Company, in cooperation with the Society, has recently published the Memorials of the Justices of the Supreme Court of the United States, with a preface and index prepared by Roger F. Jacobs, Librarian of the Supreme Court. The five volume set does not include proceedings since 1971 which are already available in West's Supreme Court Reporter. Further information regarding this important addition to the available biographic literature of the Court may be obtained by contacting the Society's offices at 12021 347-9888.

Remembrances of the Supreme Court

As I Knew It Years Ago

By Robert Ash

Editor's Note—1981 marked the sixtieth anniversary of Robert Ash's membership in the Bar of the Supreme Court of the United States. In 1921, as now, a lawyer seeking admission to practice before the Court had to have a sponsor who was a member of its Bar. Together they would appear before the Court on a Monday, which was always admission day. Bob Ash's sponsor was James M. Beck, at that time Solicitor General of the United States. Whether because of Mr. Beck's position or because Mr. Ash's name began with 'A', they stood first before Chief Justice Edward Douglass White, both wearing the traditional black cutaway coats and grey striped trousers. The Solicitor General said, "I move the admission of Mr. Robert Ash. Mr. Ash is a member of the bar of the highest court of the District of Columbia and in good standing and is otherwise qualified under the rules." The Chief Justice said, "Mr. Ash, will you step to the Clerk's desk and take the oath?" And with the appropriate response, Robert Ash joined the Bar of the High Court, fulfilling one of his greatest ambitions.

Born on October 1, 1894 in Buffalo, New York, Robert Ash had come to Washington to attend law school at George Washington University. Following his graduation in 1918, he quickly established himself as one of the leading tax lawyers in the city. For many years, he practiced alone, assisted from time to time by junior associates. He eventually became a senior member of the firm of Ash, Bauerfeld and Barton.

For many years, Mr. Ash served as Tax Counsel for the American Bar Association, and in 1960, his "Tax Problems Encountered in the General Practice of Law" was distributed to every member of the ABA by its Special Committee on the Economics of Law Practice. An attorney who had argued cases before all eleven U.S. Courts of Appeals. Mr. Ash served from 1960-1968 as a member of the Judicial Conference's Advisory Committee on Appellate Rules of Practice and Procedure. Two of his publications—"How to Write a Tax Brief" and "Preparation and Trial of Tax Cases"—continue to be regarded as definitive works in the field of tax law.

Mr. Ash was a Fellow of the American Bar Foundation, a member of the American Law Institute, the American Judicature Society, and was twice awarded his alma mater's "Alumni Achievement Award," first in 1960 and again in 1977, in recognition of his contributions to George Washington University.

Appearing frequently before the Court during his sixty-year tenure, Robert Ash observed first-hand and at close range more than a quarter of the Court's entire history. The following is excerpted from an article prepared by Mr. Ash shortly before his death on August 10, 1981.

On June 30, 1921, William Howard Taft became Chief Justice of the United States. He had already held the highest elective office in the land—that of President—and had been Solicitor General. Despite these lofty positions, he had remained a very kind, modest and compassionate man. One day when I was in the courtroom, a young, red-haired lawyer with an Eastern accent began a case and forgot his name so we shall call him Mr. O'Shaughnessy. He was apparently well qualified as a trial lawyer in labor cases. Shortly after he had begun his argument, Mr. Justice Oliver Wendell Holmes asked, "Mr. O'Shaughnessy, is there a summons and severance in this case?" At that time, when there had been more than one litigant in the lower court and one of the litigants wished to appeal the case to the Supreme Court, a summons to all other litigants had to be served so they could either join in this action or file severance from it.

Mr. O'Shaughnessy replied, "Your Honor, I will get to that in a minute." After looking through the file, Justice Holmes again interrupted, "Mr. O'Shaughnessy, please tell me the page in the record where I can find the summons and severance." At that point, Justice Taft broke in, "Mr. O'Shaughnessy, I suggest that the argument in this case be continued until tomorrow so you can examine the record to find out if there has been a summons and severance." The Chief Justice paused, and then continued, "Mr. O'Shaughnessy, I speak feelingly. When I first became Solicitor General and came before this Court to argue one of my cases, one of the Justices asked me, "Mr. Taft, is there a summons and severance in this case?" And do you know, Mr. O'Shaughnessy, I'd never heard of a summons and severance. But I found that this question if properly raised could have a disastrous effect on one's case." Bob Ash ended: "We wonder why all who knew this wonderful Chief Justice loved him.'
Prior to William Howard Taft's becoming Chief Justice, the Clerk of the Supreme Court received all of his compensation out of the fees paid to the Clerk's Office. From these fees he also paid the salaries of all the personnel and all the expenses of his office. As a result of this arrangement, the Clerk's compensation was often greater than that of an Associate Justice. Chief Justice Taft did not approve of this situation, and during his tenure, a change was made. The Clerk became a salaried officer of the Court, entitled to only a fixed stipend paid out of the fees. He was not until many years later that Chief Justice Warren decided to remove the earlier emoluments of the office, and the Clerk's compensation was limited entirely to his salary.

In 1921, William R. Stansbury was the Clerk of the Court. Charles Elmore Cropley was his Deputy. Elmore Cropley had come to the Court as a page when he was thirteen years old. He was imbued with the traditions and procedures of the Court and was completely devoted to the Court. He was one of my first acquaintances when I came to live in Washington, and later he became one of my closest friends.

When Stansbury died, Chief Justice Taft appointed Cropley the Clerk of the Court on June 6, 1927. He remained until his death in 1952.

Elmore was said to be a “Swifty” by his friends, the Marshal. He had a deep, resonating voice. I could hear him ringing now as he struck his gavel and announced the arrival of the Chief Justice and the Associate Justices as they filed in. It used to amuse me when he said “The Court is now sitting”, for they weren’t—frequently they were still walking to their large chairs. They were an awe-inspiring sight, these venerable men in their black robes. As the Marshal’s gavel sounded, everyone in the courtroom jumped to his feet and stood motionless until the entire Court was seated. They were the Chief Justice, Howard Taft; and Associate Justices Oliver Wendell Holmes, George Sutherland, James Clark McReynolds, Willis Van Devanter, Louis Brandeis, Edward Terry Sanford, Pierce Butler and Harlan Fiske Stone.

Each New Year’s Day, Chief Justice Taft held open house. No invitations were ever sent, but lawyers practicing before the Court and their wives, and certain government dignitaries, would call to pay their respects. I recall the double line that formed on Wyoming Avenue moving slowly to his hospitable residence. Sometimes this line locked a block long, and seemed even longer, as Washington could be very cold on January first. But the open fires in the drawing room and library, and the warm and friendly host awaited us, so we never really minded the wait. The Chief Justice was a great tale teller and he knew a great many stories to tell. He enjoyed telling them so much that sometimes he would begin to shake with laughter before reaching the point of the story. His laughter was so contagious that we would often find ourselves laughing too before we’d heard the punch line.

One New Year’s Day when we reached the Chief Justice, after he shook hands with Mrs. Ash, he continued to hold her hand and proceeded to tell one story after another. He knew he had an appreciative audience in us and he seemed oblivious to the people in line and cookies. It was always a real breath of those waiting as their Impatience must have grown; but we could not move until he decided to let go of my wife’s hand.

Every four years when a President was to be sworn in by the Chief Justice, we and several other close friends of the Clerk, his Deputies, the Marshal, etc., would be invited to a delightful luncheon and to view the swearing-in from a vantage point just back of the members of the Court, their families, and a few other dignitaries. We would stand on a platform built over the steps of the Court, and the President-elect would hold the large, heavy Bible and the Chief Justice administered the oath of office. These luncheons I remember very well. There was always sherry to warm us a bit, then chicken salad, Virginia ham, hot rolls, coffee and tea, brownies and cookies. It was always a very enjoyable occasion and Elmore Cropley was a perfect host.

Chief Justice Taft’s dream was that the Supreme Court should have its own building. To that end he worked tirelessly persuading Members of Congress that this should be done. The other Justices concurred, of course, and I’m sure added their persuasion. When Congress finally agreed, the Chief Justice appointed Justice Van Devanter chairman of the Court’s committee for the new building. Van Devanter was a very precise person and a stickler for detail. The Chief Justice knew this and he had always assigned me to him involving a great deal of detail. I feel sure his supervision of the new Court building as it was being built resulted in the fine execution of every exquisite detail the architect had designed. It took a long time to build it, and Mrs. Ash and I attended the ceremony when the cornerstone was set for the magnificent building. It was a bitingly cold and windy day and most of us were shivering before it was over. Even though Chief Justice Taft had gone to his reward, I’m sure his spirit must have been there.

"The truth is, that in my present life I don’t remember that I ever was President!"
—Chief Justice William Howard Taft
December, 1925

Four strenuous years had scarcely dimmed the enthusiasm and sense of fulfillment William Howard Taft felt as he carried the mantle of Chief Justice of the United States. His appointment to that post in 1921 satisfied the greatest aspiration of his life. Perhaps Taft also found it difficult to single out his recollections of four years in the White House because of his unparalleled record of public service. In addition to the four years he had already spent on the Court by 1925, and his term as President, Taft had served as a public local tax collector, an assistant prosecuting attorney, a judge on the Ohio State appellate bench, Solicitor General of the United States, a judge on the Circuit Court of Appeals, Governor General of the Philippines, Governor of Cuba, and Secretary of War. When reflecting upon this remarkable period in his life he had an appreciative audience in us and he seemed really minded the wait. The laughter was so contagious that we would often find ourselves laughing too before reaching the point of the story.

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On December 26, following a brief courtship, he married Louise Maria Torrey, whom he had met while dining at her father's home in Massachusetts the previous year. She would bear Alphonso five more children, the eldest surviving childhood being the future President and Chief Justice.

"Willy," as William Howard was called in his youth, was a blessing to the Taft family which had suffered so many infant tragedies. He was a quick learner, quite large even at birth, and as a child, Willy's parents recognized him to be exceptional. Young William was an excellent student, and through his journalistic career upon graduation, becoming assistant prosecuting attorney for Hamilton County, Ohio, in 1881.

On reading his son's reports of the new friends he had acquired while away at college, the elder Taft expressed his doubt "that such popularity was consistent with high scholarship." In fact, Taft's father had found the strictures of his own Baptist upbringing equally difficult to endure, and he revolted against them in earlier years by joining the Unitarian Church. He probably had some sympathy, therefore, when his son once wrote to complain of Yale's services "being the future President and Chief Justice.

In 1890, at the age of thirty-three, Taft was appointed by President Benjamin Harrison as Solicitor General. Two years later, after Congress had created additional jurisdictions for the office of Solicitor General, Taft sought and gained an appointment to the Sixth Circuit. During his eight-year tenure on the bench, Taft became noted for his constitutional libertarianism. President McKinley, recognizing Taft's competence, asked him to head a commission appointed to ensure the smooth transition from a military to a civilian government in the Philippine Islands at the conclusion of World War. Reluctantly, Taft accepted the appointment and in 1901 was named Governor General of the protectorate. Once again he demonstrated the diversity of his administrative skills by improving the local economy, building roads and schools, and uniting the islands' political factions.

McKinley's death in 1901 brought Theodore Roosevelt to the presidency, and he appointed Taft, in the words of one biographer, "the progressive faction of the Republican Party." Roosevelt was an early admirer of Taft's abilities and brought him to Washington in 1904 to join his Cabinet replacing Elihu Root as Secretary of War. As Secretary of War, Taft was responsible for overseeing the construction of the Panama Canal. He addressed the problem of a burgeoning workload by expanding the use of presidential powers to achieve political ends. By 1912, the scholar had grown beyond repair, and an ennobled Roosevelt hailed the Republican Party to oppose Taft with his own "Bull Moose" candidacy. The division within the party resulted in the election of the Democratic candidate, Woodrow Wilson.

Through much of the eight years that followed his unsuccessful bid for a second term, Taft served as a Professor of Law at Yale University. Over the years he kept his contacts with his undergraduate alma mater, and in 1899 he had regretfully declined an offer to become the institution's President. Despite the索引 he found those pleasant years on the Yale faculty, Taft was unable to withdraw himself entirely from public life. Long before his presidency, Taft had gazed upon an appointment to the Supreme Court as his professional ambition in life. Although the possibility of such an appointment seemed unlikely under Wilson, his name nevertheless figured prominently on many of the lists of candidates appearing in various newspapers as seats became vacant. While Taft publicly expressed little hope for an appointment to the Court during the Wilson administration, his private expectations appear to have been less gloomy. Who, after all, was to say as a Justice in 1916 promised Taft to commenting professionals that "if one appointment was wrenched enough to enjoy the appointment upon Wilson to force him to offer me an appointment. Of course, it will fail, but he does not like it."

Harding's election as President in 1920 brought a change of fortunes. The President-elect met with Taft shortly after the election and informed him that, should he still be interested in the appointment to the Court, one would be offered at the first opportunity. From Taft's perspective, it appeared that an appointment to the Court as an Associate Justice would have been accepted. But the electoral re-
Taft (continued from page eleven)

hear, and allowed the Court to give its prompt attention to questions involving constitutionality and other important matters. He may also be credited with the creation of the Judicial Conference of the United States, a body which continues to provide the federal judiciary with greater cooperation and coordination amongst its many courts. Implementation of these reforms allowed the Court to successfully eliminate its backlog of cases and to assume a more effective role at the apex of the national judiciary.

Prior to these reforms, certain political factions in Congress had pressed to alleviate the Court’s backlog of cases by expanding its membership and possibly restricting its jurisdiction. Taft felt these measures would dilute the Court’s power and prestige, and determined accordingly to resolve the problem by improving the Court’s efficiency. The judicial reforms he promoted were but one aspect of his program. Another was his successful campaign to acquire new quarters for the Court, which had long ago outgrown the cramped confines allotted to it in the Capitol building. His personal involvement with the Congress is credited with securing funds to construct the first building designed specifically for the Court’s use. To ensure that the building would meet the Court’s needs, Taft personally supervised its design and the early stages of its construction, though he did not live to see the great marble structure completed.

Despite the satisfaction Taft derived from the administrative improvements achieved during his tenure, his leadership was threatened by the Court’s internal bickering. Though he was often supported by a conservative majority, the majority was frequently slim, and often challenged by the highly critical dissents of Mr. Justice Holmes and Mr. Justice Brandeis. Cases involving prohibition and labor-management disputes proved particularly divisive in this regard, as the Court often split along partisan political lines. The issue of prohibition aroused rancor within Taft’s own household as well, as the Chief Justice’s wife, Nellie, though loyal in all other ways, was known to support the repeal of the Eighteenth Amendment, while the Chief Justice felt morally and legally obligated to defend its strict enforcement.

Regardless of the personal discomfort Taft experienced as a result of his perception of the responsibilities of his high office, he never allowed such considerations to alter his convictions. Taft’s efforts to reduce the number of dissents during his tenure as Chief Justice would go largely unrewarded, and late in life, as his own health began to fail, he became increasingly concerned that the conservative ideals he had championed would lose expression on the Court. This factor played an important role in Taft’s decision to remain on the bench despite his growing awareness that he was no longer physically equal to the job. Even though the Chief Justice took a month off in January, 1930 to recuperate from an illness, his condition continued to deteriorate. High blood pressure and hardening of the arteries brought a series of crippling strokes near the end of the month, and brought with them the realization that Taft would never be able to return to his duties. His resignation was submitted to the President on February 3. Confined to his bed, and lapsing in and out of consciousness, Taft lingered only a month, sufficient time, however, to see his close personal friend Charles Evans Hughes confirmed as his successor. Appointed by President Hoover to the post Taft had denied him 20 years earlier, Hughes took his oath of office on February 24, 1930, only a few days before Taft’s death on March 8, 1930.

Marshall Volume Presented

On October 23 at a reception at the Court sponsored by the Society to commemorate the 25th Anniversary of the American Society for Legal History, the Librarian of Congress, Daniel J. Boorstin, presented to Chief Justice Burger Volume II of the History of the Supreme Court of the United States. Entitled Foundations of Power: John Marshall 1801-15, and written by George L. Haskins, Algernon Sydney Biddle Professor of Law at the University of Pennsylvania, and Herbert A. Johnson, Professor of Law and History at the University of South Carolina, the work is the fourth to be published in the Oliver Wendell Holmes Devise Series. In a foreword to Foundations of Power, Professor Paul Freund of the Harvard Law School writes:

In the period covered by this volume—roughly the first half of John Marshall’s Chief Justiceship—the Supreme Court faced one or another of two dark fates. The Court might languish in benign obscurity or it might go down under the lack of active contempt. How Marshall and his colleagues were able to escape these opposing perils and establish the authority of the Court is the prevailing theme of this richly documented and multidimensional study, which draws on manuscript sources and contemporary journals as well as official records for an insight into this critical stage of the Court’s history.

The History, a definitive, ten-volume study of the history of the United States, being written under the auspices of the Permanent Committee for the Oliver Wendell Holmes Devise, of which the Librarian of Congress is Chairman, Ex Officio. Created in 1955 by an Act of Congress, the Committee supervises the expenditure of a bequest made to the people of the United States by Associate Justice Oliver Wendell Holmes, Jr. The preparation of the History series is the Committee’s principal function.

Chief Justice Burger accepts the Marshall volume from Dr. Boorstin (far right) as the authors, Professor George Haskins (far left) and Professor Herbert Johnson (second from right), look on.