

Lecture

REMARKS OF THE CHIEF JUSTICE: MY LIFE IN THE LAW SERIES

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INTRODUCTION

This afternoon I shall speak about my predecessors as Chief Justice, except for Chief Justice Warren Burger, with whom I served. I am the sixteenth Chief Justice, and certainly one noteworthy fact is that in the 213 years of our country's existence, while there have been forty-three Presidents, there have been only sixteen Chief Justices. I am going to go in chronological order, starting with John Jay, who was the first Chief Justice, and ending with the fourteenth Chief Justice, Earl Warren. But I shall pass quickly over the first three who held this office, because they really had little or no influence on the institution, and they sat at a time when the Supreme Court was far different from what it is today. During the first ten years of its existence, the Court decided only a total of sixty cases—that is not sixty cases per year, but six cases per year. There was so little business that the Justices sat in Washington for only a few weeks during February and early March, spending the rest of their time riding circuit as trial judges. It was only with the arrival of John Marshall, the fourth Chief Justice, that the Court acquired its co-equal status—along with Congress and the President—in our tripartite system of federal government.

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JOHN JAY (CHIEF JUSTICE FROM 1789–1795)

Let us turn now to John Jay. He was appointed Chief Justice by George Washington in 1789. In his formal portrait that hangs in the East Conference Room at the Supreme Court, he is wearing a red robe. He is the only one of the Chief Justices who sat for his portrait so attired; the others wore the traditional black.

In 1794, Washington decided that he needed a special ambassador to go to the Court of St. James and negotiate with Great Britain various disputes that had come up as a result of the Treaty of Paris. He picked Jay, who sailed for England in the spring of 1794 and did not return until the summer of 1795. There is no indication that he was greatly missed in the work of the Supreme Court during this time. When Jay returned, he found that he had been elected Governor of New York in absentia and resigned the Chief Justiceship to assume what he regarded as the more important job—Governor of New York.

JOHN RUTLEDGE (CHIEF JUSTICE FROM
AUGUST 1795–DECEMBER 1795)

We go now to John Rutledge, from South Carolina. He is surely the least known of the Chief Justices, and deservedly so, for he held the office for less than a year. Washington gave him a recess appointment to succeed Jay in the summer of 1795, but in December the Senate refused to confirm him by a vote of fourteen to ten.

OLIVER ELLSWORTH (CHIEF JUSTICE FROM 1796–1800)

Washington now appointed his third Chief Justice—Oliver Ellsworth of Connecticut. Ellsworth was dismissed from Yale College after two years for rowdiness, but he went on to graduate from Princeton and practice law in Hartford. Like Jay, Ellsworth was selected by the President—now John Adams—for a special mission to France. He left for France in the fall of 1799 and fell ill while there. He submitted his resignation to President John Adams in December of 1800.

JOHN MARSHALL (CHIEF JUSTICE FROM 1801–1835)

Now we come to John Marshall, known as “the Great Chief Justice.” John Marshall served as Chief Justice for thirty-four years—from 1801 until 1835. He was born in the Blue Ridge foothills of Virginia, about fifty miles west of present-day Washington. He had very

little formal education. But by the time he reached twenty-five years of age, he had served as a captain commanding a line company of artillery in the Battles of Brandywine and Monmouth during the Revolutionary War. He had also suffered through the terrible winter at Valley Forge with George Washington and the rest of the Continental troops. It was this experience which led him to remark that he looked upon the “United States as his country, and Congress as his government.” Not an unusual sentiment today, to be sure, but quite an unusual sentiment for a Virginian at that time.

After mustering out of the service, he studied law very briefly, attending the lectures of George Wythe in Williamsburg, and was admitted to the Virginia Bar. He was elected a member of Congress from Virginia, and at the time of his appointment as Chief Justice, he was serving as Adams’s Secretary of State. He was much better known as a politician than as a legal scholar.

Marshall’s principal claim to fame as Chief Justice—though by no means his only one—is his authoring the Court’s opinion in the famous case of *Marbury v. Madison*. Decided in 1803—two years after he became Chief Justice—he turned what otherwise would have been an obscure case into the fountainhead of all of our present-day constitutional law.

The case arose out of a suit by William Marbury, who had been nominated and confirmed as a Justice of the Peace in the District of Columbia, against James Madison, whom Thomas Jefferson had appointed as his Secretary of State. Although Marbury had been nominated and confirmed, his commission had not been issued by the time of the change in administration, and James Madison refused to issue it.

Marbury contended that once he had been nominated by the President and confirmed by the Senate, the issuance of his commission was simply a ministerial task for the Secretary of State who had no choice but to issue it. He brought an original action in the Supreme Court, relying on a provision of the Judiciary Act of 1789 which said that the Supreme Court could issue writs of mandamus to any federal official where appropriate. Marbury said that James Madison was a public official—which no one denied—and that a writ of mandamus (a recognized judicial writ available to require public officials to perform their duty) was appropriate in his case.

The opinion in *Marbury v. Madison* is a remarkable example of judicial statesmanship. The Court says that Marbury is entitled to his commission, and Madison is wrong to withhold it. It says that this is

the sort of ministerial duty of a public official that can be enforced by a writ of mandamus. But the Court concludes by saying that Congress—in granting the Supreme Court the power to issue a writ of mandamus in a case like this—has run afoul of the original jurisdiction provision of the Supreme Court contained in Article III of the Constitution. Madison and Jefferson are verbally chastised, but it turns out that there is nothing that the Supreme Court can do about it because Congress tried to give the Supreme Court more authority than the Constitution would permit. The doctrine of judicial review—the authority of federal courts to declare legislative acts unconstitutional—is established, but in such a self-denying way that it is the Court's authority which is cut back.

During the thirty-four years he served as Chief Justice, Marshall wrote most of the important opinions that the Court decided. In *Gibbons v. Ogden*, decided in 1824, he wrote the opinion adopting a broad construction of the power of Congress to regulate interstate commerce under its authority contained in Article I of the Constitution. In the *Dartmouth College* case, he gave a generous interpretation to the prohibition in the Constitution against state impairment of the obligation of contract. One could name several other opinions authored by Marshall of nearly equal importance, but time does not permit. Suffice it to say that by the time of John Marshall's death in 1835, the Supreme Court was a full partner in the federal government.

What was the secret of John Marshall's success? It was not that he was “present at the creation” because he was not; he was not the first Chief Justice, but the fourth Chief Justice. John Jay and Oliver Ellsworth were both able jurists by the standards of their time, but neither of them had the vision of constitutional government that Marshall did.

Marshall was certainly no more “learned in the law” than his colleagues on the Court, and there were probably several of those who would have been thought more learned than he. Marshall also faced a built-in headwind against his views for the first twenty-four years of his tenure as Chief Justice. During this period the “Virginia dynasty” of Presidents—Thomas Jefferson, James Madison, and James Monroe—were in office, and these Presidents had quite a different view of the relationship between the federal and state governments than Marshall did. But the Justices they appointed tended eventually to side with Marshall, rather than to express the views of the Virginia dynasty.

I think Marshall's success arose from several sources. He had a remarkable ability to reason from general principles, such as those set forth in the Constitution, to conclusions based on those principles. And in a day when legal writing was obscured and befogged with technical jargon, he was able to write clearly and cogently.

But every bit as important, I think Marshall probably had an outgoing personality and was very well liked by those he moved among. Here his service in the military probably made him a more engaging personality than someone who had simply drafted writs of replevin for his entire adult career. The familiar story of the dinner ritual when the Justices were in Washington perhaps illustrates this point. The Justices all stayed at the same boarding house and had their meals together during their few weeks in Washington. If it were raining, they would have a glass of wine with dinner. They looked forward to this ritual, and they one day expressed regret that the weather outside was fair and sunny. But Marshall said "somewhere in our broad jurisdiction it must surely be raining," and from then on they had a glass of wine with dinner every day. John Adams, after his retirement from the Presidency, said that John Marshall was his gift to the American people.

An entire book has been devoted to the various portraits of John Marshall. In *The Portraits of John Marshall*, the author (Andrew Oliver) makes this observation:

There is a remarkable consistency in the several types of his portraits, the only difference being due, undoubtedly, not so much to Marshall's change in appearance as he grew older but rather to the eye of the artist. . . . There is no difficulty in discovering in Inman's aged Chief Justice the young and handsome envoy to France as he appeared in 1797.

ROGER TANEY (CHIEF JUSTICE FROM 1836–1864)

At the time of Marshall's death, Andrew Jackson was serving his second term as President of the United States. He appointed his loyal lieutenant Roger B. Taney of Maryland to succeed Marshall as Chief Justice. Taney had a first-rate legal mind and was a clear, forceful writer. Like Marshall, he did not believe in legal learning for its own sake, and he realized that constitutional law required not only legal analysis but also vision and common sense.

The Taney Court over which he presided for twenty-eight years was less nationalist in its orientation than was the Marshall Court.

The principal doctrines of the Marshall Court remained in place, but they were tempered by a greater willingness to uphold state authority. In the *Charles River Bridge* case, for instance, decided in 1838, the Court in an opinion by Taney limited the scope of the earlier Marshall Court decision in the *Dartmouth College* case, saying that implied covenants would not be read into state contracts for purposes of the impairment of Contracts Clause. In *Cooley v. The Board of Wardens*, the Court held that some activities, even though within the scope of congressional authority over commerce, could nonetheless be regulated by the States until Congress had acted. There were dissents on both ends of this case; Justice McLean of Ohio would accord no such power to the States, and Justice Daniel of Virginia—surely one of the most extreme champions of states' rights ever to sit on the Court—would have allowed the state regulation even though it was contrary to an act of Congress.

Taney's long and otherwise admirable career is, unfortunately, marred by his opinion in the ill-starred *Dred Scott* case in which he opined that even free blacks could not be citizens for purposes of diversity jurisdiction, and that Congress lacked the constitutional authority to ban slavery in territories that had not yet been admitted as states. Charles Evans Hughes rightly described the *Dred Scott* decision as a "self-inflicted wound" from which it took the Court at least a generation to recover.

Because of his role in the *Dred Scott* case, history has judged Taney harshly. Based upon his portrait, Taney looks rather severe and unlikable, but he must have been a kind man. Samuel F. Miller, who was appointed to the Court by President Lincoln and whose opinions had little in common with those of Taney, left this memento of his feeling for Chief Justice Taney:

When I came to Washington, I had never looked upon the face of Judge Taney, but I knew of him. I remembered that he had attempted to throttle the Bank of the United States, and I hated him for it. I remembered that he took his seat upon the Bench, as I believed, in reward for what he had done in that connection, and I hated him for that. He had been the chief spokesman of the Court in the *Dred Scott* case, and I hated him for that. But from my first acquaintance with him I realized that these feelings toward him were but the suggestions of the worse elements of our nature; for before the first term of my service in the Court had passed I more than liked him; I loved him. And after all that has been said of that great,

good man, I stand always ready to say that conscience was his guide and sense of duty his principle.

Taney was in his mid-eighties, and feeble looking, when he swore in Abraham Lincoln as President in 1861. But he continued to serve as Chief Justice until his death in 1864, partly because he needed the income to support himself; at that time, no provision was made for pensions for federal judges. His long tenure prompted Ben Wade, an abolitionist Senator from Ohio, to remark that no man had prayed harder than he that Taney would outlive the administration of James Buchanan, but now he was afraid that he had overdone it.

SALMON CHASE (CHIEF JUSTICE FROM 1864–1873)

Upon Taney's death, Lincoln pondered several choices as a successor. In an act which epitomizes his absolute magnanimity, he nominated Salmon P. Chase. While serving as Lincoln's Secretary of the Treasury, Chase had committed the unpardonable political sin of seeking to wrest the Republican nomination from Lincoln in 1864 by use of the extensive patronage of the Treasury Department. But Lincoln chose Chase because he thought he would vote to uphold the Greenback Laws, passed during the Civil War to make paper money legal tender in order to finance the war. But he added a cautionary note—Chase would be a good Chief Justice if he could just give up his presidential ambitions.

For most men the Chief Justiceship would have been enough, but not for Salmon P. Chase. He was an able man, a devoted foe of slavery, but an egotist through and through. One of his detractors said that there were four persons, rather than three, in his trinity.

During his rather brief tenure on the Court—from 1864 until his death in 1873—his ambition for the presidency never left him. He authorized the submission of his name as a presidential candidate to the Republican convention in 1868, and when that convention turned to U.S. Grant, he authorized the submission of his name to the Democratic convention. There he actually received a few votes before losing to Horatio Seymour of New York, who in turn lost the election to Grant. Again in 1872, Chase made inquiries not only of the Republican convention, but of the Liberal Republican convention in Cincinnati, a small splinter group of the party. Neither one was interested.

As Chief Justice, Salmon Chase also presided over the Senate's 1868 impeachment trial of President Andrew Johnson. Chase died on May 7, 1873.

MORRISON WAITE (CHIEF JUSTICE FROM 1874–1888)

The next Chief Justice was Morrison R. Waite, appointed by President Ulysses S. Grant. Waite was born in Lyme, Connecticut on November 29, 1816. His father was a lawyer who rose to be the Chief Justice of Connecticut. Waite graduated from Yale in 1837, studied law with his father for a year and then moved to Ohio.

Waite's only national notoriety prior to his appointment to the Court was as one of three U.S. representatives to the Geneva Arbitration, which was to settle claims arising out of the Civil War, primarily between the United States and Great Britain. But Grant's route to appointing Waite was a series of bumbles that the *New York Times* described as "humiliating" and "scandalous."

After Chief Justice Chase died in May 1873, Grant waited until the following November before offering the appointment to an old political ally, Senator Roscoe Conkling of New York. Conkling declined. Three Associate Justices were favored by various factions of Grant's administration: Justice Samuel Miller, Justice Noah Swayne and Justice Joseph Bradley. But in late November, President Grant decided he would not appoint anyone currently on the Court. At some point, Grant apparently offered the Chief Justiceship to two other Senators, Timothy Howe and Oliver Morton, but both declined.

On November 30, Grant offered the post to his Secretary of State, Hamilton Fish. Fish declined on the basis that he was not qualified after twenty years away from the practice of law. Grant next suggested a "temporary" appointment for Caleb Cushing, with the understanding that Cushing would resign before Grant's term ended. Cushing had long been associated with Southern Democrats and was sure to be opposed by most Republicans. When Grant's Cabinet opposed this plan, he dropped it. Grant next nominated his Attorney General, George H. Williams. But like many in Grant's administration, Williams was open to charges of corruption. His purchase of an elegant convertible carriage, called a landaulet, for his personal use with Justice Department funds earned him the nickname "Landaulet Williams" from the press. When it became clear that Williams did not have a chance of Senate confirmation, Grant asked Williams to withdraw his name—although he remained Attorney General.

Grant then went ahead and nominated Caleb Cushing. *The Nation* noted that “the President has at last entered the small circle of eminent lawyers and then with great care has chosen the worst man in it.” When Cushing was accused of treasonous contact with Jefferson Davis during the war, he asked Grant to withdraw his name. Finally, Grant nominated Morrison Waite, whose name had begun to circulate as a possible nominee. Waite learned of his nomination by telegram.

When Waite was confirmed in January 1874, Hamilton Fish wrote, “We had ‘a time’ over the Chief Justiceship . . .” Gideon Wells was more direct: “It is a wonder that Grant did not pick up some old acquaintance, who was a stage driver or bartender for the place. We may be thankful he has done so well.”

When Waite took his seat, he had no experience as a judge, and he had never appeared before the Supreme Court. Although Waite’s inexperience and lack of familiarity with procedure made it difficult for him to win the respect of his colleagues, his kindness, humility, and work ethic—he wrote 872 opinions in his fourteen years on the Court—ultimately won them over. Justice Samuel Miller said that Waite had a “kindliness of heart rarely if ever excelled.” Unlike his predecessor, Waite refused to be considered for the 1876 Republican presidential nomination, writing to his nephew that his “duty was not to make [the office of Chief Justice] a stepping-stone to something else, but to preserve its original purity.”

During Waite’s tenure as Chief Justice, the Court’s docket grew to more than 1500 cases a year, compared with about 250 cases a year in 1850. And it was during his tenure that the disputed Presidential election of 1876 took place. That election was eventually decided in favor of Republican Rutherford B. Hayes by a Commission composed of five Democratic and five Republican members of Congress, and five Supreme Court justices. Chief Justice Waite declined to be appointed to the Commission. On March 20, 1888, Waite appeared in Court to read his opinion in the *Telephone Cases*, involving complex and vigorously disputed patent claims. He was too ill to do so and died three days later.

MELVILLE FULLER (CHIEF JUSTICE FROM 1888–1910)

Melville Fuller was born in Augusta, Maine, on February 11, 1833. He graduated from Bowdoin College in Brunswick, Maine, in 1853. He then read law with an attorney in Bangor and attended Har-

vard Law School for six months—the first Chief Justice to have any law school training. He was an avid reader and sometime journalist. After a broken engagement, Fuller left Maine and settled in Chicago.

Fuller eventually developed a successful appellate practice and argued many times before the Supreme Court. He became an active Democrat and friend of Grover Cleveland. When Cleveland became President, he offered Fuller several government posts, including Solicitor General, but Fuller declined. In April 1888 Cleveland offered him the Chief Justiceship, and he accepted.

Fuller was a dapper man who looked a bit like Mark Twain. He was so short that his seat on the bench had to be elevated. While serving as Chief Justice, Fuller was appointed to the Venezuelan Boundary Commission in 1897 and to the Permanent Court of Arbitration at The Hague in 1900.

Chief Justice Fuller's tenure was marked with diplomacy and dignity. When he moved to Washington, he bought a mansion to house his large family. Because it was more comfortable than the Court's quarters in the Capitol, the Justices often held their conferences there. Chief Justice Fuller was gracious and witty and brought harmony to the Court in many ways. He instituted the tradition of each Justice shaking hands with the other eight Justices prior to conference and prior to taking the bench, as a reminder that, despite their differences, all of the members of the Court share the same purpose.

Fuller died in 1910, having served for twenty-two years as Chief Justice. He served with strong-willed men such as the first Justice Harlan and Justice Oliver Wendell Holmes, to name only two, and was largely eclipsed by them so far as substantive contribution to the law is concerned.

EDWARD WHITE (CHIEF JUSTICE FROM 1910–1921)

Edward Douglass White was born in LaFourche Parish, Louisiana, on November 3, 1845. His father was a wealthy farmer who served as a judge in New Orleans, governor of Louisiana, and spent five terms in the House of Representatives.

White fought for the Confederacy during the Civil War until he was captured in 1863 at the Battle of Port Hudson. After the war, he spent three years studying law in the office of Edward Bermudez. In 1868 he was admitted to the Louisiana bar.

In 1890, after holding various governmental positions in Louisiana, White was appointed to a vacant seat in the United States Senate. After only three years in the Senate, and during a contentious debate in which White opposed President Cleveland's attempt to lower tariff protections for southern farm products, Cleveland called him to the White House and offered him a seat as an Associate Justice.

White served as an Associate Justice for seventeen years; on December 12, 1910, President Taft nominated White to succeed Melville Fuller as Chief Justice. On signing White's commission as Chief Justice, Taft lamented: "There 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."

Although he was less than six feet tall, he weighed 250 pounds. In a 1911 publication, Elbert F. Baldwin wrote that in "physical appearance no man in public life better deserves the adjective 'ponderous.'" Yet White stuck to a regimen of daily exercise. He often walked around what was then known as the White Lot—the open space behind the White House grounds that is now the Ellipse.

White is perhaps best remembered for introducing the "rule of reason" into the interpretation of the Sherman Antitrust Act. Although the Act on its face outlawed all combinations in restraint of trade, White believed that only "unreasonable" monopolies were prohibited. The Court adopted White's view in the *Standard Oil* case decided in 1911. Another of White's successes as Chief Justice was in garnering unanimous support for the 1915 decision striking down literacy statutes that operated to prevent many blacks from voting. He also authored the unanimous opinion for the Court upholding the military draft law in World War I. He was not a facile writer, and his opinions were often difficult to follow. But Learned Hand, a distinguished judge of the federal court of appeals in New York observed that although this was true, when you heard White read his opinions "you knew that your investments were safe."

White was the first sitting Associate Justice to be elevated to the Chief Justiceship. He had a warm personality, was known as a raconteur, and had a keen memory for history. He died in 1921.

WILLIAM HOWARD TAFT (CHIEF JUSTICE FROM 1921–1930)

After Chief Justice White died in 1921, President Harding nominated William Howard Taft on June 30, 1921. Taft was confirmed by the Senate that same day, without having his nomination referred to committee. It is hard to imagine that happening today.

Taft was born in Cincinnati on September 15, 1857, the son and grandson of judges. Taft's father was very active politically and served as Attorney General of the United States and Secretary of War under President Grant. Taft graduated second in his class from Yale in 1878 and attended the University of Cincinnati law school. He then held various state and federal law-related positions, including Solicitor General and Judge of the Court of Appeals for the Sixth Circuit in Cincinnati.

In 1900, President McKinley named Taft chairman of the Philippine Commission; he served as governor general of the Philippines from 1901 to 1904. He also served as the Secretary of War for President Theodore Roosevelt and oversaw construction of the Panama Canal. In 1908 he was elected President. As President, Taft made six appointments to the Supreme Court—more than any other one-term President. Many think that when Taft named Edward White Chief Justice rather than the other obvious choice, Charles Evans Hughes, Taft did so because White was twelve years older than Hughes. Naming White gave Taft a better shot at being Chief Justice one day himself—in spite of Thomas Jefferson's famous complaint that “few [Justices] die and none resign.”

Taft was a very large man—weighing between 300 and 350 pounds. It has been reported that when President Taft was vacationing in Cape May, New Jersey, reporters put up a sign that read: “No swimming—President Taft is using the Atlantic.”

Taft is the only person ever to serve as both President of the United States and Chief Justice. When he was appointed Chief Justice in 1921, the Court had fallen nearly five years behind in its docket. He resolved this caseload congestion in the Court by convincing Congress to pass the Judiciary Act of 1925—also known as the Certiorari Act—which gave the Court discretion as to which cases to hear. Some members of Congress were doubtful—why shouldn't every litigant have a right to get a decision on his case from the Supreme Court? Taft responded that in each case, there had already been one trial and one appeal. “Two courts are enough for justice,” he said. To obtain still a third hearing in the Supreme Court, there

should be some question involved more important than just who wins this lawsuit.

In 1922, Taft created what is now known as the Judicial Conference—the policy-making body for the federal judiciary. It is also due to Chief Justice Taft that the Court has its beautiful building across from the Capitol in Washington. Until Taft convinced Congress that the Court should have its own building, the Court occupied cramped quarters in the Capitol, and most Justices worked out of their homes. Taft did not live to see the building's completion, but it stands as a tribute to his lasting contributions to the Court.

Taft resigned in February 1930 because of illness and died a month later. He is not regarded in the front rank of jurists who have served on the Court, but the enactment of the Certiorari Act, and the establishment of the Court in its own building were major accomplishments which might not have occurred to abler judges than he. He brought to the Court his unique perspective as an ex-President, and the Court profited from it.

CHARLES EVANS HUGHES (CHIEF JUSTICE FROM 1930–1941)

It is ironic that Chief Justice Taft, who as President passed over Charles Evans Hughes when he appointed White as Chief Justice, was replaced by Hughes. Charles Evans Hughes was born in Glens Falls, New York, on April 11, 1862. Hughes was a gifted child who learned to read at the age of three and was said to have had a photographic memory. He graduated first in his class from Columbia Law School, achieved a record high score on the New York bar examination, and in 1884 was admitted to practice at the age of twenty-two.

Hughes became well known in New York politics, first as counsel to a committee which investigated gas rates in New York City, and then as a two-term Governor of New York.

On April 25, 1910, Taft nominated Hughes to be an Associate Justice, succeeding David Brewer. After Hughes was confirmed, but before he took his seat, Chief Justice Melville Fuller died. Because Taft had told Hughes that he would likely appoint him Chief Justice if the office became vacant while Taft was President, it was assumed that Hughes would be made Chief Justice. But Taft selected Edward White instead, and Hughes took his seat as an Associate Justice. Hughes wrote 151 opinions, including 32 dissents, over the next six years.

In 1916 Hughes was chosen as the Republican presidential nominee, and he resigned his seat on the Court. The election, with Woodrow Wilson as the Democratic nominee, was very close, and the early returns had many calling the election for Hughes. When the returns from California finally came in, Wilson had narrowly defeated Hughes.

Hughes returned to private practice until President Warren Harding appointed him Secretary of State, a post he held until 1925, when he again returned to private practice. In 1930, President Hoover named him Chief Justice to succeed William Howard Taft. Hughes was above medium height with gray hair and a beard best described as Jovian. Central casting could not have produced a better image of a Chief Justice, and his presence matched his appearance. When Hughes was confirmed by the Senate on February 13, 1930, his son, Charles Evans Hughes, Jr., resigned as Solicitor General.

Hughes's greatest accomplishment as Chief Justice was probably his success in ensuring the defeat of President Franklin Roosevelt's Court-packing plan in 1937. Under President Roosevelt's plan the President would have been able to appoint an additional Justice for each member of the Court over seventy who did not retire.

Hughes and other Associate Justices were offered free time by the radio networks to speak about the President's plan, which Roosevelt insisted on calling a "reorganization" plan but opponents quickly dubbed a "court-packing plan." The Justices wisely declined these offers, and said nothing. But Hughes worked busily behind the scenes with Senator Burton Wheeler from Montana, a Democrat who agreed to lead the opposition to the bill.

Because of the overwhelming Democratic majority in the Senate, where the bill was first introduced, the original opponents in that body saw themselves as a corporal guard trying to buy time until public reaction to the bill could set in. Hughes wrote a letter to Senator Wheeler, pointing out with very telling statistics that the Supreme Court was entirely abreast of its workload, and could not possibly decide cases any faster than it was doing. This letter, presented to the Senate Judiciary Committee, demolished the original justification for the bill—that the Court was behind in its work—and caused Roosevelt to switch to a franker justification of it: the Supreme Court as presently constituted was frustrating the popular will by invalidating needed social legislation.

The battle in the Senate lasted from March until July, 1937. One event after another occurred to hurt the plan's chance of enactment.

The Supreme Court handed down two decisions that spring in which it upheld, by a vote of five to four, important pieces of social legislation. Because the Court had only the previous year ruled the opposite way by a vote of five to four, these decisions were known as the “switch in time that saved nine.” Then, one of the oldest and most conservative members of the Court, Willis Van Devanter, elected to retire, giving Roosevelt one appointment without any need for the passage of the court-packing plan. And public opinion began to rally against the proposal.

Finally, in the midst of one of the worst heat waves in Washington history, it was brought home to the President that he did not have the votes to pass the bill in the Senate, and he agreed on a face-saving solution by which the bill, rather than being defeated in a floor vote, would be recommitted with a tacit understanding that the provisions relating to the Supreme Court would never again see the light of day. Supporters of the bill hoped to effectuate this result by the use of such vague language that it would not be apparent to the casual observer what was happening. They had almost succeeded when Senator Hiram Johnson, a maverick Republican from California who had opposed the President’s plan, asked whether the portion dealing with the Supreme Court was dead. At first the floor leader tried to shunt his question aside, but the white haired Californian would not accept this.

“The Supreme Court is out of the bill?” demanded Senator Johnson. “The Supreme Court is out of the bill,” finally acknowledged the floor leader. Hiram Johnson then exclaimed “Glory be to God!”, and sat down. After a momentary pause, as if by prearranged signal, the spectators’ galleries broke into applause. The President’s plan was indeed dead, in large measure because of Chief Justice Hughes’s off-stage orchestration of the opposition.

Hughes retired in July 1941 at the age of seventy-nine. He died seven years later.

HARLAN STONE (CHIEF JUSTICE FROM 1941–1946)

Harlan Stone was born in Chesterfield, New Hampshire, on October 11, 1872. He was named Chief Justice by President Franklin Roosevelt in 1941. Of all of the Chief Justices, Stone is unique. He is the only Justice to sit in every chair on the bench, from most junior to most senior and then to the center chair occupied by the Chief Justice. He is one of only two Chiefs—the other being Edward White—

appointed by a President from a different political party. He is one of only three side-bench appointments (the other two being Edward White and me) to be elevated from an Associate Justice to Chief Justice.

Stone attended Columbia Law School, where he graduated in 1898. He taught at Columbia Law School and served as its dean from 1910 to 1923. He also developed a successful corporate law practice. In 1924, President Coolidge named Stone Attorney General to clear up internal corruption left from the Harding administration. In January 1925 Coolidge nominated Stone to be an Associate Justice. In the face of some Senate opposition, Stone proposed that he meet with the Senate Judiciary Committee and answer questions—thereby establishing the practice of Senate confirmation hearings. He was confirmed by a vote of seventy-one to six.

During his tenure as an Associate Justice, the Court decided many cases involving New Deal programs. Stone repeatedly dissented from decisions striking down New Deal legislation, often joining Justices Louis Brandeis and Benjamin Cardozo. In 1937, the Court began to uphold these programs, moving Stone into the majority. On June 12, 1941, President Franklin Roosevelt named Stone Chief Justice; he was approved by the Senate two weeks later.

Stone was a large man who tried to keep in good physical shape. He was a member of President Hoover's so-called "medicine ball cabinet," a group that often exercised together on the White House lawn at 6:30 in the morning. He also walked every day.

I heard both Justice Felix Frankfurter and Justice William O. Douglas describe the conferences presided over by Chief Justice Hughes in which they sat, and I heard Justice Douglas describe the conferences presided over by Chief Justice Stone. Hughes was totally prepared in each case, lucidly expressed his views, and said no more than was necessary. Justice Frankfurter said that you did not speak up in that conference unless you were very certain that you knew what you were talking about. Discipline and restraint were the order of the day.

Understandably, some of the Justices resented the tight rein imposed by Hughes—albeit imposed only by example. Stone was one of those who had disliked the taut atmosphere of the Hughes conference, and as Chief Justice he opened up the floor to more discussion. But, according to Justice Douglas, Stone was unable to shake his role as a law school professor, and as a result he led off the discussion with a full statement of his own views, then turned over the floor to the

senior Associate Justice. But at the conclusion of the latter's presentation, Stone took the floor once more to critique the analysis of the senior associate. The conferences sometimes went on interminably. I think they were very likely the cause of much of the personal ill will which prevailed on the Court at this time.

On April 22, 1946, while announcing a dissent from the Bench, Chief Justice Stone pitched forward, felled by a stroke. He died that night.

FRED VINSON (CHIEF JUSTICE FROM 1946–1953)

Frederick Moore Vinson was appointed Chief Justice by President Harry Truman, replacing Harlan Fisk Stone. He served from June 1946 until September 1953.

Vinson was born on January 22, 1890, in Louisa, Kentucky. He received his B.A. degree in 1909 and his law degree in 1911 from Centre College in Danville, Kentucky. He earned the highest average ever recorded at his law school while supporting himself by teaching math at a nearby preparatory school.

Vinson practiced law in Louisa from 1911 to 1924. He was elected to Congress in 1923, and, except for one term, served until he was made a judge on the Court of Appeals for the District of Columbia Circuit in 1937. During the war, he held a number of important positions involving supply and price control. President Truman named him as Secretary of the Treasury in 1945 and then elevated him to Chief Justice in 1946. He is probably best remembered for writing the opinion in the *Dennis* case, upholding the conviction of the Communist twelve in a trial before Judge Medina in the late 1940s.

When Vinson was named Chief Justice, the Court was badly and publicly divided by personality and ideology. Although not remembered as one of the great Chief Justices, over time he was able to bring some measure of cordiality to the Court, which is what the Court most needed at the time of his appointment. Vinson died of a heart attack on September 8, 1953.

EARL WARREN (CHIEF JUSTICE FROM 1953–1969)

The last Chief Justice about whom I will speak is Earl Warren. Chief Justice Warren is best remembered for securing a unanimous decision in *Brown v. Board of Education*, outlawing segregation in

public schools and striking down the “separate but equal” doctrine of *Plessy v. Ferguson*.

Earl Warren was born in Los Angeles on March 19, 1891. His parents were both born in Scandinavia—his father in Norway and his mother in Sweden. His family moved to Bakersfield in 1894, where his father worked for the Southern Pacific Railroad. His father once told Warren that when he was born, the family was too poor to give him a middle name.

In 1938, Warren was elected Attorney General of California after being nominated not only by the Republican party, but by the Democratic and Progressive parties as well. He was elected governor of California in 1942. He was a progressive administrator who championed major reforms to statewide systems. Warren was reelected in 1946, after winning both the Republican and Democratic nominations, and again in 1950, beating President Franklin Roosevelt’s son James in a landslide. He ran as the Republican candidate for Vice President in 1948 with Thomas Dewey. In 1952, Warren was instrumental in securing the Republican nomination for Dwight D. Eisenhower and in return was promised the next vacant seat on the Court. When Chief Justice Vinson died, President Eisenhower named Warren the fourteenth Chief Justice.

When Chief Justice Warren joined the Court, it was sharply divided over the issue of racial segregation in schools. *Brown* was argued in October, but the case was not discussed at conference until December. At that time, Warren announced that he believed the “separate but equal” doctrine of *Plessy* could not be sustained, but he suggested that no vote be taken until further discussions took place. Warren understood the magnitude of the issue and the importance of framing the Court’s opinion to maximize the public’s acceptance of it. The Justices discussed the case informally throughout the term until, by early May every member of the Court save one agreed to overrule *Plessy*. The ninth Justice, Stanley Reed, then agreed to join the majority. The decision was released almost forty-eight years ago, on May 17, 1954.

In addition to *Brown*, the Warren Court is remembered for a series of decisions, beginning with *Baker v. Carr*, that established the “one person, one vote” principle. And in the area of criminal justice, the Court decided *Gideon v. Wainwright*, which established a right to appointed counsel for indigents facing felony charges; *Mapp v. Ohio*, which established the exclusionary rule for unlawfully seized evi-

dence; and *Miranda v. Arizona*, requiring that suspects in custody must be informed of certain constitutional rights.

Chief Justice Warren also served as the chairman of the committee established to look into the circumstances of President Kennedy's assassination.

Warren retired from the Court on June 23, 1969. He died of a heart attack on July 9, 1974.

CONCLUSION

The office of Chief Justice is mentioned only once in the United States Constitution. That mention is not in connection with the composition of the Supreme Court, but instead in describing the impeachment proceeding to be conducted before the Senate. There it says that the Chief Justice shall preside when the President is impeached. By statute, ever since the beginning of the Republic, the Supreme Court has consisted of a Chief Justice and a stated number of Associate Justices. It is from this minimal beginning that the position has evolved through more than 200 years of usage.

It is common parlance to speak of the "Warren Court," the "Burger Court," or the "Rehnquist Court." But this nomenclature can give a misleading impression. We speak of the administration of President Eisenhower, or President Kennedy, which connotes something quite different. A President brings to office his entire cabinet, from Secretary of State on down. But the Chief Justice brings to office no one but himself. He takes his seat with eight Associate Justices who are there already, and who are in no way indebted to him. By historic usage, he presides over the Court in open session, presides over the Court's conferences, and assigns the preparation of opinions in cases pending before the Court if he has voted with the majority. He also speaks on behalf of the federal judiciary in matters which pertain to it.

But this structure obviously leaves great room for interplay among the members of the Court. Marshall and Taney were dominant members of the Courts on which they served as Chief Justice; Chase and Vinson were not. Perhaps the best description of the office is to say that the Chief Justice has placed in his hands some of the tools which will enable him to be *primus among the pares* but his stature will depend on how he uses them.