

# Wives, Children . . . Husbands: Supporting Roles

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In 1965, Hugo L. Black asked his wife, Elizabeth, to host a dinner party. The purpose: to help him persuade Carolyn Agger, wife of Washington attorney Abe Fortas, to allow her husband to accept President Lyndon B. Johnson's offer of a seat on the Supreme Court. A tax lawyer at the same firm as Fortas, Agger was displeased that the move would mean a big cut in his salary; she thought he should spend a few more years in his lucrative private practice before becoming a judge. After all, he was only fifty-five. Elizabeth Black described the tense occasion in a diary entry:

We had invited Carol and Abe Fortas for dinner in answer to an SOS by [Justice] Bill Douglas, saying they were having a serious crisis about Abe's going on the Court. Carol told me they had several big things going that now had to be given up [improvements to their house in Georgetown], that they can't live on the small Court salary and may have to give up their new home. Later Hugo talked to Carol in that dear straightforward way of his. I was almost in tears at the things he was saying and it did have a great softening effect on Carol, I could tell. He told how he had deliberately chosen public service; how invaluable his

first wife's role was in his work; how unproductive he was in the years when he was alone; and, bless him, how much he was able to do after he married me. How a man needs a wife, in short. Carol asked indignantly if he was suggesting that she give up her law practice which was her life, and Hugo said "Certainly not." And as to whether Abe would have to sit out of some cases because of Carol's involvement, they were only a minute percent of cases. I do believe Hugo's advice helped. They stayed until after midnight.<sup>1</sup>

Fortas relented to the pressure and let Johnson nominate him a few months later.

Agger continued her legal career as a sought-after tax law specialist and became the family's principal breadwinner. She cut a colorful figure in Washington, driving around in her 1953 Rolls Royce and smoking cigars. But she refused to speak to President Johnson, a close friend, for months after her husband's appointment. Her "life had been ruined,"<sup>2</sup> she said.

Being the wife or, since 1981, husband of a Justice has always entailed some sacrifice and certain constraints. So has being the child of a Justice. While family members may have enjoyed privileged lives and a high social status in the nation's capital, that is not the whole story. A historic examination of the changing role of the Supreme Court spouse and firsthand anecdotes by Justices' children help illuminate the important but often thankless supporting role that family members have played in the development of the Supreme Court.

In the early decades of the Court, the Justices boarded together during the Supreme Court Term while their wives and children remained in their hometowns. These separations were exacerbated by the requirements of riding circuit, and the Justices often struggled to balance work duties with taking care of their families. In the 1790s, Hannah Iredell suffered more than most Supreme Court wives during her husband's absences because she was painfully shy. As long as the Iredells remained in their cozy hometown of Edenton, North Carolina, where Hannah was surrounded by family and old friends, her shyness was not a problem. Unlike most Justices, however, James Iredell moved his family to the capital after his appointment to the Court in 1790, probably for two reasons. First, the climate was thought to be healthier in New York and Philadelphia than in Edenton, where malaria was endemic. In addition, Iredell most likely believed the rumors that Congress would soon abolish the system of circuit riding, in which case he would never have to leave Hannah alone if they lived in the capital.

Circuit riding, of course, was not abolished, and Hannah was on her own in the capital for long months at a time, expected

to participate in the elaborate social rituals of the new federal government—attending receptions and paying and receiving social calls, or "visits." This would have been near torture for someone who described herself as "almost as helpless as a Child amongst Strangers,"<sup>3</sup> and sometimes it all became too much for her. Hannah wrote to her circuit-riding husband:

I have made no visits. I could not prevail on myself to run about the town alone after people whom I had never seen & whom I did not care if I [ever] saw again. It is impossible for you to make a fashionable woman of me & therefore the best thing you can do with me I think will be to set me down in Edenton again where I should have nothing to do but attend to my Children & make perhaps three or four visits in the year, what a dreadful situation that would be for a fine lady, but to me there could be nothing more delightful.<sup>4</sup>

Eventually, after three years in the capital, the Iredells returned to North Carolina. But Iredell still spent many months on the road, during which he fretted about how Hannah and the children were faring in Edenton's unhealthy climate. Two years after their move back home, Iredell was still trying to persuade his wife (unsuccessfully) to consider a return to Philadelphia:

I am perfectly well, but extremely mortified to find that the Senate have broken up without a Chief Justice being appointed, as I have too much reason to fear that owing to that circumstance it will be unavoidable for me to have some Circuit duty to perform this fall . . . I will at all events go home from the Supreme Court if I can stay but a fortnight—but how distressing is this situation? It almost distracts me. Were you & our dear Children anywhere in this part of the Country I should not regard it in the

least—But as it is, it affects me beyond all expression.

The state of our business is now such that I am persuaded it will be very seldom that any Judge can stay at home a whole Circuit, so that I must either resign or we must have in view some residence near Philadelphia, I don't care how retired, or how cheap it is. The account of your long continued ill health has given me great pain, and I am very apprehensive you will suffer relapses during the Summer My anxiety about you and the Children embitters every enjoyment of life. Tho' I receive the greatest possible distinction and kindness everywhere, and experience marks of approbation of my public conduct highly flattering, yet I constantly tremble at the danger you and our dear Children may be in without my knowing it in a climate I have so much reason to dread.<sup>5</sup>

Justice William Cushing routinely brought his wife, Hannah Cushing, along on his travels and even had his one-horse shay outfitted with special receptacles for the books she read to him during their trips. Although often in frail health, Julia Ann Washington also insisted on accompanying her husband, Justice Bushrod Washington. While the Cushings and Washingtons were thus spared the anxiety caused by long separations, the travel was nonetheless arduous and undignified. Writing to a relative, Hannah Cushing described herself and her husband as “traveling machines [with] no abiding place in every sense of the word.”<sup>6</sup> And in a chatty letter to her friend Abigail Adams, Mrs. Cushing recounted their difficulty in merely trying to get across the Hudson River at a time when New York City was the site of a yellow fever outbreak:

We have been roving to & from, since we had the pleasure of meeting you. . . . To avoid N. York we crossed

White plains to Dobb's ferry . . . & after staying there two nights without being able to cross, the wind continuing very high we went up 20 miles further to Kings ferry . . . where the river is not so wide & the boats better & after waiting there also two nights we safely passed the ferry, rejoicing as though we had been released from prison.<sup>7</sup>

Not coincidentally, Hannah Cushing and Julia Ann Washington were the only Justices' wives in the Court's early decades who were childless; the others generally had to stay home to look after their families and household affairs. Some of these women may have enjoyed the relative independence they had as a result of their husbands' absences. Chief Justice Jay's wife Sarah—who had six children to tend to—teased her husband when he was riding circuit in 1790: “We make out very well. Aint you a little fearful of the consequences of leaving me so long sole mistress?”<sup>8</sup> But even Mrs. Jay had her moments of anxiety and distress about how her husband was faring on the road. In one letter, at the close of a litany of illnesses afflicting the family at home, she wrote to her husband:

“Oh! my dear Mr. Jay should you too be unwell & be absent from me, & I deprived of the satisfaction & consolation of attending you how wretched should I be! . . . Oh my dear Mr. Jay how I long to see you.”<sup>9</sup>

Chief Justice John Marshall and his wife, Polly, also maintained a strong union despite their frequent physical separation. The commuter aspect of their marriage was compounded by the fact that Polly Marshall suffered nervous disorders and could not leave their Richmond, Virginia, home. At Polly's death in 1831 after forty-nine years of marriage, John nonetheless reflected on the critical support she had given him: “Her judgment was so sound and so safe that I have often relied upon it in situations of some perplexity. I do not remember ever to have regretted the

adoption of her opinion. I have sometimes regretted its rejection.”<sup>10</sup> Marshall’s friend Joseph Story sadly conveyed to his own supportive wife, Sarah, the depth of Marshall’s grief and loneliness:

On going into the Chief Justice’s room this morning, I found him in tears. . . . I saw at once that he had been shedding tears over the memory of his own wife, and he has said to me several times during the term, that the moment he relaxes from business he feels exceedingly depressed, and rarely goes through a night without weeping over his departed wife. She must have been a very extraordinary woman so to have attached him, and I think he is the most extraordinary man I ever saw, for the depth and tenderness of his feelings.<sup>11</sup>



Mary Willis Ambler (Polly) and John Marshall raised six children to adulthood in their modest Richmond home. Although Polly suffered from chronic illness and was housebound, she served as an advisor to her husband; he mourned her death after forty-nine years of marriage with these words: “her judgment was so sound and so safe that I have often relied upon it in situations of some perplexity. I do not remember ever to have regretted the adoption of her opinion. I have sometimes regretted its rejection.”

In 1830, Justice John McLean, who had been serving as Postmaster General in Washington before his Court appointment, opted out of the group boardinghouse arrangement and chose to live with his wife, Rebecca, instead. As the city of Washington developed more pleasantly and the Supreme Court’s Term lengthened, other Justices began bringing their families to the nation’s capital. Wives were tossed into the social whirl and expected to perform. This meant receiving and returning daytime social calls, and attending and hosting formal dinners in the evening—all while navigating the elaborate rules of protocol that governed polite society.

The arrival of the Court each year marked the beginning of Washington’s social season. Each Justice paid a formal social call to all the Justices more senior to him and to all members of the Cabinet. These calls were then reciprocated. There was very little of the formal separation between the Justices and members of the political branches (or the Justices and members of the Supreme Court bar) that there is today. According to nineteenth-century protocol, Supreme Court Justices ranked above Cabinet officials in the social pyramid: they were on par with U.S. Senators (although the order of precedence between a Senator and a Justice was the subject of much controversy), just one rung below the President.

Arriving from Keokuk, Iowa, Eliza Miller, the wife of Justice Samuel F. Miller (1862–1890), threw herself into the role of Washington socialite. She immersed herself in the rules of protocol governing the Justices and fully leveraged the prestige of her husband’s title. According to one society reporter:

Mrs. Miller, a matronly lady, bearing a feminine resemblance to her husband, is held in high esteem among the ladies of the Court circle as the authority on the social etiquette which attaches to their position in fashionable life. The Justice being the senior member of the

Court, in this respect even out-dating the Chief Justice, is recognized as the patriarch of the body, and Mrs. Miller is the acknowledged referee and umpire on all social questions.<sup>12</sup>

Another reported:

Mrs. Justice Miller . . . assisted by her grand-daughter . . . gives elegant dinners, not only to the Supreme Court, but other distinguished people at the Capital. She is a charming hostess. Her residence is in the best of taste, and in all her surroundings, there are many marks of luxurious refinement. . . Justice Miller has abstracted hours, but is full of life and fun when wakened up in society. The nation owes them all a world of gratitude for their purity of character

on the Supreme Bench . . . [The Justices] all stand high in Washington, making no dinner or reception quite complete, without one or more of the Supreme Bench and their families.<sup>13</sup>

But Eliza Miller may have been too socially ambitious. When Miller sought to be elevated to Chief Justice, his brother-in-law fretted: "I am afraid his wife will hurt him. . . She is ambitious, imprudent & unscrupulous."<sup>14</sup> Miller was indeed passed over, and Eliza's star faded as the city of Washington began attracting the newly rich and she was no longer able to entertain in style on a judicial paycheck.

Malvina Harlan, wife of Kentuckian John Marshall Harlan (1877–1911), was unquestionably an asset to him. She did her duty by receiving visitors at home on Mondays, the designated day for Supreme Court wives to host. This meant providing an elaborate spread



Malvina Harlan, wife of John Marshall Harlan (pictured here on their wedding day in 1856), received visitors at home on Mondays, the designated day for Supreme Court wives to host, and provided an elegant tea service for hundreds of callers. Her Northern background—she was from Indiana—and abhorrence of slavery influenced her husband, a Kentuckian.

for tea and music for dancing—often for as many as three hundred callers. But she also stepped beyond the hostess role to play a highly symbolic hand in inspiring John to write the Supreme Court’s most famous dissent. Unbeknownst to her husband, Malvina had neglected to make good on a promise to a friend to give away Harlan’s heirloom inkstand—the one that Chief Justice Roger B. Taney had used in 1857 to write the Court’s ignominious decision in *Dred Scott*. Almost forty years later, Justice Harlan wrestled with his dissent in *Plessy v. Ferguson*—an 1896 decision in which the other Justices reaffirmed the notion that blacks and whites were not equal, thus providing the legal justification for segregation that would endure for six decades. Malvina sneakily brought out the tainted inkstand to help him formulate his lone dissent. She described the ploy in her memoirs:

His dissent (which many lawyers consider to have been one of his greatest opinions) cost him several months of absorbing labour—his interest and anxiety often disturbing his sleep. Many times he would get up in the middle of the night, in order to jot down some thought or paragraph which he feared might elude him in the morning. It was a trying time for him. In point of years, he was much the youngest man on the Bench; and standing alone, as he did in regard to a decision which the whole country was anxiously awaiting, he felt that, on a question of such far-reaching importance, he must speak, not only forcibly but wisely.

In the preparation of his dissenting opinion, he had reached a stage when his thoughts refused to flow easily. He seemed to be in a quagmire of logic, precedent and law. Sunday morning came, and as the plan which had occurred to me, in my wakeful hours of the night before, had to be put into

action during his absence from the house, I told him that I would not go to church with him that day. Nothing ever kept him from church.

As soon as he had left the house, I found the long-hidden Taney inkstand, gave it a good cleaning and polishing, and filled it with ink. Then taking all the other ink-wells from his study table, I put that historic, and inspiring inkstand directly before his pad of paper; and, as I looked at it, Taney’s inkstand seemed to say to me, “I will help him.”

I was on the look-out for his return, and met him at the front door. In as cheery a voice as I could muster (for I was beginning to feel somewhat conscience-stricken as I recalled those “evasive answers” of several months before), I said to him: “I have put a bit of inspiration on your study table. I believe it is just what you need and I am sure it will help you.” He was full of curiosity, which I refused to gratify. As soon as possible he went to his study. His eye lighting upon the little inkstand, he came running down to my room to ask where in the world I had found it. With mingled shame and joy I then “fessed up,” telling him how I had secretly hidden the inkstand . . . because I knew how much he prized and loved it, and felt sure it ought really not to go out of his possession. He laughed over my naughty act and freely forgave it.<sup>15</sup>

The inkstand did prove inspirational to Harlan’s dissent. After dipping his pen in it he wrote the visionary words: “Our Constitution is color blind, and neither knows nor tolerates classes among citizens.” In doing so, he made a small scratch at undoing the stain of *Dred Scott* on the Court and on the nation. According to Malvina:

The memory of the historic part that Taney's inkstand had played in the Dred Scott decision, in temporarily tightening the shackles of slavery upon the negro race in the antebellum days, seemed, that morning, to act like magic in clarifying my husband's thoughts in regard to the law that had been intended by [Senator Charles] Sumner to protect the recently emancipated slaves in the enjoyment of equal "civil rights." His pen fairly flew on that day and, with the running start he then got, he soon finished his dissent.

It was, I think, a bit of "poetic justice" that the small inkstand in which Taney's pen had dipped when he wrote that famous (or rather infamous) sentence in which he said that "a black man had no rights which a white man was bound to respect," should have furnished the ink for a decision in which the black man's claim to equal civil rights was as powerfully, and even passionately asserted, as it was in my husband's dissenting opinion in the famous "Civil Rights" case.<sup>16</sup>

As the twentieth century arrived, Supreme Court wives and their husbands continued to enjoy a high social status in the nation's capital, dining at the White House, with members of Congress, and with foreign ambassadors. In 1906, Justice David J. Brewer expressed doubts that his friend and bench-mate Henry Billings Brown would retire as promised at age seventy because Supreme Court "wives cut an important figure, and of course they are always opposed to it [their husbands retiring]."<sup>17</sup>

The growing sophistication of the city of Washington rendered the social duties of a Supreme Court wife increasingly elaborate. By 1926, Milton Handler, a law clerk to Justice Harlan Fiske Stone, viewed these rituals as excessive:

It was customary in that era in Washington for visitors to leave cards when making a call. Mrs. [Agnes] Stone, for example, would go out some days in her chauffeured car with as many as 20 to 30 cards. She would drive to the embassies, to the homes of the Supreme Court Justices and Cabinet Secretaries, and to the White House. The chauffeur would hand the Stones' card to the Butler of the establishment. Similarly, visitors would drive up to the Stones and deposit their cards, just to show that they were maintaining social relations between dinner parties, which the Stones attended practically every night.<sup>18</sup>

Another Stone clerk, Warner W. Gardner, confirmed that the pace had not abated a decade later:

The Stones in 1934–1935 carried through an appalling social calendar. My impression at the time was that they dined in company every night of the week, month in and month out. The cost was not too great, since both were completely temperate and never left later than ten-thirty. But, neither then nor now, was the regime understandable to me. Stone, however, was a good conversationalist and enjoyed it, and Mrs. Stone seemed, too, to find a real pleasure in the social life of Washington.<sup>19</sup>

But not all Justices' wives played the game. Dean Acheson, Louis D. Brandeis' law clerk from 1919 to 1921, noted that the Brandeises did not attend many social functions. Alice Brandeis kept their social life more low-key, welcoming visitors from her husband's coterie of progressives in a modest and intimate way.

The Brandeises' "at home" was purposeful and austere. The hostess, erect on a black horsehair sofa, presided at the tea table. Above her,



A clerk to Justice Harlan Fiske Stone in the 1930s recalled that the Stones had a relentless social life: "My impression at the time was that they dined in company every night of the week, month in and month out. The cost was not too great, since both were completely temperate and never left later than ten-thirty." Pictured are Supreme Court wives Winifred Reed, Antoinette Hughes, Agnes Stone, and Elizabeth Roberts at a breakfast honoring the First Lady, Eleanor Roosevelt, in 1938.

an engraved tiger couchant, gazing off over pretty dreary country, evoked depressing memories of our dentist's waiting room. Two female acolytes, often my wife and another conscripted pupil of Mrs. Brandeis's weekly seminar on child education, assisted her. The current law clerk presented new-comers. This done, disciples gathered in a semicircle around the Justice. For the most part they were young and with spouses—lawyers in government and out, writers, conservationists from Agriculture and Interior, frustrated regulators of utilities or monopolies, and, often, pilgrims to this shrine.<sup>20</sup>

And what of Justices who were unmarried? Thrice-widowed Chief Justice Salmon P. Chase (1864–1873) relied on his charming and talented daughter, Kate, to serve as his social escort and hostess. She delighted in the role and was the toast of the town. When she married a wealthy Senator, William Sprague, the couple decided to live with her father in his Washington home, where they entertained lavishly. Although the Spragues spent more than six months of the year in William's home state of Rhode Island, the Senator paid for the expansion and upkeep of Chase's house, and for his servants. This was a relief to the Chief Justice, who had a hard time reciprocating the many elegant dinners he was invited to without straining his modest budget.





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Unfortunately, Sprague, a heavy drinker, also had a nasty streak. He sat on the Senate Appropriations Committee and was in the position to vote for a badly needed salary augmentation for the Justices. In 1866, Chase found himself in the position of lobbying his own son-in-law:

No judge can now live and pay his travelling expenses on his salary . . . Its amount practically is not as large as it was at the organization of the Government. That of the Chief

Justice should be at least 12,000 and that of each Associate 10,000."<sup>21</sup>

The Committee did raise the salaries, but only to \$8,000 (Associate Justices) and \$8,500 (Chief Justice). The higher figures originally requested had failed to pass by a single Senate vote—Sprague's. Kate divorced him soon after.

Lifelong bachelor James C. McReynolds (1914–1941) resorted to pressing his clerks into taking on some of the social duties of a wife. According to John Knox, his clerk in the

1936 Term, the irascible Justice found it tiresome to explain how the calling-card system worked—training he had to give every time he broke in a new clerk. A flat card meant it was delivered by a chauffeur; if the corner was bent then the sender had delivered it in person. Justice McReynolds informed his clerk:

When all these people leave their calling cards for me here at 2400 [my apartment], it is then up to me to decide which cards I wish to acknowledge. Most of them will be ignored, as I haven't the time or the inclination to meet many people. The cards which have been acknowledged can be kept in a small pile, but the others thrown away. And my card will almost always be sent flat—meaning that it should be delivered by Harry [Parker, his butler/chauffeur] and not by me, or else sent through the mail. I very seldom make a special trip to leave my calling card in person with anyone.<sup>22</sup>

Unfortunately for Knox, he served as a clerk during the high-profile Court-packing episode, when President Franklin D. Roosevelt proposed a plan to add new Justices to the Court because it had been striking down his New Deal legislation. Snaring a Justice for one of her dinner parties was at the top of every Washington hostess's list that year, as the Court was so much in the spotlight. Knox was saddled with extra work even though the Justice chose to decline these invitations:

I soon realized that McReynolds was indeed serious about the Washington practice of receiving and sending calling cards. This was no matter which could be treated lightly, at least with him. And once his card was received, the family he had acknowledged was then free to invite the Justice to teas, dinners, receptions, and the like. However, he often declined such invitations after

the Court-packing controversy burst so unexpectedly upon the nation in February 1937.<sup>23</sup>

The Depression and World War II put an end to these frenetic social traditions. Chief Justice Charles Evans Hughes's daughter, Elizabeth, reported that her mother had found home-based receptions burdensome in the 1930s and was relieved when the custom ended:

Those were the days of receptions—not cocktail parties, but afternoon teas. Wives of Cabinet officers and of other officials were “at home” on various days of the week. For example, Mondays were reserved for the Supreme Court ladies, Wednesdays for the Cabinet wives, Fridays for the embassies and legations, etc. In addition, the official wives in all categories often paid calls on others and left calling cards. Such practices fortunately were abandoned during the Second World War. Not only were those elegant teas costly; they were time-consuming and tiring.<sup>24</sup>

In the postwar era, ethical standards evolved to the point that judges were generally expected to distance themselves from members of the legislative and executive branches to maintain impartiality. By the 1960s, the social obligations of a Supreme Court Justice's wife were consequently more subdued. Dorothy Goldberg, who had been a Cabinet wife prior to her husband Arthur's appointment to the Supreme Court in 1962, compared the two roles:

Formal social life on the Court was quieter than on the Cabinet. Justices and their wives are not expected to reciprocate invitations extended to them by others, nor do they very often accept invitations other than from their private friends. We had, however, become friendly with some of the ambassadors, and

we continued to receive invitations from them and from some members of the Cabinet. We rarely accepted Thursday evening invitations, however—conference was on Friday; and we declined others if they brought the total number of our evenings out to more than one or two a week. . . .

The Supreme Court is the only place in the government where wives and family are accorded a special courtesy and regarded as a group. Of course, it is easier when only nine persons are involved. The Congress has a wives' gallery, to be sure, and the President's family has the first row in the family section on opening of Congress occasions, but the Executive, to my knowledge, makes no provision for the inclusion of family during work hours and probably would prefer that wives remain at home, to emerge for picture-taking purposes only. Early in the Nixon administration, there was an effort to show how wives were included in a briefing with their husbands, but that laudable effort seemed to collapse almost immediately.

On the Court, whenever a case is being argued, there is always room for Court wives in the family pews. There is also a dining room where they may gather for luncheons, though officially it is a place for entertaining visiting foreign jurists or for intimate ceremonial events, such as the presentation of a portrait by members of a Judge's family.

I had not known about the family pews and was surprised to learn from Nina Warren [wife of the Chief Justice] that a wife was expected to be there when her husband delivered an important opinion. Perhaps only Nina expected that. "Dorothy, we haven't been seeing you lately." When I

looked as puzzled as I felt, she explained that the wives often appeared for Monday morning opinions, particularly if their husbands were making important contributions. I had thought that Arthur could surely deliver himself of an opinion without my presence. I had never been essential previously, though I had always been present at his steel hearings [Goldberg had been Secretary of Labor], and at conventions and various meetings, but that was because he invited me, not because I was expected.<sup>25</sup>

Josephine Powell apparently slipped up on this etiquette as well. Her husband, Justice Lewis F. Powell, Jr., recalled that she received a gentle teasing from his colleague not long after he joined the Court in 1972:

There is [a] custom, that we [Mrs. Powell and I] violated the first time I handed down an opinion. The wife of a justice delivering an opinion is expected to be present in the courtroom and to be seated in a particular place. I got the word and I advised Jo and she showed up about 15 minutes late, which is not unusual in the Powell family. She immediately received a note from Justice Potter Stewart, sent there by one of the pages, saying "You just missed your husband's greatest opinion."<sup>26</sup>

Although spouses hold a permanent ring-side seat in the section of the Courtroom reserved for family members, few, other than Elizabeth Black and Dorothy Goldberg, have recorded eyewitness accounts. Instead, Supreme Court wives and husbands have prized discretion. In her memoir, Dorothy Goldberg recalled being struck by the emphasis wives placed on this value—and by the courteous manner in which their husbands treated them:

[T]here is a courtliness in [the Justices'] bearing toward their wives, an observance of old-fashioned manners, at least in their publicly visible relationships. One almost never sees a Justice walking several feet ahead of a wife who is breathlessly trying to walk alongside him as he rushes to talk to another Justice or lawyer. Only rarely does one see a Justice skillfully ignoring a wife or another Justice's wife after the first routine arrival kiss. I saw the Justices and their wives through rose-colored glasses, I suppose, glimpsing only affection, devotion, loving kindness, with everyone trying to avoid the slightest bit of gossip.<sup>27</sup>

In addition to being discreet, Supreme Court spouses have been expected to preserve the dignity of the institution by behaving with decorum. Hugo L. Black, who served on the Supreme Court from 1937 to 1971, made a little speech to this effect when he proposed to his second wife, Elizabeth, in 1957. He made it clear that the Court would always be his first love and that, to honor the institution, her behavior must always be beyond reproach. She recorded in her diary his visit to her house to pop the question:

He took me by both my hands and sat me down on the sofa next to him. Hugo Black did not speak of marriage. He spoke of love and the Supreme Court. "Who knows what love is?" Hugo asked me musingly. "It is a chemical blend of hormones, happiness, and harmony," he went on to say. "But I have a prior love affair for almost twenty years now with an institution. It is with the Supreme Court. I have a tremendous respect for the prestige of the Court. We have to act on so many controversial matters and we are bound to make some people mad at every decision

we make. Therefore, in my personal life I have had to be like Caesar's wife: above reproach. I have to know that the woman I marry is a one-man woman. The woman I marry will be around extremely attractive intellectual men. I am seventy-one years old. You are twenty-two years younger than I. In another five or ten years you may not find me as attractive as you do now. If that were to happen and you wanted a divorce, I would give you one. But I think it would finish me and hurt the prestige of the Court."<sup>28</sup>

Elizabeth Black proved to be a supportive wife and a useful sounding board when her husband was wrestling with difficult cases. Apparently, Justice Black was partial to nocturnal discussions:

Almost invariably, on an opinion he thinks to be very important, Hugo awakens in the middle of the night thinking about it. Soon he pulls the chain to turn on the light. "Darling," he says to me, "are you awake?" By that time I am, of course, fully awake. "I am bothered about a case." "Tell me about it," I say. "Well this is what it is all about . . ." Then he recounts in detail and with passion the horrible injustice being perpetrated on a person because of his brethren's failure to see it his way. "I will have to write it on very narrow grounds if I want to get a Court," he says, naming those he has with him and those against.

Sometimes this unwinds him, sometimes not. If he doesn't feel he can go to sleep, he says, "Now it's three o'clock in the morning and I have just got to be fresh for the Conference tomorrow. I need sleep. What do you think I ought to do?" Then I suggest, "Why don't you take

a little bourbon to make you sleepy?" (Hugo is terribly inhibited about taking liquor and usually wants me to be the one to suggest it.) And so he pours a splash of bourbon on ice, fills the glass with water, and soon is sound asleep. The next morning he awakens as bright and clear-minded as can be, and he approaches the day with his usual eager zest for life and vast good humor.<sup>29</sup>

Elizabeth Black also enjoyed helping to look after each year's new crop of clerks by occasionally hosting them in her home. A clerk to Byron R. White (1962–1993) recalls that the Justice's wife, Marion, similarly adopted a nurturing role: "White took a proprietary interest in her husband's law clerks—recording marriages and births, encouraging the unmarried to settle down, and offering advice on the proper balance between career and family."<sup>30</sup> To enhance clerks' year-long stay in the nation's capital, many wives have organized sightseeing expeditions for them. Dottie Blackmun, for example, arranged for clerks to visit the FBI and the White House, and she accompanied them to see the cherry blossoms every spring.

Wives have traditionally had to tread carefully when participating in public life, as even volunteer activities could potentially pose a conflict of interest for the Justice. If such a conflict were to occur, the Justice may decide he should disqualify himself, leaving only eight Court members to decide the case and introducing the possibility of a stalemate. To drive home the point, Arthur Goldberg once admonished his wife: "Listen, Do[rothy], when I took the oath of office, whether you know it or not, you did too. Get it?"<sup>31</sup> For Dorothy, the hardest part of being a Supreme Court wife was being told to restrict her involvement in political activism and having to turn down all but a few charity organizations that sought her help. Nina Warren, the Chief Justice's wife, told her that

she supported the Salvation Army in part because it was a safe choice. One incident in particular made Dorothy realize her position:

The code was brought home to me personally in November 1962, on the occasion of the Thanksgiving Day football match between a predominantly black Washington high school and a predominantly white school. A fracas ensued that went beyond any usual team competitiveness and was the first of the bitter racial clashes erupting publicly; It was, at least, the first of which I was aware. I thought it important to call Charles Horsky, Presidential Assistant for the District of Columbia, to tell him that it was a sign that something had better be done quickly to alleviate rising tensions. He agreed. It occurred to me to invite the high school superintendent, the administrative staff, and Mr. Henley of the Urban Service, the newly funded school-volunteer program, to meet with Mr. Horsky and the others to discuss what the schools could do to avoid similar situations and what the private sector and government might do to help. I unthinkingly sent out invitations to a meeting in the wives' dining room of the Court, since I had always had full permission from Arthur to do so in the Department of Labor.

When I phoned Nina Warren [the Chief Justice's wife] to invite her, she said, "Have you talked with Mrs. McHugh?" (Mrs. Margaret K. McHugh was secretary to the Chief.) I said no, I hadn't thought to invite her. Nina said nothing further, but that evening, at a dinner at the embassy of Israel, the Chief came up to me and said earnestly, while wagging his index finger, "Dorothy, Mrs. McHugh tells me you're



John O'Connor (right) became the first Supreme Court husband in 1981. He was joined by Martin Ginsburg (left) in 1993. A talented chef, Ginsburg relished taking his turn cooking for Supreme Court spouse luncheons. "Aware that one aspect of a spouse's job is to bind in an institution defined by differences, he seemed eager to do his part," recalls Cathleen Douglas Stone, widow of Justice William O. Douglas.

planning on inviting school officials to the Court. That is impermissible. Arthur would have to disqualify himself if a case arose involving the schools." I was vexed with my obtuseness at having to learn the hard way all the fundamental facts of everyday life. A person of my age should not have been that naïve, I realized, and now again I was marching into new areas without first having thought to ask about directions.<sup>32</sup>

Many contemporary Justices now arrive at the Court with spouses, like Carolyn Agger, who have careers of their own. Conflict-of-interest concerns, particularly for wives and husbands working in the legal profession or in politics, are increasingly an issue. A spouse's job may also engender conflicts of interest in more indirect ways as well. For example, in 1997, Martin Ginsburg, a prominent tax lawyer

and professor at Georgetown University Law Center, ordered his broker to sell all the stocks in his individual retirement account so that his wife, Justice Ruth Bader Ginsburg, would not have to worry about disqualifying herself when a company in the account was represented in a case before the Supreme Court. He had earlier sold the couple's jointly held stocks when his wife became an appellate court judge.<sup>33</sup> Despite these limitations, Martin Ginsburg dismissed any notion of personal sacrifice because of his wife's career: "I have been supportive of my wife since the beginning of time, and she has been supportive of me. It's not sacrifice; it's family."<sup>34</sup> Indeed, Martin, who died in 2010, took over responsibility early in the marriage for preparing meals both for family suppers and for the gourmet dinners they hosted. On one occasion he may even have tried to be *too* supportive. When Ruth joined the Court in 1991, Martin decided to devise a unique response system to relieve his wife

from the burden of answering the daily flood of correspondence that came her way. Justice Ginsburg humorously described this attempt to protect her:

During my first months on the Court I received, week after week, as I still do, literally hundreds of letters—nowadays increasingly fedexes, faxes, and emails—requesting all manner of responses. Brought up under instructions that plates must be cleaned and communications answered, I was drowning in correspondence despite the best efforts of my resourceful secretaries to contain the flood.

Early in 1994, Justice Scalia and I traveled to India for a judicial exchange. In my absence, my spouse tested his conviction that my mail could be handled more efficiently. He visited chambers, checked the incoming correspondence, grouped the requests into a dozen or so categories, and devised an all-purpose response for my secretaries' signature. When I returned, he gave me the form, which to this day, he regards as a model of utility and grace. I will read a few parts of the letter my husband composed. You may judge for yourself its usefulness and grace.

"You recently wrote Justice Ginsburg. She would respond personally if she could, but (as Frederick told Mabel in *Gilbert & Sullivan's Pirates of Penzance*) she is not able. Incoming mail reached flood levels months ago and shows no sign of receding. To help the Justice stay above water, we have endeavored to explain why she cannot do what you have asked her to do. Please refer to the paragraph below with the caption that best fits your request.

"Favorite Recipes. The Justice was expelled from the kitchen nearly

three decades ago by her food-loving children. She no longer cooks and the one recipe from her youth, tuna fish casserole, is nobody's favorite.

"Photograph. Justice Ginsburg is flattered, indeed amazed, by the number of requests for her photograph. She is now 61 years of age ah, those were the days!—and understandably keeps no supply.

"Are We Related? The birth names of the Justice's parents are Bader and Amster. Many who bear those names have written, giving details of origin and immigration. While the information is engrossing, you and she probably are not related within any reasonable degree of consanguinity. Justice Ginsburg knows, or knew, all of the issue of all in her family fortunate enough to make their way to the U.S.A."

I will spare you my husband's thoughts on Fund-raising, School Projects, Congratulatory Letters, Document Requests, Sundry Invitations, and proceed to one last category:

"May I Visit? If you are any of the Justice's four grandchildren and wish to visit, she will be overjoyed. If you are a writer or researcher and want to observe the work of Chambers, the answer is 'no.' Confidentiality really matters in this workplace."

My secretaries, you will not be surprised to learn, vetoed my husband's letter, and in the ensuing years they have managed to cope with the mail flood through measures more sympathetic.<sup>35</sup>

Being the child of a Supreme Court Justice can also be a complex proposition. It has its privileges, but also its responsibilities. In the early decades of the Court, children, like their mother, had to endure long separations



Elizabeth Hughes (shown here at age 9) enjoyed the privileges of being the daughter of a Supreme Court Justice when her father was appointed in 1910, but also learned discretion. “Although father never discussed cases pending before the Court, of course, he occasionally expressed a confidential opinion on current events; but he always cautioned us with the remark: ‘This is not to be repeated to anyone.’”

from their father when he left for a Supreme Court session or to ride circuit. When Chief Justice Oliver Ellsworth embarked in 1797 on the 1,800-mile Southern circuit encompassing North Carolina, South Carolina and Georgia, he made a promise to his son back in Connecticut:

Daddy is going about a thousand miles further off, where the oranges grow—and he will begin to come home & come as fast as he can, and will bring some oranges.<sup>36</sup>

Charles Evans Hughes’s daughter, Elizabeth, said she greatly enjoyed the privileges of being the daughter of a Justice when he was appointed in 1910. She learned, however, to be circumspect about any remarks she overheard:

I remember well the rides in mother’s electric automobile to take father to the Court and often call for him there.

During that period I began to realize that my family was different and I felt a compelling need to do the best I could so as not to “let father down.” There was no mention of this at home; but my brother, sisters, and I just felt it and carried on as best we could. . . . I was allowed to join the family at dinner at an unusually early age, because my parents realized that otherwise I would be alone. Thus I was fortunate enough to be allowed to listen and absorb when guests came; and distinguished ones some of them were! Children were “seen and not heard” in those days, and to me that seemed an advantage. I wouldn’t have ventured a remark in any event, but I listened carefully and tried to understand what I heard. Although father never discussed cases pending before



the Court, of course, he occasionally expressed a confidential opinion on current events; but he always cautioned us with the remark: "This is not to be repeated to anyone." We never did and were benefited by that early training.<sup>37</sup>

Children can also be an important pipeline of information to the Justices by keeping them abreast of what is going on outside the Court's marble pillars. Sometimes, though, even solicited advice from children can be burdensome. Justice Harry A. Blackmun's youngest daughter, Susan, remembers advising her father on the issue of abortion in 1972 before he wrote the Court's opinion in *Roe v. Wade*. It was a long way from the "seen and not heard" days of Elizabeth Hughes:

All three of us girls happened to be in Washington soon after Justice [Warren] Burger had assigned the opinion to Dad. During a family dinner, Dad brought up the issue. "What are your views on abortion?" he asked the four women at his table. Mom's answer was slightly to the right of center. She promoted choice but with some restrictions. Sally's reply was carefully thought out and middle of the road, the route she has taken all her life. Lucky girl. Nancy, a Radcliffe and Harvard graduate, sounded off with an intellectually leftish opinion. I had not yet emerged from my hippie phase and spouted out a far-to-the-left, shake-the-old-man-up response. Dad put down his fork mid-bite and pushed down his chair. "I think I'll go lie down," he said. "I'm getting a headache."<sup>38</sup>

Having a parent on the Supreme Court can impact a child's career path. Elizabeth Hughes's older brother, Charles, found this out the hard way when he was serving as Solicitor General in the 1930s. His father had stepped down from the Court in 1916 to run,

unsuccessfully, for President on the Republican ticket. Facing a vacancy upon the death of Chief Justice William H. Taft, President Herbert Hoover was advised that he should offer the seat to Hughes senior, now a New York lawyer, as a courtesy. The assumption was that he would not accept the offer, as going on the Bench meant that his son would have to resign as Solicitor General to avoid a conflict of interest. The hope was that Hoover then could promote Associate Justice Harlan Fiske Stone to the center chair and appoint Learned Hand, a New York judge of enormous talent and national reputation, to fill Stone's seat. This did not work out as planned.

Joseph P. Cotton, Acting Secretary of State and an old and trusted friend of President Hoover's, told his friend, Harvard law school professor Felix Frankfurter, the inside story on this father/son incident. A year later, Frankfurter related Cotton's account to Frederick Bernays Weiner, his former student. Weiner relays it here:

News of the impending Taft retirement reached the president while Mr. Cotton was with him. The latter immediately said, in substance—and the conversations that follow are, necessarily, given in substance—"That provides you with a great opportunity, Mr. President. Now you can promote Justice Stone to be Chief justice." Justice Stone was not only a member of Hoover's medicine ball cabinet [his work-out group] that met daily on the White House lawn at 7:30 A.M., but Justice and Mrs. Stone had long been close friends of the Hoovers, an intimacy reflected in their Sunday evening suppers together over many years. "And then," continued Cotton, "you can appoint Judge Learned Hand to fill Stone's place, and thus put on the Supreme Court the most distinguished judge on the bench today."

The President had his doubts. “[Promoting Associate Justice Stone] would be fine, very fine. But I feel I must offer the chief Justiceship to Governor Hughes. As a former Justice there can be no question of his qualifications, and I feel so greatly obliged to him for that splendid speech he made for me on the Sunday before the election that it would be unforgivable ingratitude on my part not to offer him this position.”

“But Mr. President,” said Cotton, “Hughes can’t take it. His son Charles, Jr., is your Solicitor General, and in that job he handles all government litigation before the Supreme Court. That comes to about 40 percent of all the cases there. Consequently, if the father is Chief Justice, the son can’t be Solicitor General. That means that Governor Hughes won’t accept. “Well,” said the President “if he won’t, that solves our problem. Then I can promote Stone and appoint your friend Hand. But, since the public knows Hughes and not Hand, it would be fine to announce that I had offered the post to Hughes before appointing Stone and Hand. So I really must make the offer to Hughes.”

Which he proceeded to do, over the telephone . . .

And then—here I quote Cotton as related by Frankfurter, this time verbatim—“The son-of-a-bitch never even thought of his son!” For Hughes accepted then and there.<sup>39</sup>

When this story came out, Hoover denied it. The President even wrote to Hughes directly to contradict it. Frankfurter later retracted the part about Hughes accepting the offer without hesitation over the telephone and Hoover criticizing Hughes for not having given his son a second thought. Apparently, two conservative

Justices already had been sent up to New York to sound out whether Hughes would take the Chief’s job, if offered. Hughes thus had been afforded plenty of time to think over the offer and consult with his son before accepting.

Although this eyewitness account is third-hand and suspect, the facts nonetheless remain. Hughes did indeed take the Chief Justice job, and his son resigned the Solicitor Generalship—perhaps the most prestigious job for a lawyer in America. Hughes, Jr., stepped down the day after his father was sworn in and never held federal office again.<sup>40</sup>

A similar father/son episode occurred in 1967, but in reverse. President Lyndon B. Johnson wanted to remove Truman appointee Tom C. Clark (1949–1967) from the Court so he could fill the vacancy with his own pick. He seized on the idea of appointing Ramsey Clark, the Justice’s son, as Attorney General, to force a conflict of interest (the Court gets many of its cases from the Department of Justice). Ramsey tried to persuade the President that as Attorney General he would not be influenced by his father, and vice versa. Unlike the Solicitor General, who argues frequently, the Attorney General usually only presents one token case before the Court. Ramsey told President Johnson that his father would not resign because, at age sixty-seven, Clark Sr. was at the peak of his powers: “I felt that . . . my dad’s career had been the great pride of our family and that it was unthinkable that he would resign. I told him that and that was the extent of the discussion. It was a little comment that was made several times but I thought it was unthinkable that he would resign.”<sup>41</sup> He also said it would be impolitic for Johnson to force him off the Court: “In the police community and some other conservative areas Dad ranks awfully high. For you to replace him with a liberal would hurt you.”<sup>42</sup> But, according to Clark, Jr., Johnson was stubborn:

[I]f my judgment is that you become attorney general, [Tom Clark] would



Justice Tom Clark graciously gave up his seat on the Court in 1967 so that his son, Ramsey Clark (at left, being sworn in by his father as assistant attorney general), could serve as Attorney General. “He gave what once seemed to me too much: career, power, prestige—the work of a lifetime—cut off prematurely as he retired from the Supreme Court. He never discussed it,” recalled Ramsey Clark.

have to leave the Court. For no other reason than the public appearance of an old man sitting on his boy’s case. Every taxi driver in the country, he’d tell me that the old man couldn’t judge fairly what his old boy is sending up [laughter].<sup>43</sup>

Much to Ramsey’s surprise, Justice Clark did resign in 1967, giving up his lifetime seat so his son could serve what turned out to be two years as Attorney General. Still energetic, Clark accepted invitations to sit on federal courts in all judicial circuits in the country to help with heavy caseloads. Ramsey Clark eulogized his father in 1977 with these words:

Tom Clark was a giver. He gave what once seemed to me too much: ca-

reer, power, prestige—the work of a lifetime—cut off prematurely as he retired from the Supreme Court. He never discussed it. He never even mentioned it. Instead, he turned to things like traffic courts and for three years he labored that the good people of this land brought before municipal courts would see principle possessed there, truth found and applied in their cases.<sup>44</sup>

But a son or daughter need not be a top government attorney to face conflicts of interest. For example, Eugene Scalia, one of Justice Antonin Scalia’s nine children, is currently a labor-law specialist and a partner at a Washington law firm whose appellate



The children of Earl Warren (top left, in this 1937 photo) were used to the political spotlight having grown up in the California Governor's mansion. But when their father later served as Chief Justice, Earl Warren, Jr., (front row second from right) called it "[s]howdown time, a period of about 20 years when we would be forced to defend or refute what the Supreme Court was doing. And it was terribly difficult—for regardless of political persuasion or personal feelings, we, as individuals, had to take stands."

lawyers often present cases before the Court. Federal law requires that, like other federal judges, Justice Scalia would have to disqualify himself if the outcome of a case would "substantially" affect his son's earnings. The Supreme Court has issued a written policy that Justices will remove themselves from cases when a relative is a partner in a firm handling the case, unless the firm has provided the Court with "written assurances that income from Supreme Court litigation is, on a permanent basis, excluded from our relatives' partnership shares." Eugene Scalia's firm has supplied such assurances to the Court. Accordingly, he receives a smaller paycheck than his law partners because his father sits on the High Bench.<sup>45</sup>

When a Justice's decisions come under criticism, his or her children are often af-

ected. After Hugo L. Black cast his vote to desegregate schools in 1954, he was so vilified in his native Alabama that his son had to give up his law practice in Birmingham and move to Florida because he, too, was ostracized. Perhaps the most poignant description of the complexities of having a parent on the Supreme Court comes from Chief Justice Earl Warren's son, Earl, Jr. He and his five siblings found themselves being held accountable for the groundbreaking and controversial direction their father's Court was taking in the 1950s and 1960s. Under Warren, the Court overturned precedents of earlier Courts and greatly expanded constitutional rights for individuals. According to Warren, Jr., living far away from Washington did not insulate him from the repercussions of what was happening on the Court at the time:

Then came my father's appointment to the Supreme Court, which was a turning point in all our lives. We were basically adults at the time, so only our parents moved to the District of Columbia. Now we were separated geographically. Now we were no longer politically naive, but acutely aware of what my father had been, what he had done, what he was, and what he believed in. But none of us envisioned the controversy which would follow his appointment, nor the impact on our individual lives which would result. We were then, and subsequently, politically divided; some Republicans, some Democrats, some Independents, some decidedly liberal, others ultraconservative, and some middle-of-the-roaders. In this respect, I am including an "expanded family" which includes spouses and their families, for our family has always been deemed to include all involved in it. It should be emphasized that my mother was always apolitical and that my father never tried to impress any particular political philosophy on any family member.

Whereas we had previously felt some focusing of the political spotlight upon us, this was Showdown time, a period of about 20 years when we would be forced to defend or refute what the Supreme Court was doing. And it was terribly difficult—for regardless of political persuasion or personal feelings, we, as individuals, had to take stands. There was a stigma to being in the family and it took many strange turns. Friends became enemies. Enemies became friends. And, in most cases, both became skeptics. We had to explain, disavow or support, for the Court was one of the major issues of our time. And this af-

ected our personal lives immensely. Yet through all of this, my father and mother remained the same as always—stoic, serene, totally understanding, and one-hundred-percent parents. And because of this, they became the greatest sources of earthly strength that we had, as well as symbols of what we should strive to be.<sup>46</sup>

## ENDNOTES

\*Editor's Note: This article is excerpted from Clare Cushman, *Courtwatchers: Eyewitness Accounts in Supreme Court History* (Roman & Littlefield, 2011) and is reprinted with permission.

<sup>1</sup>Elizabeth Black, diary entry, March 1, 1965, reprinted in Hugo L. Black and Elizabeth Black, *Mr. Justice and Mrs. Black: The Memoirs of Hugo L. Black and Elizabeth Black* (New York: Random House, 1986), 120–21.

<sup>2</sup>In a phone conversation between Lyndon B. Johnson and Mike Mansfield, July 30, 1965, President Johnson mentions that Agger used this phrase. Citation #8415, WH6507.09, LBJ Library, at <http://whitehousetapes.net/exhibit/lbjs-nomination-abe-fortas-supreme-court-july-1965> (last visited Dec. 4, 2011). Apparently, Fortas even asked the White House to delay his Senate nomination hearings to give him time to persuade his wife to support his nomination.

<sup>3</sup>Letter from Hannah Iredell to James Iredell, October 21, 1790, reprinted in Natalie Wexler, *A More Obedient Wife: A Novel of the Supreme Court* (Washington, D.C.: Kalorama Press, 2006), 53. Thanks to Natalie Wexler for her considerable help with this discussion of Hannah Iredell.

<sup>4</sup>Letter from Hannah Iredell to James Iredell, November 7, 1790, reprinted in Maeva Marcus, ed., *The Documentary History of the Supreme Court of the United States, 1789–1800*, 8 vols. (New York: Columbia University Press, 1980–2009), 2:105.

<sup>5</sup>Letter from James Iredell to Hannah Iredell, July 2, 1795, reprinted in Marcus, *Documentary History*, 3:66.

<sup>6</sup>Quoted in *Old Scituate* (Boston: Chief Justice Cushing Chapter, Daughters of the American Revolution, 1921), 37.

<sup>7</sup>Letter from Hannah Cushing to Abigail Adams, October 8, 1798, reprinted in Marcus, *Documentary History*, 3:296.

<sup>8</sup>Letter from Sarah Jay to John Jay, May 15, 1790, reprinted in Henry P. Johnston, ed., *The Correspondence and Public Papers of John Jay*, 4 vols. (New York: Burt Franklin, reprinted, 1970), 3:399.

<sup>9</sup>Letter from Sarah Jay to John Jay, November 13, 1791, reprinted in *Selected Letters of John Jay and Sarah*

**Livingston Jay: Correspondence by or to the First Chief Justice of the United States and His Wife**, eds. Landa M. Freeman, Louise V. North, and Janet M. Wedge (Jefferson, N.C.: McFarland Co., Inc., 2005), 201.

<sup>10</sup>John Marshall's Eulogy of Polly Marshall, December 25, 1832, by John Marshall, reprinted in John Edward Oster, ed., **The Political and Economic Doctrines of John Marshall** (New York: The Neale Publishing Co., 1914), 203.

<sup>11</sup>Letter from Joseph Story to Sarah Story, March 4, 1832, reprinted in William W. Story, **Life and Letters of Joseph Story**, 2 vols. (Boston: Little & Brown, 1851), 2:86–87.

<sup>12</sup>Randolph Keim, **Society in Washington: Its Noted Men, Accomplished Women, Established Customs and Notable Events** (Washington, D.C.: Harrisburg (Pa.) Publishing, 1887), 122–24.

<sup>13</sup>Mrs. E. N. Chapin, **American Court Gossip; or, Life at the National Capitol** (Marshalltown, Ia.: Chapin & Harwell, 1887), 249.

<sup>14</sup>William Pitt Ballinger, diary entry, October 14, 1871, Box 2Q425, Briscoe Center for American History, University of Texas at Austin.

<sup>15</sup>Malvina Harlan, **Some Memories of a Long Life, 1854–1911** (New York: Modern Library, 2002), 112–13. Malvina says her husband worked “several months” on the opinion, but it was argued in April and decided in May. She also remarks that he was the “youngest man on the Bench,” when David J. Brewer, Henry B. Brown, and Edward Douglass White were younger. Thanks to Ross E. Davies for pointing out these inaccuracies.

<sup>16</sup>*Id.*, 113–14.

<sup>17</sup>**Memoir of Henry Billings Brown, Late Justice of the Supreme Court of the United States**, ed. Charles A. Kent (New York: Deerfield & Co., 1915), 96.

<sup>18</sup>Milton Handler and Michael Ruby, “Justice Cardozo: One Ninth of the Supreme Court,” *Yearbook of the Supreme Court Historical Society*, 1988, 54.

<sup>19</sup>Warner W. Gardner, “Harlan Fiske Stone: The View From Below,” *Supreme Court Historical Society Quarterly* 22, no. 2 (2001), 11.

<sup>20</sup>Dean Acheson, **Morning and Noon: A Memoir** (Boston: Houghton Mifflin, 1965), 49–50.

<sup>21</sup>Letter from Samuel Chase to William Sprague, July 25, 1866, Chase Collection, Historical Society of Pennsylvania, quoted in Alice Hunt Sokoloff, **Kate Chase for the Defense** (New York: Dodd, Mead & Co., 1971), 191.

<sup>22</sup>Dennis J. Hutchinson and David J. Garrow, eds., **The Forgotten Memoir of John Knox: A Year in the Life of a Supreme Court Clerk in FDR's Washington** (Chicago: University of Chicago Press, 2002), 105.

<sup>23</sup>*Id.*

<sup>24</sup>Elizabeth Hughes Gossett, “Charles Evans Hughes: My Father the Chief Justice,” *Yearbook of the Supreme Court Historical Society* 1976, 11.

<sup>25</sup>Dorothy Goldberg, **Private View of a Public Life** (New York: Charterhouse, 1975), 140, 143.

<sup>26</sup>Lewis F. Powell, Jr., “Impressions of a New Justice,” *Report of the Virginia Bar Association*, 1972, 219.

<sup>27</sup>Goldberg, **Private View of a Public Life**, 144. The social role of Supreme Court Justices' wives was evidently still important enough in 1970 for Richard Nixon to query Harry Blackmun about his wife's social adroitness when he was interviewing him for the nomination. In an oral history interview, Blackmun recalls this cryptic interchange with the President: “What kind of a woman is Mrs. Blackmun?” “What do you mean?” “She will be wooed by the Georgetown crowd, can she withstand that kind of wooing?” “I said that she could.” The Justice Harry A. Blackmun Oral History Project, quoted by Nina Totenberg, March, 8, 2004, at [www.npr.org/templates/story/story.php?storyId=1751391](http://www.npr.org/templates/story/story.php?storyId=1751391).

<sup>28</sup>Elizabeth Black, diary entry, September 9, 1957, reprinted in Black and Black, **Mr. Justice and Mrs. Black**, 85.

<sup>29</sup>Elizabeth Black, diary entry August 10, 1965, reprinted in *id.*, 103–4.

<sup>30</sup>Unidentified law clerk, quoted in Dennis J. Hutchinson, **The Man Who Once Was Whizzer White: A Portrait of Byron R. White** (New York: Free Press, 1998), 438–39.

<sup>31</sup>Goldberg, **Private View of a Public Life**, 154.

<sup>32</sup>*Id.*

<sup>33</sup>Gardiner Harris, “M.D. Ginsburg, 78, Dies; Lawyer and Tax Expert,” *New York Times*, June 28, 2010.

<sup>34</sup>*Id.*

<sup>35</sup>Ruth Bader Ginsburg, “The Lighter Side of Life at the United States Supreme Court,” speech, New England Law School, March 13, 2009, available at Supreme Court of the United States, Speeches, [http://www.supremecourt.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp\\_03-13-09.html](http://www.supremecourt.gov/publicinfo/speeches/viewspeeches.aspx?Filename=sp_03-13-09.html) (last visited Dec. 4, 2011).

<sup>36</sup>Postscript on a letter from Oliver Ellsworth to Abigail Ellsworth, March 20, 1797, reprinted in Marcus, **Documentary History**, 3:101.

<sup>37</sup>Gossett, “Charles Evans Hughes,” 8.

<sup>38</sup>Susan Blackmun recounted this episode at a dinner honoring her father. Quoted in Linda Greenhouse, **Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey** (New York: Times Books, 2005), 83.

<sup>39</sup>Eyewitness Joseph P. Cotton told the story to his friend Felix Frankfurter, who told it to his former student Frederick Bernays Wiener, who recounts it in “Justice Hughes' Appointment—The Cotton Story Reexamined,” *Yearbook of the Supreme Court Historical Society*, 1981, 79–80. See also James M. Buchanan, “A Note on the ‘Joe Cotton Story,’” *Yearbook of the Supreme Court Historical Society*, 1981, 92–93, which emphasizes the relevance of the visit to Hughes by Justices Willis Van Devanter and Pierce Butler prior to the President's phone call.

<sup>40</sup>He did hold one minor, temporary, public office in his state before predeceasing his father.

<sup>41</sup>Transcript, Ramsay Clark Oral History Interview I, 10/30/68, Internet Copy, Lyndon Baines Johnson Library, 18, available at <http://www.lbjlib.utexas.edu/johnson/archives.hom/oralhistory.hom/ClarkR/clark-r1.pdf> (last visited Dec. 4, 2011).

<sup>42</sup>Phone conversation between Ramsey Clark and Lyndon B. Johnson, 1/25/67, 8:22 p.m., tape no. K67.01, PNO: 6,

Lyndon Baines Johnson Library, Austin, Texas.

<sup>43</sup>*Id.*

<sup>44</sup>Ramsay Clark, "Tom Clark Eulogies," *Yearbook of the Supreme Court Historical Society*, 1978, 5–6.

<sup>45</sup>See Tony Mauro, "For Scalia's Son, Turning Away Income May Help Father Stay on Wal-Mart Case," *National Law Journal*, March 16, 2011.

<sup>46</sup>Earl Warren, Jr., "My Father the Chief Justice," *Yearbook of the Supreme Court Historical Society*, 1982, 9.