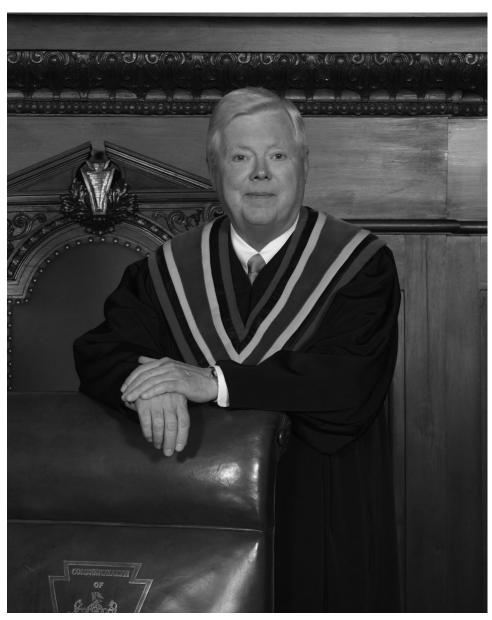


Installation Ceremony Honorable Thomas G. Saylor

January 6, 2015 Supreme Court Courtroom Main Capitol Building



Honorable Thomas G. Saylor

Proceeding

Chief Justice Emeritus Ronald D. Castille
Chief Justice Thomas G. Saylor
Justice J. Michael Eakin
Justice Max Baer
Justice Debra Todd
Justice Correale F. Stevens

COURT CRIER: All rise. The Honorable Chief Justice Ronald D. Castille presiding over this special ceremonial session of the Supreme Court of Pennsylvania.

Oyez. Oyez. Oyez. All manner of persons who have business before this Court may now appear and they shall be heard. God save the Commonwealth and this Honorable Court. Please be seated.

CHIEF JUSTICE CASTILLE: Good afternoon, everyone. This is a happy occasion. This is one of the events that we do where everyone goes away happy.

I'm Chief Justice Ron Castille. It is my honor to be here today for the induction and installation of my friend and colleague, the Honorable Thomas G. Saylor, to the office of Chief Justice of Pennsylvania.

We welcome everyone here. They are all colleagues or friends. We have Tom's wife and family in the front row, who are here for this great occasion. We have a lot of colleagues in the audience here who have been with Tom over these various years. I especially welcome Governor Tom Corbett. We welcome the Governor-Elect, Tom Wolf.

This is a special ceremonial session of our Court, and it is convened for the purpose of installing Thomas G. Saylor as the 56th Chief Justice of Pennsylvania.

Tom is a graduate of the University of Virginia, undergraduate. I am a graduate of the University of Virginia Law School, so we have that in common. And Tom has the distinction, as Justice Todd does, of having a master's of law from the University of Virginia.

We welcome Debra Todd, Mike Eakin, Corry Stevens, Max Baer, who just became a grandfather a half an hour ago and, of course, Tom Saylor. Tom also has a law degree from an extremely prestigious law school, Columbia.

I've been sitting in this room for the last 21 years hearing cases and arguments, and I have presided over those arguments for the last seven years as Chief Justice.

I can never help reflecting, as I've always enjoyed remarking to the individuals who come into this room to argue before us, about the history attendant to this particular room, this setting in the Commonwealth of Pennsylvania, and this courtroom which is considered one of the most beautiful courtrooms in the nation.

The Pennsylvania Supreme Court was originally created by the Judiciary Act of 1722, 293 years ago; however, our Court traces its lineage directly back to

INSTALLATION CEREMONY

William Penn's Provincial Court, which was founded on June 4, 1684 under William Penn's Frame of Government. That makes the Pennsylvania Supreme Court the oldest sitting tribunal of last resort in the nation. We have now been sitting continuously for 331 years.

Of course, this magnificent Capitol building is the seat of government in the state in which our nation was founded in 1776, and where our national charter was framed in 1787, but there is a much larger history in this room brought to life by the panels that you see in this historic courtroom.

Gracing these walls are 16 historic panels painted by the renowned Philadelphia artist, Violet Oakley. They were unveiled in May of 1927 and that was 25 years after Ms. Oakley, a female, began working on her first artistic commission for the state Capitol. On ceremonial occasions, such as this, I think it is worth commenting on their purpose, since they are the embodiment of the laws interpreted by Violet Oakley and meant to inspire those who have business in this chamber.

The murals to my right trace the evolution of the law. It is beginning with the Law of Nature that is above the desk of our crier, Mr. Minner. It depicts an ancient golden age. As you go around, there is Themis, symbolizing the ancient Greek concept of the revealed law.

Behind me is the Decalogue, which represents the Hebrew law, which is, in fact, the Ten Commandants.

To my immediate left is the Beatitudes, exemplifying Christian law. And next is the Code of Justinian. If you look at the Beatitudes closely, you will see the body of a man preaching on the Mount, but with the face of a female.

Next is Justinian, the Code of Justinian, representing the law of reason. And the large mural directly across from the entranceway and between those columns portrays a great English jurist, William Blackstone, lecturing students about the law.

Violet Oakley herself even studied the law so that she could render it vividly in these chambers and she focused particularly on Blackstone's Commentaries, which are touched upon in several of the paintings and which are the underpinnings of the common law of Pennsylvania.

Moving towards the next panel is the illustration of William Penn as the law-giver. He appears in the foreground and in the background is a procession of great philosophers and statesmen, and William Penn appears to be contemplating his social and political ideals built around his vision of a peaceful society in Pennsylvania. Violet Oakley and William Penn were kindred spirits, with Oakley sharing the same desire and accord as William Penn for the betterment of all the people.

The next painting, abutting the back of the courtroom wall, is of the Supreme Court of Pennsylvania sitting in Independence Hall in Philadelphia.

Behind you in the back is the Supreme Court of the United States sitting in Washington, D.C.

Still coming around the room in a circle, you can see a depiction of the International Court of Justice, at the Palace of Peace in The Hague, the site of the beginnings of the League of Nations, and later, the United Nations.

The last three murals together represent state, national and international law. I draw your attention to the middle panel, which is the Spirit of Peace

HONORABLE THOMAS G. SAYLOR

striding triumphantly over man's machines of war and sinking battleships with bolts of lightning.

Finally, on the main entranceway is the keystone of the series, the Divine Law. I could have opened with that mural because it was described by Ms. Oakley as the alpha and the omega, the beginning and the end of her Supreme Court presentation. And note that above the green globe of Earth in the bottom — the face of Truth looms in the top in the background, half concealed and half revealed. If you look closely, you will see the word "law" embedded in the ornate tracery of the mural with the L on the left-hand side and the A on top, and the W in the middle. If you also look at the L, the letters O-V-E are in there standing for Love.

Violet Oakley hoped that the art, which she reposed in this courtroom, would inspire judges, lawyers and citizens to a higher set of principles in administering justice. Looking around this room, I believe it is safe to say that Violet Oakley's aspiration was fulfilled.

On occasions such as this, and other significant moments involving my judicial brothers and sisters, I often recall the admonition of the nineteenth century preacher Henry Ward Beecher.

Henry Ward Beecher was the brother of Harriet Beecher Stowe, who wrote the anti-slavery novel, Uncle Tom's Cabin; and he said: if you take all of the robes of all of the good judges in all of the world, they would not be large enough to cover the iniquity of one corrupt judge.

If every judicial officer heeded this aphorism, our citizens would be assured that Justice would be served in our courts.

I personally have every confidence that Chief Justice Thomas G. Saylor will serve this Commonwealth well and truly, and he will never violate the oath of office which he is about to undertake.

So with this historical preface, and in this historical setting, it is my solemn duty to transfer the constitutional office of Chief Justice of Pennsylvania to my friend and my colleague, Tom Saylor, just as my predecessor, the late Chief Justice Ralph Cappy, did for me almost seven years ago today.

This continuum of orderly procession is one of the great hallmarks of our democratic form of government and one of the signature achievements of our independent judiciary in this great Commonwealth.

The commission of office has been duly executed by his Excellency, Governor Tom Corbett under the seal of the Commonwealth and will be presented later by Robert B. Asher to Chief Justice Saylor and his family at the reception following this session.

The oath of office which I am about to administer is set forth in Article 6, Section 3 of the Pennsylvania Constitution, and the oath traces its origins to our original constitution of 1776.

Please stand in respect while I administer the oath of office to Thomas G. Saylor.

Justice Saylor, are you ready?

JUSTICE SAYLOR: I am.

CHIEF JUSTICE CASTILLE: Please raise your right hand and repeat after me. I, Thomas G. Saylor.

JUSTICE SAYLOR: I, Thomas G. Saylor.

INSTALLATION CEREMONY

CHIEF JUSTICE CASTILLE: Do solemnly swear.

JUSTICE SAYLOR: Do solemnly swear.

CHIEF JUSTICE CASTILLE: That I will support, obey and defend.

JUSTICE SAYLOR: That I will support, obey and defend.

CHIEF JUSTICE CASTILLE: The Constitution of the United States of America.

JUSTICE SAYLOR: The Constitution of the United States of America.

CHIEF JUSTICE CASTILLE: And the Constitution of this Commonwealth.

JUSTICE SAYLOR: And the Constitution of this Commonwealth.

CHIEF JUSTICE CASTILLE: And I will discharge the duties of my office.

JUSTICE SAYLOR: And I will discharge the duties of my office.

CHIEF JUSTICE CASTILLE: As Chief Justice of Pennsylvania.

JUSTICE SAYLOR: As Chief Justice of Pennsylvania.

CHIEF JUSTICE CASTILLE: With fidelity.

JUSTICE SAYLOR: With fidelity.

CHIEF JUSTICE EMERITUS CASTILLE: Congratulations, Chief Justice Thomas Saylor. The floor is yours.

CHIEF JUSTICE SAYLOR: Thank you, Chief.

Fellow Justices and judicial colleagues, present and past, Governor Corbett, Lieutenant-Governor Cawley, Governor-Elect Wolf, Lieutenant Governor-Elect Stack, Attorney General Kane, and distinguished leaders and members of the legislature, family and friends, I am honored by your presence, and in many instances, blessed by your personal friendship.

It has long been my observation that a person seldom comes to an occasion such as this by their efforts alone or because they are the brightest and the best. Rather, I am here today because of the help and encouragement of many people, quite a few of whom are in this room.

Certainly and foremost, my parents, who started me on this journey, and my family, which supported me every step along the way.

My staff has been with me for the past 17 years and has worked hard to make my job easy.

Finally, it was the citizens of Pennsylvania who reposed their trust in me and lent me the temporary privilege of this office. I appreciated the Chief Justice's allusion to the history of our Supreme Court, which spans over 300 years.

Like any institution, however, it is comprised of individuals, and thus has had its greater moments, as well as its lesser; but as with all institutions, it is judged through the lens of its long history.

Today, I would like to share a few thoughts about the role of the judiciary in our constitutional system and the work that judges do. Our constitutional design, both federal and state, creates three separate but equal branches of government, which are assigned distinct powers; yet at the same time, effects an intricate arrangement of power sharing and power checking between the branches.

HONORABLE THOMAS G. SAYLOR

In his oft-quoted passage from Federalist 78, Alexander Hamilton assured that the judiciary was the least dangerous branch. From almost the outset of our nation's history, many, including those in our sister branches, have taken issue with this observation, but I believe that the point that Hamilton was trying to make was this: "Possessed of neither purse nor sword," the judiciary is dependent on the legislative branch to provide its sustenance, and on the executive branch to, in many instances, enforce its decrees; and as importantly, the judiciary is dependent upon the confidence of the people that its decisions are both reasoned and measured.

In our constitutional scheme, the making of public policy is commended to the political branches, the legislature and the executive, which possess the tools to weigh and assess competing policy choices and are the most directly accountable to the people. This is the reason, as I have often written, that courts should, to the fullest extent possible, defer to their determinations in this regard.

Occasionally, however, courts are obliged to decide whether a legislative enactment or executive action contravenes our national or state constitutions. This necessity is implicit in our constitutional structure since constitutions are the organic expression of the people.

This, again, from Hamilton during the ratification debates:

The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute, the intention of the people to the intention of their agents.

Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both[.]

Thus, any resulting tension is a natural consequence of our constitutional design.

But the work of constitutional interpretation is not as simple as some occasionally suggest, that all judges need to do is lay the text of the constitution alongside the challenged legislative enactment or executive action and declare where the line is to be drawn.

First of all, constitutions have a fair share of "deliberately open-ended guarantees," like rights to due process of law and equal protection of law.¹

Secondly, constitutions contain values that "may well exist in tension with each other, not in harmony"; values, which while good in their own right, compete with other values, which also have significant weight and salience. For example, the Chief Executive's constitutional obligation to guard the security interests of the state or nation can collide with the guarantee of freedom of speech, and courts can be called upon to decide which constitutional value has primacy in a particular context or at a given point in time.

So how do judges proceed to this task? They first turn to the text of the constitution, and occasionally, the words alone are sufficient to supply the answer. For example, no one under the age of 35 can be president.

INSTALLATION CEREMONY

Judges also resort to history, which helps to clarify the intent of the Framers in placing a certain provision in the constitution. History informs and elucidates, and thus, has great weight in constitutional interpretation.

However, it is sometimes but a starting point. This is so because constitutions are intended to provide a framework of government calculated to endure over time and sufficient to adapt to contemporary exigencies, many unforeseen or indeed unforeseeable at the time of their adoption.

I am convinced that the men who framed Pennsylvania's first Constitution in 1776 with its Declaration of Rights, and our federal Constitution in 1787 and its Bill of Rights in 1789, fully expected and fervently hoped that those governing charters would be read as an affirmation of the special values they embody rather than a statement of a "finite rule of law, its limits fixed by the consensus of a century long past, with problems very different from our own." So interpreted, they have survived essentially unchanged for over 200 years, which is a remarkable achievement when compared to the experience of other constitutional democracies throughout history.

And, finally, judges have recourse to precedent, prior decisions regarding the constitutional provision at issue. Precedent is important, because as Holmes once said: "Imitation of the past, until we have a clear reason for change, no more needs justification than appetite." But of equal importance is the assurance that if constitutional values have been wrongfully decreed or if the circumstances supporting their initial articulation have changed, they will be put aside.

We must always bear in mind, as Justice Souter recently put the point, that the tensions that are the stuff of judging, in so many difficult constitutional cases are, after all, the creatures of our aspirations: "To value liberty as well as order, and fairness and equality, as well as liberty."

Although some scholars have endeavored over time to explain the nature of the judicial function under the rubric of legal science, judges realize that the work they do is not a science and cannot be converted into one.

In performing their work, judges bring to bear their experience and practical knowledge, honed by habit and informed by common understanding. While the precise manner in which they do this is difficult to describe, the end of the endeavor is not.

Judges, wrote Justice Frankfurter, are called upon for allegiance to nothing except the effort amid tangled words, amid limited insights to find their path through precedent, through policy, through history, to the best judgment that poor fallible creatures can arrive at in the most difficult of all tasks, the achievement of justice between man and man, between man and state, through reason called law.

Thank you.

COURT CRIER: This court is adjourned.

+

^{1.} Harvard Commencement Remarks of Hon. David H. Souter, May 27, 2010, reprinted at http://news.harvard.edu/gazette/story/2010/05/text-of-justice david-souters-speech.

^{2.} Id.

 $^{3. \ \} Herbert\ Wechsler,\ Toward\ Neutral\ Principles\ of\ Constitutional\ Law,\ 73\ Harv.\ L.\ Rev.\ 1,\ 19\ (1959).$