AWESOME stories

MIDNIGHT JUDGES

0. MIDNIGHT JUDGES - Story Preface

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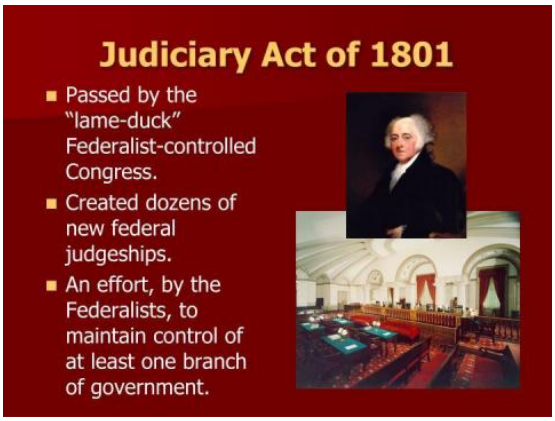

The election of 1800 marked the first time that power to run the federal government was transferred to an opposition party. Before then, American political wrangling was not as divided by political parties, although the election of 1796 set conflicts in motion.

At the time, he who won the most votes became President; he who came in second became Vice President. In 1796, John Adams (a Federalist) received more electoral votes than Jefferson (a Democratic Republican). Adams became President; Jefferson became Vice President. One can only imagine what type of tension *that* situation produced.

As politicians increasingly debated (among other things) how much power the federal government should have, they continued to align themselves with other, similar-thinking people.

In the Congressional election of 1800 - the year Congress first occupied the Capitol building - people could vote for either Federalists or for Democratic Republicans. Depending on the election results, both the executive *and* legislative branches could lose power, requiring a hand-off to the opposition. That, in fact, is exactly what happened.

During the 19th century, American presidents were elected in November and inaugurated the following March. Before 1800, the time between the election (of a new president and new members of Congress) and the time they actually took office (months later) was not so strikingly characterized by the vagaries of lame-duck politics. After the election of 1800, that changed too.

On 27 February 1801, while in lame-duck session, Congressional Federalists passed the Justice of the Peace Act. Forty-two judges would be given five-year terms in Washington and Alexandria.

John Adams, in his final hours as President, nominated Federalists to each of those jobs. One month earlier, on January 20th, he had appointed John Marshall, his sitting Secretary of State, to *also* serve as Chief Justice (when that position became vacant).

The Senate confirmed all nominations, the outgoing President signed the forty-two judicial commissions, and the seal of the Senate was affixed to those commissions on March 3rd. Jefferson was sworn in as the country's third president the next day.

Serving as Secretary of State during the final days of the Adams administration and the early days of the Jefferson administration (because the new president had made that request), John Marshall (who by then was also Chief Justice) should have had the commissions delivered. We can no longer be sure today if anyone received them. We know for sure that William Marbury (a prominent Washington financier with Federalist ties) did not.

Marshall, writing to his brother two weeks after Jefferson's inaugural, expressed his belief that the commissions were effective even though they were not delivered:

> *I did not send out the commissions because I apprehended such as were for a fixd time* [five years] *to be completed when signd & sealed & such as depended on the will of the President might at any time be revokd. To withhold the commission of the Marshal is equal to displacing him which the President I presume has the power to do, but to withhold the commission of the Justices is an act of which I entertaind no suspicion.*

Whether Marshall's position (that the Justice-of-the-Peace commissions didn't need delivery to be effective) was correct no longer mattered. His actions had given the new president an opportunity to withhold them.

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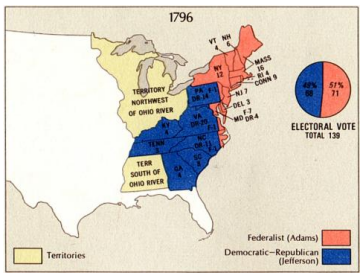
Media Stream



Election of 1796 - Electoral Vote Results
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John Adams - President
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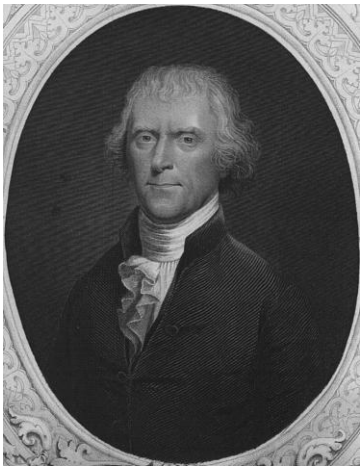

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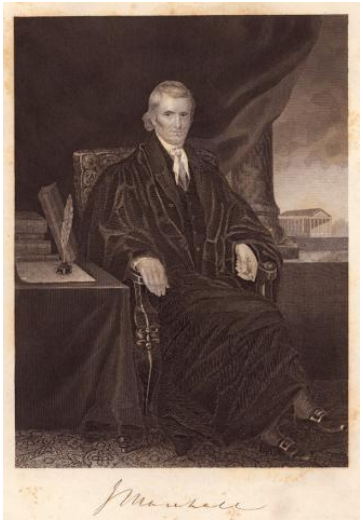

John Marshall
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William Marbury
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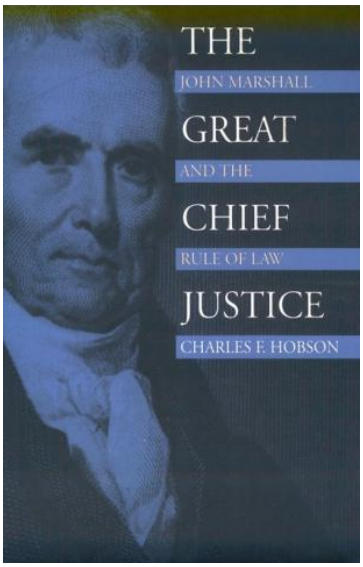

The Great Chief Justice - by Charles F. Hobson
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