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## Rehnquist, O'Connor revisit case

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Wire Editor

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U.S. Supreme Court Chief Justice William H. Rehnquist AB '48, AM '48, JD '52, Justice Sandra Day O'Connor, AB '50, JD '52, and former University President Gerhard Casper revisited the U.S. Supreme Court case "Youngstown Sheet & Tube Co. v. Sawyer" — better known as "the Steel Seizure case" — to mark the 50th anniversary of the Law School's Kirkwood Moot Court competition.



Katherine Liu

Justice Sandra Day O'Connor and Chief Justice William Rehnquist listen to Stanford Law School alumni and students plead the "Youngstown Sheet & Tube Co. v. Sawyer" case in Memorial Auditorium.

Nearly 1,700 students, alumni and faculty were in attendance at Memorial Auditorium for the event, which was sponsored by the Stanford Alumni Association and the Graduate School of Business.

The event, entitled "Presidential Power in Times of Crisis: The Steel Seizure Case Revisited" also commemorated the 50th anniversary of Rehnquist and O'Connor's graduation from the Law School. Additionally, it is the 50th anniversary of the court decision itself.

Saturday's moot-court presentation revisited a case that has both historic and present-day importance. Many scholars regard the Steel Seizure decision as evidence of the U.S. Supreme Court's effectiveness in limiting the president's expansion or acquisition of power at the expense of Congress.

In 1952, in a 6-3 decision, the majority decided that President Harry Truman did not have the power to seize the country's steel mills in order to prevent a labor strike, despite Truman's argument that the conflict in Korea required that he do so.

"President Truman . . . set up this profound issue: What may the president do without congressional authority in times of national security crises? It is an issue that we argued back in 1952 and will argue in the next hour and is an issue that has enormous national significance today," Kathleen M. Sullivan, dean of the Law School, said in her introductory remarks.

On Saturday, the counsel for the petitioner was Charles E. Koob, JD '69, who is the head of the litigation department and a partner with Simpson Thacher & Barlett in New York City. The counsel for the respondent was Karen L. Stevenson JD '98, who won the Moot Court competition when she was in her third year at the Law School. Third-year law student Benjamin J. Horwich served as marshal.

In his presentation, Koob stressed that power within the American government is divided into three branches.

“We do not dispute that the government has the authority to seize private property,” he said. “That is a congressional right. And Congress can even delegate that right to the president, if it so chooses, and it has done so on numerous occasions. This president didn’t ask.”

Throughout Koob’s presentation, those presiding over the case challenged Koob’s arguments.

Casper said, “You ask us to do something extraordinary. You ask us, the Supreme Court of the United States, to uphold an injunction against the president of the United States.”

O’Connor added, “Your theory, if upheld, could have all kinds of implications . . . [such as] lawsuits against the president.”

Stevenson began her presentation in affirmation of Truman’s argument that the seizure of the steel mills was necessary because of U.S. involvement in Korea.

“Those lives [being lost in Korea] must be defended not by political discourse but bullets and guns and ships and airplanes — all of which are highly dependent on the robust and uninterrupted production of steel in this country,” Stevenson said.

Stevenson also pointed out that past presidents have seized private properties without statutory or congressional authority.

In response, O’Connor asked a question that generated laughter from the audience.

“Are you saying that your argument boils down to something along the lines of a page of history is worth a pound of logic?” O’Connor asked.

“A page of history is certainly worth some value,” Stevenson replied. “It does not exceed logic . . . but may inform the inquiry here.”

“It cannot be the case that the executive does not have the authority, as commander in chief and in obligation to execute law, does not have the authority to prevent a catastrophic threat to our national security,” Stevenson said toward the end of her presentation.

While the justices and Casper were in deliberation, Sullivan said, in an interview, “When I dreamt up this idea, I couldn’t have imagined a better presentation. It had both drama and profundity, along with great preparation on all parts and terrific sense of humor.”

When Sullivan first approached Rehnquist about his participation in a moot court, she proposed a reenactment of *Marbury v. Madison*. But Rehnquist

turned that case down, claiming that it was “too lopsided.”

“Justice Rehnquist wanted a case with great arguments on both sides, and he suggested the Steel Seizure case,” Sullivan said.

Considering the current national political climate — with the war on terrorism and U.S. relationships with Iraq and North Korea — the Steel Seizure case seems as relevant today as it was 50 years ago.

When Rehnquist, O’Connor and Casper returned from deliberation, Rehnquist refrained from disclosing his personal viewpoints on the issue of presidential power. He did, however, share with the audience what it was like to be a clerk for Justice Robert Jackson when the Steel Seizure case was taken up by the Supreme Court.

“When the [Justice Jackson] came back from conference, he said [to me and my co-clerk], ‘Well boys, the president got licked,’” Rehnquist said.

O’Connor also shared personal memories from when the Steel Seizure decision was made.

O’Connor explained that back then, the president and members of the Supreme Court were friends, and so Justice Hugo Black held a dinner for all of the justices and the president.

“It is reported that the president was quite stiff at the dinner, but after a few drinks, he said ‘Your law is no good, but your Bourbon is,’” O’Connor said.

The last of the three to speak, Casper began by saying, “I’m not a justice on the Supreme Court, alas, and I can express my views.”

In an interview immediately following the event, Casper said, “I asked myself last night, ‘How would I have decided?’ I would have voted with the majority.”

“I used to teach the case, and I had not fully appreciated it until now,” Casper added. “I didn’t know that it was such a complicated case. The court had such a diversity of opinions.”

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