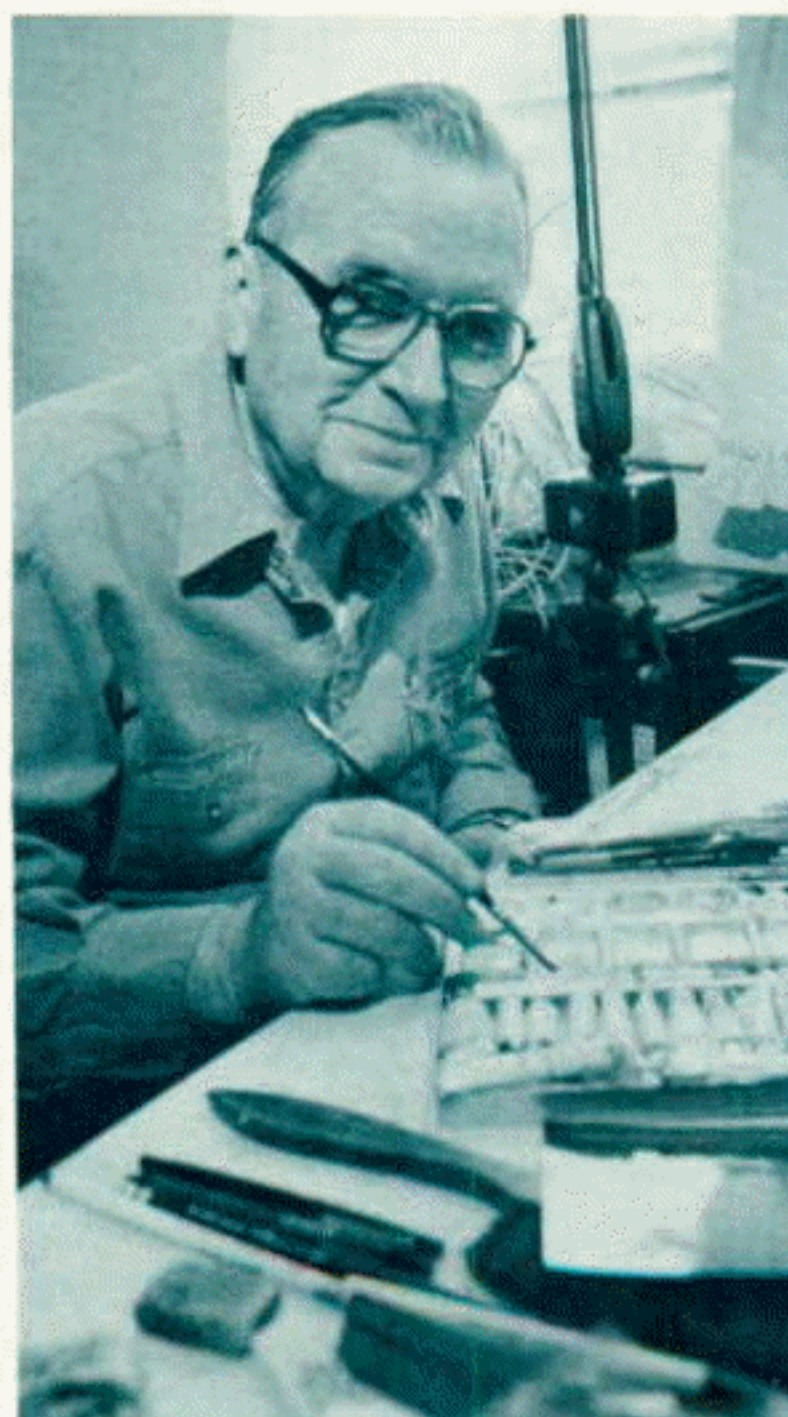


O A S I S

April/May 1987



Older Americans Month
'For age is opportunity
no less than youth itself.'-- Longfellow



May 24, 1937

Judgment day for Social Security

(This year marks the 200th anniversary of the U.S. Constitution. The following article examines a constitutional issue raised by the original Social Security Act.)

It was fifty years ago this month and, as Dickens wrote, it was the best of times and the worst of times.

In May, 1937, the fledgling Social Security Board had hired just over 4,000 new employees. They were happy to have jobs in that Depression year and eager to begin work on a new government program. The Social Security Act had gone into effect only four months earlier, and the following month the first claims were expected to come in.

But our employees in the 12 regional offices and 88 field offices had reason to doubt that they would ever take a claim under the Social Security Act. A United States Court of Appeals had declared the Act unconstitutional the previous year, and the Supreme Court was to rule on an appeal of the case sometime before the end of May, 1937.

Over the previous four years the Supreme Court had declared much of the New Deal legislation unconstitutional, including the National Recovery Act, the Railway Pension Act, the Agricultural Adjustment Act, the Bituminous Coal Act, the Municipal Bankruptcy Act, and a New York State law prescribing a minimum wage for women.

The constitutional challenge to the Social Security Act had been brought by George Davis, a shareholder of the Edison Electric Illuminating Company of

Social Security employees celebrate after learning of Supreme Court ruling.

Boston. He filed suit to restrain the corporation from making payments and deductions called for by the Social Security Act.

The United States District Court in Boston ruled against Davis upholding the constitutionality of the law. But the Court of Appeals reversed the lower court's ruling, declaring the Social Security Act unconstitutional.

Like most of the other New Deal legislation, the constitutional challenge revolved around the Tenth Amendment. The amendment states that "All powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The Government's case before the Supreme Court was argued by Robert Jackson, who would himself eventually become a Supreme Court Justice. He said that the Social Security Act was constitutional because of the clause in the Constitution that grants Congress the power "to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States."

On May 24, 1937, by a 5-4 vote, the Supreme Court upheld the constitutionality of the Social Security Act.

The dissenting Justices wondered aloud how the Court could justify a philosophical turnabout from opinions written only 2 years earlier against New Deal legislation.

The majority opinion was written by Justice Benjamin Cardozo. He wrote that "The line must still be drawn between one welfare and another, between particular and general. Where this shall be placed cannot be known through a formula in advance of the event.

"The concept of the general welfare is not static. Needs that were narrow or parochial a century ago may be interwoven in our day with the well-being of the Nation. What is critical or urgent changes with the times." □

