



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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Mrs. Betty C. Dillon, new director for the Supreme Court Historical Society, took over her duties March 1.

BETTY CRITES DILLON NAMED NEW SCHS EXECUTIVE DIRECTOR

Mrs. Betty Crites Dillon has been named the new Executive Director of the Supreme Court Historical Society. The appointment was announced by Mrs. Elizabeth Hughes Gossett, president of the Supreme Court Historical Society and daughter of the late Chief Justice Hughes.

Mrs. Dillon is the second of the Society's executive directors, succeeding William H. Press who resigned on March 1.

From 1971 to 1978, she served in the Department of State. For six years she was the United States Minister-Representative to the International Civil Aviation Organization, a United Nations specialized agency. In that capacity, she was the first woman on the Executive Council and its committees. During her tenure at the State Department, she chaired many United States delegations to international conferences. From 1965 to 1971,

(Cont. on page 2)

1979 ANNUAL MEETING SET FOR MONDAY, MAY 14

Professor Benno Schmidt of Columbia University Law School, author of the Oliver Wendell Holmes Devise volume on Chief Justice Edward D. White in the History of the Supreme Court, will deliver the second annual lecture of the Society at the 1979 annual membership meeting. Professor Schmidt's lecture will be held at 2 p.m. in the restored Courtroom in the Capitol, following the practice inaugurated last year by Professor Richard Morris' lecture.

The lecture, the annual membership meeting in the Supreme Court itself, and the banquet in the Great Hall are the highlights of the 1979 schedule. The program has been set for Monday, May 14, preceding the annual meeting of the American Law Institute.

At 11 a.m. the Board of Trustees of the Society will hold its regular quarterly meeting. Luncheon for the Board members will follow. The Schmidt lecture will take place at 2 p.m. Members should note that the lecture has been scheduled a half an hour earlier this year to allow them more time to prepare for the evening program.

The general membership meeting will be held at 6 p.m. in the main courtroom of the Supreme Court, made available for this purpose by Chief Justice Warren E. Burger. Mrs. Elizabeth Hughes Gossett, Society President, will preside and various officers and committee chairmen will make their annual reports.

The Board of Trustees will meet immediately following the general membership meeting. One-third of the membership of the board will have been elected to positions becoming vacant at the general meeting and will organize their programs for the year ahead. Following a reception in the East and West Conference Rooms, the annual membership banquet will begin at 8:00 in the Great Hall. Black tie is suggested for this occasion.

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Editor William F. Swindler
Assistant Editor Mary Beth O'Brien

EXECUTIVE DIRECTOR

(Cont. from page 1)

Mrs. Dillon was an official of the Peace Corps. She was the first woman to serve as country director for the Peace Corps, serving in both Tunisia and Ceylon (now Sri Lanka). She was also the first woman to serve as Director of the Office of Special Services at the Washington headquarters of the Peace Corps. In different years, both the Peace Corps and the Department of State selected Mrs. Dillon as the top Federal Career Woman in their respective departments.

From 1960 to 1965, she served with the Bureau of International Affairs of the Civil Aeronautics Board, as Air Transport Examiner and liaison. Her work in that capacity brought her a meritorious award for outstanding performance. From 1953 to 1958, Mrs. Dillon was Special Assistant to the Deputy Administrator for Management and to the Administrator of the Foreign Operations Administration (now the Agency for International Development).

Mrs. Dillon was the first woman to be chosen for the Mid-Career Fellows Program at the Princeton University Woodrow Wilson School of Public and International Affairs. Her undergraduate work was done at George Washington University. She is a member of the Daughters of the American Revolution in southern Indiana, her family home.

Mrs. Gossett made the following comment about Mrs. Dillon's appointment:

"We have been fortunate to have the help of William H. Press during our Society's formative years, and we are delighted now to welcome to the executive directorship of the Supreme Court Historical Society a person with the background and experience of Mrs. Dillon. Although the Supreme Court serves a vital function in our governmental structure, it seems to remain the least known and indeed the most mysterious branch of our national government. It should be better understood and appreciated for the unique role it plays in our history and that is the major task confronting Mrs. Dillon and the Society."

Project on Chief Justice Marshall's
Papers Reaches Volume III

One of the major pieces of documentary editing of particular relevance to the work and interests of the Supreme Court Historical Society is *The Papers of John Marshall*. The project is sponsored jointly by the College of William and Mary and the Institute of Early American History and Culture, with additional funding from the National Historical Publications and Records Commission and other agencies. While plans for its implementation reach back at least as far as 1955, the study of Chief Justice Marshall did not begin formally until 1967.

In 1955, a year-long celebration of the bicentennial of Marshall's birth was coordinated by the federal government. Its major anniversary functions centered at William and Mary, where Marshall had attended school. Discussion of an editorial project relating to Marshall's papers and documents was initiated during the course of these functions and several keystone documents were deposited with the college for safeguarding until such work could be realized.

Among these deposits were Marshall's manuscript book of *Law Notes and Accounts* and a comprehensive collection of the Chief Justice's letters to his wife. Both of these gifts were arranged by Dr. and Mrs. H. Norton Mason of Richmond, Virginia. Records show that the donors had been in possession of these documents since World War I; for it was at that time when Senator Albert J. Beveridge consulted them while preparing his four-volume prize-winning biography of the Chief Justice.

Mrs. Mason later edited and supplemented the letters and published them in a popular volume entitled *My Dearest Polly: John Marshall's Letters to His Wife*. Although presently out of print, the SCHS is undertaking to have it reprinted by a professional publishing house. The letters had been on indefinite deposit with the Library of Congress, but in 1955 the Masons directed that they be transferred to the College of William and Mary for the prospective editorial project.

The volume of *Law Notes and Accounts* was also deposited with the college and subsequently purchased formally with private funds for permanent entry in its rare book library. The *Law Notes* were "commonplacéd," as was the practice for law students of the time, and probably were made by Marshall when studying the law under George Wythe at the college (see separate story on the bicentennial of legal education). The *Accounts* tells an equally significant story of the young practitioner's years in Richmond, with entries

(Cont. on page 3)

Continuing a photographic feature series of homes of the Chief Justices, begun in the first issue with the John Jay Homestead, this issue pictures the home of John Marshall in Richmond, Va. The structure is a historic property under the administration of the Association for the Preservation of Virginia Antiquities.

Photo courtesy of the Association for the Preservation of Virginia Antiquities.



MARSHALL PAPERS

(Cont. from page 2)

of fees for his professional services, costs of materials for the house he built for his growing family, and even amounts he spent on amusements and marketing.

A sizable number of other Marshall documents were at the college, but when the formal documentary project began it was evident from the outset that a search for supplemental materials would be necessary. Eventually more than 500 sources of Marshall papers were consulted and working copies obtained. As Congressman, special envoy, Secretary of State as well as Chief Justice, Marshall's documentary trail led up and down the Eastern states and across the seas to England and Europe.

After more than a half dozen years of gathering

documents, the editors — first Dr. Herbert A. Johnson and then Dr. Charles Cullen — were ready to assemble the material for the first volume, which was published and formally presented to Chief Justice Burger in November 1974. The second came off the presses in 1976 and the third is expected to be published this June. A fourth will go to the printers this summer.

Dr. Johnson left the Marshall project in 1977 to become professor of legal history at the University of South Carolina, and co-editor of the volumes on the first part of the Marshall period in the Oliver Wendell Holmes Devise History of the Supreme Court (see separate story). Dr. Cullen will move from William and Mary this summer to become associate editor of the Thomas Jefferson Papers at Princeton. The next editor for the Marshall project has not yet been announced.

Bronze Medallions of Chief Justices Proving Popular Collectors Items

The first four U.S. Mint medallions of the Chief Justices are available through the Supreme Court Historical Society for purchase by collectors and historians. This series is overdue and an appropriate part of the Mint's medallion program. Over the years, all of the Presidents, as well as twenty-six Secretaries of the Treasury, a number of Directors of the Mint, and a wide variety of other celebrated government officials and buildings have been the subject of medallions.

The first two Supreme Court Historical Society medals portrayed John Jay and Warren E. Burger; the second two Earl Warren and John Rutledge. The series will move from both sides of the chronology inward. The final medal will depict Melville

Weston Fuller, who presided over the Court from 1888 to 1911.

The SCHS offers these medals for sale at headquarters and at the Kiosk in the Supreme Court building. They sell for \$7.50 to Society members and \$8.00 to non-members. As the series becomes available, they will be coded by number as follows:

- | | |
|-----------------------|--------------------------|
| 1. John Jay | 15. Warren E. Burger |
| 2. John Rutledge | 14. Earl Warren |
| 3. Oliver Ellsworth | 13. Fred M. Vinson |
| 4. John Marshall | 12. Harlan F. Stone |
| 5. Roger B. Taney | 11. Charles Evans Hughes |
| 6. Salmon P. Chase | 10. William Howard Taft |
| 7. Morrison R. Waite | 9. Edward D. White |
| 8. Melville W. Fuller | |

Holmes Devise to Cover History of the Supreme Court From Jay to Hughes

Justice Oliver Wendell Holmes, who died in 1935, left his residual estate to the United States of America — a unique bequest for which no precedents existed as to use (except, perhaps, James Smithson's comparable gift of more than a century before). Eventually, after World War II interrupted preliminary planning, the government decided that the most appropriate utilization of the gift would be the financing of a definitive, multi-volume history of the Supreme Court.

The original bequest, of approximately \$263,000, is administered by a Permanent Advisory Committee of the Oliver Wendell Holmes Devise which is housed in the Library of Congress. Editor-in-Chief of the project is Professor Paul Freund of Harvard Law School, who will also be the author of the last of the eleven projected volumes. (Professor Freund is a distinguished member of the Board of Trustees of the Supreme Court Historical Society.)

In 1955, twenty years after Holmes' death, the history project was formally launched. Sixteen years later, in 1971, the first volume, written by the late Professor Julian Goebel of Columbia Law School, was finally published. Two other volumes have now been completed: Volume V, *The Taney Period*, by the late Carl B. Swisher of the Johns Hopkins University; and Volume VI, *Reconstruction and Reunion*, by Professor Charles Fairman of Harvard. Several other manuscripts have been compiled and are awaiting final editing.

Other authors of remaining volumes include Owen M. Fiss and Phil C. Neal of the University of Chicago, Gerald Gunther of Stanford, George Haskins of Pennsylvania and Herbert A. Johnson of the University of South Carolina. Benno C. Schmidt of Columbia has inherited the work begun by the late Alexander Bickel of Yale. Haskins and Johnson are preparing the first volume on the Marshall period, to be followed in time by Gunther's two volumes on the later Marshall Court. A second projected volume on Reconstruction by Fairman, Neal and Fiss will cover the Court at the turn of the century.

The Chief Justiceship of Edward D. White, the work of the late Professor Alexander Bickel, is being edited by Professor Schmidt, who is also the prospective author of the volume on the Taft period. Freund will cover the New Deal.

When the volumes are completed, the collection will be the most exhaustive history of the Supreme Court of the United States ever written. The project has been time-consuming for two reasons. First, the authors selected in 1955 for the several volumes were the leading constitutional scholars of the time; therefore, they were already laboring under heavy professional commitments. Second, no one could have anticipated the magnitude of the research which would be required, as great quantities of previously unknown and unused documents came to light, especially for the early period.



Oliver Wendell Holmes, one of the legendary figures on the Supreme Court, served from 1902 to 1932.

While younger scholars who have come on the scene in the ensuing decade are now continuing some of the work, there is no suggestion that the project be extended beyond 1941. Until the present research is completed and published, the Advisory Committee is not considering expansion of the project.

The Holmes Devise history will complement, and be complemented by, the still useful multi-volume work by Charles Warren, *The Supreme Court in the United States History*, originally published in 1923. (Its most substantive content does not extend much beyond 1910.)

Also supplemental to the Holmes Devise volumes will be such projects as the SCHS *Documentary History of the Supreme Court of the United States, 1789-1800*. Because the Holmes Devise can only make occasional or oblique reference to documents, much of the Court's history will still be incomplete until and unless reference materials are collected, edited and published. This is especially true of the first decade of the Court's history. The Society's *Documentary History* project is dedicated to compiling all available material (four or five volumes) and will become the primary source for reference and research regarding the Court's earliest period.

First Federal Congress Records Filling Long Neglected Field

The legislative beginnings of the United States have been subject to varying degrees of neglect. The first national legislature, the Continental Congress, subsequently the Congress under the Articles of Confederation, has been exhaustively treated. The thirty-five volumes of its *Journals* were published systematically over the first quarter of the twentieth century. Its total *Papers* have become available on microfilm. As a product of the 1976 bicentennial, the *Letters* of its members, first edited several years ago by E. C. Burnett, were revised and extended in a new edition of almost three times the original volumes.

But the First Federal Congress long languished in neglect, with only the incomplete *Annals* and scattered excerpts from various public and private journals available to provide some record of the beginnings of the government which replaced the Confederation under the Constitution. The Constitution itself had been, and remains, the subject of considerable scholarly work; Max Farrand's definitive but now out-of-print collection of the records of the Philadelphia Convention of 1787 will be the subject of a comprehensively revised edition being prepared for the 1987 bicentennial; and, the journals of the Founding Fathers have now been published. The exhaustive *Documentary History of the Ratification* will replace the old and inadequate reference, *Elliott's Debates*. Other supplemental constitutional projects are in progress and will be reported in due course.

The First Federal Congress is at long last the subject of a documentary undertaking. The project is being sponsored jointly by the George Washington University and the National Historical Publications and Records Commission. Under the editorship of Linda Grant DePauw, three volumes have been published through the Johns Hopkins University Press since 1972. Its significance is eloquently expressed by the editor in the introduction to the first volume, a meticulously edited edition of the Senate Legislative Journal:

Many nations have come to ruin under constitutions deliberately patterned on the American model. It was the way in which the American people implemented their Constitution that made a functioning system from the document's abstractions. Nothing was more essential to the enduring success of that system than the First Federal Congress . . .

The Congress was the first of the institutions created by the Constitution to take solid form. It antedated the Presidency, for the

Congress made the arrangements for counting the ballots of the first electoral college and for inaugurating George Washington and John Adams as the first executive officers. The first executive departments — War, State and Treasury — and the office of Attorney General were set up by acts of the First Congress. The Congress antedated the judicial branch of the government as well, for Congressional legislation was needed to erect the system of federal courts and establish the Supreme Court, implementing the general provisions of the Constitution's third article.

The Senate and House Legislative Journals and the Senate Executive Journal have now been published. Unfortunately, many original copies of Congressional documents have been destroyed or have disappeared so that even after exhaustive searching, the record of our governmental origins remains less than complete. Once the official surviving papers have been edited and published, the project will collect the unofficial accounts in journals and the press, particularly of the debates on the floor of both houses.

Volumes IV and V will cover the legislative history of bills proposed to or enacted by the first three sessions. Volume VI will collect as many as possible of the vast number of petitions directed to the First Congress. A total of fifteen volumes for the project is anticipated. When completed, it will be a definitive record of the business with which the new government of the United States had to deal in its crucial first years. As Chief Justice Warren E. Burger has said, it will be "the kind of record that helps all branches of government keep their constitutional bearings."

A valuable result of such projects is that it stimulates other scholars to pursue research in related fields. The Institute of Early American History and Culture in Williamsburg, Virginia recently produced three volumes of *Letters of Congressmen to Their Constituents* for the first three decades of the new government, edited by Professor Noble Cunningham of the University of Missouri. Another three-volume project, *The Documentary History of the First Federal Elections*, has been completed by Dr. Merrill Jensen, the editor of the ratification project. The Oliver Wendell Holmes Devise *History of the Supreme Court*, while not a documentary project, is another important supplement to these other undertakings. (See separate story in this issue.)

THE CONSTITUTION AND CHIEF JUSTICE MARSHALL

William F. Swindler

Introduction by
Warren E. Burger,
Chief Justice of the United States

The fundamental principles of the Constitution of the United States which evolved from the independence movement were best illustrated in major constitutional cases which arose in the Supreme Court under Chief Justice John Marshall (1801-1835).

In this volume are presented dramatic narrative accounts of five landmark cases that established precedents for basic aspects of the structure of the society in which we live: judicial review (*Marbury v. Madison*, 1803); the rights of the defendant and the accountability of the executive (*United States v. Aaron Burr*, 1806); the limits to state action (*Dartmouth College v. Woodward*, 1819); the supremacy of federal power (*McCulloch v. Maryland*, 1819); implementing federal power (*Gibbons v. Ogden*, 1824).

Prefaced with an essay on the Constitution, the Supreme Court, and Chief Justice Marshall, this volume was edited by Dr. William F. Swindler, publications committee chairman of the Supreme Court Historical Society. Designed to provide background material for a film series entitled "Equal Justice Under Law," this important book will enlighten the general public in an interesting and authoritative manner on the significant constitutional work of the Marshall Court which has vitally affected the course of national history.

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Professor Paul R. Baier

LSU Student Chapter Hosts Solicitor General

The Solicitor General of the United States, Judge Wade H. McCree, Jr., delivered a lecture entitled "The Solicitor General and the Supreme Court" at the Louisiana State University Law Center on February 28, 1979. To commemorate Solicitor General McCree's visit to the Law Center, an exhibit was prepared by the members of LSU's Edward Douglass White Chapter of the Supreme Court Historical Society and displayed in the foyer of the law library. The exhibit traced the history of the office from 1870, when the Joint Committee on Retrenchment proposed to the President the creation of "a new officer, to be called the solicitor general of the United States."

Former Solicitors General featured in the exhibit included: William Howard Taft (S.G. 1890-92); John W. Davis (1913-18); Robert Jackson (1938-40); Francis Biddle (1940-41); Archibald Cox (1961-65); Thurgood Marshall (1965-67); Erwin Griswold (1967-73); and Robert Bork (1973-77).

Some of the special items exhibited were: the only photograph ever taken of the Supreme Court in session (snapped surreptitiously by Dr. Erich Salomon in 1930); an original copy of the brief for petitioner Charles Sawyer in the Steel Seizure case, *Youngstown Co. v. Sawyer*; William Sharp's Life Magazine sketches of the oral argument in the Steel Seizure case; transcripts of Solicitor General McCree's oral argument in the Second Nixon Tapes case, *Nixon v. Administrator of General Services*; two drawings of Solicitor Gen-

eral McCree and Archibald Cox arguing the Bakke case by NBC news artist Betty Wells.

The Edward Douglass White Chapter was organized in October, 1978 through the efforts of LSU Law Center's Professor Paul R. Baier, former Supreme Court Judicial Fellow. The members formally chartered their chapter in front of the statue of Chief Justice White in New Orleans and then visited the White Plantation in Thibodaux, Louisiana. The LSU chapter plans a trip to the Supreme Court this spring, reports Professor Baier.

New Chapters Organized

A group of students from the Salmon P. Chase Chapter at Northern Kentucky University visited the Supreme Court earlier this month. Chief Justice Burger addressed the group and Assistant Supreme Court Curator Susanne Owens conducted a tour of the building and its exhibits.

In the past six months, new SCHS student chapters have been formed at Villanova University (Charles Evans Hughes Chapter) and LSU Law Center. Chief Judge Edward D. Re, Chairman of the Committee on Student Chapters, reports that chapters are being inaugurated at Temple University and the University of Pennsylvania. SCHS Founding Member Evelyn Goldstein has been instrumental in the organization of the three Philadelphia area chapters.

Future issues of the QUARTERLY will feature reports on the SCHS Student Chapters. Chapter members and their moderators are encouraged to submit material to the editor about their recent activities and planned projects.



Chief Judge Edward D. Re

SCHS Executive Committee to Meet in Williamsburg

On Constitution Day 1979, September 17, the Supreme Court Historical Society will meet for the first time outside of Washington, D.C. The regular September meeting of the Executive Committee of the Board of Trustees has been scheduled for Colonial Williamsburg, Virginia, as part of the bicentennial of American legal education being observed by the Marshall-Wythe School of Law of the College of William and Mary.

Nearly two hundred years ago, on December 4, 1979, the college Board of Visitors reorganized the curriculum of William and Mary and established a chair of law and "police." The latter term referred to the organization and administration of government, in eighteenth century usage. The dual objective of the new teaching program was to train young men both for the practice of law and for general public service.

Thomas Jefferson, a former student at William and Mary, was governor of Virginia and led the drive to introduce a number of "modern" subjects into the course of studies. He considered such subjects useful in the education of citizens of this newly independent commonwealth. For the chair of law he proposed his own former teacher, George Wythe (pronounced *with*), a leading member of the Virginia Bar for more than a quarter of a century.

The Society's meeting in Williamsburg during the bicentennial period is one of several special events associated with the Law School anniversary. Project '87, a planning group looking forward to-

ward the bicentennial of the Constitutional Convention in 1987, will hold a national conference at Williamsburg April 27-28; this event will supplement the Law Day program already scheduled for that time. In October, the American Society for Legal History will hold its national convention in the colonial capital, with the official bicentennial lecture being given by Sir Ruport Cross, Vinerian Professor of English Law at Oxford University.

The Oxford chair, first occupied by Sir William Blackstone, was founded in 1758, just twenty-one years before the William and Mary chair. In recognition of the 1979 anniversary and the historic relationship between the two institutions, the law faculty of All Souls College, Oxford, made a gift of two stained glass windows which formerly had been set in one of the buildings at the English university. The windows will be incorporated into the new facility for the William and Mary Law School now under construction.

Depending on the speed of construction, the SCHS participants meeting in Williamsburg this September may have the opportunity to view the windows in place. They may also visit the National Center for State Courts, which has its headquarters adjacent to the new building in a "Bicentennial Park" overlooking the colonial parkway between Jamestown and Yorktown.

Plans for a variety of special events of interest to Board members coming to Williamsburg are now being formulated.

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