



THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

VOLUME II, NO. 2

SPRING, 1980

## Society To Hold Fifth Annual Meeting

Members are now receiving announcements of the Society's Fifth Annual Meeting, to be held on June 9, 1980, in Washington, D.C.

Dr. Maxwell Bloomfield, Chairman of the Department of History at Catholic University, will deliver the annual lecture in the restored old Supreme Court Chamber in the Capitol. Entitled "The Supreme Court in Popular Culture: An Historical Perspective" the lecture will highlight the impact of novelists and playwrights on the Court's public image throughout history. If past experience is any guide, this year's annual lecture will once again fill the historical chamber to capacity. Members are encouraged to arrive early to be assured of seating.

Following the lecture, members may walk across the street to the Supreme Court Building and view the new photographic exhibit prepared by the Curator's office and displayed on the ground floor. (Please see article on page number 4). Also a 30-minute film entitled "Equal Justice Under Law" will be shown continuously.

Starting promptly at six o'clock, the general membership meeting will convene in the Supreme Court Chamber. The meeting will include the President's Annual Report, reports by committees and announcements of the election of Trustees. Following the meeting, the Curator of the Court, Gail Galloway, will conduct a special tour of the Supreme Court Building.

Culminating the day's events, the annual reception and dinner will once again provide an opportunity for members to get acquainted and enjoy a gourmet dinner and entertainment. The annual reception, which begins at seven o'clock, will be held in the Court's East and West Conference Rooms.

The annual dinner will begin promptly at eight o'clock in the Great Hall. The dinner is again being planned by Ralph E. Becker, chairman of the annual meeting, and a committee of nine others.

The evening will include music provided by the Unit-

ed States Army Band Strolling Strings and Chorus, and a special presentation of historical vignettes on the lives of former justices. A similar presentation was so well received at the founding dinner for the Society's Illinois Chapter last fall, that it was decided to include it in this year's annual dinner program.

This year's annual meeting promises to be one of the finest in the Society's history. Any member who wishes to attend, but has not yet received an invitation, should contact the Society's executive offices immediately at (202) 347-9888.



Symposium speaker addresses members in the restored Supreme Court Chamber in the U.S. Capitol.



## New Society Invites Dr. Marcus To Attend First Annual Meeting

The United States District Court for the Northern District of California Historical Society held its Founders' Meeting on April 10, 1980.

Chief Judge Robert F. Peckham, Chairman of the Board of the Society, invited Dr. Maeva Marcus, who was in San Francisco to attend the Annual Meeting of the Organization of American Historians, to present the greetings of the Supreme Court Historical Society to the new organization. More than three hundred people filled the ceremonial courtroom of the United States District Court House in San Francisco to participate in the Society's founding.

Chief Judge Peckham; Chief Judge James R. Browning of the United States Court of Appeals for the Ninth Circuit; Thomas Barnes, a distinguished legal historian; and John A. Sutro, Sr., President of the U.S. District Court for the Northern District of California Historical Society, gave welcoming remarks. All spoke enthusiastically of the formation of the Society and the purposes for which it was organized: to preserve and make accessible the Court's earliest records; to begin an oral history project to develop additional source material for studying the Court; and generally, to stimulate greater interest among scholars, lawyers, and the public in the District Court's history.

Professor Kermit Hall of Wayne State University, the final speaker, delivered a paper on "The Politics of Justice: California's Early Federal Judicial Appointments in the National Context." After the formal part of the program concluded, the guests attended a reception in the headquarters for the Society of California Pioneers.

## Dues Transition Progressing Well

The transition to the new system of membership renewal, explained in the last issue of the *Quarterly*, is well underway. The system, which will eventually result in all members being reminded to renew their memberships in September of each year, is being implemented on a monthly basis by prorating members' dues to provide for expiration dates in either September, 1980, or September, 1981. In order to accomplish this change, an explanatory letter noting each member's prorated dues is being sent to members as their current memberships expire.

By September of this year it is expected that 40 percent of the Society's membership will be on the new September renewal cycle. The remainder will be phased into the new cycle the following year. The new system is expected to provide the Society with substantial savings in membership renewal solicitations, and is also expected to greatly streamline the Society's membership services operations by allowing improved work scheduling for the Society's staff. The staff appreciates each member's cooperation in implementing this important change.

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Published four times yearly, in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 1511 K Street, N.W., Suite 612, Washington, DC 20005.

Distributed to members of the Society, law libraries and interested individuals and professional associations.

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## 1980 Yearbooks Mailed, Additional Copies Available

All regular, non-student members should by now have their copy of the 1980 *Yearbook*. Members who have not received their copy by May 31, 1980 should contact the Society's executive offices at (202) 347-9888. Members desiring additional copies of the 1980 *Yearbook* or previous *Yearbooks*, may order them by contacting the Society's executive offices. *Yearbooks* are also available at the Society's kiosk on the ground floor of the Supreme Court Building.

## Society Receives Donation From Law League

Once again, the National Capitol Law League presented a donation to the Society at its April meeting. The meeting, which marked the League's 18th Anniversary, was attended by Mrs. Hugo Black, Secretary of the Society, who accepted the gift on behalf of the Society.

Over the last several years, the League has generously support the Society's activities through contributions and memberships. This year's donation will be used to help fund a summer internship for a student working on the Society's Documentary History Project.

### For The Careful Reader Only

In the sample address used in our last *Quarterly*, Sherlock Holmes' address was mistakenly reported as 12 Baker Street. As a result, all mail between members of the Society and the renowned sleuth has been diverted into the fiendish clutches of Dr. Moriarty. Fortunately, Holmes' many friends in the Society were quick to supply the staff with the real address, 221-B Baker Street, and all correspondence with Mr. Holmes should hereafter be directed to that address.

## Society Sponsors Panel At OAH

The Supreme Court Historical Society recently sponsored a panel at the annual meeting of the Organization of American Historians held in San Francisco. Chaired by Dr. Maeva Marcus, Editor of the Documentary History Project, the session provided a forum for the presentation of two papers on nominations to the Supreme Court.

Melvin I. Urofsky, Professor of History at Virginia Commonwealth University, offered an interesting interpretation of the confirmation fight over the nomination of Associate Justice Louis D. Brandeis to the Supreme Court in 1916. Urofsky argued that the various charges brought against Brandeis by his opponents were a deliberate attempt to mask the real reason the opposition did not want Brandeis on the Court: their belief that he was a radical.

The second paper, read by James M. Buchanan, Assistant Editor of the Documentary History Project, presented new material on the 1930 nomination of Charles Evans Hughes as Chief Justice of the United States. Using manuscripts from numerous collections, Mr. Buchanan provided a detailed account of the behind-the-scenes maneuvering that eventually led to his appointment.

Two eminent legal historians commented on these papers. Paul Murphy, Professor of History at the University of Minnesota, has written several noted works in the field of constitutional history, and G. Edward White, Professor of Law at the University of Virginia, is the author of the widely acclaimed work, *The American Judicial Tradition: Profiles of Leading American Appellate Judges*. Both scholars praised the papers presented as valuable contributions to a greater knowledge of the nomination process leading to appointment to the Supreme Court. Noting the need for more such studies, Professor Murphy suggested further questions to be addressed, and Professor White outlined a tentative, general framework of analysis.

## Bar Association Honors Hughes

A room honoring Charles Evans Hughes and Charles Evans Hughes, Jr. was dedicated at the Association of the Bar of New York on March 10th.

Formerly known as the West Conference Room, the room was restored and dedicated through the generosity of the Hughes family and the law firm of Hughes, Hubbard and Reed. Participating in the occasion were Chief Justice Burger, Society President Elizabeth Hughes Gossett, and Society Vice President Whitney North Seymour, Sr. Merrill S. Clark, current President of the Association of the Bar, Orville Schell, a former President, and Charles Evans Hughes, III, grandson of Chief Justice Hughes, also spoke. The dedication was attended by several hundred luminaries of the New York Bar, including Mayor Edward I. Koch, former Mayor John V. Lindsay, and the Chief

Judge of the United States Court of Appeals for the Second Circuit, Irving R. Kaufman.

The ceremony commemorated the 50th anniversary of Hughes' induction as Chief Justice; the 70th anniversary of his appointment as Associate Justice; and the 110th anniversary of the founding of the Association of the Bar of the City of New York. Hughes served as President of that organization from 1927 to 1929.

The occasion was the inspiration of Whitney North Seymour, Sr., who delivered a 30-minute speech summarizing Hughes' life and career. Mrs. Gossett expressed the appreciation of the Hughes family. Orville Schell and Charles Evans Hughes, III spoke of the life of Charles Evans Hughes, Jr., whose distinguished career included the position of law secretary to Benjamin Cardozo, (while Cardozo was Chief Justice of the New York Court of Appeals), service as Solicitor General of the United States, and the practice of corporate law with Hughes, Hubbard and Reed.

Chief Justice Burger spoke of Hughes' sense of humor and humanity, stating that "he was a very tolerant man in the areas where tolerance was important." He referred to Hughes' contributions to the modernization of judicial administration — to the creation of the Administrative Office of the United States Courts, the development of the rule-making process, and the Circuit Judicial Councils. Chief Justice Burger also spoke of that "great poise, quiet tenacity and great skill" and those talents "as advocate and diplomat," which were "factors that carried the Court safely through the court-packing crisis of 1937."



Mr. Chief Justice Warren Burger and Mrs. Burger (left) pose with Mrs. Elizabeth Hughes Gossett (right) and Charles Evans Hughes III in the room dedicated to honor two renowned members of the Hughes family.



## Court Opens New Exhibit

On March 14th, a new exhibit opened for view in the Exhibit Hall on the ground floor of the Supreme Court. Consisting of over 120 prints, the exhibit is a photographic history of the justices who have served since the beginning of the Court. The exhibit was compiled by the Curator of the Court, Gail Galloway, and the Assistant Curator, Susanne Owens, and is expected to be open to the public for at least a year.

Each of the fourteen exhibit panels in the Lower Great Hall is devoted to a single Chief Justice and the individuals who served with him during his tenure, with the exception of the second panel which includes both Chief Justices John Rutledge and Oliver Ellsworth. Most of the 101 justices who have served on the Supreme Court are included in the exhibit.

The exhibit includes the many formal group photographs of the Court. The practice of bringing all nine justices together for a formal group photograph has developed into a tradition that is repeated whenever a new justice joins the Court. The earliest formal group photograph in the exhibit is of Chief Justice Salmon P. Chase and his colleagues. Photographic evidence suggests that the precedent for the seating arrangement used today by the justices for a formal photograph was established during the tenure of Morrison R. Waite. In formal portraits of the Court, the Chief Justice is seated in the front row, flanked by the most senior justices, with the other justices making up a second row, standing in the rear. Although the justices typically appear very restrained in these group photographs, an exception is found in the photo of the Vinson Court, which captures the nine justices in a less serious pose.

Other group photographs include those taken during the annual visits of the Court to the White House. On exhibit are photographs of the Stone Court visiting



Mr. Justice Joseph Bradley (1870-92) reading by gaslight lamp in his study.



C. M. Bell's photo of the Waite Court taken in 1888 which set the trend for subsequent formal portraits of the Court.

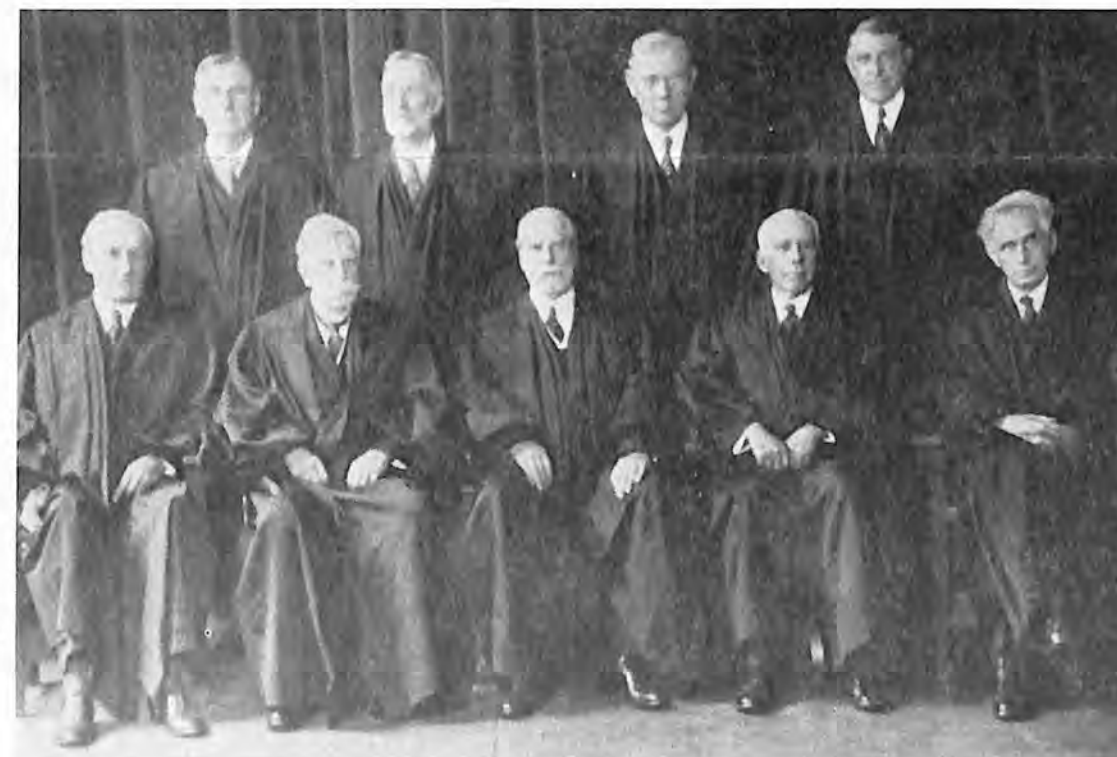
President Harry Truman in 1945, the Vinson Court visiting President Dwight Eisenhower, and, more recently, the Burger Court visiting President Jimmy Carter in 1977.

Individual photographs of the justices include formal studio portraits as well as more candid shots. One photograph of particular interest shows Associate Justice Joseph P. Bradley — who served from 1870-1892 — working at a desk in a Victorian study, lit by a gas lamp. Another picture captures Associate Justice Owen J. Roberts of Pennsylvania in his golfing attire, seated outdoors on a terrace reading *Vogue* magazine. Perhaps the more interesting aspect of the exhibit is that it permits viewers to compare photographs of individual justices during various stages of their service at the Court — the opportunity to view the justices in their early days on the Court on up to their senior years.

The current photographic exhibit replaces a collection of drawings by Betty Wells which is scheduled to be reexhibited at the University of Florida Gallery of Art in Gainesville, Florida. The current exhibit is open for viewing from the hours of 9:00 AM to 4:30 PM, Monday through Friday, except on government holidays.



Mr. Justice Owen J. Roberts (1930-45) takes a moment of leisure to read *Vogue* magazine.



Formal portrait of the Hughes Court taken in 1930 carries on the traditional pose established by the Bell photograph 42 years earlier.



## Roger Brooke Taney: The Man and the Enigma

Roger Brooke Taney, the fifth Chief Justice of the Supreme Court, is one of the most controversial figures of the Court's history. A "strange mixture of slave-owner, aristocrat, and Jacksonian democrat, clinging to the past but conceding the need to accept the future", Taney led the Court for a period of twenty-seven years, succeeding the great John Marshall as Chief Justice. Although his popular reputation is largely based upon his ill-fated decision in the *Dred Scott* case, Taney deserves to be remembered from a much wider perspective than this single decision allows.

Chief Justice Taney was born in Calvert County, Maryland on March 17, 1777. The descendant of a prominent Roman Catholic family, he attended Dickinson College and upon completion, moved to Annapolis to study law. He was an intense, ardent, zealous person; as a student of law he read "for weeks together . . . twelve hours in twenty-four." While in Annapolis, he became acquainted with Francis Scott Key who became his life-long friend, and in time, his brother-in-law.

In 1799 Taney went into law practice and politics simultaneously. After serving in the Maryland House of Delegates, he moved to Frederick, Maryland where he practiced law. There, in 1806, he married Anne Phoebe Carlton Key, the sister of Francis Scott Key. Taney was described as a "tall, gaunt fellow, as lean as a Potomac herring, and as shrewd as the shrewdest." His marriage to Anne was likened to the "union of a hawk with a skylark."

Taney remained active in both his practice and politics, embracing both with a fervor which was characteristic of his nature. The Federalist Party split into factions over the issue of the War of 1812; that portion of the party that supported the war was soon named the "Coodies", and Taney, the faction's ostensible leader, became known as "King Coodie."



Engraving of Mr. Chief Justice Taney (1836-64).



Taney's home in Frederick, Maryland which is currently maintained by the City of Frederick Historical Society.

During the years 1815-1831, Taney held several state political offices, serving as Attorney General of Maryland for a time. He argued many cases before the Supreme Court during this period and earned the reputation of a dedicated, competent lawyer.

In the late 1820's, Taney became a staunch supporter of Andrew Jackson and the Democratic Party, throwing himself into the party with his characteristic zeal. In 1831, he was rewarded for his support by being named Attorney General of the United States. He became a close confidant and advisor to the President. For a brief time, Taney held the portfolio of Secretary of War in addition to his office as Attorney General.

At the time Taney came into the Cabinet, Jackson was already embroiled in a battle with the Senate over the rechartering of the Bank of the United States. The Bank's charter was due to expire in 1836, and Jackson had determined it would not be renewed. In July, 1832, Congress passed a bill to recharter the Bank and sent it to the President for approval. Jackson vetoed the bill and returned it to Congress with a vehement attack against the "moneyed monster."

The conflict became so bitter that Vice President Martin Van Buren was forced to wear pistols to preside over the Senate when it debated the Bank's future.

Enraged over actions that had been taken to ensure the bank's survival, Jackson demanded that Secretary of the Treasury Duane remove all federal funds from the Bank. Duane refused to carry out the order and refused to resign his position. In desperation, Jackson fired Duane and replaced him with his loyal supporter, Roger Taney. Upon taking office, Taney ordered the removal of federal funds, thus sealing the Bank's future.

Taney's name was not sent to the Senate for approval until six months after he had taken office. The nomination was rejected and Taney became the first Cabinet nominee to be vetoed by the Senate.

Taney returned to private life, but in 1835 was nominated to be an associate justice of the Supreme Court. The Senate again refused to confirm him. In 1836, Jackson nominated Taney to succeed John Marshall as Chief Justice. This time the Senate confirmed the appointment.

Taney became the first non-Protestant and first Roman Catholic to sit on the bench. It is somewhat ironic that Taney, the aristocrat, introduced the custom of wearing ordinary trousers under judicial robes, replacing the more formal knee breeches that had been worn in prior times. But Taney was a man disposed to hold seemingly inconsistent ideologies. He was a states' rights man, but he was willing to deny the States the power to obstruct federal processes when he thought it was necessary. He guarded property rights jealously and scrupulously, but he focused primarily upon the property interests of slave owners and landholders rather than the property interests of contracts.

The notorious *Dred Scott* decision, perhaps the most controversial opinion ever issued in the history of the Supreme Court, was written by Taney. In this opinion, Taney expressed the view that framers of the Constitution had not considered slaves as citizens, hence they could not become citizens of the United States nor have standing in federal courts. In addition to refusing rights of citizenship for slaves, the judgement went on to declare the Missouri Compromise unconstitutional by reason that Congress was bound to protect personal property, and since the Constitution recognized slaves as property, Congress was bound to protect slavery in the territories.

Taney's decision in the *Dred Scott* case came approximately thirty years after he had spoken out against slavery while arguing the case of a Northern Methodist Minister accused of inciting slaves to rebellion. During the course of the trial he said: "A hard necessity compels us to endure the evil of slavery for a time; yet while it continues it is a blot on our national character." This appears to be Taney's true personal view, the view of the Southern aristocrat who voluntarily freed his own slaves before the law required.

Taney was consistent in his attitude toward the law. He strove to uphold the law as he interpreted it, despite the consequences or public sentiment. In another unpopular decision, Taney denied the power of the President to suspend the writ of habeas corpus. In the

*Merryman Case*, Taney called on President Lincoln to uphold the law of the land and the courts.

By the time Taney died in 1864, he had served his country as Chief Justice for twenty-seven years. At the time of his death, the Court had fallen to a new low in public opinion, civil war had swept the country, and the old economic system was gone forever.

Although disliked by many of his contemporaries, Taney has received better treatment from historians. Considered an able administrator and well versed in the law, Taney is rated by many of them as one of the "great justices" of the Supreme Court's history.

## LSU Chapter Hosts Elizabeth Black

Members of the Society's Edward Douglass White Student Chapter at Louisiana State University recently enjoyed a rare glimpse into the Court's behind-the-scenes history from Mrs. Elizabeth Black, the Society's Secretary and the widow of the late Mr. Justice Hugo L. Black. Mrs. Black, at the invitation of Professor Paul Baier, visited the LSU Law Center and attended classes in which many of the Chapter's students are enrolled. While at the Law Center, she was treated to a special showing of Baier's television production, "Hugo Lafayette Black and John Marshall Harlan: Two Faces of Constitutional Law."

Ray Maher and Miles Tilley, the students who portray the two Justices in the film, subsequently had the opportunity to talk with Mrs. Black about her husband. Among other things, she told them of the close personal relationship which existed between her husband and Mr. Justice Harlan despite their intellectual differences on such matters as the meaning of the due process clause.

Mrs. Black was also the guest of honor at a Chapter meeting followed by a reception. To commemorate her visit to the Law Center, a retrospective exhibit is on display at the University's Law Library on Mr. Justice Black's career at the Supreme Court. The exhibit includes a number of the Justice's papers, historic memorabilia and photographs spanning his distinguished career.



Mrs. Black holding the great, great, great, great, great granddaughter of Mr. Justice John Jay (1789-95) during her visit at LSU.



## Marbury, Douglas Portraits Donated

Two portraits, one an oil painting of William Marbury, and the other a pencil drawing of Justice William O. Douglas, were recently donated to the Society to be added to its collection for preservation and future exhibition.

Those familiar with the landmark Supreme Court case of *Marbury v. Madison* (1803) will recognize the name of William Marbury as one of the "midnight appointments" made by President John Adams just before he left office to be replaced by Thomas Jefferson. By an interesting quirk of history, Mr. and Mrs. Richard C. Marshall III, who donated the portrait, are direct descendants of both William Marbury and Chief Justice John Marshall. Mr. Marshall is the great, great, great grandson of the former Chief Justice, and his wife, Florence Beaufort Marshall, is the great, great, great granddaughter of William Marbury. Through the generations, the portrait has been handed down in the Marbury family, until now, when the stately gentleman has finally "returned" to the Supreme Court.

The portrait itself measures 34" x 29" and is in excellent condition. Marbury is shown seated, in three-quarter length, with his left hand resting on a book. The date of the portrait is thought to be some time between 1820 and 1830. Although the painting is unsigned, it has been attributed to Rembrandt Peale (1778-1860), the American portrait painter. The

Supreme Court owns a portrait of John Marshall by Peale, done in the "porthole" motif for which he is so well known. The Marbury portrait constitutes the only known painting extant of him, and it can be found reproduced in color in the June, 1963 issue of *American Heritage*.

The second acquisition is the gift of Mr. and Mrs. Milton Turner of Kenwood, Maryland. As a gesture of their high regard for the late Mr. Justice Douglas, the Turners commissioned this portrait of him to present to the Society.

The portrait is a pencil drawing rendered by the New Jersey artist Ferdinand R. Petrie. Mr. Petrie studied at the Parsons School of Design and at the New York Art Students League. His works appear in collections at the White House, the Smithsonian Institution, the Kennedy Library in Boston, and the Indianapolis Museum of Art.

Mr. Petrie's rendering of Justice Douglas is based on an informal photograph. Measuring 18- $\frac{3}{4}$ " by 12- $\frac{3}{4}$ ", the portrait is done in pencil strokes which convey a chiseled effect, as if the figure were a sculptured bust.

Justice Douglas joined the Supreme Court in 1939 at the age of 40 and retired in 1975 at the age of 76. He served for 36 $\frac{1}{2}$  years — longer than any other Supreme Court justice. In addition to the physical energy so characteristic of the Justice, the portrait suggests his sense of spirit and independent thought. The Society is indeed fortunate to receive such an excellent tribute to the late Justice Douglas.



Peale's portrait of William Marbury, donated to the Society by Mr. and Mrs. Richard C. Marshall III.



Petrie's sketch of Mr. Justice William O. Douglas, donated to the Society by Mr. and Mrs. Milton Turner.