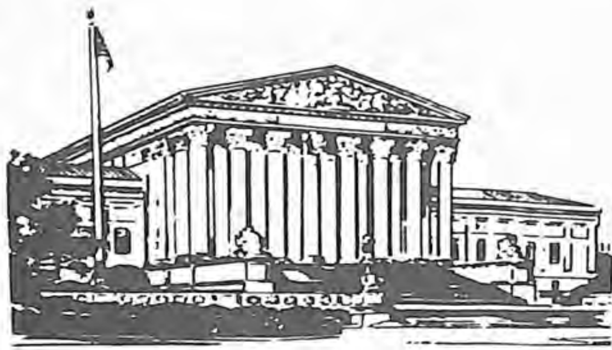


THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

VOLUME IV, NO. 2 SPRING, 1982

Society Holds Seventh Annual Meeting

The Supreme Court Historical Society held its seventh annual meeting and dinner at the Supreme Court on April 30. The Society's annual lecture was presented at 2:00 P.M. to an audience of over a hundred members and guests gathered in the restored Supreme Court chamber in the Capitol by Professor Henry J. Abraham, James Hart Professor of Government and Foreign Affairs at the University of Virginia. A graduate of Kenyon College, Columbia University, and the University of Pennsylvania, Dr. Abraham was introduced by Chief Judge Howard T. Markey, chairman of the 1982 annual meeting committee. The title of Professor Abraham's address was "Some Historical Reflections on the Theory and Practice of the Supreme Court Appointment Process," a topic on which the speaker is regarded as a leading authority. Following the lecture, a special tour of the Court was conducted for Society members and their guests by Betsy Strawderman, tour director at the Court.

Shortly after 6:00 P.M. the Society's Chairman, Fred M. Vinson, Jr., convened the annual meeting of the Society's board of trustees. Among other business, Melvin M. Payne was elected to a three-year term as a vice president of the Society, and Elizabeth S. Black and Sol Linowitz were elected to one-year terms on the executive committee.

Immediately following the close of the trustee's meeting, the seventh annual meeting of the Society's membership was called to order in the Supreme Court chamber by the Society's President, Linwood Holton. In his report to the membership, President Holton commented upon several of the Society's accomplishments during the past year. He reported that by action of the Society's executive committee, a small three-story town house, built in the 1880's and located across from the Court on Second Street, had been purchased for eventual use as the Society's permanent headquarters. He also reported that the Society had sponsored a new edition of the book, *Equal Justice Under Law*, which was being published in cooperation with the National Geographic Society. He expressed his hope that this important introductory study of the Court's history could be made available to a wider audience through a public placement program directed toward libraries and schools throughout the country. The President also announced that contracts had been signed with the Columbia University Press for publication of Volume I of the Documentary History Series, and with the Kraus-Thomson Organization for publication of the two-volume Opinion Index. President Holton concluded his remarks by observing that "with a stable staff, improving financial conditions, and the continuing support of the membership," the Society was ending its seventh year in better shape than ever before.

Following the President's report, Virginia Warren Daly, the Society's secretary and chairman of the 1982 nominating committee, presented her committee's report. The following were elected to three-year terms on the Society's board of trustees: Ralph E. Becker, Griffin B. Bell, William T. Coleman, Jr., William T. Gossett, Erwin N. Griswold, J. Roderick Heller, III, Joseph H. Hennage, Bruce Kiernat, Wade McCree, Dwight Opperman, E. Barrett Prettyman, Jr., Merlo J. Pusey, Fred Schwengel and Whitney North Seymour.

continued on page five

Chief Justice Burger, the Society's Honorary Chairman, expresses his appreciation to all those involved in making the seventh annual meeting a success.

Supreme Court Appointments Subject of Annual Lecture

What are the criteria for becoming a justice of the Supreme Court of the United States? Are political ideology, religious affiliation and geographic origin the primary considerations which shape presidential selection and thereby determine the fate of nominees in Senate confirmation hearings? In an address to the Society's membership at this year's annual lecture, Dr. Henry J. Abraham examined these and other fundamental questions pertaining to the Supreme Court appointment process. Some of Professor Abraham's observations and conclusions are summarized below. (Printed copies of his lecture will be distributed to the membership as soon as they become available.)

According to Dr. Abraham, James Hart Professor of Government and Foreign Affairs at the University of Virginia, the framers of the Constitution assumed and intended that a threshold of merit should be met by any prospective appointee to the Court. Yet, the founding fathers may not have foreseen the development of political parties, nor the political threat partisan politics might present for the future of the judicial appointment process. Professor Abraham noted that since the Court's founding in 1789, political considerations have played a significant role in the Senate's rejection of 26 presidential nominees to the Court, but that merit has been the overriding concern of the confirmation process. With regard to the 102 appointees confirmed, Professor Abraham suggested that politics and partisan considerations have generally yielded to merit as the determining criterion for appointment. Abraham asserted that the necessity of geographical representation embodied in the Congress has had little impact on the appointment and confirmation of justices, noting that only 31 states have been represented on the Court, and that four states—New York, Ohio, Massachusetts and Virginia—have supplied 39 of the 102 justices appointed to date. Commenting further on geographical origin as a consideration for appointment, Abraham said:

> *The latter fact of political life prompted Republican Senator William Langer of North Dakota, then a senior member of the Senate's Committee on the Judiciary, to commence in 1953 a campaign of opposition to any and all presidential nominees to the Court until his home state, which had never been so honored, would receive a Supreme Court nomination. He went to his grave in 1959 with his wish still unrealized.*

Abraham pointed out, however, that equitability of other representational factors such as race, religion, gender, and perhaps even age, have become of increasing concern in the appointment process:

> *Whatever the Framers' ascertainable intentions may have been, the notion of entitlement to a "peer model" has become all but pervasive in judicial staffing today.*

Nevertheless, partisan political considerations have probably been the single most influential consideration shaping

Professor Henry J. Abraham, this year's annual lecturer, outlines the historic role of merit as a criterion for selection of Supreme Court justices.

presidential selection in federal judicial appointments. Washington, for example, appointed all Federalists displaying a perfect record of party loyalty. Woodrow Wilson—the only President yet elected to have earned a Ph.D.—followed Washington as a close second with 98.6 percent of his nominations being fellow Democrats. Jimmy Carter ran a close third with 97.8 percent of his appointments going to his own party. Least guilty of selecting nominees exclusively from his own party, was Republican President Gerald Ford, whose partisan appointments number only 81.2 percent of his total, and William Howard Taft, who appointed fellow Republicans in only 82.2 percent of his opportunities and who crossed party lines on three of his six appointments to the Supreme Court.

Professor Abraham asserted that while politics, religion, race, gender and age have all been considerations which have influenced the judicial appointment process, these considerations cannot be traced to the intentions or expectations of the founding fathers. Further, if the concept of "representativeness" can be legitimately applied to the judicial selection process, it should "be wholly dependent upon the demonstrable presence of merit at the threshold." Professor Abraham proposed six standards by which a candidate's qualifications for judicial appointment might be judged: "(1) demonstrated judicial temperament; (2) professional expertise and competence; (3) absolute personal as well as professional integrity; (4) an able, agile, lucid mind; (5) appro-

continued on page eight

In Memoriam: Abe Fortas 1910 - 1982

Former Associate Justice Fortas returned to the Supreme Court on March 22, 1982 for the first time in twelve years to present an oral argument in a case before the Court; it was his last appearance. Justice Fortas died two weeks later, at his Georgetown home, on April 5, of a heart attack.

Abe Fortas was born in Memphis, Tennessee on June 9, 1910, the youngest of five sons of William Fortas, an Orthodox Jew who had immigrated from England. A cabinetmaker by training, the elder Fortas operated a small shop with his wife in one of the poorer sections of Memphis. Abe Fortas attended the local public schools and gained a reputation for his dedication to his studies. Encouraged by his father, he studied music and played his violin at local dances and parties to earn money for college. Assisted by an academic scholarship, Fortas attended Southwestern College in Memphis, graduating at the age of 16 as a Phi Beta Kappa member of the Class of 1930. He traveled north to New Haven to enter Yale Law School. Upon arriving at Yale, Fortas met a young professor from Columbia University Law School who had joined the faculty only the year before—William O. Douglas. Already a leading financial law expert, Douglas quickly recognized his new student's talent. Fortas admired the accomplishments of this poor farm boy from Yakima, Washington who had risen from poverty to a distinguished position on the faculty of one of the nation's leading law schools. It was not surprising that the two soon become close friends.

A member of the Order of the Coif and Editor-in-Chief of the prestigious *Yale Law Journal*, Fortas took his degree in 1933 at the head of his class. Upon graduation, he accepted a position on the Yale Law School faculty, but before long, was commuting between New Haven and Washington. William O. Douglas, who would join the Roosevelt Administration in 1936, encouraged his former student and friend to help with the legal work of several of the new government agencies. Fortas' skills soon won for him a growing reputation, and he found it increasingly difficult to balance the academic responsibilities of an associate professor with the exciting challenges of working for the government.

Office of the Curator, Supreme Court

Associate Justice Abe Fortas, 1965-1969.

While working part-time at the Agriculture Adjustment Administration, Fortas met Carolyn E. Agger, an economist, whom he married in July of 1935. He encouraged his wife to go to law school at Yale and to pursue a career in law; she did, and soon established herself as one of the nation's leading tax attorneys.

In 1939, lured by the excitement and challenge of President Roosevelt's New Deal programs, Fortas left academic life to become general counsel of the Public Works Administration. For the next several years, Fortas held numerous positions within the Administration. In 1942, he was appointed as Harold Ickes' Undersecretary at the Department of the Interior, a position he held until he left the government to go into private practice in 1946.

It was during these early years in Washington that Fortas first met a young Congressman from Texas, Lyndon Johnson. Representing a district near Austin, Johnson had sought Fortas' support for a water project which was of considerable importance to his constituents. Johnson was impressed with Fortas, and turned to him again for help several years later. When Fortas left the government, he established himself in private practice with Thurmond Arnold, another Yale Law School alumnus who had come to Washington as part of FDR's so-called "Brain Trust." Known to many as Roose-

continued on next page

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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.

Editor .... Alice L. O'Donnell
Assistant Editor .... David T. Pride

Fortas *(continued from page three)*

velt's "trustbuster," Arnold had headed the Justice Department's Antitrust Division. Together with Paul Porter, Arnold and Fortas founded what quickly became one of Washington's leading law firms. Johnson won the Texas senatorial primary in 1948 by less than 100 votes. His opponents challenged the election, and persuaded a federal judge to take Johnson's name off the ballot. Acting on behalf of his new client, Fortas won a stay from Supreme Court Justice Hugo Black, restoring Johnson's name to the ballot. Johnson subsequently won election to the Senate by a wide margin. Fortas' successful representation provided the basis for an enduring friendship, and in time, Fortas became one of Johnson's most trusted advisors. President Johnson later described his lawyer-friend as one of the "wisest, ablest and fairest men" he had ever known.

During the 1950's Fortas' reputation grew as an able and courageous advocate. While his firm's clientele included many of the country's corporate giants, Fortas himself frequently represented less popular clients. In 1953, with the McCarthy era at its height, Fortas defended Owen Lattimore, a State Department official who had lost his job as a result of Senator McCarthy's investigations. Reflecting a deep interest in criminal law cases generally ignored by other successful corporate lawyers, Fortas represented Monte Durham in a precedent-setting District of Columbia case in 1954. Fortas won for his client a decision which significantly broadened the modern insanity defense. Several years later, the Supreme Court turned to Fortas for expert counsel when it appointed him in 1962 to represent Clarence Earl Gideon, an indigent Florida inmate who had challenged the constitutionality of his conviction in a handwritten petition for certiorari. The Court's decision in the landmark case established the right of an individual accused of a serious criminal offense to be represented by counsel at trial, even if counsel must be appointed at public expense.

In July 1965, Associate Justice Arthur J. Goldberg creat[illegible] a vacancy on the Court when he resigned to accept President Johnson's appointment as U.S. Ambassador to the United Nations. Johnson immediately decided to appoint his old friend and confidant, Abe Fortas. Fortas, however, was reluctant to leave private practice and declined the President's offer. He had previously declined President Johnson's offer to become Attorney General, and had turned a deaf ear toward the President's overtures that he don the black robes of a federal judge. Nevertheless, an insistent President nominated Fortas on July 28, barely three days after receiving Goldberg's resignation. The Senate confirmed Fortas' appointment by voice vote on August 11, 1965, and Fortas joined the Court as an Associate Justice on October 4, 1965.

Fortas was no stranger to the work of the Court, and his well-crafted and articulate opinions soon joined those of his colleagues, broadening the constitutional rights of criminal defendants, and extending due process guarantees to juveniles. In one case, Fortas insisted that "a murder trial is not a sporting match," and in another that "under our Constitution, the condition of being a boy does not justify a kangaroo court." Fortas was uncomfortable with the mechanistic application and extension of theoretical doctrines, stating in one case that he could not agree with "the implication that the tail must go with the hide." In an important slander case, Fortas perceived a need for realistic limits and defended the right of public officials to be protected from "shotgun attacks in virtually unlimited open season."

In 1965, Fortas joined the majority in *Griswold* v. *Connecticut* which held unconstitutional a Connecticut statute prohibiting the use of contraceptives. He provided support the following year for Chief Justice Warren's majority opinion in *Miranda* v. *Arizona*, the landmark case decided by a 5-4 vote which required law enforcement officers to inform suspects of their constitutional rights prior to questioning. Writing for the Court in 1967, Fortas held in *In re Gault* that certain due process guarantees—including the privilege against self-incrimination and the right to counsel—extended to juvenile court proceedings. In one of his last and most famous opinions, the 1969 majority opinion in *Tinker* v. *Des Moines Independent School District*, Justice Fortas wrote that the wearing of black armbands by students protesting the Vietnam War was "closely akin" to the "pure speech" protected by the First Amendment. Consequently, the public expression of opinion was entitled to constitutional protection as a form of peaceful and nondisruptive "symbolic" speech so long as it did not violate the rights of others.

In 1968, Chief Justice Warren indicated to President Johnson his intention to retire at the end of the Court's Spring term. With the presidential election only months away, President Johnson hoped to gain two appointments to the Court. He sent Fortas' name to the Senate on June 26 for confirmation as Warren's successor. Fortas' confirmation as Chief Justice would have created another vacancy on the Court which Johnson was anxious to fill. The nomination, however, was doomed from the outset. Amid charges of cronyism and political manipulation, Senators criticized the "lame duck" President for attempting to "pack the Court." In the face of mounting opposition, President Johnson was forced to withdraw the nomination after a cloture vote failed to end a filibuster which had prevented the nomination from reaching the Senate floor. On October 4, at Justice Fortas' request, the nomination was withdrawn, but not before irreparable damage had been done which would ultimately lead to Justice Fortas' resignation. On May 14, 1969, Justice Fortas resigned from the Court, explaining in a letter to Chief Justice Warren that his duty was to resign so that the Court could "proceed with its vital work free from extraneous stress."

An urbane man of "meticulous calm" and "precisely organized ideas," Fortas quietly resumed the private practice of law. An accomplished amateur violinist, he divided his time between his work and his music, regularly playing in Sunday evening string quartets. His love of music led him to become an active board member and supporter of the Kennedy Center for the Performing Arts and Carnegie Hall International. As Eric Sevareid said at a memorial concert held, appropriately, at the Kennedy Center, Abe Fortas was "a poor boy from Memphis" who was born "rich in mind, rich in courage, and rich in that inexplicable instinct for what is tasteful and beautiful and lasting."

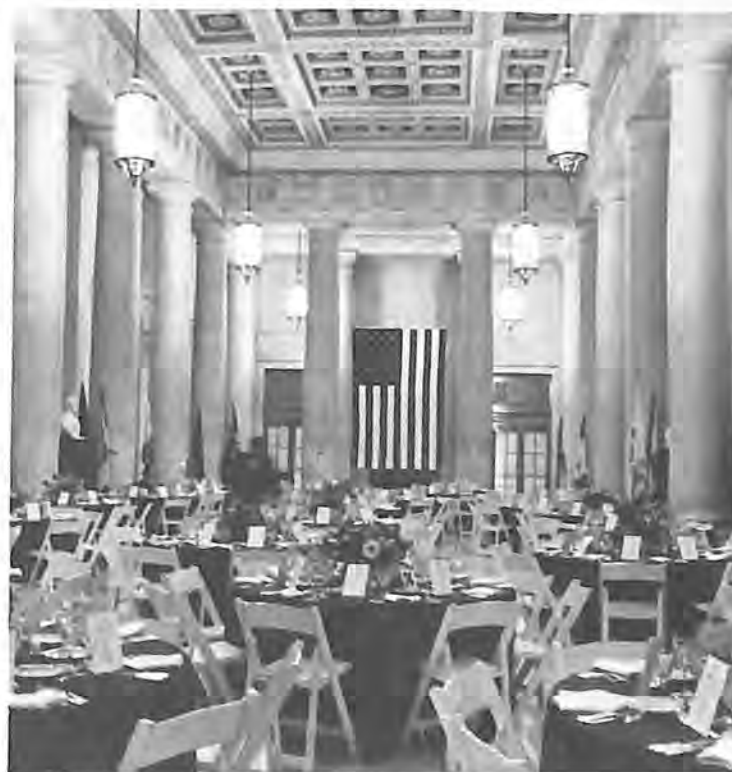
Office of the Curator, Supreme Court

Justice Fortas (standing, far right), the new junior justice on the 1965 Warren Court. Also shown (seated left to right) are: Associate Justices Tom C. Clark and Hugo L. Black; Chief Justice Earl Warren; and Associate Justices William O. Douglas and John Marshall Harlan. Standing (left to right) are: Associate Justices Byron R. White, William J. Brennan, Jr., and Potter Stewart.

Annual Meeting *(continued from page one)*

President Holton next recognized the Society's Honorary Chairman, Chief Justice Warren E. Burger, for the purpose of making a special presentation. The Chief Justice then asked Mrs. Rowland F. Kirks and her children, Rowland, Jr., and Virginia, to come forward. On behalf of the Society, the Chief Justice presented Mrs. Kirks with a framed memorial scroll honoring her husband's distinguished career and exceptional service to the Society. A former law school dean, government official, and retired general in the Army Reserve, Rowland F. Kirks had been one of the three original incorporators of the Society, and as a founding trustee, had been one of the Society's most active supporters prior to his death in November, 1977. Mrs. Kirks thanked the Chief Justice on behalf of her family for remembering her husband in such a tribute, and expressed her hope that the Society, to which her husband had committed his time and effort, would continue to grow and prosper. At the close of this special presentation, President Holton thanked all those present and adjourned the meeting.

A reception was held immediately following the annual meeting in the Court's East and West Conference rooms. The weather was ideal, allowing the use of the outdoor fountain-courtyards adjacent to the Conference rooms. Chamber music during the reception was provided by the U.S. Army Band. At eight o'clock dinner was served in the Great Hall. Society members and their guests were entertained following dinner by the U.S. Army "Strolling Strings" and the U.S. Air Force "Singing Sergeants." At the close of an enthusiastically received musical program that lasted approximately forty minutes, the Chief Justice thanked all those who had participated in making the evening such a success, and President Holton adjourned the meeting.



The Great Hall shortly before the annual dinner.

Society Acquires Early Accounts of Chase Court

Editor's Introductory Note

The Society recently acquired several excerpts from mid-19th century editions of *Harper's Weekly*, two of which are printed below. The magazine, a prominent periodical which appealed to the educated middle-class and elite of American society, provides an interesting perspective of the Court in the post-Civil War period. The first article, reprinted below, is a general account of the Court which appeared in *Harper's* February 1, 1868, edition. Typical of journalism in the period, the authors rely heavily upon editorial license in relating their story. The group picture of the Justices, for example, is described as depicting the members of the high bench in one of the Court's conference rooms. More probably, the architectural splendor in the background is the product of artistic imagination, for aside from the elegance of the courtroom's arched ceiling, the additional space allotted to the Court in the Capitol building was rather modest.

In the era immediately preceding the advent of professional press bureaus and wire services, articles like the second one, also printed below, provided the only form of reporting on the Court. The account of the Court's proceedings which appeared in *Harper's* April 27, 1867 issue was probably atypical of the magazine's coverage of the Court. Apart from the passing excitement stirred by the Court's rulings on paper currency and reconstruction issues in the postwar period, the Court's day to day business, from an editor's viewpoint, did little to stimulate circulation. A comment made by Chief Justice Earl Warren in his *Memoirs* concerning the Court's relationship with the press suggests that little has changed in this regard over the years: "The media [do] not consider the Court's work newsworthy until it makes a decision which stirs emotion on the part of great numbers of people on the losing side."

April 27, 1867
UNITED STATES SUPREME COURT ROOM

The persons who were attendant in the room of the United States Supreme Court at Washington on April 5 were witnesses to one of the most significant and remarkable scenes which ever occurred in any hall of justice. WILLIAM L. SHARKEY and ROBERT J. WALKER, as counsel for the people of the State of Mississippi, rose in their places and asked leave to file an injunction restraining the President and military commanders from enforcing the Reconstruction Act on the ground of its unconstitutionality. For the first time in the history of any nation, the legal representatives of the participants in an organized rebellion, defeated in the field, were permitted to appear in court, not to defend their clients on trial, but to arraign and deny the authority of the law-making power, and plead anew the issues of the cause already decided by the sword. After accepting the terms of surrender they proposed in the Supreme Court to test the very right admitted by their surrender. No greater effrontery on the part of insurgents and rebels against legal authority has ever been witnessed, and no instance of such leniency on the party of any other government can be quoted as this, in which the highest tribunal in the country patiently sits to hear arguments which, if admitted, would declare the war for the Union to have been unjust and oppressive instead of a justifiable effort to preserve the peace of the Union, and maintain the republican form of government which the people enjoyed and demanded.

We have presented a picture of the Court-room on this occasion for several reasons. It marks an important period in the history of Southern Reconstruction, and will be interesting in that connection. The public are not very familiar with the room itself; and as it is the same in which the great statesmen of the country have for the past thirty or forty years framed the laws and interpreted the Constitution, its every feature as well as its every reminiscence will be of interest. The room now in use by the Supreme Court is the old Senate Chamber as it existed prior to the remodeling of the Capitol. It has been somewhat improved for the purposes of the Court by alterations lately made. Our engraving will give the reader an idea of the appearance of the apartment and the officials.

February 1, 1868
THE JUSTICES OF THE UNITED STATES COURT

As we write this article Congress is engaged in debating a bill further regulating the jurisdiction of the Supreme Court of the nation by declaring what shall constitute a quorum of the Justices of the Supreme Court; doubtless before it shall reach the eyes of our readers that body, the highest judicial tribunal in the land, will be invested with the new power which this bill contemplates giving it. In view of this fact, and the additional importance given to the Chief Justice and his assistants, a great deal of interest has been manifested to know more of them; and we therefore give on other pages of this issue of the Weekly accurate portraits of MR. CHASE and the Assistant Justices. Our engraving is taken from an imperial photograph recently published at Washington by Mr. ALEXANDER GARDNER. It represents the members of the court attired in the official robes worn by them when upon the bench, but seated in their private room or consultation-chamber, not in the hall of the Supreme Court.

The sessions of the court for hearing arguments and deciding cases are held always at Washington, commencing on the first Monday of December and continuing through the winter, a greater or less time according to the amount of business before it. During the spring, summer, and fall, the judges are largely occupied in holding circuit courts for the trial of causes, each one of them having a circuit composed of various States assigned to him.

Harper's Weekly

Harper's **illustration of the Chase Court hearing arguments in *Mississippi* v. *Johnson*, 4 Wall. 163 (1867), one of the first Supreme Court tests of Reconstruction legislation.**

Harper's Weekly

The Chase Court as depicted in the Feb. 1, 1868 edition of *Harper's*. Seated (left to right) are: Associate Justices David Davis, Noah Swayne and Robert Grier; the then late Justice James Wayne; Chief Justice Salmon Chase; and, Associate Justices Samuel Nelson, Nathan Clifford, Samuel Miller and Stephen Field.

Annual Lecture *(continued from page two)*

priate professional educational background or training; and (6) the ability to communicate clearly, both orally and in writing, especially the latter."

In support of his argument that proven merit was the only criterion cited by the founders, and that merit should remain the primary consideration for appointment, Professor Abraham cited several examples of appointments based primarily on merit rather than representational considerations. Abraham's first example was President Hoover's nomination of Benjamin Cardozo, a case in which factors of religion, geography and political affiliation all threatened Cardozo's appointment, but were ultimately of less significance than the candidate's proven ability. Cardozo, a liberal Democrat, was neither politically nor ideologically associated with Hoover, a conservative Republican. Moreover, with Justice Brandeis already on the bench, there was little to be gained politically by appointing another Jewish justice. Finally, and perhaps most damaging, Cardozo came from New York, a state already represented by Justices Stone and Hughes, both of whom had been appointed by Hoover. But as Professor Abraham noted, Cardozo was so highly regarded as one of the nation's most distinguished jurists and legal scholars that support for his nomination crossed both party and ideological lines. Shortly before the President announced his candidate to replace retiring Justice Holmes, and after Justice Stone had volunteered to resign to make room for Cardozo, Hoover met with Senator William E. Borah of Idaho, a conservative Republican and Chairman of the Senate Foreign Relations Committee. Professor Abraham provided the following narrative account of what transpired:

> *In an often-told dramatic confrontation between two proud men, the President, after discussing the vacancy generally, suddenly handed Borah a list on which he ranked those individuals he was considering for the nomination in descending order of preference. The name at the bottom was that of Benjamin N. Cardozo. Borah glanced at it and replied: "Your list is allright, but you handed it to me upside down." Hoover protested at first, there was the geographical question to be considered and second, he had to take "religious or sectarian repercussions" into account. Senator Borah sharply retorted that "Cardozo belongs as much to Idaho as to New York" and that "geography should no more bar the judge than the presence of two Virginians—John Blair and Bushrod Washington—should have kept President Adams from naming John Marshall to be Chief Justice." And, he added sternly, "anyone who raises the question of race (sic) is unfit to advise you concerning so important a matter."*

Hoover could ill afford to ignore such sound and insistent advice, and on February 15, 1932 he sent Benjamin N. Cardozo's name to the Senate. Few appointments have ever been so unanimously endorsed, and Cardozo's service proved beyond any doubt that the enthusiasm over his appointment had been entirely warranted.

Professor Abraham cited three other justices who were appointed to the high bench ostensibly because of representational considerations but who would not have received confirmation had they been unable to meet the threshold of merit requirement. Chief Justice Taney was appointed to the Court in reward for his support of President Jackson's political views and his loyal service in Jackson's administration. But Taney was also one of the great legal minds of his day and a leader of the Maryland Bar. As Chief Justice, he performed his duties with distinction, and is rightly regarded as one of the Court's greatest justices.

Justice Wiley B. Rutledge, the next appointment considered by Professor Abraham, was nominated to help balance the Court geographically by selecting someone from west of the Mississippi. But, again, Abraham pointed out that Rutledge was confirmed because he was clearly qualified to "represent" the West. Rutledge, the only Roosevelt appointee to have previous experience in the federal judiciary, served four years on the U.S. Court of Appeals for the District of Columbia. A former law professor at the University of Colorado, and law school Dean at Washington University in St. Louis, and the University of Iowa, Rutledge possessed strong academic credentials. Though his tenure on the Court lasted just over six years, Justice Rutledge will be remembered for his capable service, the geographic considerations for his appointment far overshadowed by his distinguished record.

In a final example, Professor Abraham recounted President Harding's nomination of George Sutherland in 1922. Sutherland's appointment was ostensibly motivated by his political and ideological affinity with President Harding, and with Chief Justice Taft who may have suggested the appointment. A close personal and political friend of President Harding in the Senate, Sutherland was highly regarded by his fellow legislators; his nomination was confirmed by the Senate within hours of his nomination. Abraham characterized Justice Sutherland as "a leading expert in constitutional law and an active member of the Utah and U.S. Supreme Court Bars." Sutherland had served in the Utah Senate and the U.S. House of Representatives prior to serving in the U.S. Senate. Once on the Court, Justice Sutherland distinguished himself as a lucid and articulate spokesman for the Court's conservative faction.

With the Sutherland example, Professor Abraham brought his lecture to a close. He referred to the "rich mine of giants that have served so remarkably well on the Court" during its near two centuries of service to the nation. He ended his remarks by stating that the examples he had chosen—and others equally compelling—provided "proof positive of promise fulfilled and achievements rendered," and that a commitment to merit first and other considerations second had fulfilled the founders' prophecy of a "bench happily filled."