

THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME V, NO. 1

WINTER, 1983

Society Plans 8th Annual Meeting

The Society will hold its 8th annual meeting and dinner on Friday, May 6, in Washington, D. C. As in past years, the Society's annual lecture will be presented at 2:00 PM in the restored Supreme Court Chamber in the Capitol. The Annual Meeting Dinner Committee, chaired again this year by Chief Judge Howard T. Markey, is pleased to announce that this year's speaker will be Judge Robert H. Bork, United States Circuit Judge on the Court of Appeals for the District of Columbia circuit. A graduate of the University of Chicago and University of Chicago School of Law, Judge Bork is a former dean of the Yale Law School and served as Solicitor General of the United States from 1973-1977. Judge Bork's topic will be styles and theories of constitutional adjudication.

Following the lecture, a special tour of the Supreme Court building and the Society's new headquarters building will be available for interested members. The tour will include the ground floor exhibition commemorating the building's fiftieth anniversary, the Justices' conference and dining rooms, and the Court's magnificent library.

The annual meeting of the general membership will follow the trustee's meeting, and will be held in the Supreme Court Chamber at 6:30 PM. A reception will be held in the east and west conference rooms beginning shortly after the meeting is adjourned, with dinner to be served in the Great Hall promptly at 8:00 PM. Chamber music will be provided by a string ensemble of the United States Army Band, and a musical program by the United States Army Band "Strolling Strings" and Chorale.

Members are reminded that because of the seating limitations of the Great Hall, reservations for dinner will once again be limited. Beginning on Monday, April 4th, reservations will be confirmed as payment is received, on a first-come, first-served basis, with reservations for no more than four persons accepted per member.

Each member should receive an invitation and program

providing additional details no later than March 25; for further information, please contact the Society's Executive Office, 1511 K Street, N.W. Suite 612, Washington, D.C. 20005, or telephone (202) 347-9888.



U.S. Supreme Court—Site of the Society's eighth Annual Meeting.

Office of the Curator, Supreme Court

Rules for Young Lawyers

Editor's Note:

On May 7, 1791 a short essay entitled "Rules for Young Lawyers" appeared in Philadelphia's *Gazette of the United States*, which had previously been published in the *Litchfield* (Connecticut) *Monitor* by an anonymous author using the pen name "Littleton." Discovered and shared by James Buchanan — a member of the staff of the Society's Documentary History Project — the article's irreverence is as fresh today as it was in 1791, and proves that humor was alive and well in the eighteenth century.

First, to discard all modesty and diffidence of his own abilities, and instead thereof assume a competent stock of impudence—for an overbearing confidence and superlative arrogance are most excellent weapons in this warfare.

When he enters court let his hat comply with apparent reluctance, and just uncovered, thrust himself into the most advantageous, conspicuous, and dignified seat, to the exclusion of older practitioners—for, to bystanders it will give him an appearance of genuine superiority.

When he happens to be retained in a cause, let him make as many motions to the court as possible, no matter how impertinent, frivolous, or indecent; for although they may be fruitless and unimportant, and consequently despised by the discerning few, yet the majority of numbers among the ordinary audience, will impute his loquacity and zeal to a redundancy of profound knowledge and talents, capable of miraculous improvement.

If he should be engaged in the same cause with old and experienced counsellors, let him rise magnanimously, upon all interlocutory and occasional questions, and without servile consultation offer and obtrude his sentiments upon the Court in a harsh, sonorous, authoritative tone of voice, as if

conscious of his innate superiority — this will infallibly magnify or stretch him in the eyes and opinion of the multitude.

It will be his happy circumstance, if he can compose his muscles to a fixed gravity when addressing the Bench, and in a dictatorial style peremptorily declare that he shall proceed until he is stopped. This manoeuvre has produced wonderful effects on the court and attendants; for where is the Judge, Advocate, or Jury man, who can withstand such knock me down arguments?

He ought likewise to treat his predecessors in practice, and superiors in knowledge and experience at the bar, with supercilious indifference, if not sovereign contempt. If they peaceably suffer him to pass without applicable animadversions, his clients may consider it a tacit acknowledgement of his distinguished abilities.

When managing a cause in court, by all means let him browbeat, blackguard and abuse the opposite party and his witness as much as possible—for this will insure the confidence of his employer, and loosen the pursestrings, whilst ten to one, some other candidate for litigation will set him down as an undaunted adversary, and more refined and polished characters, (as well as aboriginals) have sometimes worshipped evil spirits to keep on good terms with them.

If a suit is likely to be commenced, or some controversy in a family or neighborhood begun, he must be careful to visit one of the contending parties, and in character of a friend, officiously point out what necessary measures are to be taken—after this it would be ungrateful not to employ him in the cause.

After all this he must frequent the shrine of Bacchus with such as may probably introduce business; from which familiar correspondence, great advantages may be often obtained — this, however, depends on circumstances and contingencies; so that it must be left to the management of direction.

Only four years attentive practice upon these principles, hath successfully conducted a thrifty stripling of my acquaintance to a comparatively high degree of elevation, in his own opinion — But pray be contented to expect more strictures on the subject by and by, as occasion may require.

Littleton □

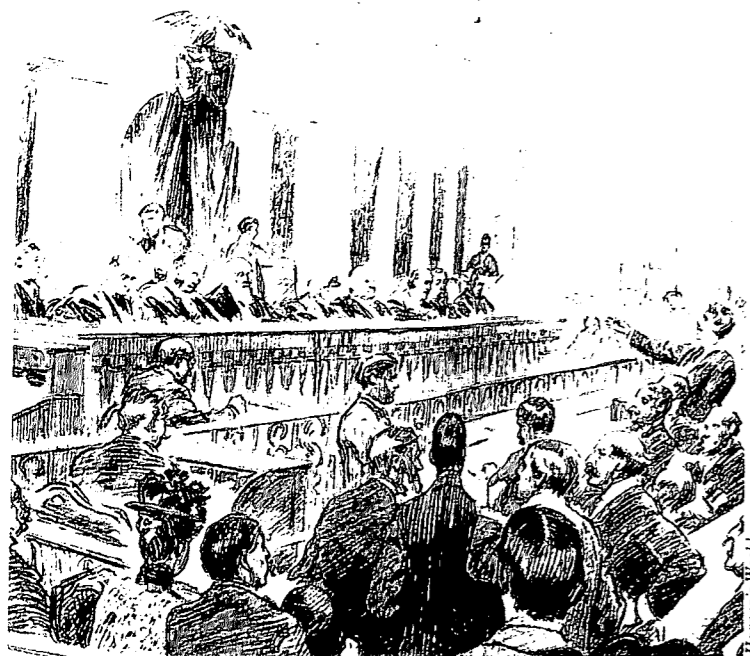
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Editor Alice L. O'Donnell
Assistant Editor David T. Pride



A "young lawyer" arguing before the Court in 1895.

Aitken Models Donated to Society

The Society recently acquired several plaster models of sculptures by Robert Ingersoll Aitken, one of which was a study for the finished sculpture in the west pediment of the Supreme Court building. Presented to the Society by Mr. and Mrs. Otto Grun, these plaster casts provide a valuable addition to the Society's collection of artifacts, soon to become a part of the current exhibit at the Court commemorating the fiftieth anniversary of the laying of the cornerstone of the Supreme Court building.

The plaster casts were preliminary three-dimensional studies from which Aitken completed large finished sculptures. Aitken worked by creating small clay models which allowed him to experiment with various aspects of composition such as costume, decorative detail, depth and contour. After he had perfected a design in clay, the model was cast in plaster to preserve it. The plaster cast was then used as a guide for the actual stone cutting of the sculpture. The plasters acquired by the Society were prepared between 1933 and 1935 when Aitken was commissioned to do work at the Supreme Court building and the National Archives building. By that time, Aitken was a well-respected sculptor with many commissions and honors to his credit.

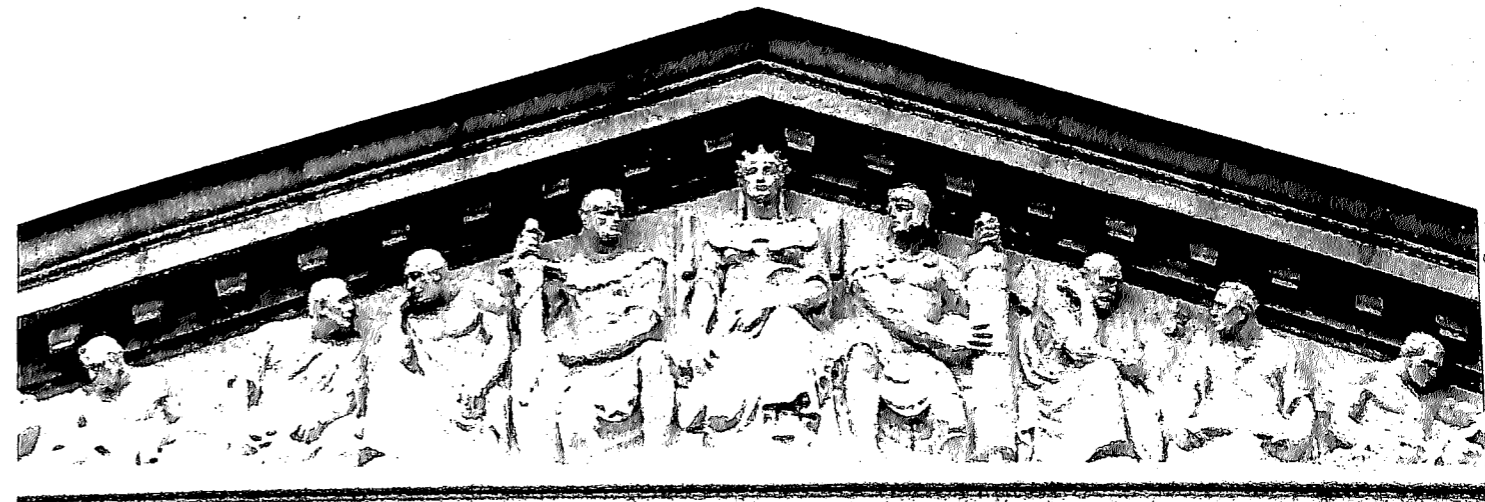
The sculptor was born in San Francisco, California on May 8, 1878. He completed high school there and then studied sculpture with Douglas Tilden and painting with Arthur F. Matthews at the Mark Hopkins Institute. In 1904 Aitken left for France where he studied for three years. He settled in New York City upon his return, resuming work and teaching sculpture at the Art Students' League and National Academy of Design. He received many honors during his career including the Medal of Honor from the Architectural League of New York in 1915, and the Elizabeth N. Watour Gold Medal from the National Academy of Design in 1921. He was elected a member of the National Academy of Design and was a president of the National Sculpture Society.

At the time Aitken was working, sculpture was essentially an adjunct of architecture. Sculptors depended heavily on the favor of architects for commissions and were constrained by their instructions and inclinations. Most sculptural commissions at the time were for public buildings, and the subject matter was quite limited.

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The sculptor, Robert Aitken, with his completed "Thomas Jefferson" for the New York Hall of Fame.



The west pediment of the Supreme Court building is considered by many to be Aitken's finest work.

James C. McReynolds: Last of the Old Guard

On February 5, 1937, President Roosevelt sent to the Senate a proposal to expand the nine-member Supreme Court to a fifteen-member bench. Though Roosevelt attempted to justify the plan as a means to relieve some of the burden on the Court's older members by adding several younger members, it was widely condemned in Congress as a "Court-packing" scheme.

Although Roosevelt's attempt was eventually repudiated by Congress, the controversy surrounding this desperate attempt to gain a favorable Court focused considerable attention on the Court's Associate Justices Willis Van Devanter, George Sutherland, Pierce Butler and James C. McReynolds. These four justices, joined frequently before 1937 by Associate Justice Owen Roberts, led the fight against Roosevelt and his New Deal program. The four endured a setback, however, in March 1937, when Justice Roberts joined Chief Justice Hughes and Associate Justices Brandeis, Stone and Cardozo in upholding a Washington state minimum wage law in the *West Coast Hotel* case. They experienced a second reversal a month later when the majority upheld the Wagner Act in *National Labor Relations Board v. Jones and Laughlin Steel Corporation*. This case established the government's right to regulate disputes between labor and management if those disputes threatened to disrupt interstate commerce. The "four horsemen" dissented vigorously in both instances; Justice Willis Van Devanter announced soon thereafter, however, that he was unwilling to continue the struggle and would retire. Justice Sutherland joined him the following year, and Justice Butler's death in 1939 left only one of the four conservatives on the bench. Justice McReynolds clung to his seat until 1941, determined to oppose New Deal liberalism. Embittered by his growing

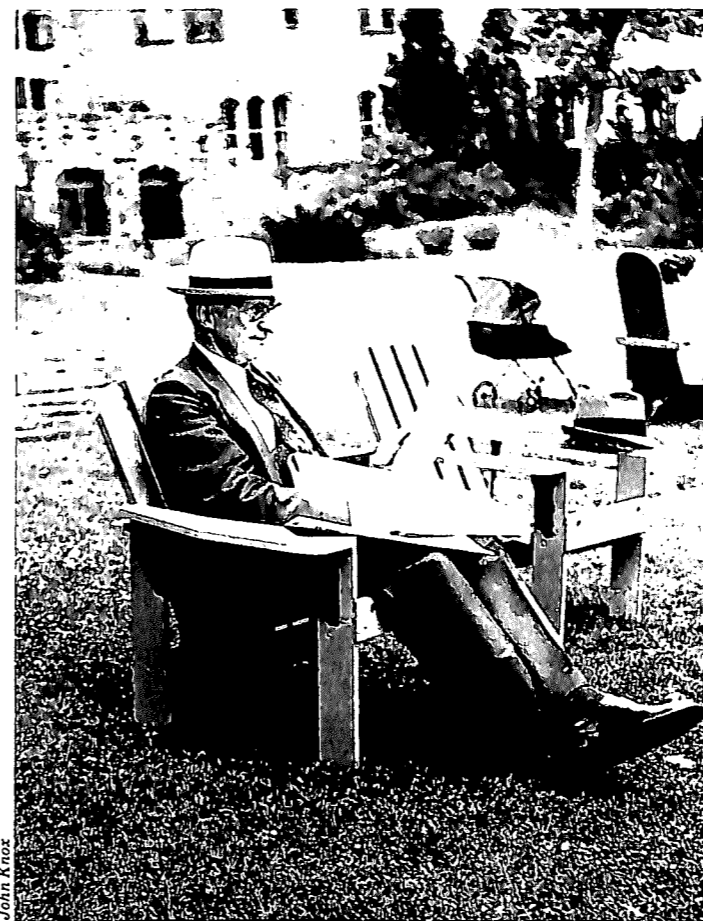


Associate Justice James Clarke McReynolds (1914-1941)

isolation on the Court, and Roosevelt's election to a third term in 1940, McReynolds finally acknowledged defeat in 1941. Upon leaving office, the 78-year old jurist lamented that he had tried to protect his country, but that "any country that elects Roosevelt three times deserves no protection."

McReynolds' static view of the Constitution in the end was simply irreconcilable with the economic and social reforms Roosevelt and others thought necessary to bring the nation out of the Depression. Indeed, McReynolds himself had concluded in his strongly worded oral dissent in the Gold Clause cases of 1935 that the Constitution, as he knew it, "was gone." In a sense, McReynolds was undoubtedly correct. The legal absolutes of property rights and liberty of contract, with which he had been imbued while studying law under Professor John B. Minor at the University of Virginia School of Law, were increasingly restricted by the Court's expanding definition of the public interest. McReynolds focused upon this issue in a 1934 dissent declaring:

If now liberty or property may be struck down because of difficult circumstances, we must expect that hereafter every right must yield to the voice of an impatient ma-



This rare photograph of Justice McReynolds off the bench was taken by his law clerk, John Knox, in 1936.

... jority when stirred by distressful exigency... Rights shielded yesterday should remain indefeasible today and tomorrow. Certain fundamentals have been set beyond experimentation; the Constitution has released them from control by the State.

This attack against the New Dealers' expanding definition of the public interest was more than simply the unthinking repetition of Minor's strict legal philosophy. McReynolds embraced Minor's teachings because they were compatible with his own beliefs, and complemented the tradition of conservative individualism in which he was reared.

Born on February 3, 1862, in Elkton, Kentucky, McReynolds was reared in a sparsely settled mountain community where self-reliance was more a necessity than a virtue. His parents were both members of the fundamentalist Campbellite sect, and insisted upon a strict moral upbringing. McReynolds' father traced the genealogy of the Scotch-Irish family back to 60 A.D., when Fergus, King of Connaught, established the ancestral clan in Donegal County, Ireland. Although the family's feudal titles had long since vanished, its once royal heritage was reflected by the aristocratic station of many of its descendants. McReynolds' father, Dr. John McReynolds, was a wealthy plantation owner, known within the community as "the Pope," largely as a result of his imperious character and tendency to remain socially aloof. He opposed public education, which not only resulted in financial burden on the landed gentry, but also corrupted the existing social

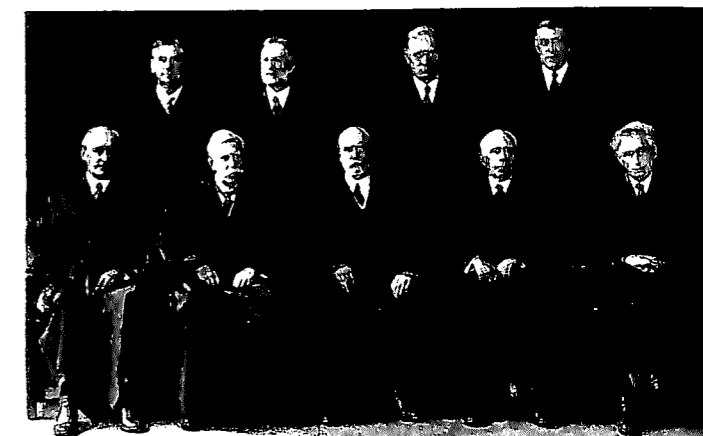
hierarchy. This attitude—imparted nearly intact to his son—explained McReynolds ostracism by his peers and increasing social isolation in a rapidly changing society.

Lacking close friends, young McReynolds channelled his energies toward the study of plants and birds which could be examined without leaving the family's estate. At the age of seventeen, he entered Vanderbilt University in Nashville where he excelled at scientific studies. He also became interested in politics and displayed skills in debate. He became editor of the school paper, and graduated class valedictorian in a class of 100 students in 1882. McReynolds began postgraduate work, but left Vanderbilt to study law at the University of Virginia. The school's most distinguished professor, Professor Minor, was unquestionably the first person since McReynolds' father to exert much influence on the young man's development. Minor inculcated in his students the concept of law as an immutable verity, which merely confirmed McReynolds' own perceptions of society in general. As both a willing and enthusiastic student, McReynolds was able to take his degree in only fourteen months under Minor's guiding tutelage.

Following graduation, McReynolds served two years in Washington as an assistant to Senator Howell Jackson, a Tennessee Democrat. He returned to Nashville, and established himself in the practice of law from 1884 until 1903. Representing primarily corporate clients, McReynolds' dignified appearance and comports gained for him a certain reputation, but denied to him broad public appeal. His aloof attitude and reserved professional style undoubtedly contributed to his defeat in an unsuccessful bid for Congress in 1896. McReynolds returned to the practice of law, serving for awhile as a professor of law at Vanderbilt.

In 1903, McReynolds became Assistant Attorney General under Philander Knox. His appointment was partly the result of personal connections, but more likely a result of his political acceptability. As a "Gold Democrat," he was acceptable to President Theodore Roosevelt, a progressive Republican, and during Roosevelt's administration,

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The Supreme Court during the early 1930's was dominated by its four conservative members — Associate Justices Van Devanter, McReynolds, Sutherland and Butler.



Drawing on the notorious reference to the "four horsemen" of Notre Dame's legendary football team, Clifford Berryman's 1937 cartoon presents a cynical view of FDR's "court-packing" plan.

McReynolds (continued)

McReynolds gained a reputation as a trust-buster for his zealous enforcement of the Sherman Anti-Trust Act. Though McReynolds had resigned the post in 1909, President Taft asked him to return to office to assist in the final dissolution of James Duke's tobacco trust, a case which McReynolds had tenaciously pursued in the previous administration. Displaying his independent nature, McReynolds again resigned, this time in protest over Attorney General George Wickersham's compromise settlement with the Duke monopoly. McReynolds then returned to Democratic Party politics in Tennessee, supporting Woodrow Wilson in his successful bid for the presidency in 1912. He was rewarded for his efforts with appointment as Attorney General in 1913.

McReynolds' tenure as Attorney General was brief and tempestuous. Controversies arose over unsubstantiated reports that the Justice Department was spying on federal judges, and that the cost of the new Justice Department building far exceeded all reasonable estimates. The most damaging accusations involved McReynolds' attempts to delay prosecution of the son of a high government official

for an alleged violation of the Mann Act. Although McReynolds' intent in all three cases was above reproach, his violent temper and abrasive nature caused President Wilson considerable embarrassment. The death of Associate Justice Harold Lurton provided the President with a perfect opportunity to elevate McReynolds to the Court, thereby demonstrating his support for the Attorney General while simultaneously putting an end to his political difficulties.

Once on the Court, McReynolds actively supported a form of economic competition largely free from the restraints of either government or monopoly. He frequently found himself at odds with his fellow justices; though on the bench for 27 years, McReynolds wrote few majority opinions. His dissents often included thinly veiled personal attacks upon his political and philosophical adversaries. But his most scathing criticisms were reserved for President Franklin D. Roosevelt, whom he once described as an "utter incompetent."

Roosevelt, however, was not the sole target of McReynolds' wrath. His inherited lack of social grace and the absence of close friends or family, left the confirmed bachelor a lonely and embittered man. His relations with fellow Justices Brandeis and Cardozo were at best cool, and more often rude and explosive. He refused to speak to Justice John Clarke, whom he considered unequal to the tasks of a Supreme Court justice. On one occasion, Justice Harlan Fiske Stone commented to McReynolds that a particular attorney's brief had been "... the dullest argument" he had ever heard; in typical fashion, McReynolds is reported to have replied that "the only duller thing I can think of is to hear you read one of your opinions." Court employees who have orally passed on stories about this unusual Justice reported that he was one of the loudest objectors to the accommodations of the Supreme Court building. Legend has it that he demanded (and got) treatment on the marble floors to assure he would not become victim of the high polish applied to the marble. And, when the first woman to be employed in the Office of the Clerk of the Court was installed, she was on occasion forced to temporarily absent herself when the "tap-tap" of McReynolds' cane was heard approaching.

McReynolds' biting sarcasm and irascible behavior is too well documented to be ignored or overlooked. In private life, however, he could be both "gracious and considerate." Justice Oliver Wendell Holmes — McReynolds' philosophical antithesis — once remarked that "poor McReynolds, is, I think, a man of more feeling and secret kindness than he would get credit for." Even his colleagues were surprised to learn that following the German blitz in Europe McReynolds had quietly adopted 33 young children victimized by the war. Equally surprising was McReynolds' will which bequeathed the majority of his estate to local charities, including nearly \$100,000 for the Children's Hospital in Washington, D.C., and the Salvation Army.

Justice McReynolds died as he had lived — alone in a Washington hospital on August 24, 1946. He was buried in a simple ceremony in Elkton, Kentucky unaccompanied to his final resting place by the traditional representatives of the Supreme Court.

Aitken (continued from page three)

Aitken's work for the Supreme Court building conforms to this philosophy. Heavily influenced by the works of Michaelangelo and Rodin, his figures are somewhat exaggerated in size and have heavy musculature. Cass Gilbert's neo-classical theme dictated the use of idealized, stylized figures. The pediment filling the portico over the Court's main entrance is roughly 18 feet tall at its apex and 60 feet long. Rising above the Corinthian colonnade, the central figure is an allegorical representation of "Liberty enthroned." Holding the scales of justice in her lap, she is guarded on either side by two Roman soldiers representing "Order" and "Authority"; to either side of them, are individuals representing "Council." Aitken used living individuals associated with the Supreme Court as models for these figures. To the left of the Roman guards are Cass Gilbert, the architect of the building, and Elihu Root, a prominent lawyer, statesman, and trustee of the Metropolitan Museum of Art. To the right are Chief Justice Charles Evans Hughes and the sculptor himself, Robert Aitken. At either end of the pediment are the reclining figures of Chief Justices John Marshall and William Howard Taft. These figures symbolize research and are intended to be idealized portraits of the men as young students. The likenesses of Root and Aitken are particularly accurate.

Among the plaster models presented to the Society by the Gruns is a study for the head of "Liberty." She is portrayed full face, with a crowned head. Petal shaped pieces extend from the base of the crown in a fashion reminiscent of the Statue of Liberty in New York. Two other plasters were working models of Roman soldiers, which may have been early studies for the pediment. They corre-



This plaster most likely served as a preliminary model for Aitken's "Guardians of the Portal."

late more closely, however, with the "Guardians of the Portal" — sculptures on the Pennsylvania Avenue side of the National Archives building which Aitken executed in 1935. Carved in relief on single limestone slabs at either end of the central door, the finished sculptures reach a height of approximately nine feet. Aitken also executed two large statues entitled "Past" and "Future" which stand on the Pennsylvania Avenue side of the National Archives building. These statues are Neoclassical in style and conceptualize "Study the Past," and "What is Past is Prologue." Aitken also was responsible for many of the seals that surround the top of the Archives building. Done in tondo form, they represent different branches of the government, such as the Department of Labor and Congress.

In addition to his work on these two famous public buildings, Aitken did a large bronze memorial to Samuel Gompers, located at Massachusetts Avenue and 10th Street, N.W. in Washington, D.C. Perhaps Aitken's most famous early work was the "Fountain of the Earth" composition which he created for the Panama Pacific Exposition in San Francisco in 1915. The most innovative and interpretive of Aitken's works, the sculpture incorporated artificial illumination and jets of steam to create the effect of "the earth swimming out of chaos." Heavy relief panels dealt with such controversial themes as natural selection and survival of the fittest.

Although Aitken's sculpture for the Supreme Court was more conventional than his fountain, it clearly reflected his style and proven ability, and it has stood in silent tribute to both his skill and vision as a great American artist.



Aitken's study of "Liberty."



Mr. Justice McReynolds at home in his study.

IN MEMORIAM

During the last few months, the Supreme Court Historical Society has lost two of its most prominent leaders, Robert T. Stevens and Frederick M. Vinson, Jr. The contributions of these two trustees have been of inestimable value especially during the Society's nascent years. Their advice and guidance, and especially their friendship, will be sorely missed.

Frederick M. Vinson, Jr. 1925-1982

Frederick M. Vinson, Jr., son of former Chief Justice Vinson and Chairman of the Society's Board of Trustees, died on November 21 at Sibley Memorial Hospital, Washington, D.C. after suffering a heart attack. A Memorial Service was held at the National Cathedral.

Mr. Vinson was born in Louisa, Kentucky on April 3, 1925. He attended Washington and Lee University, where he was a star baseball player and was elected to Phi Beta Kappa. He remained at Washington and Lee, to take his law degree and was inducted into the Order of the Coif. He was admitted to the Bar in the District of Columbia in 1951, and went on to become a prominent Washington attorney.

In 1965, Mr. Vinson was appointed Assistant Attorney General of the Justice Department's Criminal Division, an office he held until 1969. During his tenure, he successfully argued before the Court the jury-tampering conviction of Teamster President Jimmy Hoffa.

A senior partner of Reasoner, Davis and Vinson, Mr. Vinson served as President of the D.C. Bar Association in 1971-1972, and was a member of the House of Delegates of the American Bar Association from 1971-1974. A fellow of the American Bar Foundation and member of the American College of Trial Lawyers, Mr. Vinson was active in local civic affairs, serving as Chairman of the board of trustees of the D.C. Public Defenders Service from 1976-1978. He also served for many years as a member of the board of professional responsibility of the U.S. District Court for the District of Columbia. A charter member of the Society and one of the original trustees, Mr. Vinson was elected Chairman of the Board in 1981.

Robert T. Stevens 1899-1983

Robert T. Stevens, a founding trustee and former Chairman of the Society's Board of Trustees, died at his home in Edison, New Jersey on January 30, 1983. Memorial services were held at the Crescent Avenue Presbyterian Church in Plainfield, New Jersey; a private burial service was held at West Point Cemetery at the United States Military Academy, West Point, New York.

Mr. Stevens was born on July 31, 1899 in Fanwood, New Jersey. He joined his family's textile firm—J. P. Stevens & Company—following his graduation from Yale University in 1921. Holding successively important offices, he became president of the company in 1929 upon the death of his father, John P. Stevens, Sr. In 1942, Mr. Stevens was elected Chairman of the Board of the Company, a position he held until his appointment by President Eisenhower in 1952 as Secretary of the Army.

Mr. Stevens' association with the United States Army began during World War I, when he served as a Second Lieutenant in a field artillery company. In 1941, he attended the Command and General Staff School, Fort Leavenworth, Kansas, completing the course of study on December 6th—the day before the Japanese attacked Pearl Harbor. Mr. Stevens served as a Colonel in the office of the Quartermaster General in 1942, and from 1943-1945 as Deputy Director of Purchases.

Following his service as Secretary of the Army during the Eisenhower Administration, Mr. Stevens served as a member of the Board of Visitors to the United States Military Academy. In 1977, in recognition of his long and productive years of service, Mr. Stevens received the Sylvanus Thayer Award from the Academy's Association of Graduates. In 1981, the Robert T. Stevens Leadership Development Program was inaugurated at the Academy in his honor to establish an annual seminar for outstanding cadet leaders.