

Quarterly

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SPRING 1984

Lecture Draws Record Crowd At Society's Ninth Annual Meeting

A standing room only crowd greeted Professor William E. Leuchtenburg in the restored Supreme Court chamber of the U.S. Capitol on Monday, May 14, 1984. Professor Leuchtenburg, guest lecturer at the Society's ninth annual meeting, delivered a lively and informative talk on President Franklin D. Roosevelt's second "court-packing" plan to an estimated crowd of well over 150 Society members and their guests. (A brief summary of the lecture appears elsewhere in this issue of the *Quarterly*.)

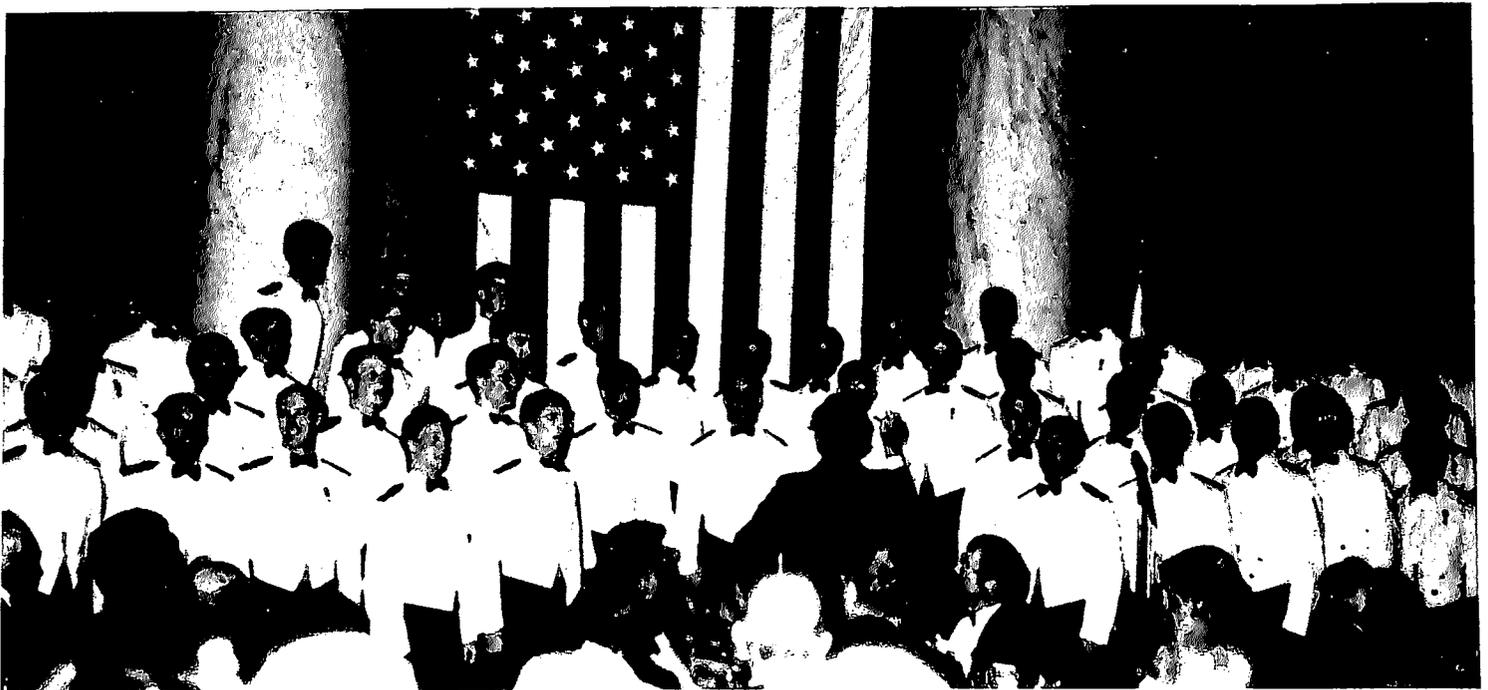
Professor Leuchtenburg's address was the opening event in a day-long schedule of activities marking the Society's ninth year of operation. Following the lecture, many in the audience walked across the Capitol grounds to the Society's headquarters on Second Street to attend an informal reception. The headquarters' proximity to the Supreme Court and the Capitol enabled the Society to extend to the mem-

bership this additional opportunity to meet and greet one another.

At four o'clock, Dr. Maeva Marcus invited interested members to attend a brief talk on the progress of the Society's Documentary History Project which she has directed since its inception. Dr. Marcus noted that the first volume of the long-awaited series will be published later this year. She also answered questions and discussed in detail certain aspects of the project's work. Those who chose not to attend Dr. Marcus' talk were given a special tour of the Court building conducted by Sue Simmonds of the Court Curator's office.

At six o'clock, Society Chairman Kenneth Rush opened the annual board of trustees meeting in the courtroom of the Supreme Court building. The Chairman reported to the trustees that "... with the acquisition of the new headquar-

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The U.S. Naval Academy Glee Club, led by Dr. John Talley, entertained guests in the Great Hall at the Society's ninth annual dinner.

Annual meeting (continued from page one)

ters building and recent strides in membership growth, the Society is moving into a new period of greater stability and greater service."

Society President Linwood Holton presided over the annual meeting of the general membership which followed the trustees' meeting. After calling the meeting to order, he asked for a moment of silence in memory of Professor William F. Swindler, whom he described as "... the guiding force behind many of the Society's most important programs since its founding in 1974." Professor Swindler, who had served on the law faculty of the College of William and Mary for many years, was a founding trustee of the Society and had served as editor of the *Yearbook* since 1976.

President Holton then proceeded with the meeting's agenda and the election of new trustees. Elected by the membership to three-year terms were the following: Elizabeth S. Black, Vincent C. Burke, Jr., Virginia Warren Daly, Charles T. Duncan, Frank B. Gilbert, Lita Annenberg Hazen, Linwood Holton, Earl W. Kintner, Peter A. Knowles, Sol M. Linowitz, William P. Rogers, and Justin A. Stanley.

Following the election of trustees, the President noted "... the unfortunate tendency to allow the necessity of conducting business at our annual meetings to obscure the historical purposes for which we donate our time and support." In response to this problem, he offered a few brief readings from the Court's rich history as an appropriate way to close the meeting. He selected two anecdotes concerning Justice Stephen Field's early experiences during California's gold rush days which, from all appearances, those in attendance found both entertaining and amusing. (Both extracts appear elsewhere in this *Quarterly*.) President Holton then recognized Chief Justice Warren E. Burger, the Society's Honorary Chairman, who thanked the members for their continuing support of the Society and commented on the Society's service to the Court. Following the meeting, members and their guests made their way to the East and West Conference Rooms for the annual reception, which was fol-



Professor William E. Leuchtenburg presents the Society's ninth annual lecture in the restored Supreme Court Chamber of the U.S. Capitol.

lowed by dinner in the Great Hall. This year's entertainment was provided by the String Ensembles of the U.S. Army Band and the U.S. Naval Academy Glee Club which presented a program of choral music. All those in attendance agreed that Chief Judge Howard Markey and the members of his committee had once again provided an exceptional annual meeting and dinner.



The Chief Justice handed down his opinion on the Society's progress and thanked the members for their strong support at this year's membership meeting.

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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The Strolling Strings of the U.S. Army Band—an always popular feature at the Society's annual dinner.

The Life and Death of FDR's Second Court-Packing Plan

Before the largest audience ever, Dr. William E. Leuchtenburg, Professor of History at the University of North Carolina at Chapel Hill, recounted the fascinating circumstances surrounding the life and death of President Franklin D. Roosevelt's second effort to modify the composition of the Supreme Court in 1937. Professor Leuchtenburg began his lecture by telling the "twice-told tale" of how FDR's first attempt to add six new justices—an apparent act of retaliation for the Court's refusal to endorse his New Deal initiatives—met with defeat when Chief Justice Hughes convincingly demonstrated that political rather than practical considerations underlay the President's proposal. The issue appeared to receive a more ultimate resolution with Justice Van Devanter's retirement, and the Court's decision in the Social Security case in the Spring of 1937, when as one commentator noted, "a switch in time saved nine."

The story, as Professor Leuchtenburg pointed out in splendid detail, was not yet over. Although the plan to reform the Court appeared to have been soundly defeated, and an opposition leader in the Senate Judiciary Committee was heard humming the old tune, "Massa's in the Cold, Cold, Ground," Roosevelt very nearly succeeded in getting a second, modified court-reform bill enacted into law, a political victory for the President which would have dramatically altered the history of the Court.

For nearly an hour, Professor Leuchtenburg filled the old court chamber in the Capitol with a blow-by-blow account of how Roosevelt's efforts initially suffered, and were ultimately brought to the brink of success through the skillful maneuvering of his political allies on the Hill, only to die quite literally when his chief lieutenant—Senate Majority Leader Joe Robinson—fell victim to a fatal stroke. From the defection of his own Vice President, John Garner, to the

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F.D.R.'s first "Court enlargement proposal" was greeted with mixed reaction in the Sunday, February 21, 1937 edition of the *Washington Post* (below). Sweeping all other news from the front page, the *Post's* coverage discussed the contemporary criticisms of the plan while placing it in an historical perspective. Despite F.D.R.'s attempt to take his message to the people in a famous "fireside chat", his initial effort to pack the Court failed. His second effort was the subject of this year's exciting annual lecture.

SECTION III EDITORIALS Special Articles

The Washington Post

NEWS REVIEW America Speaks • Books SECTION III

WASHINGTON: SUNDAY, FEBRUARY 21, 1937

Roosevelt Supreme Court Proposal Boldest in U. S. History

Six Changes Made to Date By Congress

None, However, Seen as Deliberate Attempt at Tampering.

Three Obviously Result of Congestion and New Territories.

In Franklin Roosevelt's history, never before in the history of the country has so bold a change been made to alter the composition of the Supreme Court by increasing its size in an other manner, as that undertaken by President Roosevelt in his second proposal to permit a maximum of nine justices of that tribunal.

On his first proposal Congress had changed the size of the Supreme Court to seven in 1789. All subsequent changes have been made because of need for additional courts and the need for additional justices to handle the increasing caseload.



Throughout the 144 years of the existence of the Supreme Court, Presidents have presided with that body. Great changes with "packing" the Court, was tampered to President's Weekly, reproduced above, for his appointment.



President Roosevelt and Chief Justice Hughes are in the center of a historic battle at the present time as the judicial reform proposal is considered. Illustration courtesy of The Washington Post, on the plan to add six justices to the Court, is reproduced above.



Without any doubt of and effect in any one year. A month was added to these terms of court in Washington.

Congestion In Judiciary Now Claimed

"Midnight" Judges Law Defended as More Than "Jobbery."

Historians Deny Grant "Parked" High Tribunal in 1869.

Historians who have written extensively on the subject of the "Midnight Judges" have long maintained that the law was not passed to "park" the Court, but to provide for the needs of the country in the event of a sudden increase in the number of cases. The law was passed in 1801, and it was not until 1802 that Congress passed the Judiciary Act of 1802, which reduced the number of justices to five.

The Washington Post

Court Packing (continued)

scathing indictment of the report of the Senate Judiciary Committee, it appeared that FDR had finally gone too far—that even the leaders within his own party no longer felt duty bound to put up with his exotic ideas and brash young advisors. During the darkest moments of the Spring of 1937, seasoned veterans and political insiders speculated that Roosevelt might even have trouble holding a major portion of his party's support for his renomination as President in 1940.

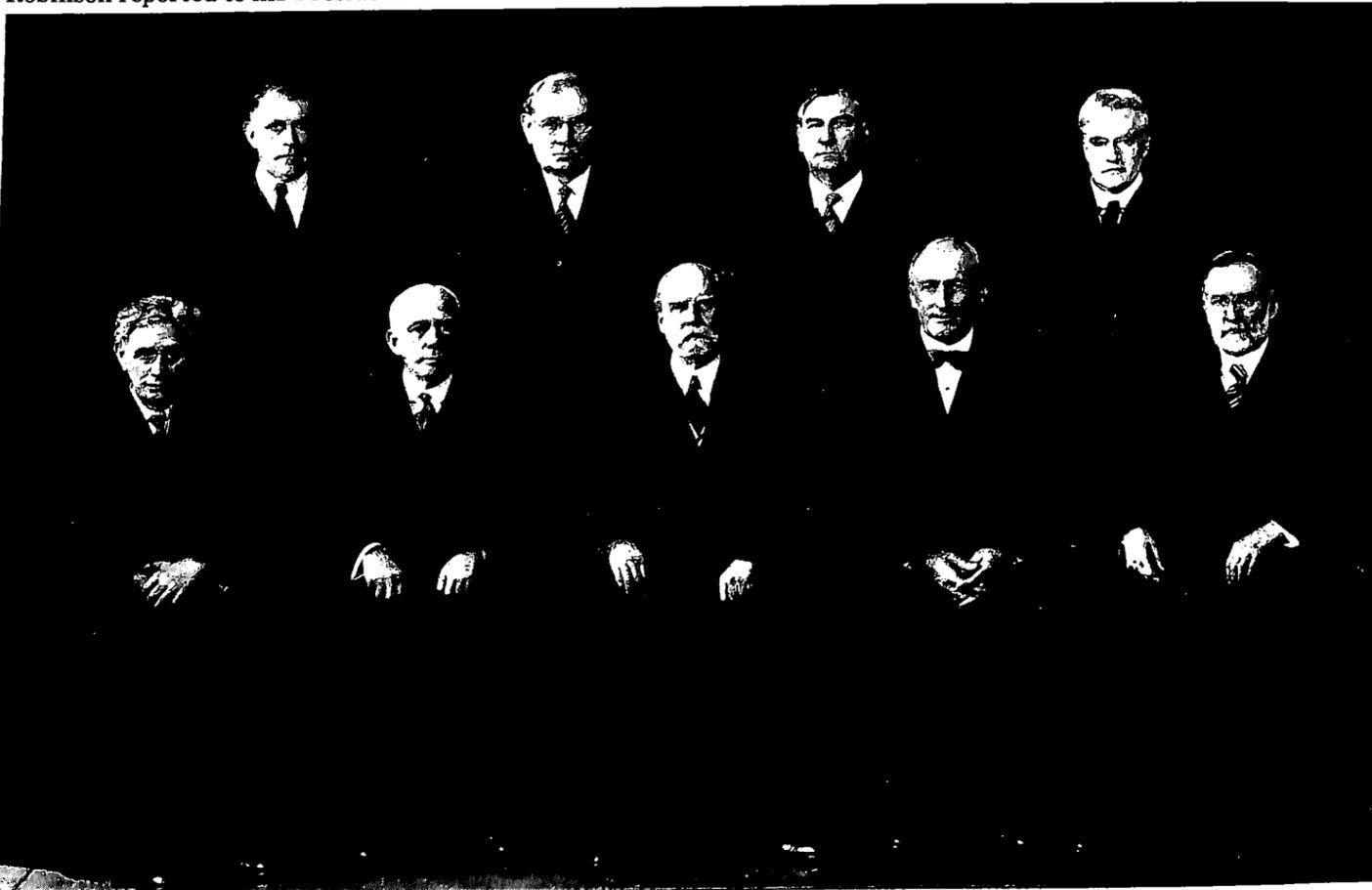
But from this low ebb, Roosevelt rebounded in typical fashion. Rather than lash out at his opponents, he invited them to "picnic" with him on a warm summer's weekend in June. In the end, some 340 congressmen attended a rather unusual weekend of relaxation and lobbying with the President on an island in the middle of the Chesapeake Bay. The Jefferson Island "frolic" proved an inspired idea. More like a "jolly innkeeper who radiated geniality" than an embattled chief executive, the President created a fraternal spirit during this "three-day democratic jamboree" that reassured wavering supporters, and signaled opponents that rumors of his political demise were at best premature.

Following Roosevelt's triumph of the June weekend at Jefferson Island, Senate Majority Leader Joe Robinson began the seemingly impossible job of putting together a majority behind FDR's revamped court-packing bill. By early summer, the task was completed, and an exuberant Robinson reported to his President that he had the votes to

pass the amended Judiciary Bill. At this point in his lecture, Professor Leuchtenburg presented his audience with a remarkable document—a copy of an official U.S. Senate tally sheet prepared for the private use of Senator Edward Burke of Nebraska, a leading Republican opponent of the bill. Professor Leuchtenburg reported that he had come across the tally sheet in the Cornell University Library among the papers of Frank Gannett—an important newspaper publisher and the leader of the media lobby against the legislation. The tally sheet clearly indicated 52 votes in favor of passage, and only 44 against.

The great debate over packing the high court finally reached the Senate floor in early July, and many observers predicted an early victory for the President, especially if the weather turned hot. The prospect of being trapped in the Capital through the summer was enough to make even strong men falter, and nearly a third of the Senate was over sixty!

As Professor Leuchtenburg told the fascinating story, the outcome of the Court-packing bill ultimately hinged on the weather, and the physical endurance of the Senate. As the debate raged on, "a heat wave from the sun-baked prairies" hit Washington, the thermostat reached the mid-90s, and "the jungle breath from the Potomac flats began to wither the city." The thermostat seemed stuck at 82 at midnight, and one Congressman wrote home: "Please remember that people in Washington are committing suicide to escape the heat."



Despite six years in the White House, President Roosevelt was faced with the same Court in 1937 that had witnessed his first inauguration in 1933. This circumstance, and the Court's continued opposition to the New Deal, undoubtedly led to the President's complaint about these "Nine Old Men".



In this famous Berryman cartoon, one of many during the Court packing controversy, President Roosevelt appears with Carl MacFarland, an official in the Justice Department, who helped Attorney General Homer Cummings draft the plan.

The heat and humidity grew worse, and the city became an "airless furnace, but Senator Robinson intensified his attack. He called the Senate into session on Saturday, and he blocked all attempts for an adjournment. His colleague, Senator Copeland, a physician, warned that it would be nothing less than manslaughter to hold Congress in session through a Washington summer. Robinson however, was intent upon breaking the back of the opposition filibuster, knowing that he had the votes if he could only force the measure to the floor.

No one, however, could have predicted that the heat—or death itself—would ultimately prove to be no friend of FDR's court-packing plan. In the dramatic conclusion to an unusually exciting tale, Professor Leuchtenburg chronicled Senator Robinson's final hours: the raging oration before the Senate; the apparent momentary lapse of memory; the quiet evening at home with a copy of the Congressional Record; and the fatal coronary attack which left the Senate Majority Leader face down on his bathroom floor.

Robinson's sudden death stunned the Senate, and brought the full pressure of worried wives and concerned physicians upon many Senators to hasten their departure from the sweltering Capital. As one columnist noted glumly, "Death has assumed leadership in the Senate." While seasoned veterans concerned themselves with the immediate business at hand of choosing Robinson's successor as Majority Leader, freshmen senators met privately and decided that enough was enough. No longer bound by either promise or threat to the man who had controlled the Senate with an iron hand and velvet glove, they abandoned as a group the President's judicial reform bill. Handing victory to the jubilant opposition, they ended one of the most significant chapters in the history of the three branches of the national government, and preserved the integrity of the judicial appointment process. Concluding that in the end circumstances rather than wisdom saved the Court, Professor Leuchtenburg brought to a close an immensely popular ninth annual lecture.

Holton Recalls Justice's Early Exploits at Annual Meeting



Society President Linwood Holton, who appeared to enjoy telling the Field stories as much as the audience enjoyed hearing them.

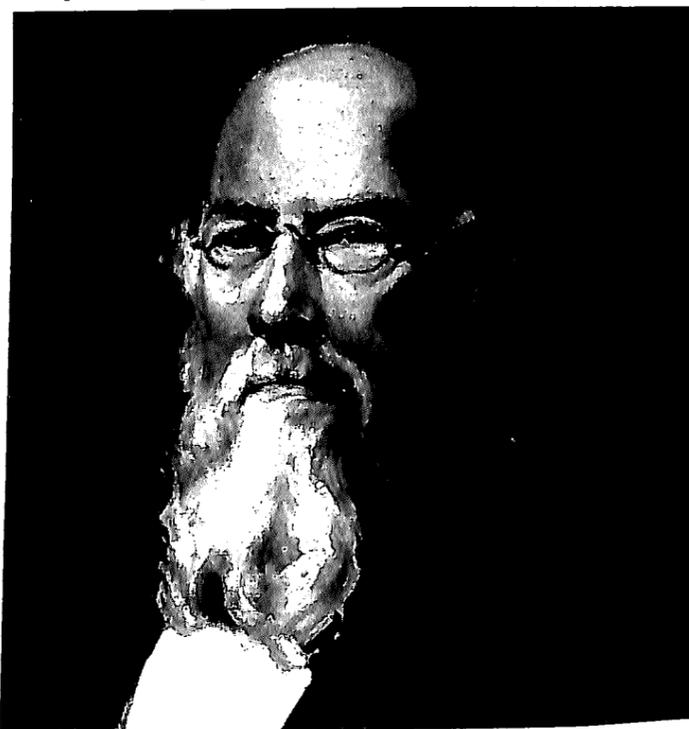
Ed. Note—The following are two anecdotes extracted from Justice Stephen Field's Personal Reminiscences of Early Days in California, which were read aloud by Society President Linwood Holton at this year's membership meeting. The first concerns Field's arrival in San Francisco in 1850, shortly after the beginning of the California Gold Rush. Unsuccessful in his attempt to open a law practice there, Field traveled upriver in search of better prospects. The second anecdote concerns the circumstances of his trip and his arrival at "Yubaville."

Passing down Clay street, and near Kearney street, my attention was attracted by a sign in large letters, "Jonathan D. Stevenson, Gold Dust Bought and Sold Here." As I saw this inscription I exclaimed, "Hallo, here is good luck," for I suddenly recollected that when I left New York my brother Dudley had handed me a note against Stevenson for \$350 or \$400; stating that he understood the Colonel had become rich in California, and telling me, that if such were the case, to ask him to pay the note. I had put the paper in my pocket-book and thought no more of it until the sight of the sign brought it to my recollection, and also reminded me of my solitary dollar. Of course I immediately entered the office to see the Colonel. He had known me very well in New York, and was apparently delighted to see me, for he gave me a most cordial greeting. After some inquiries about friends in New York, he commenced talking about the country. "Ah," he continued, "it is a glorious country. I have made

two hundred thousand dollars." This was more than I could stand. I had already given him a long shake of the hand but I could not resist the impulse to shake his hand again, thinking all the time of my financial condition. So I seized his hand again and shook it vigorously, assuring him that I was delighted to hear of his good luck. We talked over the matter, and in my enthusiasm I shook his hand a third time, expressing my satisfaction at his good fortune. We passed a long time together, he dilating all the while upon the fine country it was in which to make money. At length I pulled out the note and presented it to him. I shall never forget the sudden change, from wreaths of smiles to an elongation of physiognomy, expressive of mingled surprise and disgust, which came over his features on seeing that note. He took it in his hands and examined it carefully; he turned it over and looked at its back, and then at its face again, and then, as it were, at both sides at once. At last he said in a sharp tone, "That's my signature," and began to calculate the interest; that ascertained, he paid me the \$440 in Spanish doubloons, but some of it may have been in gold dust. If it had not been for this lucky incident, I should have been penniless before night.

* * *

I took the little steamer "Lawrence," for Vernon, which was so heavily laden as to be only eighteen inches out of water; and the passengers, who amounted to a large number, were requested not to move about the deck, but to keep as quiet as possible. In three or four hours after leaving Sacramento, the Captain suddenly cried out with great energy, "Stop her! stop her!"; and with some difficulty the boat escaped running into what seemed to be a solitary house



Associate Justice Stephen Field
(1863-1897)



Following the thousands who rushed to the California gold fields, Stephen Field, a young attorney fresh from the East, quickly established himself as a leading citizen in the new state. His skill in resolving land disputes to the satisfaction of his clients eventually led to a seat on the California Supreme Court and his appointment to the U. S. Supreme Court in 1863.

standing in a vast lake of water. I asked what place that was, and was answered, "Vernon," — the town where I had been advised to settle as affording a good opening for a young lawyer. I turned to the Captain and said, I believed I would not put out my shingle at Vernon just yet, but would go further on. The next place we stopped at was Nicolaus, and the following day we arrived at a place called Nye's Ranch, near the junction of Feather and Yuba Rivers.

No sooner had the vessel struck the landing at Nye's Ranch than all the passengers, some forty or fifty in number, as if moved by a common impulse, started for an old adobe building, which stood upon the bank of the river, and near which were numerous tents. Judging by the number of the tents, there must have been from five hundred to a thousand people there. When we reached the adobe and entered the principal room, we saw a map spread out upon the counter, containing the plan of a town, which was called "Yubaville,"

and a man standing behind it, crying out, "Gentlemen, put your names down; put your names down, all you that want lots." He seemed to address himself to me, and I asked the price of the lots. He answered, "Two hundred and fifty dollars each for lots 80 by 160 feet." I replied, "But, suppose a man puts his name down and afterwards don't want the lots?" He rejoined, "Oh, you need not take them if you don't want them: put your names down, gentlemen, you that want lots." I took him at his word and wrote my name down for sixty-five lots, aggregating in all \$16,250. This produced a great sensation. To the best of my recollection I had only about twenty dollars left of what Col. Stevenson had paid me; but it was immediately noised about that a great capitalist had come up from San Francisco to invest in lots in the rising town. The consequence was that the proprietors of the place waited upon me and showed me great attention.

Changing of the Guard: Society Appoints new Executive Director

At its June 20th meeting, the Society's Executive Committee thanked Executive Director Gary J. Aichele for his dedicated service to the Society during the past four years, and announced the appointment of Cornelius B. Kennedy of Washington, D.C. as the Society's new Executive Director. Mr. Aichele had informed the Board of Trustees prior to the annual meeting of his decision to accept a faculty position at Norwich University in Northfield, Vermont. A Ph.D. in Government as well as a lawyer, Mr. Aichele will leave in August to commence his teaching career this Fall in American Government, Constitutional Law, and American Legal History.

Mr. Kennedy was chosen from a list of outstanding candidates. He was raised in Chicago, and after graduation from Yale University and the Harvard Law School, practiced law in Chicago with the firm of Mayer, Meyer, Austrian & Platt. He spent a year as Assistant United States Attorney in Chicago before joining Senate Minority Leader Everett Dirksen's staff in Washington as legal counsel. Presently of counsel to the St. Louis firm of Armstrong, Teasdale, Kramer & Vaughan, Mr. Kennedy is a fellow of the American Bar Foundation, a past Chairman of the American Bar Association's Section on Administrative Law; he has also served five terms as a public member of the Administrative Conference of the United States, and he served as Chairman of its Committee on Rulemaking for most of this period. Among his other accomplishments he has written numerous articles on administrative law, public policy and constitutional history.

Mr. Kennedy will join the Society's executive staff later this summer.



After four years as the Society's Executive Director, Gary J. Aichele (above) informed the trustees during this year's annual meeting that he would join the faculty of Norwich University in Northfield, Vermont in August.

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