



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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Society Plans Twelfth Annual Meeting

Plans for the Society's Twelfth Annual Meeting are being finalized. The meeting will be held Monday, May 18, 1987 in Washington, D.C. The first event of the day will be the Annual Lecture which will be given in the Restored Supreme Court Chamber in the Capitol building at 2:30 PM. This year's lecture, entitled "The Relationship of Church and State in American Constitutional Law: A Bicentennial Reflection," will be given by the Honorable Kenneth W. Starr, United States Circuit Judge, District of Columbia. Judge Starr's legal career prior to his appointment to the Circuit Court included service as a Law Clerk to Chief Justice Warren E. Burger from 1977-1980, work in private practice, and service as Counselor to the Attorney General, U.S. Department of Justice, 1981-1983.

A special tour of the Supreme Court Building is scheduled for 4 PM for those interested. The Annual Meeting of the

General Membership will take place at 6:30 PM in the Supreme Court Chamber, with the Meeting of the Board of Trustees to follow. The reception will begin at 7:00 PM with dinner to follow at 8 PM. Members will receive formal invitations and reservation cards the first week in April.

Members are reminded that because of space limitations and the popularity of this event, each member will be limited to one guest. Those members desiring to bring additional guests are encouraged to make gifts of a year's membership in the Society to such guests. One gift membership would allow a member to bring a spouse and an additional couple to the dinner.

Reservations for the Reception and Dinner are taken on a first-come, first-served basis when the reservation card and payment are received at the Society's office.



U.S. Court of Appeals Judge Kenneth Starr will deliver the Society's Annual Lecture in the Restored Supreme Court Chamber in the U.S. Capitol building. The Court ceased to convene in this chamber in 1860. For the next 90 years the room served as a law library.

Judges, Lawyers, and the Bicentennial of the Constitution

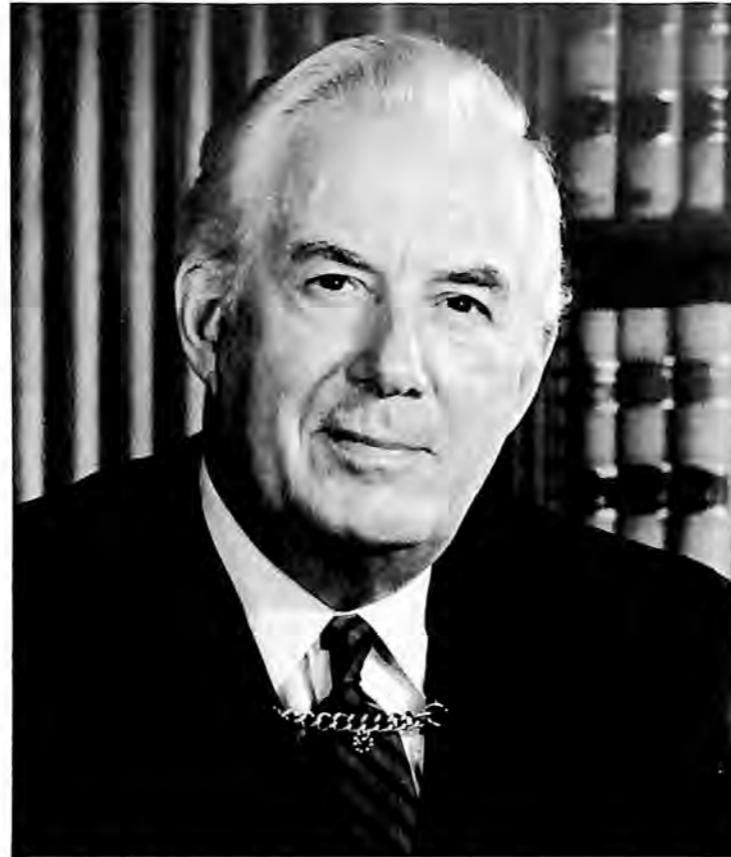
by
 Chief Justice Warren Burger
Chairman, Commission on the Bicentennial of the Constitution
Chief Justice of the United States, 1969-1986

As we approach the Bicentennial of our Constitution, we have a massive communications task before us. The American people, by and large, know far too little about the Constitution, how it came into being, and how difficult it was to achieve. Yet we tend to take it for granted. A 1979 Gallup poll, for example, showed that 76 percent of adult Americans did not know the subject matter of the First Amendment. Four years later, an article in *U.S. News & World Report* noted that nearly 25 percent of the 17-year-olds polled thought it was illegal to start a new political party.

To remedy this situation, members of the legal profession can and should play a leading role in telling the great story of the Constitution to the American people. Just as members of the legal profession of the late eighteenth century played a leading role in framing this unique document and explaining it to their countrymen, lawyers must play a major role today.

Since the earliest days, there has been a need for public-spirited, articulate men and women to explain the fundamental principles under which we grew from a wilderness with less than four million people to a world power of nearly 230 million. Men like George Washington, James Madison, and Alexander Hamilton, for example, recognized very early the need for a stronger national government to take the place of the loose alliance, beset by regional and parochial differences, that existed under the Articles of Confederation. But it took a great deal of effort to get that message across to the American people in the late eighteenth century.

When the thirteen former colonies joined together under the Articles of Confederation, they did so as separate, independ-



Chief Justice Warren Burger vacated the Court's center chair citing the pressing demands of his role as Chairman of the Commission on the Bicentennial of the Constitution.



From left to right: George Washington, Alexander Hamilton and James Madison. Each of these men promoted a stronger, more centralized National government. They collectively saw the Articles of Confederation as providing too weak an alliance between the states.



Alton S. Tobey's "A More Perfect Union" depicts the signing of the Constitution in Philadelphia on September 17, 1787. The painting was commissioned by West Publishing Company to commemorate the Bicentennial. This reproduction was made available to the Society through the courtesy of Society Trustee Dwight D. Opperman.

ent, sovereign states. In many respects, the Articles themselves read like a multilateral treaty among independent nations, reflecting the jealousies among the thirteen states. Article III stated: "the said states hereby severally enter into a firm league of friendship with each other . . ." a "firm league of friendship" to carry on a war against a great world power!

The government created by the Articles was extremely weak, with no power to levy taxes and no authority to raise armies. One of the states, for example, had paid nothing in the way of taxes or contributions to the Confederation for at least five years before the meeting in Philadelphia. The soldiers under Washington often furnished their own clothing, their own rifles and sometimes even their own gunpowder. These conditions led to death and disease during that harsh winter at

Valley Forge, only a few miles from where the Constitutional Convention later met. Indeed, with such a government, it is a wonder the Revolution was successful, and that there was any occasion to convene delegates in Philadelphia.

The weakness of the Confederation no doubt helped shape the political philosophies of Washington and some of his officers, convincing them that a stronger central government was imperative. John Marshall, for example, was a young lieutenant with Washington at Valley Forge during that terrible winter. His views on the need for a strong national authority later led him to fight for ratification of the Constitution in his native Virginia. Years later this view influenced the opinions of the Supreme Court when Marshall became Chief Justice. Alexander Hamilton, one of Washington's staff officers, saw that we could never become a true nation as long as payment of taxes by the people and by the states was voluntary. The thirteen states, he said, needed a new structure of government, not one that appealed to "the narrow colonial sphere in which we have become accustomed to move" under the Confederation, but rather an "enlarged kind suited to the government of an independent nation."

Soon after the battle of Yorktown, the rivalries among the states and regions strained the Confederation almost to the breaking point and generated serious economic problems. Each state was free to set up trade barriers, each could issue its own currency, and some treated citizens of other states as aliens. Merchants and businessmen wanted and needed a

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 Assistant Editor David T. Pride

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system that would open the channels of trade and commerce and in turn stimulate manufacture.

To convert the thirteen state sovereigns into a true nation, it was imperative that trade barriers be abolished and that the thirteen states have a common currency, a central revenue system, a central banking system, a central authority to deal with commerce between the states and with other nations, and the power to raise and support armed forces. George Washington and others attempted to resolve some of these difficulties—beginning with such efforts as the Mount Vernon conference, which dealt with navigation on the Potomac and Chesapeake Bay—but quickly realized that piecemeal solutions were inadequate.

Convincing the states of the need for a stronger central government was no easy task in 1787 and 1788, however. During the Eighteenth Century and, indeed, well into the Nineteenth, many people tended to think of themselves as Virginians or New Yorkers first and Americans second. It is recorded that during the Revolution, when New Jersey troops reporting for duty at Valley Forge were asked to swear allegiance to the United States, the soldiers declined, saying, "New Jersey is our country."

Another difficulty was a deep-seated fear of strong central governments, stemming no doubt from the fact that the American people had only recently fought a revolution to escape from the distant, strong, insensitive central government in London. This fear was reflected in the action of the Continental Congress when it met in New York early in 1787 to

consider acting on the resolution of the 1786 Annapolis Convention for a constitutional convention. Washington, Hamilton, Madison and others had worked tirelessly to persuade their countrymen of the need for a true constitutional convention. Madison and Hamilton had persuaded the Annapolis convention to invite the states to send delegates to such a convention in Philadelphia in the spring of 1787, and had finally succeeded in getting the Continental Congress to consider the issue. But the Continental Congress refused to convene a full-scale constitutional convention. Its mandate was narrow and explicit: The meeting was called "for the sole and express purpose of revising the Articles of Confederation." There was no hint of drafting a new constitution.

Several prominent Americans were so fearful of a strong central government that they strongly opposed the creation of a constitution. Many others lacked interest in the whole affair. As a result, of the more than 70 delegates appointed, only 55 ever showed up. Rhode Island refused even to send delegates.

The key figures of the Philadelphia Convention were nonetheless undaunted when the delegates finally met in May 1787. Despite the odds, Washington, Hamilton, Madison, and the others had been able to convince enough people of the need for a stronger central government that the Convention was a reality.

I have always found it interesting that most of the delegates—33 of them, in fact—had studied law. Four—John Blair of Virginia, John Dickinson of Delaware, Charles Cotesworth Pinckney of South Carolina, and John Rutledge of South Carolina—had their training at Middle Temple in London; and another, William Houstoun of Georgia, had been schooled at Inner Temple. These men knew something of the history of Rome and Greece as well as France and England. They had read Locke and Montesquieu. And many had played prominent roles in the revolution.

Getting the delegates to agree on a new constitution, however, required as much if not more persuasion than getting the states and the Continental Congress to agree to a meeting. The chief obstacle was convincing the delegates that the states needed to surrender some authority and sovereignty to a new, unknown, and as yet undefined national government. The delegates then had to find a method of electing the national legislature that would be acceptable to both the small and the large states. The lawyers at the Convention, using their analytical and persuasive skills to good advantage, played leading roles in resolving these great issues. They included Edmund Randolph, Governor of Virginia and later the first Attorney General of the United States, John Rutledge and Oliver Ellsworth, who later served as Chief Justices of the United States, and William Paterson and James Wilson, who later became associate justices.

Lawyers also led the fight for ratification. We know that *The Federalist Papers*, written by three lawyers, played a vital role in convincing the American people of the strengths of the proposed Constitution. Historians recognize those essays by Hamilton, Madison and John Jay—later our first Chief Justice—as the best political essays ever written about our system. And John Marshall, then a 33-year old lawyer, played an important role in Virginia's ratification convention by carefully countering Patrick Henry's powerful oratory with cool, logical reasoning.

Today, as the opening of the Bicentennial approaches, we face a challenge not wholly unlike that faced by the Founders: instilling in the hearts and minds of all Americans a deeper appreciation for and a keener understanding of our unique constitutional system and the principles on which it is based. The events of the past 40 years have brought home to us very forcefully that freedom is fragile, particularly in an open society whose members—and visiting enemies—are free to challenge both the principles on which our system of government is based and their application. We cannot defend or properly practice what we do not understand. We can best honor the Constitution by giving ourselves and those around us a history and civics lesson on its origin and meaning.

Plans and programs are already being developed throughout the country. There will be seminars, lectures, debates, speeches, and essay contests. Television shows will dramatize the historical events leading up to the Philadelphia Convention and ratification of the Constitution. Hundreds of thousands of words will be written and spoken as we hold a great American birthday party for our Constitution.

The Judicial Conference of the United States has formed a special committee on the Bicentennial, chaired by Chief Judge Howard Markey, to promote and coordinate the celebration within the Judiciary. This committee's activities and mission are ably discussed in Judge Markey's article. Similar committees—with membership open to lawyers and others in the community—are being formed in each of the Federal Circuits. Judge Arlin Adams, moreover, chairs a judicial Speakers' Bureau, and some 500 judges have already signed up.

Bicentennial Programs of Interest to Society Members

International Symposium

The Smithsonian Institution, in cooperation with the American Bar Association and the University of Virginia, will convene a symposium on "Constitutional Roots, Rights and Responsibilities" which will probe the Constitution's origins, reexamine its fundamental principles and their applicability to the present day, and generate fresh perspectives on the Constitution's role in governance in the coming years. Among the symposium speakers will be Supreme Court Justice William Brennan, Jr., and retired Chief Justice Warren Burger. The symposium will begin in Charlottesville at the University of Virginia, May 18-19, 1987, and move to Washington, D.C. at the Departmental Auditorium on Constitution Avenue, May 20-23, 1987.

California Program

The U.S. District Court for the Northern District of California Historical Society, in conjunction with the United States District Court for the Northern District of California, has a major program of symposia and public exhibits to celebrate the Constitutional Bicentennial. The first event was the opening of an exhibit entitled "The Fields and the Law" March 12 at the U.S. Courthouse in San Francisco.

The exhibit traces the illustrious and often controversial careers of the Field brothers, Supreme Court Justice Stephen J. Field, and David Dudley Field, author of the Field Codes, and

In addition, the American Bar Association is co-sponsoring, with the Bicentennial Commission and USA TODAY/Gannett, Inc., an essay contest for high school students. The top prize will be \$10,000 for the national winner. And West Publishing Company is co-sponsoring, with the Commission, a law school essay contest. West Publishing has also commissioned a painting of the signing of the Constitution and will place more than 20,000 in American high schools. A program to distribute millions of copies of the Constitution is being formulated; another program will seek to have millions of people sign the Constitution and thereby join those remarkable men at Philadelphia.

Ultimately, however, the Bicentennial's success depends on the willingness of patriotic Americans to press bicentennial programs in hundreds of communities. Lawyers and judges, as guardians of the Constitution, have a special responsibility in this regard, and I strongly encourage every member of our profession to become involved, by joining a local bicentennial committee, by taking part in the speakers' bureau, and by telling church and community groups the great story of how our Constitution came into being. I also urge everyone to read and study the great books about our Constitution and its history.

We of the legal profession, like our predecessors two hundred years ago, should take the lead in educating the American people—and all who seek freedom—about the Constitution and the principles on which it is based. Now, as in 1787, the future depends on the legacy we leave to the generations that will follow.

their nephew, Supreme Court Justice David Brewer. Such diverse incidents in Stephen Field's life as his disbarment
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Associate Justice William J. Brennan, Jr. is scheduled to speak at the Smithsonian's symposium on the Constitution on May 20.



This drawing, commemorating the Constitutional Centennial celebrated in 1887 appeared in a two volume report, authored by Hampton Carson, on the observances of that celebration.

The Judicial Conference Committee on the Bicentennial of the Constitution

by
Chief Judge Howard T. Markey, *Chairman*

At the direction of the Judicial Conference of the United States in October 1985, Chief Justice Burger appointed a Committee on the Bicentennial of the Constitution. Insuring widespread participation, he appointed a district or circuit court judge from each of the thirteen circuits, a judge from the highest courts in two states, and a chairman. Then Associate Justice Rehnquist and Justice Powell served for a time on the committee. Because of the potential for overlapping activities with the National Commission on the Bicentennial of the Constitution, of which he is chairman, Chief Justice Burger joined the Conference Committee.

At its organizational meeting on December 18, 1985, the Committee reached conclusions on: (1) its mission; (2) its *modus operandi*; and (3) funding.

The Committee adopted, as its guidance over its three-year life, this mission statement:

The Committee shall:

- (a) promote, encourage, and coordinate activities within the Judicial Branch designed to commemorate the Bicentennial of the Constitution, including its drafting, ratification, history, and importance in the lives of the American people.
- (b) plan and develop such activities, in pursuit of the goals of ceremony, celebration, scholarship, and education.
- (c) serve as a clearing house for collection and dissemination of information about bicentennial events and plans of individual units of the Judicial Branch.

Recognizing the limitations imposed by many factors, the Committee adopted this description of its *modus operandi*:

The Committee shall:

- (a) accomplish its goals primarily by encouraging local Judicial Branch entities to create and carry out projects in their local areas, using volunteers, and locally generated funds. Locally conceived, planned, staffed, funded, and conducted activities are not only more likely to succeed, but are essential to accomplishment of the nationwide celebration of the Constitution's Bicentennial.
- (b) committee decisions shall be reached by majority vote. Each Circuit shall have one vote. The Chairman votes only in case of a tie.

Thus the Committee serves as a catalyst and clearing house for information and ideas.

In considering its operation, the Committee noted the need to concentrate on the Judiciary's celebration of the Bicentennial and on its unique role in defending and preserving the Constitution. Literally thousands of organizations will be encouraged by the National Commission to participate in the general celebration and educational projects devoted to many



Chief Judge Howard Markey, of the U.S. Court of Appeals for the Federal Circuit, is the Chairman of the Federal Judicial Conference's Committee on the Bicentennial and a member of the Society's Executive Committee.

different aspects of the Constitution. The judiciary should be best suited, however, to contribute to an understanding of what Article III of the Constitution has meant to the preservation of freedom in our country for two hundred years.

At the same time, the Committee recognized that it "could not do it all," and that it should make that fact clear to all judges. Indeed, the committee saw that even if it could do it all, it should not, hence, its reference to "Locally conceived, planned, staffed, funded, and conducted activities." To that end, it was determined that the chairman and each circuit-representing member would request the formation of local committees by each district and circuit court in the federal system.

Viewing local committees and their activities as the key to success, the Committee felt that the membership of such local committees should be left solely to the courts (or Circuit Councils) appointing them. The Committee saw no reason, for example, to suggest that local committees be restricted to judges. Indeed, membership by lawyers, professors, business and professional persons, clergy, politicians, etc. was seen as



Chief Judge Markey addresses his distinguished colleagues at a meeting of the Judicial Conference's Bicentennial Committee in the Ladies' Dining Room of the Supreme Court building.

adding special dimension to the Judiciary's effort to both explain and celebrate the Constitution. That special dimension takes on particular interest in light of the perceived tendency of many citizens to consider the Constitution as the special province of the government or of the Congress or of the courts, as contrasted with its daily role in the lives of the people. For the same reasons, the Committee saw no harm, and substantial benefit, in cooperation between local committees of the Judiciary and committees formed by state courts, by states, cities, and counties, by local bar associations, by local business entities, etc.

Though the Committee had not, at the time of its organizational meeting, received its appropriation, it recognized that whatever it received would be dissipated long before the Committee had lived out its term if it were to become a source of funding for local projects. Questions of whether the Committee should consider requests for grants and the criteria evaluating such requests were set aside for future consideration.

As a funding matter, the Committee noted that the Judiciary lacked authority to receive gifts of cash and that the Director of the Administrative Office had authority to receive non-cash gifts on behalf of the courts, but that each local committee would have to investigate the propriety of methods they may employ in arranging for monetary support of their local projects.

Concerning committee expenditures, the Committee noted

that it has no staff, and that travel costs dictated that committee meetings would be infrequent. The Committee determined that it would accomplish its work primarily through correspondence and telephone communication.

Time precluded discussion of a long list of projects that might be suggested to local committees, but copies were supplied to members for possible use within the Circuits. The list included, in part, exhibits on the Constitution in every federal courthouse, "open house" days at court, exchange of visits between schools and courts, and distribution by courts of pamphlets explaining various elements in the court system.

The ensuing months of the Committee's life were devoted to two fundamentals, obtaining its appropriation and encouraging the formation of local committees. The Chairman appeared before and was well received by the Congress, which initially appropriated the Committee's request in full. Thereafter, in view of now famous budgetary constraints, Congress reduced the appropriation by one-third. Formation of local committees has, as might be expected, proceeded apace in some circuits and more slowly in others.

At the thoughtful invitation of Chief Justice Burger, the Committee Chairman attended the meetings of the National Commission. One immediate benefit was acceptance by the Commission of the Chairman's suggestion that the names and addresses of all members of the Committee and of all its local

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Bicentennial Programs *(Continued from page five)*

during the California gold rush, his later role in deciding important constitutional issues during the Gilded Age, and his campaign for a presidential nomination are covered. For David Dudley Field, the exhibit illustrates episodes in his career ranging from his campaigns for codification of the law to his defense of "Boss" Tweed in graft trials and his handling of important constitutional cases before the U.S. Supreme Court, providing a fascinating look at a remarkable family that significantly shaped American law. Professor Charles W. McCurdy of the University of Virginia, the leading scholar on Justice Field and a member of the Supreme Court Historical Society, gave the address at the opening of the exhibit in San Francisco.

For those unable to visit the exhibit, a book by the same title published by the Northern District of California Historical Society and the Federal Bar Council of New York, is available through the Supreme Court Historical Society's executive offices for \$3.00, plus \$1.00 postage and handling.

The Northern District Court Historical Society is also sponsoring four symposia on the U.S. Constitution. Symposium I entitled "The Constitution and the Separation of Powers" was held March 12, 1987 and featured U.S. Court of

Appeals Judges Abner J. Mikva (District of Columbia), and Judge Joseph T. Sneed (Ninth Circuit) and Louis Fisher, Library of Congress Specialist in American National Government, as speakers.

Symposia II, to be held on May 26th, is entitled, "The Constitution and Judicial Review." Speakers include Judge Kenneth W. Starr of the U.S. Court of Appeals for the District of Columbia Circuit who will also address the Supreme Court Historical Society membership on May 18th as this year's Annual Lecturer, Professor of History Jack N. Rakove of Stanford University and Dean Jesse H. Choper of Boalt Hall School of Law.

Symposium III, scheduled for July 16th, is entitled "The Constitution and Foreign Relations." Speakers will include the State Department's Abraham D. Sofaer, Professor Louis Henkin of Columbia University and Professor of Law Michael J. Glennon of the University of California, Davis.

The last symposium in the series will be held October 26th and is entitled, "The Constitution and Federalism." Speakers for the symposium include Justice Hans A. Linde of the Supreme Court of Oregon, U.S. Court of Appeals Judge Anthony Kennedy (Ninth Circuit) and Professor of Business Administration and Public Policy Susan B. Foote of the University of California at Berkeley.



The Court's new photographs may now be ordered through the Society's executive offices. An 8 x 10 formal black and white group photograph is \$10.00. Color 11 x 14 group photos are available in either a formal or an informal pose for \$21.00 unmatted or \$25.00 on an 11 x 13 mat suitable for framing. Photographs of the individual Justices are available in black and white for \$10.00 and color for \$20.00.

SPECIAL GIFT IDEAS

New Gift Items

Two and three-quarter inch square lead crystal box, with engraved seal of the Supreme Court of the United States on the top panel. Appropriate for keeping small items on a desk, or the two halves can be used as coasters. The boxes are individually gift boxed for convenient gift giving. \$9.00

Smoky beveled glass box with the Supreme Court's seal engraved on the lid. The mirrored bottom reflects the seal. The box measures 4" x 4" x 2 3/4" and has brass trim. \$31.50

Publications

Pocket sized Constitution. Contains the text of the Constitution and all amendments through 1986. An easy to read and carry copy of this important document. \$1.00

The Documentary History of the Supreme Court of the United States, 1789-1800. This eagerly awaited first volume of the Documentary History Project serves as an introduction to the planned seven-volume history. Volume I, which is in two parts, deals with the structure of the Supreme Court and the official records of its activities from 1789-1800. The volume contains primary source materials including manuscripts, correspondence, private papers, newspaper articles and official records of the period. \$75.00

The Illustrated History of the Supreme Court of the United States by Robert Shnayerson. This book contains portraits and engravings, hand-colored maps and rare archival items, sketches by Cass Gilbert, the architect of the Supreme Court building, as well as illustrations of people, places and events associated with the history of the Supreme Court. Its 304 pages contain a bibliography, a chart of justices, and 377 illustrations, including 86 in full color. \$48.00

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To order, simply fill out the order form below and send it, along with your check, money order, or credit card name, number and expiration date to: The Supreme Court Historical Society, 111 Second Street, N.E., Washington, D.C. 20002. *Mastercard or VISA* users may also order by phone by calling (202) 543-0400, 10:00 A.M. to 4:00 P.M. (EST), Monday through Friday. Prices include shipping and handling. Please allow four to six weeks for delivery.

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	Thank You!	TOTAL	_____

New Members *(continued from page five)*

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