



THE SUPREME COURT
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Society Celebrates Fourteenth Annual Meeting

By all accounts, the Fourteenth Annual Meeting of the Supreme Court Historical Society, held Monday, May 15, was an unprecedented success.

As in past years, the events of the day began with the Annual Lecture. This was the first year that the Annual Lecture had been delivered in the Court Chamber of the Supreme Court Building. In years past, the lecture had been given in either the restored Supreme Court Chamber of the U.S. Capitol or the caucus room of the Russell Senate Office building. However, the lecture has become so popular that it had to be moved to a larger room. The crowd that gathered this year was one of the largest ever to hear an Annual Lecture.

This year's speaker, Associate Justice Anthony M. Kennedy, delivered an extemporaneous speech on the subject of the Franklin D. Roosevelt Court-packing plan. Justice Kennedy began his talk by describing the Hughes Court of 1936. He delivered anecdotes about each member of the Hughes Court while referring to a photograph of each Justice that had been placed before the seat that the Justice had occupied on the Bench in 1936. This introduction served to bring the characters to life for the crowd as well as to set the stage for the plan that was proposed by the Roosevelt administration.

During 1936, the Supreme Court struck down many Roosevelt recovery and reform programs that had been launched to combat the Depression and its effects. In response, Roosevelt sent a message to Congress that proposed a judicial "reorganization." The proposed measure would have increased the number of Supreme Court Justices to as many as fifteen by creating a new seat for each Justice who reached the age of seventy and declined to retire. Roosevelt's aim was to compose a Court that was more responsive to his legislative programs.

As Justice Kennedy related, Senator Joseph Robinson of Arkansas was charged with shepherding the plan through Congress. As Senate Majority Leader, Robinson was perhaps the only figure in Congress with enough political power to get

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Chief Justice William H. Rehnquist (*above*), in his remarks to members attending the Annual Dinner, praised the work of the Supreme Court Historical Society. Chief Judge Howard T. Markey, the Annual Meeting Chairman, (*below, left*) introduced Associate Justice Anthony M. Kennedy to a capacity crowd gathered in the Supreme Court Chamber. Justice Kennedy delivered the Annual Lecture on the subject of the Court-packing plan of 1937.



A Letter from the President

The 1989 Annual Meeting, which took place in Washington, D.C. on May 15, 1989, was, I believe, a complete success. At the least it was a very pleasant occasion which everyone who was there seemed to enjoy.

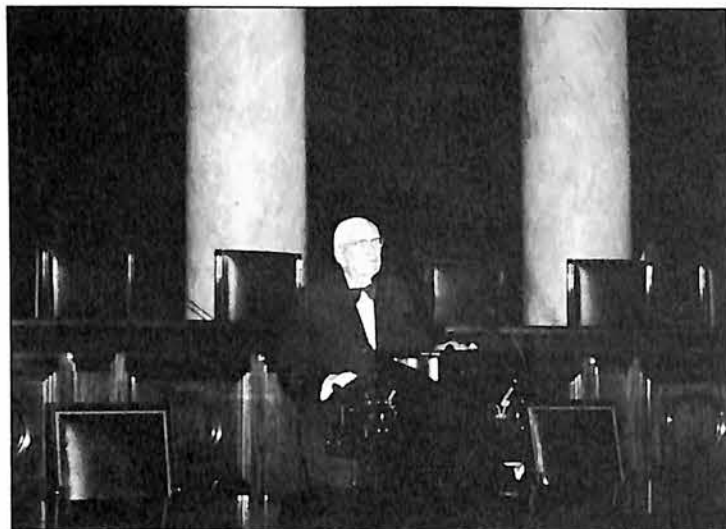
The Annual Lecture was given by Justice Kennedy in the Supreme Court Chamber. We had outgrown the old chamber in the Capitol and the Senate Conference Room, which we used last year, was an inadequate substitute. The Court came to our rescue and the new facilities proved to suit our purposes excellently.

Justice Kennedy talked about the Roosevelt Court Packing Plan of 1936-37, a subject which will always be of interest to lawyers, especially those interested in the history of the Supreme Court. To make the presentation more graphic, he placed photographs of each member of the 1936 Hughes Court in front of the chair occupied by that Justice when the proposal was pending. Then Justice Kennedy surprised his audience by delivering his lecture without using a single note. He did so, however, without wasting words and by speaking in clear sentences and paragraphs. He was very good, and brought back memories of Jacques Barzun, who was able to do the same thing.

At the General Membership Meeting, the several Committees of the Society reported on their activities for the past year. Membership is now quite well organized and is picking up steam; our financial affairs are in good order; the drive toward our \$2,500,000 endowment goal is on target and has produced over \$500,000. We have solid program plans, and are seeking additional space in or near our headquarters building. The Publications Committee is trying to catch-up on the publication of our *Yearbook* (which it hopes to do with the 1989 book)



Mrs. Virginia Warren Daly presents the report of the Nominating Committee to those assembled for the General Membership Meeting.



Erwin N. Griswold was elected to serve a three-year term as Chairman of the Board of Trustees. After being introduced by Mr. Stanley, he spoke to those attending the meeting.

and is offering annual prizes for the two best original articles. The events organized by the Annual Meeting Committee spoke for themselves.

The following six new Trustees were nominated and elected by the members: Robert S. Banks, Barbara A. Black, F. Elwood Davis, Geoffrey C. Hazard, Phil C. Neal, and Charles B. Renfrew. They are an unusually talented, interesting group and they should bring much strength to the Society.

At the Trustees meeting, Erwin N. Griswold was elected as our new Chairman. Erwin has long been a Trustee and has demonstrated a deep interest in the Society. One of the outstanding lawyers of his generation, he has argued more cases before the Supreme Court than any living lawyer and he brings great distinction to our Society.

We were extremely pleased to have seven Justices and their spouses present at the dinner: The Chief Justice and Mrs. Rehnquist; Retired Chief Justice and Mrs. Burger; Justice and Mrs. Brennan, Justice and Mrs. White; Justice and Mrs. Powell; Justice and Mrs. Scalia, and Justice and Mrs. Kennedy.

Once more the String Quartets and Strolling Strings of the U.S. Army Band provided beautiful music for the event. For the first time, the Alexandria Harmonizers joined us; the chorus received a standing ovation for their efforts.

If you missed the function, you missed a great deal, but we would have been hard pressed to find a place for more members in the Great Hall.

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Annual Meeting (continued from page one)

the Court-packing plan approved. When Senator Robinson died from a heart attack in July 1937, brought on in part by the Capital's unbearable summer heat and by overwork from fighting for the Court-packing bill, the plan died with him. Because President Roosevelt's plan unraveled as it did, Justice Kennedy concluded, no other attempt was made to change the Supreme Court.

Justice Kennedy received a hearty round of applause for his talk. He spoke with members of the audience after the lecture, including Senator Strom Thurmond, a member of the Society.

Immediately following the lecture, members of the Society and their guests were invited to attend a special tour of the Supreme Court building. Priscilla Goodwin, Tour Director in the Office of the Curator, directed members through private areas not usually open to the public, including the Justices' Dining Room and Conference Room. During the tour, Ms Goodwin pointed out unique furnishings and objects that were obtained by the Supreme Court Historical Society for the Court.

As an alternative to the tour, some members chose to attend an Open House that was held at the Society's headquarters directly behind the Supreme Court building. Members toured the facility and visited informally with staff of the Society.

At six-thirty that evening, Society President Justin A. Stanley presided over the General Membership and Board of Trustees Meetings that were held in the Supreme Court Chamber. Mr. Stanley presented a report on the progress that had been made during the past year establishing a committee structure and placing the Society in a firm financial position. The business of the General Membership and Trustees meetings may be found in the letter from the President on page two of this issue.

During the Trustees meeting, Erwin N. Griswold was elected to serve a three year term as the Chairman of the Board



Society Trustee John C. Shepherd was among those who met with Justice Anthony M. Kennedy after the Annual Lecture.



The Alexandria Harmonizers, a ninety-five-man barbershop quartet, performed at the Annual Dinner and received a standing ovation for their efforts.

of Trustees. Mr. Stanley introduced Mr. Griswold to the assembly, and Chairman Griswold spoke briefly, noting his long interest in the Supreme Court and membership in the Society before adjourning the meeting.

The reception followed immediately, held once again in East and West Conference Rooms of the Supreme Court. Members were able to meet one another as well as Society Officers, Trustees, and some of the Justices. Chamber music was provided by the String Quartets of the U. S. Army Band. The seated dinner was held in the Great Hall, decorated for the evening with state flags and a large American flag.

Chief Justice William H. Rehnquist addressed the gathering, offering his thanks on behalf of the Court to the Supreme Court Historical Society, noting that, because of federal budgetary constraints, there were many things that the Court would have been unable to do without the assistance of the Society. The Chief Justice added that he enjoys working with the Society, and hopes to continue the successful association.

A rousing performance by the Alexandria Harmonizers barbershop chorus capped the evening and marked the close of a very memorable day.



Mrs. Virginia Warren Daly, retired Associate Justice Powell and others attending the dinner enjoyed the music of the Strolling Strings.

Learned Hand: A Judge's Judge

In reading accounts of Judge Learned Hand's career, the question most frequently asked by his biographers is why Learned Hand never received an appointment to the Supreme Court. Judge Hand had an outstanding record of service in the federal judiciary which spanned 52 years. During his career he served as a Judge on the United States District Court for the Southern District of New York, and then on the Court of Appeals for the Second Circuit, where he was chief judge for a number of years and then senior judge for a dozen years more. Indeed, many legal historians considered the Second Circuit Court "the most distinguished and admired Bench in the United States," other than the Supreme Court Bench. Hand enjoyed a reputation as a brilliant writer and skilled orator and he was given much credit for the reputation of the Court over which he presided. Most historians agree that his name was suggested to, and given serious consideration by, several Presidents as a nominee to the Supreme Court Bench. His personal friends and acquaintances included not only other individuals from the legal community, but literary figures and academics. He corresponded regularly with Supreme Court Justices Benjamin Cardozo, Oliver Wendell Holmes, Jr. and Felix Frankfurter, all of whom made comments endorsing Hand as a suitable candidate for the highest bench. But, in spite of his many accomplishments and recommendations, Learned Hand did not draw "a successful ticket in that odd lottery by which men are picked for the Supreme Court of the United States," as Felix Frankfurter termed it.

Certainly Hand's genealogy seemed suitable for a member of the Supreme Court. Hand came from a family which had given distinguished service to the law. His grandfather, Augustus Cincinnatus Hand, attended Judge Reeve's Law School in Litchfield, Connecticut, the first law school in this country. He served as a U.S. Congressman, a State Senator, and as a judge of the New York Supreme Court and the New York Court of Appeals and made his home in Elizabethtown, New York. Augustus amassed an impressive collection of English law books, and a collection of first edition contemporary American authors, such as James Fenimore Cooper, Washington Irving, and Nathaniel Hawthorne. Perhaps it is not surprising that all of Augustus C. Hand's three sons became lawyers. His son Samuel eventually served on the New York Court of Appeals, and became the second president of the New York State Bar Association.

Learned Hand marked the third generation of Hands to serve the state of New York as a judge. He was born Billings Learned Hand, in Albany, New York on January 27, 1872. He discarded his first name around the age of 30 complaining it was "vastly formidable" and "pompous," but many of his personal friends called him "B. Hand." Hand's scholastic career was marked by great success. He attended Harvard College where he received an undergraduate degree in philosophy. He graduated summa cum laude in 1893 and was also honored by being named class orator for the commencement day ceremonies. After graduation, he did postgraduate work and received a Masters Degree from Harvard in 1894. He then enrolled in the Harvard Law School where he served as an editor of the "Law Review", and graduated with honors in 1896.

Learned was not the only member of the third generation of Hands to serve in the legal profession. His first cousin, Augustus Noble Hand, named in honor of their grandfather, also pursued a legal career. Augustus also attended Harvard and the Harvard Law School, graduating three years before his younger cousin, Learned. One of the interesting aspects of Augustus' career is that he served with his cousin Learned on two separate courts for most of his professional life. They first served together on the District Court for the Southern District of New York from 1914 until 1924. In 1924 Augustus was appointed to the Court of Appeals for the Second Circuit where he served with Learned for the next thirty years. In both instances, Augustus was appointed to serve on the Court where Learned was already serving. As children, Learned and Augustus N. had been frequent companions during the summers hiking and camping together. As adults, they were to spend almost all of their professional lives serving together.

After graduation from law school, Hand took up practice in Albany, but he moved to New York City shortly thereafter where he was in private practice until 1909. He married Frances Amelia Fincke in 1902 and they had three daughters. They purchased a townhouse in the East Sixties of New York City, and Augustus and his wife purchased a home nearby. Thus, the cousins were never separated by any great distance, either at home or at work.

Learned and Frances purchased a summer home on the New Hampshire side of the Connecticut river, south of Dartmouth College. This area was an art community centered around the studio of Augustus Saint-Gaudens, the noted American sculptor. "Each summer for the next forty-two years Learned and his family spent the first part of their summers at Cornish. The so-called Cornish Colony included artists Stephen and Maxfield Parrish; architect Charles Platt; American writers Winston Churchill, Maude Howe Elliott, and Pierre Salinger; political writer Herbert Croly; Learned's Harvard friends George Rublee, Norman Hapgood, and Philip Littell; and Washington lawyer Edward B. Burling. They shared, above all, good talk; they hiked, put on charades and theatricals, and took pride in their Italiante gardens." The associations and friendships Hand shared at Cornish greatly enriched his life and work.

In 1909, President Taft appointed Hand, who was then thirty-seven, to the District Court for the Southern District of New York. Hand undertook his judicial duties with great vigor and humility. In response to a letter from James Byrne, congratulating him on his appointment to the bench, Hand responded: "Your congratulations are very important to me. . . I believe that this opportunity is a very fine one, if I am man enough to discharge the duties. . . ." Judge Hand undertook his judicial tasks with characteristic vigor and hard work. Circuit Judge Carroll Hincks described Judge Hand's work habits by saying:

"Six days a week he was studying and formulating his cogitations. How often have we seen him behind his writing board, refining and correcting his thoughts in almost innumerable drafts! It is said that upwards of 2,000 finished opinions emerged. Generally each was preceded by multiple drafts. Add to these the per curiam opinions



Learned Hand was a summa cum laude graduate of Harvard College and of the Law School, Oliver Wendell Holmes Lecturer at the Harvard Law School, and a federal judge for fifty-one of his eighty-one years. Learned was the third generation of Hands to serve as a judge.

which he wrote, his sparkling conference memoranda (which were roughly three times as numerous as his name-opinions), plus an unknown number of unpublished memorandum decisions when a district judge, and the sum total of the mileage of his pen over that old writing board would doubtless rival that involved in contemporary adventures into outer space."

The catalog of Learned Hand papers in the Harvard Law School Library bears out Judge Hincks' account of Hand's productivity. The materials in the collection are divided into three main categories: correspondence (50,000 items), District Court opinions (ca. 1000 opinions), and Court of Appeals materials (69 manuscript boxes), including the memoranda of which Judge Hincks speaks. The detailed inventory of the collection runs 500 pages.

But Hand's reputation as a jurist was not limited to the quantity of his opinions. He was also widely noted as a superb writer and a brilliant legal mind. Benjamin Cardozo spoke of Hand's "qualities of mind,—the keen analysis, the close reasoning, the capacity for deft and incisive phrase." Judge J. Edward Lumbard who served as Chief Judge of the Court of Appeals for the Second Circuit said of Hand:

"His keen and original mind was forever probing into the dark corners and the twilight zones of the law; nothing delighted him more than to find some point not raised in the briefs or argument and not perceived by his colleagues and their bright young men. Students in all fields of law are indebted to him for his seminal and lucid opinions and for many years his opinions have been cited in

both federal and state courts as often as those of any legal writer. Indeed, most of the briefs filed in this court cite Learned Hand, whether it be a majority or dissenting opinion and—I might add—whether or not the quotation is in point."

Marvin Schick observed in his book *Learned Hand's Court*: "While he was chief judge, Hand virtually dominated the public image of the Second Circuit, even if he could not dominate the decisions emanating from his court. His reputation easily transcended the inferior court he sat on. Judge Clark once noted that Hand's relationship to the Second Circuit was analogous to that enjoyed by Justice Oliver Wendell Holmes, Jr., in his relations with the Supreme Court. There was a tendency on the Supreme Court to cite Learned Hand opinions specifically, whereas normally the High Court refers to lower court opinions without mentioning the name of the writer."

Much of Learned Hand's reputation during his lifetime was based upon his communication skills, both as a writer and an orator. He was a powerful and skillful writer and perhaps that is why he was so frequently quoted even in legal documents. His writing was effective not only because of the style, but because he communicated his message clearly. Underlying the effect of his writing was his ability to assess honestly the roots of human behavior. In discussing the excesses of the Nazis he observed: "The trouble is that it isn't just the Nazis. It isn't just the Russians. It's human nature, through the centuries. We all have totally unreasonable and cruel ambitions, and then we . . . all festoon our lusts with pretty phrases, to justify them." He also observed: "The truth is we are all sinners; nobody's record is clean; and indeed it is only fair to say that much of the very texture of the law invites us to sin, for it so often holds out to us, as though they were objective standards, terms like 'reasonable care,' 'due notice,' 'reasonable restraint,' which are no more than signals that the dispute is to be decided with moderation and without disregard of any of the interests at stake."

Hand's memorandum concerning the *United States v. Aluminum Company of America* reflects his skill in communicating plainly, his common sense approach to judging, his familiarity with literature, and perhaps, his sense of humor as well.

It would be absurd to assert that monopolies can have no tendency to put initiative to sleep and to satisfy their owners with custom and routine. There are two possible ways of regulating them: to regulate them, or to forbid them. Since we have no way of regulating them, we forbid them. I don't think much of that way, but I didn't set it up . . . Some are born monopolists; some achieve monopoly; others have monopoly thrust upon them. Alcoa is not in the third class."

In addition to his reputation for his brilliant legal mind, Judge Hand also had a reputation for being formidable in the court room. No doubt this image was enhanced by his physical appearance, which was distinguished by "foreboding brows" as Felix Frankfurter termed Hand's unusually heavy eyebrows. Mrs. Chadbourn, Curator Emeritus of Manuscripts at the Harvard Law School, recounted a story told to her by Philip Putnam, an Assistant Librarian of the Harvard Law School for many years. According to Mr. Putnam, one day a stray dog wandered into the Reading Room of the Law School Library. The dog was discovered frozen in his tracks, hair standing on end, growling at a bust on a pedestal "with wild, bushy eyebrows, a furrowed forehead, square, determined jaw, and deep-set brooding eyes."

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Learned Hand (continued from page five)

Apparently Judge Hand was a force to be reckoned with, even outside the court room.

Added to his somewhat intimidating appearance were his quick wit and insight, and his searching and sometimes scathing questions, which taken together could produce trauma in counsel when appearing before the court. John Frank once wrote that Hand "has a reputation as the most irritable man on the C.A. 2nd Bench." Even his successor as Chief Judge on the Second Circuit, Judge Lumbard, noted that "Many of us have seen and felt the force of his judicial wrath. His thunder terrified the boldest counsel and his lightning questions and comments could short-circuit any argument." Lumbard hastened to add that despite his intimidating outbreaks Hand "... was penitent for any pain or suffering he may have caused. Sometimes he apologized from the bench, but always he begged forgiveness from his colleagues and he usually found some way of making amends to counsel. He always took great care to seek out any possible merit in points which he had summarily brushed aside in the courtroom."

As further evidence of Hand's irascibility, Schick recounted Justice Harlan's experience before the Second Circuit when he was a young lawyer. "... he [Harlan] once submitted a lengthy brief to the Second Circuit in a case in which Hand was on the panel. Hand took the brief and threw it onto the counsel table, saying that he would not read it. Yet, when the decision came down, Hand voted to uphold the position taken by Harlan."

Life Magazine carried an article written by Philip Hamburger about Judge Hand in the November 4, 1946 issue. Mr. Hamburger also reported on Hand's "irritable" behavior:

"Broad generalizations leave him in a cold intellectual fury. Lawyers who attempt to impress him by reminding the court of 'those eternal principles of justice ringing down the ages' do so only once. His broad jaw drops in anguish. His busy gray eyebrows rise in horror. His face, a moment ago as serene and inquiring as Cardozo's, becomes as fierce as Daniel Webster's at the height of a peroration. The courtroom echoes with a sharp crack as he slaps a hand to his brow and leans far back in a tall leather armchair. 'Rubbish!' he shouts, almost disappearing from view behind the bench."

Despite his sometimes intimidating behavior, Hand was frequently called upon to speak to civic groups. Hand's fame throughout the United States was enhanced by his participation in a ceremony in Central Park, New York City on May 21, 1944. The occasion was a celebration of "I Am an American Day", an event which was aimed at bolstering the American spirit during the war years. Fiorello H. LaGuardia asked Judge Hand to administer the Oath of Allegiance to the Flag at the ceremonies, also saying: I think it would be appropriate if, before giving the Oath of Allegiance, you made a few introductory remarks regarding the responsibilities and privileges of American citizenship. . . . For your information, invitations have been sent by the U.S. Department of Justice Bureau of Naturalization to 150,000 newly naturalized citizens, asking them to attend these ceremonies." As it turned out, the ceremony drew an estimated crowd of 1,400,000 people. Hand's speech was brief, but very affecting. He started by saying the crowd had gathered to affirm its faith in America, saying that people had come to this country to seek freedom from oppression and want and the freedom to

be themselves. He continued his speech saying:

Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it. And what is this liberty which must lie in the hearts of men and women? It is not the ruthless, the unbridled will; it is not freedom to do as one likes. That is the denial of liberty, and leads straight to its overthrow. A Society in which men recognize no check upon their freedom soon becomes a society where freedom is the possession of only savage few; as we have learned to our sorrow.

What then is the spirit of liberty? I cannot define it; I can only tell you my own faith. The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded; the spirit of liberty is the spirit of Him who, near two thousand years ago, taught mankind that lesson it has never learned, but has never quite forgotten; that there may be a kingdom where the least shall be heard and considered side by side with the greatest."

This speech, along with other materials written by Hand, was published in a book entitled *The Spirit of Liberty* published in 1952. The speech made in 1944 and the resultant publicity catapulted Judge Hand into the public eye nationally and for the first time, he was known beyond the relatively narrow confines of the legal and academic community. The Life Magazine article published in 1946 was not only a result of his growing reputation, but also fostered his national reputation.

Hand's extrajudicial activities included participation in the work of the Legal Aid Society of New York. Also he was called upon frequently to speak to many civic and legal organizations, particularly after his famous speech in 1944. One of his most noteworthy activities involved the establishment of the American Law Institute (ALI), of which he was a co-founder along with William Draper Lewis and others. Lewis originally wrote to Judge Hand in May of 1922 asking him to serve on the "Committee on the Establishment of a Permanent Organization for the Improvement of Law." This organization subsequently evolved into the ALI. Hand was a guiding force in the creation of the ALI and was actively involved in the organization for the duration of his lifetime. Characteristically, Learned and Augustus worked together in the ALI. A letter dated January 9, 1940 to William Draper Lewis shows Hand's sense of humor about his activities: "I have consulted Augustus, and he and I will appear on Saturday, January 20th, at 10:00 A.M., at the Bar Association, uniformed, armed and equipped for a meeting of the executive committee. We will thereafter go into a huddle with Eddie Morgan on evidence. . . Gruss Gott".

Hand's extra-judicial associations were varied and encompassed a number of acquaintances from many different fields. His acquaintances from literary and art circles included not only his friends from the Cornish Colony, but also individuals from abroad. He knew and corresponded with Bertrand Russell, Bernard Berenson, Clarence Day and Archibald MacLeish. Hand visited Berenson at his villa, I Tatti, near Florence, Italy, and discussed Italian Renaissance art with the famous art critic. He joined both Berenson and Russell when he was elected to membership in the Athenaeum, in London. MacLeish procured Hand's help with his play "J.B." For this play, he asked Hand to

record some dialogue in which he would be the voice of God speaking to Job. He wrote a letter to Hand about the arrangements which read in part: "Dear God (not an expletive - an apostrophe) here are the lines You utter from Your whirlwind. There are earlier interventions of Your distant Voice but we will use a live actor for those because they are brief and are understood by Mr. Zuss and Nickles to be spoken by a prompter-- which is scarcely a role You could be expected to play. . . . In any event these are the great lines. . . . Gadg Kazan and I will call on you Saturday at the hour fixed and convey you to a recording establishment which will not even know that Something is happening in its inwards which has never happened before on this continent."

Hand retired from the Federal Circuit in 1951, but even after his formal retirement, he continued to work as a senior judge contributing greatly to the work of the court. Schick reported that in July of 1951, "only six weeks after retiring, . . . Hand granted bail to a group of second-string Communist leaders under indictment. After a sharp exchange with the prosecutor, he remarked, "I thought I was going to get some relief when I retired, but all my colleagues have left me and I'm here alone." In Hand's eighty-eighth year, the Second Circuit's chief judge, Charles E. Clark, said that Hand "still carries an unusual work load as a judge. During the current year he has already participated in some thirty appeals in three different judicial weeks. He will be sitting again in about ten days and probably yet once more during the spring." Shortly after Hand's death in 1961, Chief Judge Lumbard remarked that "during the last ten years he rendered invaluable assistance to his hard-pressed associates; always ready to do whatever he could no matter how short the notice. Last term he wrote 18 majority opinions."

Despite his complaints about the workload and the frustrations, it is obvious that Hand was committed to the business of being a judge. In a letter dated December 24, 1939 to Judge Charles E. Wyzanski, Jr. (who had clerked for Hand), Hand remarked: "And if you want to be a judge, Charlie, be one. It's a good job; after thirty years I still enjoy it." It would seem that even after fifty years Hand still enjoyed the work.

Whitney North Seymour, Sr. concluded that "If one wonders why Hand was never appointed to the Supreme Court, one concludes that the custom of giving great weight to geographic distribution and the particular political situation at the time of vacancies available for New York must be blamed. Certainly his judicial qualities would always have been ornaments of the Court." But many historians ascribe Hand's failure to achieve a Supreme Court appointment to the actions of William Howard Taft.

While Taft was President he made an effort to improve the quality of federal judges, and upon the advice of his Attorney General, George W. Wickersham, he appointed Hand to the Southern District Court of New York. Taft was pleased with Hand's performance on the bench, but he was not pleased by his political activities. In 1912 Hand supported the Bull Moose Party and the candidacy of Theodore Roosevelt. As far as Taft was concerned, this was a betrayal. In Taft's eyes Hand compounded his transgression when he sought elective office one year later as chief judge of the New York Court of Appeals running on the Progressive ticket. Hand said he decided to run because he felt

it was his duty but because he was a sitting judge, he felt it was inappropriate to campaign. He did not actively campaign and was handily defeated by his opponent.

Apparently Taft never forgave Hand for his actions. As one scholar put it: "During the 1920's, particularly when Harding was in the White House--years when there was an unusually large number of openings on the Supreme Court--Taft, as chief justice, exercised great power over appointments to the federal judiciary. In 1922 Hand was under consideration as successor to Justice Mahlon Pitney. Taft, conceding that Hand was 'of proper age, . . . an able judge and a hard worker,' strongly objected. In a letter to President Harding he recalled that Hand 'turned out to be a wild Roosevelt man and a Progressive, and though on the bench, he went into the campaign.' He continued, 'If promoted to our Bench, he would almost certainly herd with Brandeis and be a dissenter. I think it would be risking too much to appoint him.'"

The Hand papers contain letters written to and from Theodore Roosevelt. In a letter to Roosevelt's sister, Mrs. Douglas Robinson, written in 1912 Hand said: "I hope, and I believe, that when history comes to be written, the greatest service he [T.R.] will have done his country. . . will be said to be when he became the inspiration and the leader, as he had been the real creator, of the Progressive Party." Hand was questioned about his support of Theodore Roosevelt in 1957. He responded to his interlocutor: "I was indeed an ardent 'Rooseveltian', and strange as it may seem to you I voted for him [T.R.] in 1912. . . . I have never repented and should do it again."

Whether or not Taft's animosity to Hand's political affiliations kept him from serving on the Supreme Court Bench, there is no doubt that Hand was an able and respected judge who left his mark on the American legal system. Whitney North Seymour said "Certainly his [Hand's] judicial qualities would always have been ornaments of the Court. Frankfurter tells us that 'Holmes coupled Learned Hand with Cardozo as the two judges whom he wished to see on the Supreme Bench.'"

Hand's reputation among legal scholars is considerable. Karl Llewellyn rated him as one of the nine greatest English-speaking commercial judges. D.W.M. Waters, a British legal scholar, expressed his view that Hand's opinions on maritime law and unfair competition law helped shape the development of these fields. Waters even went so far as to say "... he [Hand] was often considered to be the greatest admiralty judge in his time in the United States." (His clerks relate that in considering collision maritime cases he often used working models to help him arrive at his decision.) Hand was also considered an outstanding trial judge and appellate judge as well as an accomplished judge in the fields of copyright and patent law. While serving as Chief Judge of the Second Circuit Court, Hand achieved a reputation for not only presiding over the busiest Court in the system, but also for having the most efficient Court. Judge Wyzanski wrote in 1961 that Hand, "more than any other lower court judge. . . was the architect of our present structure of antitrust law." In the New York State Bar Journal's memorial issue for Judge Hand, his abilities are summarized as: "The range of subject-matter of his opinions was as broad as American federal jurisprudence. He never thought of himself as a specialist in any particular field. Nor do we. The structure of

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Tribute to Chief Justice Earl Warren

Friends, relatives and former colleagues of Earl Warren gathered in San Francisco on April 8th to commemorate the 20th anniversary of the late Chief Justice's retirement from the Supreme Court. The weekend-long celebration, entitled "Earl Warren--A Remembrance", also included a symposium on the legacy of the Warren Court. The Grand Ballroom of the Fairmont Hotel hosted a dinner for the 500 people--including 25 former Warren clerks, 31 members of the Warren family, and hundreds of distinguished lawyers from around the country--who came to honor him. Comedian Steve Allen, acting as Host and Master of Ceremonies, kept the evening rolling along with good humor.

Earl Warren, who died in 1974 at the age of 83, began his career as an Alameda County district attorney from 1925 to 1938 before becoming state attorney general and California's only three-term governor. A life-long Republican, Warren ran unsuccessfully for Vice-President on Thomas Dewey's ticket in 1948. President Dwight D. Eisenhower appointed him Chief Justice of the United States in 1953. He retired in 1969.

The evening included many personal reminiscences. Former Governor Edmund G. (Pat) Brown, who served as district attorney of San Francisco and as state attorney general, joked about the similarities between his and Warren's early careers. Prominent civil rights lawyer Eva Jefferson Patterson,

who is black, thanked Warren for the affirmative-action admissions program which enabled her to attend the University of California at Berkeley's law school (which Warren also attended). Warren's grandson, a realtor from St. Helena named Jeffrey Warren, described how "Papa Warren" used to like to eat chocolate cake in bed on Friday nights while watching the fights with his family.

Two Associate Justices who served on the Warren Court attended the commemoration. Associate Justice Thurgood Marshall received a standing ovation, but did not make a speech. Associate Justice William J. Brennan, Jr. took the podium to praise Warren and his contributions: "People were his concern, especially ordinary people, the disadvantaged, the downtrodden, the poor, the friendless." Brennan described the 13 years he sat on the Court with Warren as the era with "the greatest diversity of controversial questions in the Court's history."

Justice Brennan went on to introduce excerpts from a 90-minute documentary biography called "Super Chief--The Life and Legacy of Earl Warren." The film, made by Bill Jersey and Judith Leonard, is scheduled to air on PBS in October of this year. It includes rare archival footage of the Chief Justice, interviews with men and women who worked with and against him, reminiscences by family members and friends, as well as com-

mentary from scholars.

U.S. Representative Robert Matsui, a Democrat from Sacramento, read a proposed congressional resolution honoring the former Chief Justice and declaring April 8th "Chief Justice Earl Warren Day." The Joint Resolution lauds Warren for extending "the principles of the Bill of Rights to every American" and striving "for equality for the poor and the underprivileged."

The following morning, National Public Radio's legal affairs correspondent, Nina Totenberg, moderated a symposium on the impact of the Warren Court's 16 years of controversial rulings that eased the way for civil rights and expanded individual rights. The four panelists in the discussion were: Judge Robert Bork, John M. Olin Scholar in Legal Studies at the American Enterprise Institute and former professor at Yale Law School, acting Attorney General of the United States, Solicitor General and Circuit Judge, United States Court of Appeals for the District of Columbia Circuit; Jesse Choper, Dean of the Boalt Hall School of Law, University of California at Berkeley since 1982, served as law clerk to Chief Justice Earl Warren in 1960-61; Lino Graglia, Professor of Law at the University of Texas, Austin since 1962; and Anthony Lewis, Pulitzer Prize-winning columnist and former Supreme Court reporter for the New York Times.

Both Judge Bork and Professor Graglia argued that the Warren Court had inappropriately granted individual rights that

were outside Constitutional limits. Lewis and Choper defended the Warren Court, reasoning that its decisions helped to make the United States the most free country in the world. The symposium, which covered such issues as banning school segregation, ensuring protection from unreasonable search and seizure, and eliminating compulsory religious activities in schools, will be broadcast on Public Broadcasting Service stations across the nation.

The commemorative program for "Earl Warren--A Remembrance" was underwritten by the Supreme Court Historical Society.



Associate Justice William J. Brennan, Jr. paid fond tribute to his former colleague, calling him a man of "absolute granite integrity and fairness."



This photograph, taken on the lawn of the Warren family home in Oakland, was used frequently in Earl Warren's 1942 gubernatorial campaign. The Warren children are shown in the order of their age: Robert, Nina (Honeybear), Dorothy, Earl, Jr., Virginia, James, Mrs. Warren and then Attorney General Warren.



Representative Robert Matsui of California presents the Congressional Joint Resolution of thanks to Chief Justice Earl Warren's surviving children. Depicted, from left to right, are: Robert Warren, Rep. Matsui, James Warren, Earl Warren, Jr., Supreme Court Historical Society Secretary Virginia Warren Daly, and Nina (Honeybear) Warren Brien.

Membership Update

The following members have joined the Society between April 1 and June 15, 1989.

Alabama

Joel F. Dubina, Montgomery
Sonny Hornsby, Montgomery
J. Gorman Houston Jr., Montgomery
Henry B. Steagall II, Montgomery

Arkansas

Karen Wallace Duncan, Benton

California

David Todd Alexander, San Francisco
William H. Burford, Long Beach
Anthony Ching, Los Angeles
Mark C. Dosker, San Francisco
Bette Garren, Corona Del Mar
Richard C. Giller, Los Angeles
Fulton Haight, Santa Monica
Halvor L. Harley, Newport Beach
Marc S. Harvey, Encino
James B. Hicks, Los Angeles
Boyd F. Jensen II, Tustin
Henry John Kupperman, Los Angeles
Dori E. Miles, Los Angeles
Ralph J. Novotney Jr., Woodland Hills
Clay Robbins III, Los Angeles
Stephen F. Rohde, Los Angeles
Larry C. Russ, Los Angeles
Wesley Sizoo, Walnut Creek
Suzanne M. Woo, El Cerrito
Fred L. Wright, Torrance
Diane C. Yu, San Francisco

Connecticut

Mark R. Kravitz, New Haven
Francis J. McNamara Jr., Stamford

District of Columbia

Bonnie A. Beavers
Douglas W. Charnas
J. Edward Day
David M. Friedland
M. Kay Gartrell
Richard B. Herzog
Roberta Hromas
Carol M. Lane
Robert L. Liebross
Glen D. Nager
David S. Ruder
Bonnie M. Ryan
Carl Willner

Florida

Barbara A. Curtis, Ft. Lauderdale
Patrick E. Geraghty, Fort Myers
Hal K. Litchford, Orlando

Hawaii

John P. Moran, Honolulu

Illinois

Gary Bain, Evanston
Paul S. Braun, Flossmoor
Stephen C. Bruner, Chicago
Mark M. Christerson, Chicago
Robert L. Heidrick, Chicago
Michael Patrick Kane, Chicago
Stephen R. Kaufmann, Springfield
Donald S. Nathan, Chicago
Philip J. Nathanson, Chicago
Anne Scott, Chicago
Elizabeth N. Thielemann, Chicago

Kansas

Shari Feist Albrecht, Wichita

Kentucky

W.R. Patterson Jr., Louisville
R. Scott Plain, Owensboro
Herbert D. Sledd, Lexington

Maine

Kevin M. Cuddy, Bangor
Joseph L. Delafield III, Portland
Barry K. Mills, Ellsworth
Robert A. Morden, Waterville

Massachusetts

Samuel Adams, Boston
Diana Butt Campbell, Hamilton
Donald J. Correa, Plymouth
John M. Harrington Jr., Boston
David M. Prentiss, Westborough
Joseph E. Sollitto Jr., Edgartown

Michigan

Robert N. Brown, Detroit
Harvey Covensky, Southfield
Thomas R. Eineman, Wyandotte
Fernando J. Prado Ferreira, Ann Arbor

Ira G. Kaufman, Bloomfield Hills
John K. Maloney, Rochester
Leonard M. Niehoff, Detroit

Minnesota

David R. Brink, Minneapolis
W. Joseph Bruckner, Minneapolis
Thomas Fraser, Minneapolis
Michele Gloria Greer, Minneapolis
Clark Griffith, Minneapolis
Timothy D. Kelly, Minneapolis
Richard A. Lockridge, Minneapolis
Opperman Heins Paquin, Minneapolis
Patrick J. Schiltz, Minneapolis

Mississippi

Robert C. Galloway, Gulfport
William F. Goodman Jr., Jackson
Ernest W. Graves, Laurel
Philip Mansour Sr., Greenville
Charles J. Pisano, Carrlere
William J. Threadgill, Columbus
Everette G. Truly, Natchez
T. Kenneth Watts, Meridan

Missouri

Liam S. Coonan, St. Louis
Maurice B. Graham, Fredericktown
Robert A. Henderson, Kansas City
Larry L. McMullen, Kansas City
Henry D. Menghini, St. Louis
Robert F. Ritter, St. Louis
R. Lawrence Ward, Kansas City
Dale A. Whitman, Columbia

Nevada

Robert C. Bell, Reno
Jeffery A. Dickerson, Reno
Thomas Drendel, Reno
Troy Everett Peyton, Las Vegas
Wayne A. Schaffer, Reno
Eugene J. Wait Jr., Reno

New Hampshire

Thomas Butler Merritt, Hollis
Jack B. Middleton, Manchester

New Jersey

John T. Dolan, Newark
Michele M. Fox, Cherry Hill

Michael Halebian Jr., Englewood Cliffs
Robert Kantor, Clifton

New York

Floyd Abrams, New York
William A. Brandt Jr., New York
Clayton A. Prugh, New York
Richard A. Santana, Croton-on-Hudson
Regina Seltzer, Bellport
Bernard Yaker, White Plains
University of Rochester Library

North Carolina

David M. Clark, Greensboro
Mark Finkelstein, Raleigh
John L. Garrou, Winston-Salem
Ralph M. Stockton Jr., Winston-Salem

Ohio

Sam H. Bell, Akron
Philippa H. Nasatir, Toledo
Andrew I. Sutter, Columbus
Robert S. Willard, Dayton

Oregon

Wayne Hilliard, Portland
Janice Jackson Schantz, Portland

Pennsylvania

David S. D'Angelo, Philadelphia
J. Brian Durkin, Philadelphia

Leon Ehrlich, Reading
Alan Epstein, Philadelphia
Samuel J. Halpren, Coatsville
Craig E. Hammes Jr., Radnor
Russell B. Korner Jr., Uniontown
Thomas A. Leonard, Philadelphia
Lowell A. Reed Jr., Philadelphia
Gettysburg College, Gettysburg

Puerto Rico

Luis Mariano Negron, Hato Rey

South Carolina

Charles M. Condon, Charleston
William E. S. Robinson, Columbia
Charles T. Speth II, Greenville

South Dakota

Donald R. Shultz, Rapid City

Tennessee

T. Maxfield Bahner, Chattanooga
H. Travis Parker Jr., Knoxville

Texas

Russell L. Cook Jr., Houston
A.L. Dent III, Houston
Allene D. Evans, Austin
Suren Kamath, San Antonio
Eric L. Lindstrom, Midland

Karl B. Schmalz, Houston
William Lancaster Smith Jr., Dallas
Dolena T. Westergard, Dallas
Miguel David Wise, Brownsville
Ronald D. Wren, Dallas

Utah

J. Thomas Greene, Salt Lake City

Vermont

John M. Dinse, Burlington
Lawrence Miller, Rutland

Virginia

Cary B. Bowen, Richmond
Elizabeth Ann Dickerhoof, Springfield
Harry Ganderson, Richmond
Scott B. Mexic, Alexandria
Mark B. Robinette, Richmond
Robert Tayloe Ross, Richmond
C. Thomas Turbeville, Williamsburg
Dean S. Worcester, Leesburg

Washington

F. Lee Campbell, Seattle
Clifford Frederick Cordes III, Olympia

West Virginia

Kimberly Regina Fragale, Clarksburg
Shirley A. Succurro, Charleston
Robert Winter, Fairmont

Judicial Fellows Program

The Judicial Fellows Commission invites applications for the 1990-1991 Judicial Fellows Program. The Program, established in 1972, is patterned after the White House and Congressional Fellowships. The Program is designed to attract to the Judicial branch outstanding individuals from a variety of disciplinary backgrounds who have an interest in the administration of justice and who show promise of making a contribution to the judiciary.

Two or three Fellows will be chosen to spend a year, beginning in September 1990, in Washington, D.C. at the Supreme Court of the United States, the Federal Judicial Center or the Administrative Offices of the United States Courts. Candidates should be familiar with the judicial system, have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on Fellows' salary histories but will not exceed the GS 15, step 3 level, presently \$60,968.

Information about the Judicial Fellows Program and on application procedures is available upon request from Vanessa

Yarnall, Associate Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. (202) 479-3374. All application materials should be submitted by November 15, 1989.

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Page 8, Warren family on the lawn, from the collection of the Bancroft Library.

Page 9, both photos, by Richard Gordon, courtesy of the Catticus Corporation.

Page 12, Bust of Learned Hand, reproduced by permission of the Harvard Law Art Collection.

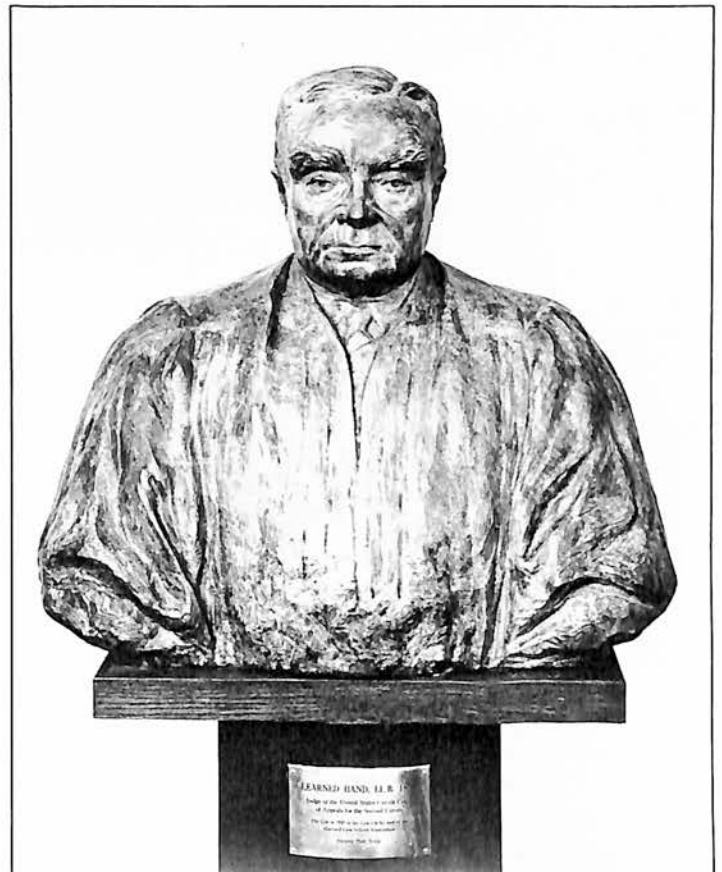
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Learned Hand (continued from page seven)

the law covering every controversy with which he dealt, he explored to its foundations. He was a master in every subdivision of the field."

Paul Freund wrote in 1961 that "Learned Hand was born to be a judge . . . [he was] a judge's judge, a lawyer's judge, a student's judge." Schick summed up Hand's abilities by saying: "He [Hand] was a master craftsman and a brilliant writer whose opinions surely rank with those of Holmes and Cardozo as the best American legal prose of the century. His ability to write beautifully did not lead him to the quick production of glossy opinions that did not explore the full complexities of a case. To the contrary, he usually worked hard and long until he was satisfied with what he had written. It was not enough to base a decision on outdated formulas and on legal clichés; throughout his career he sought to adapt the law to the rapid changes in society and industry."

Felix Frankfurter commented that he felt Hand was lucky in not having been chosen to serve on the Supreme Court: lucky because the unique situation of the Supreme Court would have resulted in Hand experiencing more conflict and strife, and lucky because he was less subject to criticism. He explained that comment by saying: "In the first place, down there [the Supreme Court] his views would have been diluted eight-ninths and here only two-thirds. In the second place, I think almost inevitably, though certainly as authenticated by history, the controversies down there are more strident than they are in the quietude of Foley Square. . . . He has demonstrated and given heartening proof of the fact that moral influence, achievement of excellence, the fertilization of thought are not dependent upon place. . . . And so, although Mr. Justice Holmes felt that the right place for Judge Hand . . . was Washington, and, if you will forgive me for saying so, although I spent not a little part of my life to promote that end as opportunity availed, I insist with deep conviction that he was lucky in not having won out in that strange lottery. But luckier have we been that he was endowed with these gifts and has put them to the uses to which he has put them. After every one of us in this room will no longer be here, long after that, Learned Hand will still be serving society so long as law will



Philip Putnam, former Librarian of the Harvard Law School, told a story of a stray dog who wandered inadvertently into the Reading Room of the Law Library. The dog had taken only a few steps when he stood stock still, as if frozen in his tracks. The hair on his back began to rise, and he emitted a low growl. Confronting him, on a pedestal, was this massive bust of Learned Hand.

continue to exercise its indispensable role in helping to unravel the tangled skein of the human situation."

The Editors wish to acknowledge the gracious cooperation of Mrs. Erika Chadbourn, Curator of Manuscripts, Emerita, at the Harvard Law School Library, for her assistance in providing an original paper she had prepared as well as an exhibit catalog and photographs for this article.

Call for Papers

The Society has issued a call for papers for the 1989 edition of the Supreme Court Historical Society *Yearbook*. All interested individuals with appropriate works are invited to submit them for review by the Board of Editors.

Beginning with the 1989 edition, prizes will be awarded. The Board of Editors will make two awards, a first prize of \$1,500 and a second prize of \$500. Although non-exclusive papers will be considered for publication, only unpublished works will be eligible for the awards.

Submission deadline is October 1, 1989. Please send papers, either typed or on five and one-quarter inch computer disk, to: Clare Cushman, Supreme Court Historical Society, 111 Second Street N.E., Washington, D.C. 20002. (202) 543-0400.

Society Sponsors Pictorial Cancellation

The Supreme Court Historical Society plans to commemorate the two-hundredth anniversary of the Federal Judiciary Act with a special pictorial cancellation. Through the assistance of the U. S. Postal Service, a temporary postal station offering the pictorial cancellation will be set up in the Supreme Court building on Friday, September 22, 1989. The cancellation honors the two-hundredth anniversary of the Federal Judiciary Act of 1789, which created the entire judicial branch of the federal government.

A brief ceremony will be held at 11:00 AM in the lower Great Hall of the Supreme Court building and the postal unit will perform cancellations from 9:30 AM to 4:00 PM. All members of the Society are invited to participate in these activities. Cancellation materials will be available through the Society.