



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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Session Commemorates Bicentennial of Supreme Court

In a simple, dignified ceremony on January 16, 1990, a special session of the Supreme Court honored the Bicentennial of the first session of the Supreme Court of the United States. The commemorative session opened as all official sessions of the Court are opened, with the Marshal of the Court gaveling the room to silence and announcing the arrival of the Justices: "The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States." The program consisted of four speeches from representatives of the Supreme Court, the Supreme Court Bar and the Department of Justice.

The first speech was given by Retired Chief Justice Warren E. Burger, Chairman of the Commission on the Bicentennial of the U.S. Constitution. Chief Justice Burger discussed the origins of the Supreme Court, outlining the circumstances that surrounded the first session of the Supreme Court in February, 1790. He noted that on the day appointed for this first session, "only three of the six Justices who had been confirmed were present. There being no quorum they met the following day when the fourth Justice arrived. The fifth did not make it at all and the sixth, Justice Harrison, declined the appointment partly on the grounds of health and probably influenced by the reality that riding circuit. . . was a burden that only a Justice in robust health could undertake." In discussing this historic occasion, Burger described the humble surroundings in which the session was held: "This first session was held in a small room on the second floor of a commercial building in New York City across the street from the Fulton Fish Market near the waterfront."

Chief Justice Burger explained that there was no actual business before the Court for its first session, so "it undertook housekeeping matters; it appointed a 'cryer,' adopted a seal for the Court and later appointed a clerk. At its second session it admitted some lawyers, and over the next two years it mainly waited for the pipeline to bring some cases from the lower courts." Burger pointed out that while the caseload was light in the early years of the Court's history, some significant opinions were rendered. He noted particularly the decision in Ware v. Hylton, saying that it "can be read as foreshadowing the holding



Society founding member William S. Sessions, Director of the Federal Bureau of Investigation, and Retired Chief Justice Warren Burger were among those attending a reception that immediately followed the bicentennial session.

in Marbury v. Madison nine years later."

Chief Justice Burger then commented on the difficulties of the early Court in establishing itself as a truly co-equal branch of the government. In conclusion, he commented that the free-

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Annual Meeting: Update

The date for the Society's Fifteenth Annual Meeting has been set for Monday, May 14, 1990. As in past years, the activities will include: the annual lecture, to be given in the Supreme Court Chamber by Retired Justice Lewis F. Powell, Jr.; an open house; a special guided tour of the Supreme Court; the annual membership meeting; and the black-tie reception and dinner. Invitations were mailed to Society members on April second.

Letter from the President



Society President Justin A. Stanley

We are closing in on our interim goal of \$1.5 million in hand or in pledges to the endowment campaign by the time of our May 14, 1990 Annual Meeting. We now have one million, four hundred and thirty-five thousand dollars, thanks to \$25,000 contributions from: S. Howard Goldman; Southwestern Bell Foundation; Altheimer & Gray; Pillsbury, Madison & Sutro; Sutherland, Asbill & Brennan; and Skadden Arps, Slate, Meagher & Flom since I last reported to you.

Our membership campaign, headed by Frank Jones, is also proceeding well, with the Society's membership rolls now ex-



The U.S. Army Strolling Strings are scheduled to perform at the Annual Dinner on May 14, and will be followed by the ninety-five-man Alexandria Harmonizers barbershop-style chorus.

ceeding 3,300 members. Frank hopes to reach 3,500 by May 14th. If he does, it will be the result of a great deal of hard work by Frank and the vigorous efforts of state membership chairpersons like Charles Renfrew, who singlehandedly has signed up over 130 new members this year.

As you probably noticed, the front page of this issue includes a notice about the Fifteenth Annual Meeting which will be held on May 14, 1990. Although much of this year's program will follow the successful traditions of prior meetings, the Society's increased activities have happily necessitated some expansion of our agenda. Two noteworthy additions to this year's program will be a presentation of awards for state membership chairmen who have met their annual membership goals and awards for \$25,000 endowment donors. Similar presentations were made last Fall to some of the initial endowment fund donors, and state membership chairmen who got their recruiting drives off to a fast start--meeting their year-end goals within a mere six months.

A third ceremony will also be held to present cash prizes to the authors of the two best original works published in the 1989 Yearbook. This is particularly exciting, because these are the first awards of this kind in the Society's history.



Society Trustee Charles B. Renfrew was photographed with Mrs. Rehnquist at the Fourteenth Annual Dinner. Mr. Renfrew, one of two California membership chairmen, has recruited more than 130 new members.

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Retired Justice Lewis F. Powell, Jr., chats with Society members at a reception preceding an earlier annual dinner. Justice Powell will deliver the Annual Lecture May 14, in the Supreme Court Chamber.

The Society has been fine-tuning its development and production of the Yearbook for several years and the book is gradually evolving into a nationally recognized annual. Professor Michael Cardozo has assumed the role of Editor. Clare Cushman, a member of our staff, is doing a very able job as Managing Editor. We have also been fortunate to secure the valuable editorial assistance of James J. Kilpatrick and the research assistance of Supreme Court Assistant Librarian, Dr.

I hope that as many of you as possible will plan to attend the Fifteenth Annual Meeting. However, I remind you that, as in years past, the Annual Reception and Dinner are very popular and reservations will be accepted in the order in which they are received. The membership is growing, but the Great Hall is not; if you wish to attend, please respond promptly when you receive your invitation. All members with reservations that are accepted will be notified by mail as soon as is possible.

Patricia Evans. While each individual's contribution greatly enhanced the production quality of the 1989 Yearbook, this issue also benefitted from a strong field of editorial submissions--in part due to the establishment of the cash prizes to encourage original scholarship on the history of the Supreme Court.

To preserve objectivity, the Publications Committee established a policy that sitting and retired Justices, members of the Publications Committee and members of the Yearbook's Board of Editors would be ineligible for consideration for these prizes. Even with these restrictions, the Board of Editors is having a difficult time choosing from among several deserving papers, which, in itself, is a credit to the Yearbook's growing prominence. Nevertheless, the first two recipients will be selected in time to receive prizes of \$1,500 and \$500 respectively on May 14th.

Endowment Fund Donors of \$25,000 as of April 6, 1990

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Commemorative Stamp Issued for Bicentennial of Federal Judiciary

Article III, Section 1 of the Constitution of the United States provides that "[t]he judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." The Judicial Branch of the federal government was created in accordance with this provision, by the authority of the Judiciary Act of September 24, 1789. On February 2, 1790, the Supreme Court of the United States met for the first time.

Two hundred years later, a ceremony was held in the Supreme Court building to unveil the commemorative stamp designed to honor the Bicentennial of the Judicial Branch.

The stamp, part of the Constitution series, was designed by Howard Koslow of East Norwich, New York. The commemorative stamp created for the Judicial Branch features Chief Justice John Marshall. As the fourth Chief Justice, Marshall did more than any other Justice to establish the Supreme Court and the federal judiciary as an equal branch of the government. Among his greatest contributions is his written opinion in *Marbury v. Madison* (1803), in which he held that the Supreme Court has the power to declare acts of Congress unconstitutional.

The unveiling and dedication of the stamp was celebrated in a ceremony held in the lower Great Hall of the Supreme Court, at the foot of the large John Marshall statue. Mr. Joseph Harris, the Postmaster of Washington, D.C., presided over the ceremony. After welcoming the honored guests, including the Chief Justice, Mr. Harris introduced an a capella sextet to sing the National Anthem. Next, Rabbi Harold S. White, from Georgetown University, delivered the invocation. Esther J. Richards, the General Manager/ Postmaster of the Southern Maryland Division of the Postal Service, introduced many of the honored guests to the large crowd attending the event.

Mr. Harris resumed the podium to introduce Chief Justice Rehnquist, who represented the Court. The remarks of the Chief Justice follow:

"I am happy to participate in this ceremony honoring the Judicial Branch of the United States Government with a stamp depicting my great predecessor, Chief Justice John Marshall. I am both an amateur stamp collector and an American history buff, and I must say that at least in the past, there seems to have been a certain amount of politics involved in deciding which American historical figures were chosen to have their pictures grace a stamp.

"Take, for example, the three most prominent members of Abraham Lincoln's cabinet. William H. Seward was his Secretary of State, and continued to serve as Secretary of State under Andrew Johnson.

"Lincoln's Secretary of the Treasury was Salmon P. Chase, who had served as both Governor of Ohio and Senator from that state. In 1864, Lincoln named him Chief Justice of the United States, and he served in that position for nine years until his death in 1873.

"The third member was Edward M. Stanton whom Lincoln appointed Secretary of War. Stanton was a political chameleon. He had voted for Buchanan in 1856, and served briefly in Buchanan's cabinet just before Lincoln came to power. He became Lincoln's Secretary of War in 1862, and carried over into

the administration of Andrew Johnson just as Seward had. While in Buchanan's administration he had surreptitiously confided the deliberations of the Cabinet to the incoming Republicans. While Johnson's Secretary of War he had surreptitiously confided the deliberations of the Cabinet to the radical Republicans on Capitol Hill. Grant appointed him to the Supreme Court in 1869, but he died before he could take his seat.

"In what order do you suppose these three worthies would appear on United States postage stamps? One factor to bear in mind, of course, is the policy against putting any living person on a stamp.

"The first to make it onto a stamp was none other than Edwin M. Stanton, who first made his appearance on the seven-cent vermilion stamp of the National Bank Note issue of 1870-71.

"Seward, although he died only a few years after Stanton, was not so fortunate. He did not make it onto a postage stamp until 1909, when his picture appeared on the two-cent carmine denomination of the Alaska-Yukon-Pacific Exposition issue. (Seward had been the moving force behind the acquisition of Alaska for the United States, and this exposition commemorated the fiftieth anniversary of that acquisition.)

"And how about Salmon P. Chase? Notwithstanding the fact that he was a Senator from Ohio, the Governor of Ohio, Secretary of the Treasury under Lincoln, and Chief Justice of the United States for nine years, he has never appeared on a stamp!

"This is but one example of the fact that United States postage stamps have not been particularly generous in their depiction of members of the Supreme Court. John Marshall, who appears on today's stamp, was the first to break the judicial barrier in the post office department. . . . [T]his is the fourth time that Marshall has appeared on a United States postage stamp.

"William Howard Taft, the only American to have served both as President and Chief Justice of the United States, was depicted on the special four-cent brown denomination issued in the year of his death, 1930. He is also depicted a second time on the fifty-cent light violet denomination of the Presidential issue of 1938.

"When we come to members of the Court who were not John Marshall, and who were not also President of the United States, the pickings are slim. In 1948, two years after his death, a three-cent bright violet stamp was issued to honor Harlan Fiske Stone, Associate Justice and then Chief Justice. In 1957, the fifteen-cent rose lake denomination depicts John Jay, the first Chief Justice of this Court. And in 1962, on the one-hundredth anniversary of his birth, a commemorative four-cent stamp was issued to honor Chief Justice Charles Evans Hughes."

Two Associate Justices have been depicted on stamps: Oliver Wendell Holmes, Jr. on the fifteen-cent maroon denomination of the Prominent Americans issue of 1968; and Associate Justice Hugo L. Black in 1986. The Court building, on the other hand, has been depicted three separate times.

"There may be some who will feel that John Marshall has already had more than his share of stamps depicting him as compared with other distinguished members of this Court. But this new issue is designed to represent the Judicial Branch of the United States Government, and surely there can be no doubt that if one person is to be selected to embody that branch, it must

be the man who is referred to by all simply as 'The Great Chief Justice.' He served as Chief Justice of this Court for thirty-four years, from 1801 until 1835. He came to a Court that was weak and insignificant, so much so that those planning the move of the Capitol from Philadelphia to Washington in the fall of 1800 totally forgot to provide any space in which the Court could meet. When Marshall left the Court more than a third of a century later, it was a vigorous and co-equal branch of the government, with its power of judicial review firmly established. No other person in the history of the Court even comes close to matching his stature."

Anthony M. Frank, the Postmaster General of the United States, was the next to speak. He began by stating that dedicating the commemorative stamp was "the highest honor we, at the postal service, can give to recognize the two-hundredth anniversary of the Judicial Branch and the convening of the highest court in the land.

"Several years ago, the Postal Service received thousands of requests to create a series of stamps celebrating the Bicentennial of the U.S. Constitution. And, we were happy to comply with those requests, because this series gives us the opportunity not only to commemorate the events surrounding the early days of the writing and implementation of the Constitution, but also to teach the American public about the continuing importance of this document in our daily lives.

"The Constitution series consists of more than twenty philatelic issues that pay tribute to our country's early years. Each stamp and postal card highlights a major event in the development of our federal system. . . from convening of the Constitution Convention, to ratification of the document by the thirteen original states, to the drafting of the bill of rights.

"This Judicial Branch stamp is the last of four commemoratives in the Constitution Series specifically recognizing the three separate branches of our federal government. Last year, we issued two stamps honoring the Legislative Branch--one for the House of Representatives and the other for the Senate--and a stamp recognizing the Executive Branch. The Judicial Branch stamp completes the group.

"I think it is fitting that the Supreme Court stamp is the final one issued in this group of four. . . fitting, because, Congress can pass a law, and the President can sign it into power, but the Supreme Court, representing the Judicial Branch, has final authority over that law.

"The fourth Chief Justice, John Marshall, whose striking image appears on this stamp, and whose statue we stand before today, was instrumental in establishing the Supreme Court's final authority. His decision in the case *Marbury v. Madison* defined, irrefutably, the Court's ability to declare a law unconstitutional, by demonstrating that the Court was obliged to refuse enforcement of any statute that it found to be contrary to the Constitution. For the last 200 years, the Supreme Court has continued to see that the Constitution remains the guiding force in shaping our nation.

"Our stamp designs must convey complex ideas in only a few seconds, much like the lawyer who has only a few minutes to present his case before the Supreme Court. Both the stamp design and the court case are researched extensively. Months, even years, of intense preparation are carefully condensed into

the essence of the issue.

"In the case of the Supreme Court stamp, several design elements were researched and considered. It was suggested that the scales of justice would be an appropriate illustration, or the Supreme Court building itself. Or even the first Chief Justice, John Jay. But it was decided that John Marshall, the man who did the most to shape the destiny of the Court, would best represent the Supreme Court on this commemorative stamp.

"The stamp designer, Howard Koslow, who also created the Legislative and Executive Branch commemoratives, molded an image of John Marshall and blended it with colors and typefaces to match the previous issues, giving a beautiful continuity to this set of four. After all of this intense preparation comes the moment of truth. We have only one chance to catch the recipient's attention with our stamp design. . . just as the lawyer has only one chance to convince the nine Supreme Court Justices with his argument.

"But extensive research and careful presentation are not the only parallels between the Postal Service and the Supreme Court. We also are two entities that touch the lives of every American on a daily basis.

"It has occurred to me that the Supreme Court issues hundreds of legal decisions, while the Postal Service makes decisions on hundreds of possible subjects for future stamp issues. These decisions and issues are eagerly anticipated by the American public.

"I am glad that the anticipation over the Judicial Branch stamp is finally over. Starting today in Washington, D.C., and tomorrow nationwide, millions of these stamps will appear on envelopes speeding across the country, and around the world, telling of our pride in the Judicial Branch of government and celebrating two hundred years of preserving, protecting and promoting the Constitution of the United States."

The Postmaster General, accompanied by the Chief Justice, unveiled the commemorative stamp to hearty applause from the audience. Postmaster General Frank then dedicated the stamp.

Mr. Frank presented souvenir albums to the distinguished guests. The first, by tradition, was delivered to the President of

the United States. As President Bush was unable to attend, his album was delivered to the White House. The next album was presented to Chief Justice Rehnquist, followed by presentations to Chief Justice Burger and the Postmaster of Washington, D.C. These presentations concluded the commemorative ceremony.

The commemorative stamp, shown left, was designed by Mr. Howard Koslow and features an image of Chief Justice John Marshall that was drawn from numerous sculptures, paintings, statues and engravings.

Bicentennial Session (continued from page one)

doms "people all over the world are demanding" were the kinds of freedom "this Court has been foremost in protecting for two hundred years. Our history is their hope, and our hope for them must be that whatever systems they set up . . . will include a judiciary with authority and independence to enforce the basic guarantees of freedom, as this Court has done for these two hundred years."

The next speaker was Rex E. Lee, President of Brigham Young University and former Solicitor General of the United States. Mr. Lee, speaking as a representative of the members of the Supreme Court Bar, briefly touched upon the history of that Bar, explaining that the first rules of the Court, adopted on February 5, 1790, drew a distinction between "counsellors and attorneys." The rule provided that "counsellors shall not practice as attorneys nor attorneys as counsellors in this court." This rule perpetuated the tradition of Great Britain whereby the duties and roles of barristers and solicitors are distinct from one another. In the newly created American system, attorneys "could file motions and do other paperwork, but only counselors could plead a case before the Court." Mr. Lee pointed out that this system was modified in 1801 by a change in rules which allowed that "Counsellors may be admitted as Attorneys in this Court, on taking the usual oath."

Mr. Lee noted several of the distinguished nineteenth century advocates before the Supreme Court. He pointed out that during the early years of the Court there were no time limitations on oral argument and frequently each side was represented by two or more attorneys. As an example, he noted that the oral argument in *McCulloch v. Maryland* included six attorneys and lasted nine days. "Those were the days when there were no questions; both the commentators and the advocates themselves referred to their arguments as speeches, which they would rehearse for days. Charles Warren relates that 'the social season of Washington began with the opening of the Supreme Court term.'"

After discussing several of the most notable advocates of the



Rex E. Lee, President of Brigham Young University, represented the members of the Supreme Court Bar. Mr. Lee is shown above, left, with Justice and Mrs. Scalia at the reception that followed the bicentennial session.

nineteenth century, Mr. Lee said "it is already clear that during the Court's second hundred years, advocates to match the stature of Pinkney, Wirt, and Webster have stood at this podium. Comparisons are difficult because of changes in circumstances and rules, but quite clearly the Court's jurisprudence during this century has been influenced by people such as John W. Davis, Robert Jackson, Thurgood Marshall, and Erwin Griswold, just as it was during earlier times by Pinkney, Wirt, and Webster."

In conclusion, Mr. Lee said, "we the members of the bar of this Court are proud of the institution whose two hundredth birthday we celebrate, proud of what it has meant and what it has done for our country and its people, and proud of the contribution that the members of the bar have made to the Court and its accomplishments over its two-hundred-year history. . . . We are pleased to offer our continuing services as we enter the Court's third century."

The third speaker was Kenneth W. Starr, Solicitor General of the United States. Solicitor General Starr spoke of those early members of the Court who were included among the Founding Fathers and of the significant contributions they made to shaping the new country. He noted that as early as 1792 in *Hayburn's Case* it became evident that "our constitutional democracy, by virtue of the status of the Constitution as supreme law, would include the power of judicial review. . . ."

He said many of the first decisions of the Court helped to define the scope and powers of the federal government. One of the first principles which it addressed was the "legitimacy as well as the limits of judicial power." The second was that appropriate national interests could and should supercede those of individual states or regions.

In conclusion, he said that the Court had played its role in bringing "to life in 1789 and 1790 what the Framers had envisioned--a balanced government, destined to stand the test of time," and it is that "moral vision of equal justice under the rule of law" that the Court and the entire Justice system even now endeavor to promote.

Chief Justice Rehnquist was the concluding speaker. He thanked the other speakers for their remarks and spoke of a ceremony held in the Court fifty years ago to commemorate the one hundred and fiftieth anniversary of the first session of the Supreme Court. He quoted from then Attorney General Robert H. Jackson, who had spoken on that occasion:

this age is one of founding fathers to those who follow. Of course, they will reexamine the work of this day, and some will be rejected. Time will no doubt disclose that sometimes when our generation thinks it is correcting a mistake of the past, it is really only substituting one of its own. . . . I see no reason to doubt that the problems of the next half-century will test the wisdom and courage of this Court as severely as any half-century of its existence.

The Chief Justice noted the catastrophic changes that took place around the world shortly after Jackson's speech and expressed his belief that the coming fifty years would also bring great changes of far-reaching magnitude. He noted that "we, too, must realize that our work has no more claim to infallibility than that of our predecessors. Daniel Webster said that 'Justice is the great end of man on earth'. . . and the motto

inscribed on the front of this building-- 'Equal Justice Under Law'--describes a quest, not a destination."

Continuing his remarks, the Chief Justice commented that fifty years ago the Court had been "virtually the only constitutional court. . . sitting anywhere in the world." He noted that in the years following the Second World War, many countries have drafted written constitutions. While they differ widely from one another, many include provisions for a court system which has "authority to enforce the provisions of a written constitution." After further commentary, he concluded, "I do not think that I overstate the case when I say that the idea of a constitutional court such as this one is the most important single American contribution to the art of government."

The special session of the Court was followed by a reception sponsored in part by the Supreme Court Historical Society.

In contrast to this simple program, it is interesting to consider the Centennial Anniversary of the Supreme Court. President Benjamin Harrison suggested the appropriateness of a centennial celebration in his inaugural address delivered on March 4, 1889, and the New York State Bar Association determined to host such a celebration. A Committee was duly appointed and the President of the New York State Bar, William H. Arnoux, was elected its Chairman. The Committee put together a gathering of large proportions, so much so that the Metropolitan Opera House in New York was reserved for the occasion.

By the time of the commemoration, the New York Bar Association had been joined by the American Bar Association in hosting the event, and the original Committee had been expanded to 100 members to symbolize the 100 years of the Court's existence. The Committee determined to have four speakers representing the New England, Middle, Southern and Western states and Ex-President Grover Cleveland was chosen to preside over the occasion. The Symphony Orchestra of the Metropolitan Opera House volunteered to provide music for the occasion as did the German Liederkrantz Society, a choral group of one hundred voices.

As described in *The Supreme Court of the United States, Its History and Heritage*, by Hampton L. Carson, the Opera House was "superbly and appropriately decorated. Streamers of the National colors were suspended from the dome and trained back to the upper gallery. The galleries themselves were profusely draped with large silken flags, and in the spaces between the Coats-of-Arms of the States and Territories of the Union were displayed. The stage was surmounted by a vast arch draped with flags and to the centre a facsimile of the Seal of the Supreme Court of the United States was attached. Upon the right and left of the stage the portraits in oil of the Chief Justices of the Court stood upon easels, adding to the interest and significance of the scene. At the appointed hour the members of the Court and special guests, amid a burst of great and spontaneous applause, entered the Opera House. . . ." Thus began the ceremony for the Centennial Celebration. The ceremony must have been lengthy for the speeches as recorded are long and musical numbers were interspersed in the program. The record shows that a selection from Verdi's "Aida" was played at the close of one long address, while a brief intermission was taken following another. After speeches by various members of the New York Bar and the four regional representatives of the Bar, the Chief Justice made brief remarks and introduced Justice Stephen Field as the final



Kenneth W. Starr, Solicitor General of the United States, represented the Department of Justice.

speaker. After Field concluded his remarks, the orchestra played. The President had been scheduled to speak at this time, but neither the President nor his Cabinet were present that day, as they were in mourning for the family of the Secretary of the Navy. Secretary Tracy's family had experienced a tragedy "by reason of fire" according to the record, with several deaths resulting.

To close the commemoration, the German Liederkrantz Society sang an "Ave Maria" and the audience stood and joined them in singing 'Our Country 'Tis of Thee'. After singing the Doxology, a benediction was pronounced and the guests dispersed while the orchestra played.

But the New York Bar Association was not content to let the day end with only that ceremony. That evening a banquet was held at Lenox Lyceum on Madison Avenue to which the members of the Supreme Court and other distinguished guests were invited. The record is not complete on the activities of this event, but it does record a response to a toast by the first Justice Harlan.

The enthusiasm of the centennial celebration may seem a bit exaggerated to us now that we stand at the two hundred year mark. But both commemorations were dedicated to the same institution and underlying precepts of liberty. This "quest for liberty" as Chief Justice Rehnquist termed it, is the underlying cause of both celebrations. Mr. Arnoux, Chairman of the Centennial Commemorative Committee summarized his generation's feelings in words that are still meaningful today:

The institution of a Judicial body so comprehensive and far-reaching, so implicitly trusted and obeyed, so republican in form and final in effect was, to the absolutism of Europe, a bold innovation, a stupendous experiment. It was unparalleled in the world's history. Now it is no longer an experiment, with cavil or misgiving, but a monumental and rounded fact. The Executive, with a million soldiers at his command, the Congress of the United States, with its power, forty States, sovereign in their sphere, and sixty-five millions of people occupying a continent, a proud and liberty-loving people, jealous of their rights, bow to the decree of a Tribunal of nine Civilians that has not a single sword to enforce its judgments. . . .

We meet, not to discuss or criticize the Court. . . . But we meet, on the broadest grounds of patriotism and gratitude, to acknowledge and celebrate its worth and its beneficent results, to recognize the great debt which we as a nation owe it, so that in the records of History there may be proof anew that Republics are not always indifferent or ungrateful.

Arthur Goldberg: A Man of Advocacy

by Kathleen Shurtleff

Arthur Joseph Golberg was a man of many careers. During his lifetime he worked as an attorney specializing in labor law, served as an advisor to Presidents Kennedy and Johnson, and became Secretary of Labor in Kennedy's Cabinet, an Associate Justice of the Supreme Court of the United States, and United States Ambassador to the United Nations during the Vietnam conflict. Goldberg also made a bid for elective office when he ran for governor of New York in 1970.

Goldberg's origins were very humble and his is the classic story of a poor child of immigrants making his fame and fortune in America. Goldberg was born August 8, 1908, one of eight children of Joseph and Rebecca Goldberg. Both of his parents were Russian immigrants who settled in Chicago. Goldberg's father, who died when Arthur was eight, sold produce to hotels from a wagon pulled by a blind horse. Despite the financial hardships of his childhood, Goldberg completed high school at the age of 15. He then began attending Crane Junior College by day and De Paul University by night. He subsequently entered Northwestern University Law School, where he graduated first

in his class in 1929 and took his doctorate, summa cum laude, the following year.

After clerking for a Chicago law firm, Goldberg opened his own practice, which became increasingly devoted to labor law. One of his first major labor clients was the American Newspaper Guild, which was embroiled in a strike against the Chicago Hearst newspaper. In 1931, Goldberg married Dorothy Kurgans. They had two children, Barbara and Robert.

In the late 1930's he began representing a group which would become the United Steelworkers union and the Chicago and Illinois state branches of the Congress of Industrial Organizations (CIO). Because of his work with these and other clients, Goldberg played an important part in the historic merger in 1955 of the American Federation of Labor and the Congress of Industrial Organizations, and, indeed, authored the constitution of the new AFL-CIO. In 1959 he represented the steelworkers in a strike that lasted more than 100 days and ended in what was seen by many as a significant victory for labor.

During the 1950s when he cooperated with congressional



Representatives of both sides of the steel talks are shown leaving the White House after the June 8, 1952 bargaining session. No progress had been made toward resolving the critical week-long steel strike. Left to Right: Arthur J. Goldberg, General Counsel, United Steel Workers (USW); Philip Murray, President, USW; John Stephens, Vice President U.S. Steel; Ben Morrell, Jones & Laughlin; David J. McDonald, Secretary - Treas., USW; Charles White, President, Republic Steel.

committees and their investigations of corruption in organized labor, Goldberg became acquainted with Robert F. Kennedy, who was the chief counsel of the Senate Select Committee on Improper Activities in the Labor Management Field. His relationship with the Kennedys was strengthened in 1958 when Goldberg supported labor reform legislation that Senator John F. Kennedy had proposed. Goldberg was instrumental in obtaining the support of organized labor groups for Kennedy's presidential campaign. It was not a surprise, therefore, when Kennedy nominated Goldberg for the post of Secretary of Labor in his Cabinet. The choice proved to be popular, and he was confirmed unanimously by the Senate and praised by Senator Barry Goldwater as "the most outstanding choice" in the new Cabinet.

Twenty-four hours after Goldberg was sworn in as Secretary, he travelled to New York to help mediate a tugboat strike. During his service in the Cabinet, Goldberg called upon his wide experience in labor law to arbitrate a number of disputes. The most significant of these involved United States Steel Corporation. President Kennedy was committed to holding the cost of U.S. steel down to its current prices, and Goldberg worked to resolve the dispute between labor and management without increasing wages, thereby raising the price of steel. He succeeded in arbitrating such an agreement, but three days later U.S. Steel executives announced a price increase. President Kennedy was angered by this action, and Goldberg went back to U.S. Steel to demand a change in pricing. After significant pressure was brought against the U.S. Steel Corporation, their executives did comply. Goldberg was also involved in creating procedures to reduce strikes at missile construction sites. Biographers note that Goldberg's advice to President Kennedy went beyond those issues related to the Labor Department to include such areas as federal aid to the arts, social security benefits and foreign policy.

But Goldberg was not to serve long as Secretary of Labor. On August 28, 1962, Felix Frankfurter retired from the Supreme Court. On September 28, Goldberg was nominated to fill Frankfurter's seat. He was confirmed and took his seat in time for the October Term. In a speech before the American Bar Association in 1963 Goldberg spoke about the differences he experienced when he left the Cabinet to become part of the Court:

One is "elevated" to the Court and consequently, in socially conscious Washington, eats higher on the hog, but the Secretary, though outranked at the table, is driven to the dinner in a government Cadillac, whereas the Justice steers and parks his own car. Who gains by the exchange depends on a value judgment. . . .

The Secretary's phone never stops ringing; the Justice's phone never rings—even his best friends won't call him.

The Secretary continually worries about what the President and an unpredictable Congress will do to his carefully formulated legislative proposals; the President, the Congress and the Secretary wonder what the Justice will do to theirs. . . .

The Secretary numbers among his several thousand employees doorkeepers to guard his privacy; the newest Justice is, himself, the doorkeeper to protect the Court's. . . .

The last sentence, of course, refers to the procedure used by the Justices during Conference. When the Justices meet on Fridays



Justice and Mrs. Goldberg pictured at their Virginia farm in 1986.

to vote on cases, it is in complete privacy; no Court employees are allowed inside the room during their conference. The newest member of the Court, therefore, becomes the doorkeeper who gives and receives messages to and from the Court employees outside the Conference Room.

Goldberg approached his work on the Court with his characteristic energy. Though he served only three terms on the Court—from October 1962 through June 1965—he wrote a number of significant opinions, and several separate opinions. Goldberg approached his work on the Court with the philosophy that had dominated his earlier endeavors: that while there are problems in the world, solutions can be found. In his work on the Court he would prove himself a strong advocate of individual rights, writing such important opinions as *Kennedy v. Mendoza-Martinez*, which dealt with immigration law and draft evasion, and *Watson v. City of Memphis*, which concerned the pace at which desegregation proceeded. The most important decision he wrote was in the case of *Escobedo v. Illinois*, which concerned due process for indigent defendants.

In 1965, President Lyndon Johnson asked Goldberg to leave the Court and take over the post of the U.S. Ambassador to the United Nations. Citing the difficulties of the Vietnam War and the need to have a distinguished American replace Adlai Stevenson, Johnson persuaded Goldberg that his special talents would be well utilized in the post. There is speculation that Johnson's real motivation in asking Goldberg to resign was his desire to appoint his friend, Abe Fortas, to the Supreme Court. Whether or not this was his underlying motive, Johnson did, in fact, nominate Fortas to fill Goldberg's seat. When Goldberg accepted the appointment to the United Nations, he told Johnson, "I shall not, Mr. President, conceal the pain with which I leave the Court after three years of service. It has been the richest and most satisfying period of my career. . . ." He told reporters in July 1965, the day he was named to the Ambassadorial post, "in all candor, I would rather the President had not asked me to undertake this duty. But it appears perhaps I can at this stage of our national life make a contribution, I hope, in this area of foreign affairs."

-continued on page ten

Justice Goldberg (continued from page nine)

Goldberg's tenure as Ambassador to the United Nations was marked by many disappointments and frustrations. Johnson had emphasized that his negotiating skills and reputation would enable him to play an important role in seeking peace in Vietnam. This was not to be the case, however. Goldberg did make an important contribution regarding the Arab-Israeli war of June 1967 and a peace settlement in the Middle East, but the goal of resolving the Vietnam problem eluded him. Goldberg and Johnson held disparate views on how the war in Vietnam should be conducted, and relations between Goldberg and Johnson deteriorated over the years. By the end of his tenure at the U.N., insiders reported that Johnson took exception to Goldberg's frequent telephone calls and memoranda calling for de-escalation of the war.

In June 1968, Goldberg returned to the practice of law, this time in the City of New York. He made one bid for elective office in 1970 when he ran against Nelson Rockefeller for Governor of New York. It was not a successful experience, and Goldberg was not lured into the arena of elective politics again. In 1971, Goldberg returned to Washington, where he practiced law and taught part-time. He was often called in to work on international arbitration cases, and from 1977-78 he served as a United States Ambassador-at-Large. He frequently criticized the Eastern bloc nations for their human rights policies and advocated peaceful solutions to problems through negotiation.

At the time of his death, Goldberg was still practicing law in Washington, D.C and pursuing many of his extra-legal interests.

When Chief Justice William H. Rehnquist announced Golberg's death, he observed that "though Justice Goldberg served on this Court for a comparatively brief period of time, he made important contributions to its jurisprudence." Perhaps a fitting epitaph can be found in the words of President Lyndon Johnson, who praised Goldberg in his memoirs as "a skilled arbiter and a fair-minded man."



Justice Goldberg (from left) joined Justices Scalia, O'Connor, and Stevens at the unveiling ceremony of Retired Chief Justice Burger's portrait bust. The ceremony was held June 3, 1988 in the Great Hall of the Supreme Court.



This photo of President Johnson and Justice Goldberg was taken aboard Air Force One on July 19, 1965, six days before Goldberg resigned from the Court.

Membership Update

The following members have joined the Society between December 16, 1989 and March 9, 1990.

Alabama

- William D. Melton, Evergreen
- Jerry L. Thornton, Hayneville

Arizona

- John Edward Charland, Phoenix
- David J. Diamond, Tucson
- Larry A. Hammond, Phoenix
- Paul Marcus, Tucson
- Michael J. Meehan, Tucson

California

- Charles A. Alders, Los Angeles
- Richard D. Aldrich, Westlake Village
- Gary H. Anderson, San Francisco
- James R. Bancroft, San Francisco
- Frederick D. Baron, Palo Alto
- John B. Bates Jr., San Francisco
- Daniel H. Bookin, San Francisco
- Ried Bridges, Los Angeles
- William Brockett, San Francisco
- William K. Coblentz, San Francisco
- Douglas J. Collodel, Los Angeles
- Grant B. Cooper, Studio City
- Thomas B. Cummings, Santa Ana
- Andre L. de Baubigny, San Francisco
- A.B. Diepenbrock, San Francisco
- John V. Diepenbrock, Sacramento
- Pamela S. Duffy, San Francisco
- Timothy H. Fine, San Francisco
- Peter M. Folger, San Francisco
- James T. Fousekis, San Francisco
- Maurice Fuller, Atherton
- James C. Gaither, San Francisco
- Robert B. Gex, San Francisco
- Margaret G. Gill, San Francisco
- David B. Gold, San Francisco
- R.J. Guggenhime, San Francisco
- Max Gutierrez Jr., San Francisco
- Hancock, Rother, San Francisco
- Richard Harrington, San Francisco
- Kirke M. Hasson, San Francisco
- Herbert S. Hazeltine, Los Angeles
- Malcolm G. Heib, Manhattan Beach
- Robert C. Herr, San Francisco
- Edwin E. Huddleson Jr., San Francisco
- Philip Hudner, San Francisco
- Clarence S. Hunt, Long Beach
- Robert F. Kane, Redwood City
- John W. Kecker, San Francisco
- Clive J. Kemp, Santa Ana
- Raoul Kennedy, Oakland

- Lane B. Carlisle, San Francisco
- David O. Larson, Oakland
- Anne E. Libbin, San Francisco
- George H. Link, Los Angeles
- William R. Mackey, San Francisco
- Donald J. McCubbin, San Francisco
- T. Neal McNamara, San Francisco
- William C. Miller, San Francisco
- Ronald B. Moskovitz, San Francisco
- G. Richard Murray, San Francisco
- William E. Mussman, San Francisco
- Michael L. Ohleyer, San Francisco
- Walter G. Olson, Hillsborough
- William H. Orrick III, San Francisco
- Luther Kent Orton, San Francisco
- James N. Penrod, San Francisco
- Alfred L. Pepin, San Francisco
- David L. Perry, San Francisco
- Forrest Plant, Sacramento
- M. Laurence Popofsky, San Francisco
- Jay E. Powell, San Francisco
- Toni Rembe, San Francisco
- Paul A. Renne, San Francisco
- Joseph W. Rogers Jr., San Francisco
- Morton Rosen, Santa Monica
- Robert A. Rosenfeld, San Francisco
- Edward W. Rosston, San Francisco
- Michael Rubin, San Francisco
- Marshall M. Schulman, Santa Ana
- Roland W. Selman, San Francisco
- Richard J. Sideman, San Francisco
- John E. Sparks, San Francisco
- Graydon S. Staring, San Francisco
- David T. Steffen, San Francisco
- John K. Stewart, San Francisco
- Brooks Stough, San Francisco
- Steven L. Swig, San Francisco
- Haskell Titchell, San Francisco
- Nancy P. Tosterin, Monterey
- Charles E. Townsend Jr., San Francisco
- Mr. & Mrs. Harold Williams, San Diego
- Robert R. Wood, Menlo Park

Colorado

- William D. Neighbors, Boulder
- Paul D. Renner, Denver

Connecticut

- William H. Narwold, Hartford
- Samuel V. Schoonmaker III, Stamford
- Beverly Wall, Hartford
- Gayle B. Wilhelm, Stamford

District of Columbia

- Lawrence H. Averill
- Jerome B. Libin
- Peter Van Lockwood
- Andrew J. Pincus
- William B. Schultz
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- Laurie Webb Daniel, Atlanta
- Jefferson James Davis, Decatur
- Samuel H. Harrison, Lawrenceville
- Harold N. Hill Jr., Atlanta
- Donald W. Janney, Atlanta
- Dorothy Y. Kirkley, Atlanta
- Paul Webb Jr., Atlanta

Hawaii

- Clinton R. Ashford, Honolulu
- Mari Matsuda, Honolulu
- Lawrence S. Okinaga, Honolulu

Indiana

- Stephen M. Coons, Indianapolis
- J. Frederick Hoffman, Lafayette
- Allen Sharp, South Bend
- Thomas H. Singer, South Bend
- William A. Thorne, Elkhart

Kansas

- Alvin D. Herrington, Wichita
- Topeka West High School, Topeka

Louisiana

- Jack C. Caldwell, Lafayette
- Charles Richard Derby, Baton Rouge
- Paul M. Haygood, New Orleans
- Clyde C. Holloway, Alexandria
- Charles K. Reasonover, New Orleans
- Robert M. Talcott, Los Angeles
- Charles A. Verderame, Metairie

Maryland

- J. Woodford Howard Jr., Baltimore
- Daniel Long-Belknap, Columbia
- Mary E. Pivec, Baltimore

Membership Update *(continued from page eleven)*

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R. T. Cox, Columbia
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W. James Foland, Kansas City
David W. Hall Jr., Springfield
Kerry L. Myers, Springfield
James M. Neville, St. Louis
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David Arthur Oliver, Columbia

Nebraska

Eugene P. Welch, Omaha

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New York

Daniel Abrams, New York
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