



THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

VOLUME XII

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## Justice Brennan Retires from Court

Justice William J. Brennan, Jr. announced his retirement in July after a mild stroke convinced him that he should follow his doctor's advice and not endeavor to keep up with the demanding pace of the Court's schedule. The 84-year-old Justice was nominated for appointment to the Supreme Court by President Dwight D. Eisenhower in 1956, and has been a leading liberal voice on the Court for over three decades. The length of his tenure--33 years--has been exceeded by only five other Justices--William O. Douglas, Stephen J. Field, John Marshall, Hugo L. Black, and the first John Marshall Harlan. Over the last few months much has been written about Justice Brennan, and tributes by colleagues and friends are scheduled to appear in the 1991 *Yearbook*. This issue of the *Quarterly* offers a photographic farewell to the man many have called the twentieth century's greatest defender of individual liberties.

Justice Brennan is pictured below in 1956, the year he left the New Jersey Supreme Court bench to join the Supreme Court of

*(Photo at right taken by Josh B. Mathes. Both photos this page courtesy of the Collection of the Supreme Court of the United States.)*



the United States. He was recommended to President Eisenhower by Attorney General Herbert Brownell who thought that the appointment of a highly qualified Democrat and a Roman Catholic from the Northeast would help Eisenhower in the 1956 election. Brennan had come to Brownell's attention when he spoke, as a last-minute replacement for his senior colleague, Chief Justice Arthur Vanderbilt, at a conference on court congestion.

Thirty years later, in May 1986, Justice Brennan was photographed (*above*) lecturing to a school group in the East Conference Room.

*-continued on page 4*

## A Letter from the President

by Justin A. Stanley

July 1, 1990 marked the first day of the Society's new fiscal year, which causes us to contemplate the success of the previous year. The past year has been a good one, and while you will receive a formal annual report in the future, I would like to comment briefly on some of the things we have done and outline some of the goals for the new year.

One of our major accomplishments, of course, is the implementation of a full-fledged capital campaign to build our Endowment Fund. I am happy to report that these efforts have been quite successful. By the end of June the Endowment Fund had grown to some \$1.6 million in gifts and pledges. The majority of the gifts received in this period were from law firms, foundations and corporations. Current plans for the Fall call for several special luncheon meetings to be held in important cities across the United States. We have already met in Chicago, Dallas and Memphis. We were privileged to have Retired Chief Justice Burger come to the Chicago meeting where several special presentations were made to firms that have supported the Endowment Fund. At these luncheons we will present our story



Chief Justice Burger (Ret.) attended a Chicago meeting to solicit support for the Endowment Fund and to present awards to law firms that have made contributions. Milton H. Gray is pictured above accepting an award on behalf of his firm, Altheimer & Gray.

to important members of the legal community.

While we will still seek gifts from similar sources in the coming year, July marked the commencement of a new phase in the fundraising: an appeal to the individual members of the Society.

Many of you have already received letters requesting your participation in this important project, and all of you will be contacted within the year in an effort to help us achieve the goal of \$2.5 million in endowment.

This is the first time in the history of the Society that we have requested donations of this kind from all our members. We do so now because we think it is most important that all members participate in securing the financial future of the Society. You are already aware of and committed to the important purposes of the Society's work; you are an integral part of the legal community of this country; and you are motivated to participate in seeking solutions to the unique problems inherent in preserv-



Frank D. Mayer, Jr. accepted an award on September 10 from Chief Justice Burger (Ret.) in recognition of Mayer Brown & Platt's generous support of the Endowment Fund.

ing the history of the least public of the branches of federal government. We know you recognize the value and necessity of these purposes, and we hope that you will participate to the extent appropriate to your circumstances.

The standing committees of the Society continue their important activities. Work is currently being completed on the 1990 issue of the *Yearbook* and we anticipate that this volume will be circulated to all members of the Society in December. We already have many excellent articles for the 1991 edition as well, so we think that our publications program is well in hand. The Acquisitions Committee has pledged to assist the Office of the Curator of the Court during the coming year and we look forward to providing financial assistance to enable that office to mount several new exhibits which will inform and enrich hundreds of thousands of visitors to the Court. In addition, we hope to pay for the cleaning and restoration of several oil portraits displayed in public areas of the Court building.

Other projects currently under consideration by standing committees include the possible relocation of the Society's headquarters to a larger building on Capitol Hill. While this is still in a very tentative stage, the growing needs of the Society indicate that it may be necessary to find additional office space. This will be particularly necessary if we hope to sponsor independent research and other special projects.

## The Supreme Court Historical Society

### Quarterly

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Editor.....Alice L. O'Donnell  
 Managing Editor.....Kathleen Shurtleff  
 Associate Editor.....Clare Cushman  
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 E. Barrett Prettyman, Jr.

The Budget and Finance Committee is pledged to administering the Endowment Fund in the most beneficial way. The Committee has recommended an ambitious budget for the current year which will require a full commitment to the Society from all of us.

As we all contemplate Justice Brennan's retirement from the Court and the investiture of Justice Souter, it reminds us that the history of the Court is not simply a static compilation of information and facts, but an ever-changing, evolving composition of individuals, issues and ideals. This vital organization is what we seek to document and preserve.

Thank you for your help.

## Society's Library Needs Your Donations

Patricia Evans, a Research Librarian at the Supreme Court, is helping the Society to revitalize its library and reference book collection. Her trained eye has helped us eliminate books that are either out of date or unsuitable to our needs. She has developed a list of recommended books that the Society should acquire, and has encouraged us to join the Library of Congress's book exchange in order to have access to excess copyright and donated materials that are stored for redistribution to libraries, schools, and non-profit educational institutions.

Although we have been purchasing new books and browsing second hand stores, to keep costs down the Society must also seek donations. Most obviously, we are looking for works about the Court and for biographies and autobiographies of its members. But we also need books on American history, legal history, and reasonably up-to-date reference works such as encyclopedae, good dictionaries, and biographical directories.

Although we rely heavily on the Supreme Court library, it has become increasingly important to develop an adequate library in-house so that staff can meet basic research needs. It is also important to have a good library available to members when they visit the headquarters and to answer an increasing number of inquiries from researchers. Any members who would like to donate appropriate titles from their collections should contact the Society either by phone or in writing.

## Endowment Fund Donors of \$25,000

As of October 16, 1990

### Individuals:

Mr. S. Howard Goldman  
 Mr. William T. Gossett  
 Mr. William J. Harte  
 Mr. David Lloyd Kreeger  
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 Mr. Bernard G. Segal  
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 Cravath, Swaine & Moore  
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On October 1, 1956, President Eisenhower had an animated chat with his nominee to the Court. The Rumson, New Jersey judge was the first Catholic appointed to the High Court since Frank Murphy's death in 1949.

(Both photos this page courtesy of The Bettman Archive)



Supreme Court Justice designate William J. Brennan, Jr., age 50, was photographed with his family on October 16, 1956, the day he took the judicial oath. From left to right are: son Hugh, Mrs. Marjorie Leonard Brennan, First Lt. William Brennan III, and, seated in her father's lap, daughter Nancy, age seven.

#### Errata

On page 7 of the Summer issue of the *Quarterly*, the editors misidentified Pierce Butler, the delegate from South Carolina to the Constitutional Convention, as Justice Pierce Butler.

The article on page 4, should have reported that Dean Griswold argued the Pentagon Papers case. The editors regret these errors.

## Gift Ideas from the Supreme Court Historical Society

Members of the Society receive a 20% discount. Members prices are listed in bold.

**Item 341 Desk Folder** Cloth-backed vinyl with brass-plated corners, this finely constructed business accessory will keep your papers clean and unruffled for important meetings. Inside flap and letter-size ruled pad included. Maroon color, smooth finish with gold stamped picture of the Supreme Court building in the lower right corner. "Supreme Court of the United States" printed in gold beneath the image. Reg. \$13.99. **Members \$11.20.**

**Item 342 Padded Leather Folder** This is our very best folder, made of top grade leather, maroon in color, with a satin lining. It comes to you with an inside flap, brass corners and a letter size ruled pad. In the lower right hand corner you'll find embossed in gold the scales of Justice resting on a law book with "Equal Justice Under Law" captioned below. Reg. \$28.95. **Members \$23.15.**

**Item 354 Small Note Pad** The newest note pad to our collection comes in an assortment of colors--red, black, green, or blue. Vinyl covered and small enough to fit in a purse or briefcase, each has an ample supply of paper and a refill order form. Depicted on the front cover in gold is the center facade of the Supreme Court building. Reg. only \$3.95. **Members \$3.15.**

**Item 314 Brass Gavel** Our brass gavels are perfect for their decorative appeal or for actual use. Each piece is turned from solid brass and highly polished and is a little more than one-half scale of the full-sized wooden gavels. Reg. \$8.99. **Members \$7.20.**

**Item 316 Wooden Gavel** The engraved wooden gavel is perfectly balanced and is made of solid walnut with "Supreme Court of the United States" engraved on its gold band. \$17.95 **Members \$14.35.**

**Item 304 Walnut Gavel Plaque** Our large, impressive plaque measures 9 by 12 inches, is made of rich solid walnut and makes a perfect presentation gift. The plaque is ornamented with the Society's enamel seal, a solid walnut gavel and a 2" x 4" polished brass plate ready for engraving and gift giving. \$47.00. **\$37.60.**

**Item 321 Ceramic Inkwell** These ceramic inkwells are replicas of those used in the Colonial period. They are hand fired in "The Old Dominion" from Virginia clay. Each piece is hand signed and individually painted with a colorful cobalt blue design. Each inkwell comes with a handcut pair of quill pens. Reg. \$12.00. **Members \$9.60.**

**Item 319 Pewter Inkwell with Quill Pens** Patterned after those made by silversmiths of the Colonial period, this highly polished inkwell has the look and feel of silver and will add a bit of history to any home or office. Each piece comes with a pair of handcut goosequill pens and makes a charming gift. \$29.99. **\$23.99.**

**Item 330 Large Plate** **Item 329 Small Plate**  
**Pewter Plates** Richly detailed with no two exactly identical, the plates are crafted in a Queen Anne style. The plates are available in two sizes; diameter of the larger plate measures 10 inches,

while the smaller measures just over 5 inches. The plates are hand cast and polished to a burnished sheen. Each plate has the seal of the Supreme Court of the United States centered on it with edging to highlight the detail of the seal. Large plate: \$49.95; Small plate: Reg. \$17.95. **Members: \$39.95 and \$14.35.**

**Item 349 Marble Paperweight** Our newest desk item is a distinctive 3 x 3 inch white Carrara marble paperweight. This impressive white marble has veining throughout and is embellished with a richly detailed casting in bronze of the Supreme Court Seal. Reg. \$12.95. **Members \$10.35.**

**Item 332 Porcelain Handled Letter Opener** This attractive letter opener has a pistol grip handle of black porcelain. The seal of the Supreme Court is embossed on the handle in gold. The blade is Sheffield stainless steel. This attractive and useful accessory is boxed in royal blue for an elegant look. \$8.99. **Members \$7.20.**

*The four desk items that follow are companion pieces.*

**Item 302 Memo Caddy** The memo caddy is crafted from natural walnut and bears the full color enamel seal of the Society. Each tray includes a matching pen and a generous supply of memo sheets which measure 8 1/4" by 4 1/4". Order forms are included for future paper refills. Reg. \$32.00. **Members \$25.50.**

**Item 303 Bookends** The handsome bookends are decorated with the full color enamel seal of the Supreme Court Historical Society on each piece. The bottom of each piece is covered with cork to prevent damage to furniture. Reg. \$32.00. **Members \$25.60.**

**Item 300 Single Pen Set** The companion piece to the memo caddy and bookends, this walnut pen set also features the Society's richly detailed color enamel seal. The bottom is felt covered to prevent damage to fine furniture. The set measures 4 x 5 inches. Regualr \$24.00. **Members \$19.20.**

**Item 301 Double Pen Set** Solid walnut base with three-inch Supreme Court Historical Society seal in full color enamel. Each set measures 4" by 10" and comes with matching pens. It is a companion piece to the three items above. \$29.99. **\$24.00.**

**Item 312 Round Laser Etched Box** Each box is four inches in diameter and carved from a solid piece of walnut. The boxes are felt lined and have the Supreme Court seal laser etched on the lid with exacting detail. These circular boxes are perfect for holding stamps, paper clips, jewelry or other small items. Appropriate for either home or office use. Reg. \$11.99. **Members \$9.60.**

**Item 305 Walnut Single Pen Set** is a classic design crafted of hand-rubbed wood polished to a glossy sheen. A two-inch gold plated medallion of the Supreme Court seal complements the natural wood beauty. Felt squares on the base of the pen set prevent furniture damage. Packaged in a gift box. \$45.00. **\$36.00**



**Item 306 Matching Walnut Pencil Caddy** with two inch gold plated medallion of the seal of the Supreme Court. This piece stands five inches high, and is large enough to hold an ample supply of writing instruments. A perfect companion piece to the pen set, above, it is similarly fitted with felt pads on its base. Regular \$38.00. **Members \$30.40.**

**Item 356 Quill Ballpoint Pen** Our finest ballpoint feels extremely comfortable and glides effortlessly across your documents. The body has a smooth matte black finish with gold accents. Etched into the cap in gold is "Supreme Court of the United States." our pen is gift boxed, writes in black ink and refills may be obtained from any stationery store. Made in the U.S.A. and guaranteed for life. Regular \$24.95. **Members \$19.95.**

**Item 317 Wooden Business Card Holder** The newest addition to our collection of desk items is our solid wood business card holder. This item is handcrafted from walnut or oak hardwoods, and each comes with the Society's enameled seal recessed into the front of the piece. The holder has a protective felt bottom. Please specify choice of wood. Regular \$14.95. **Members \$11.95.**

**Item 343 Walnut Constitution** Our most impressive gift item, this limited edition stainless steel walnut Constitution is very distinctive. Measuring 16 x 22 inches, the unabridged Constitution of the United States is etched into a stainless steel plate which is then mounted on a hand rubbed walnut plaque. This piece is suitable for an attorney's office. Regular \$217.95. **Members \$174.35.**

#### Glass items

**Item 415 Lead Crystal Box** measures two and three-quarter inches square and is acid-etched with the seal of the Supreme Court of the United States on the top panel. Useful for keeping small items on a desk; and the two halves can be used separately. This item is gift-boxed for convenient gift giving. Regular \$12.99. **Members \$10.40.**

**Item 405 Glass Set** This is a set of four double old-fashioned sized glasses. The seal of the Supreme Court of the United States has been acid-etched onto each glass. \$14.99. **Members \$11.99.**

**Item 420 Crystal Inkwell** A true Victorian reproduction handblown into an original 19th century mold. The inkwell is square with a round cover, made of full lead crystal and available in clear or cobalt blue glass. Totally functional and beautiful, each comes with a hand made, polished pewter cover. Excellent value at \$48.95. **Members \$39.15.**

**Item 414 Glass Suncatcher** The suncatcher is a striking lead crystal diamond shaped piece that measures 3 by 3 inches and has the seal of the Supreme Court acid-etched in its center. The beveled edge creates dazzling effects when struck by light. This lovely design comes with a ribbon tie so that it may be used as a Christmas ornament, or use the enclosed suction cup to hang in a window and enjoy all year. Individually boxed. Regular \$5.95. **Members \$4.80.**

**Item 413 Glass Paperweight** is circular and has a delicately fluted edge. The seal of the Supreme Court is acid-etched in the center of the piece. A popular item, this unusual paperweight measures almost four inches in diameter. Reg. \$7.98. **Members \$6.40.**

**Item 416 Lead Crystal Ruler** is 24% lead crystal and has beveled edges. The ruler measures 6 by 2 inches and is imprinted with "United States Supreme Court" across its face. It may be used as either a ruler or paperweight. Regular \$9.50. **Members \$7.60.**

**Item 411 French Crystal Vase** is an elegant and impressively designed gift. The Supreme Court seal is hand engraved on the front of the one foot tall piece. Reg. \$25.00. **Members \$20.00.**

#### Ornaments

**Item 352** Finished in 24K gold, these 3 by 3 1/2 inch oval, metal cutwork ornaments are available in three designs: the Supreme Court building, the seal of the Supreme Court, and the figure of Lady Justice. Each is presented in a folio which includes a short history of the design. Regular \$7.95 or \$6.35 each for members. Please specify design.

#### Publications

**Item 242 The Documentary History of the Supreme Court of the United States, 1789-1800.** The first and second volumes of the Documentary History Project are now available. **Volume I** deals with the structure of the Supreme Court and the official records of its activities from 1789-1800, and serves as an introduction to the planned seven volume series. This volume contains primary source materials including manuscripts, correspondence, private papers, newspaper articles, and official records of the period. **Volume II, The Justices on Circuit, 1790-94,** details the early workings of the federal judicial system. The documents in this volume also touch on topics that figured prominently in the law and politics of the era: neutrality, the boundary between state and federal crimes, and others. Each volume: \$85.00. **Members \$68.00**

**Item 200 The Illustrated History of the Supreme Court of the United States** by Robert Shnayerson. This beautiful book contains portraits and engravings, hand-colored maps and rare archival items, sketches by Cass Gilbert, the architect of the Supreme Court building, as well as illustrations of the people, places, and events associated with the history of the Supreme Court. The 304 page book contains a bibliography, a chart of Justices, and over 370 illustrations. **Special Price \$24.00 No member discount.**

#### Jewelry

**Jewelry with the seal of the Supreme Court.** Each piece features a highly detailed medallion of the Court seal in a heavy gold plate. **Item 606 Money Clip** Reg. \$29.99. **Members \$23.99**  
**Item 607 Tie Bar** Reg. \$18.50. **Members \$14.80.**  
**Item 608 Tie Pin** Reg. \$11.99 **Members \$9.60.**  
**Item 610 Cuff Links** Reg. \$28.95 **Members \$23.15**  
**Item 604 Elegant 10-K Gold Filled Jewelry** featuring the seal of the Supreme Court. Ladies' Charm, \$24.00. **\$19.20.**

#### Our Most Popular Items

**Item 334 Gavel Pencils** This unique pencil has a double-headed eraser which gives it the look of a gavel. The barrel is inscribed with the words "With Liberty and Justice for All", and "The Supreme Court of the United States." The pencils are available in cream, metallic gold, and silver colors. Regular: \$.65 each or \$7.50 per dozen. **Members: \$.52 each and \$6.25 per dozen.**

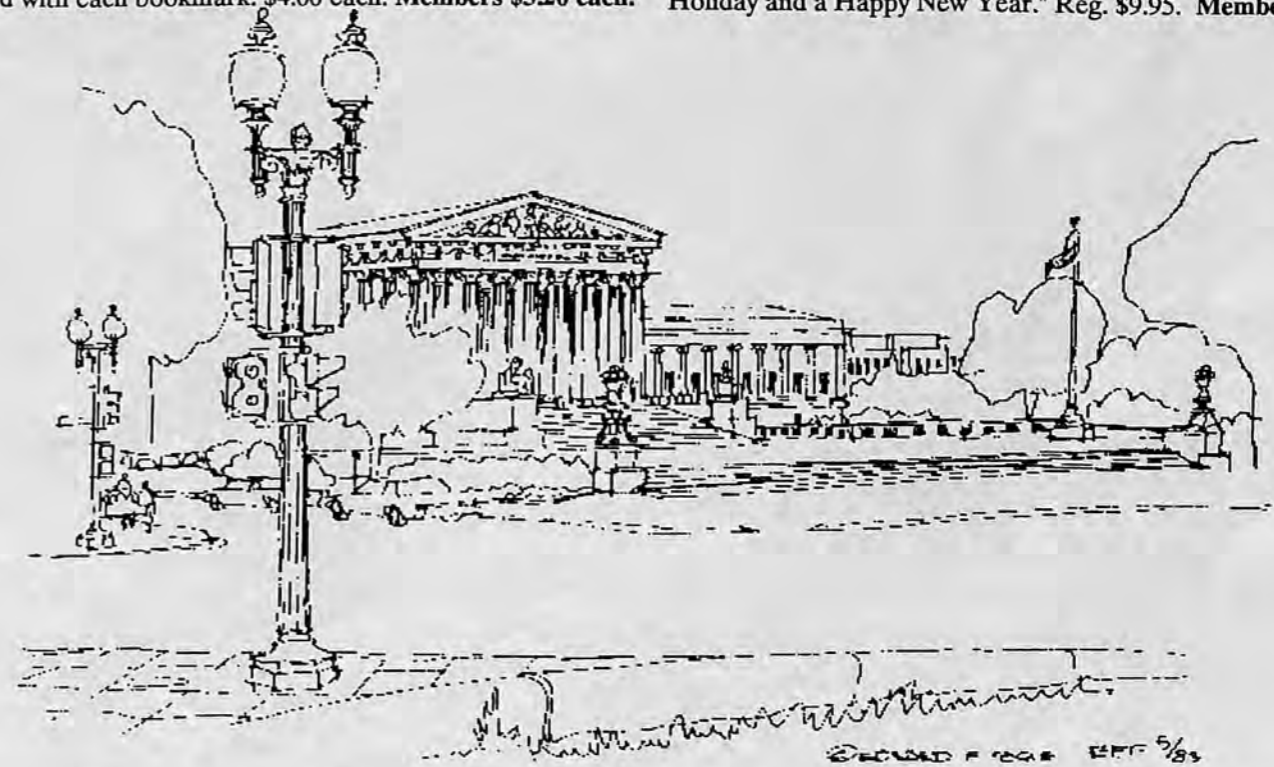
**Item 400 Mugs** Crafted of ironstone for durability, the mug is cobalt blue with the Supreme Court building traced in gold. The rim is trimmed in gold for an added touch of class. \$6.49. **\$5.20.**

**Item 344 Small Scales**

**Scales of Justice** These beautiful scales are made of solid brass, have brass ropes, and are capped with a majestic eagle. They are available in two sizes: the smaller is 11 inches tall, the larger is over 15 inches in height. Small: \$18.99, \$15.20. Large is \$42.95. **\$34.35.**

**Item 720 Supreme Court Building Model** Perfect for children or attorneys of any age. Our wooden model of the Court building measures 9 inches long and 2 3/4 inches tall. A highly detailed rendition of the front of the Court looks equally "Supreme" in the playroom or on any office bookshelf. Crafted of solid wood in the U.S.A. Reg. \$5.99. **Members: \$4.80.**

**Item 338 Bookmarks** are finished in 24k gold over intricate metal cut work. Designs include: the seal of the Supreme Court, the U.S. Capitol, the Supreme Court building, and the Great Seal of the United States. A brief description and history of the design is included with each bookmark. \$4.00 each. **Members \$3.20 each.**



#### Photographs

Photos of the current Justices as individuals and as a group are sold in black and white and in color. All individual portraits are matted and measure 8 x 10, including the matte. Color group photos may be purchased matted (20 x 16) or unmatted (13 1/2 x 10 1/2). Glossy group black and white photos are available in 8" x 10" only. Please call for availability and pricing on all photos.

#### Greeting Cards

**Item 29 A Holiday Greeting Cards** These two cards, both measuring 5" x 7", are beautiful full-color photographic images of either the "Capitol in the Snow" and the "Supreme Court in the Snow." The pictures are non-religious and the greeting reads "Wishing you the happiness and joy of this beautiful holiday season and throughout the coming year." The rich colors in the photographs are enhanced by the accompanying blue envelopes. Specify Court or Capitol picture. Individual cards \$.80 each. **\$.64.**

**Item 29 B Embossed Note Card** This white on white notecard features a blind embossing of the Supreme Court building for an understated, elegant look. The card is blank and can be used either for correspondence or as a notecard. It measures 4 1/2 by 6 inches and comes with a white envelope. \$1.15 each. **\$.92.**

**Item 29 C Note Card** Our newest design (pictured below) features a black ink sketch of the Supreme Court building by Edward F. Fogel on heavy white stock with matching envelopes. A short description of the Supreme Court and the history of its building appears on the back of the card. Reg. \$1.15 each. **Members \$.92.**

**Item 30 Holiday Card** Our newest holiday greeting card features the Court in a classic folk art rendition by Carol Dyer. Warm and colorful, the multitude of activity on the Courts' front plaza brings back memories of old fashioned holidays with family and friends. Available in boxes of 12 with envelopes, it bears the inscription: "Warm Greetings and Best Wishes for a Joyous Holiday and a Happy New Year." Reg. \$9.95. **Members \$7.95.**



**Artwork**

**Item 811 Court Building Lithograph** This limited edition 22 x 28 inch lithograph by Carolyn Anderson is prepared on museum quality stock, and each print is hand signed by the artist and numbered. The picture is a handsome watercolor rendering of the Supreme Court building, showing the dome of the original Library of Congress building in the background. \$20.00. \$16.00.

**Item 807 Poster of the Supreme Court Building** by Susan Pear Meisel. This poster was made for the 1980 Washington Art Show by Meisel, a nationally noted artist. The poster is done in bright, vibrant tones and has a contemporary feeling. For a limited time, these posters are available signed by the artist. Reg. \$12.95. Members \$10.35.

**Item 819 Small Watercolor** **Item 820 Large Watercolor**  
**Handcolored Watercolors** of the Supreme Court building by Andy Dedula are double matted with beveled edge mats and are ready for framing. Small picture is 8 1/2 by 7 inches; the large one is 16 x 20 inches. Excellent values at \$7.95 and \$11.99. \$6.35 & \$9.60

**Item 808 Doors of Washington, D.C.** This poster is one of a series featuring interesting and unique doors. It features the bronze doors of the Supreme Court building as well as those of many private residences and buildings throughout the District of Columbia, and presents a unique view of Washington. \$8.99. \$7.20.

**Ordering Information**

To order, please send this form along with your check, money order or credit card number and expiration date to: The Supreme Court Historical Society, #1 First Street, N.E., Washington, D.C. 20543. Attn: Gift Shop. Mastercard and VISA users may also order by telephone by calling (202) 479-3450, between 10:00 AM and 4:00 PM (EST) weekdays. Minimum credit card order is \$10.00. Please allow three to four weeks for standard delivery. Special rush orders may be possible. Please telephone for information and availability.

Name \_\_\_\_\_ Tel. \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
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Quality	Item Number	Description	Price Each	Total Price

\*Shipping available only in the continental U.S. Please notify us immediately of any damages or shortages.

Shipping Charges: \$1.00--\$50.00 = \$3.75  
 \$51.00--\$100.00 = \$5.50  
 \$101.00--\$200.00 = \$7.50  
 \$201.00 and above = \$9.50

<b>Sub Total</b>	
<b>Shipping &amp; Handling</b>	
<b>Grand Total</b>	

On the anniversary of his thirty-third year on the Bench, Justice Brennan was given a poster collage of important events in his life. It covered his graduation from Harvard Law School in 1931, his service in World War II as a Colonel in the General Staff Corps, U.S. Army, and his appointments to both the New Jersey Superior Court and the New Jersey Supreme Court.



Justice Brennan and his wife, Mary, celebrated his thirty-third year on the Court at a party held in his Chambers (left). Retired Chief Justice Burger, Chief Justice Rehnquist, Justice Stevens and Justice Marshall applaud the Brennans (below) at the New Jersey Justice's surprise 80th birthday party.



**Louisiana Conference on Southern Justices**

Louisiana State University in Shreveport has issued a call for papers and participants for a conference titled "The U.S. Supreme Court and its Great Justices" to be held on Thursday-Friday, November 15-16, 1990. The interdisciplinary Conference Committee of the eighth annual American Studies Fall Forum has organized the conference on the general theme of the Supreme Court and its great Justices (historical and modern)-with emphasis on those from the South, and on other judicial topics, especially those related to the South. Selected papers will eventually be published as a volume. For information, contact William D. Pederson, Director, American Studies, Department of History and Political Science, Louisiana State University, One University Place, Shreveport, LA 71115-2399, phone (318) 797-5349 or 5337.

(Photos top and left by Lois Long, bottom by Josh D. Mathes. All photos courtesy of the Collection of the Supreme Court of the United States.)



Joseph L. Rauh, Jr.

Editor's Note: "Amicus Curiae" is a new feature in the Quarterly, designed as a forum for members to share their past experiences with the Court. This excerpt is reprinted with permission from 69 North Carolina Law Review, pp. 207-208 (1990). Copyright 1990 by the North Carolina Law Review.

I would like to mention a few interesting sidelights on the internal workings of the Hughes Court. The Chief Justice was the engine that made the Court function. In the conferences of the Justices, he opened the consideration of each case by stating the facts and giving his own view on what the Court should do. The Justices then spoke in order of their seniority, agreeing or giving a different view. Strangely enough, they voted from the most junior up, on the theory, Cardozo laughingly explained, that the juniors shouldn't be intimidated by the votes of more senior members of the Court. Although possibly one of the most "political" Supreme Courts in our history, in an effort to be perceived as non-political the Justices sternly shunned the electoral process and didn't even vote in the national or state

elections.

Each Associate Justice had one law clerk (each has four now) and, certainly in the case of Justice Cardozo, the role was more companion than collaborator. Cardozo wrote his opinions long-hand between Saturday at dinner time when he received his assignment from the Chief Justice and the following Monday morning. When I walked into his office Monday, he had a complete draft of the opinion ready. "It wasn't just the case in which I wanted to write," he would usually say, "but it has its interesting points. I put in the relevant Federal and New York cases [they lined the wall of his apartment], but maybe you could add a few from New Mexico or somewhere out there. We don't want to appear too provincial."

If there is a personal anecdote you would like to share about the Court's history, please send it to Clare Cushman, Director of Publications, c/o the Society.

### Membership Update

The following Members have joined the Society between June 1 and September 24, 1990. Names and honorifics appear as they do on membership applications.

#### Alabama

Mr. Frank H. McFadden, Montgomery

#### California

Alan Leigh Armstrong Esq., Huntington Beach  
Mr. Jack D. Fudge, Los Angeles  
Robert C. Livsey Esq., San Francisco  
Mr. Timothy J.M. Lynch, San Francisco  
The Fletcher Jones Foundation, Los Angeles  
Mr. Michael Traynor, San Francisco  
Mr. Robert A. Young, Irvine

#### Colorado

Mr. John A. Criswell, Denver  
Mr. Joseph C. Jaudon, Denver  
Mr. Marvin D. Johnson, Golden  
John M. Kobayashi Esq., Denver  
E. Gregory Martin Esq., Denver  
Rike & Barbara Wootten, Englewood

#### District of Columbia

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### William Henry Moody: Theodore Roosevelt Progressive

by Paul T. Heffron

William Henry Moody of Massachusetts was President Theodore Roosevelt's close friend and trusted advisor. Before becoming Roosevelt's third and final appointment to the Supreme Court, Moody had been at the President's side for nearly five years: first as Secretary of the Navy and then as Attorney General. Unfortunately, Moody's judicial career was cut short by a disabling illness after less than four full terms on the Court. His brief tenure partly explains why one of the most remarkable public figures of the progressive era has remained one of the more obscure Justices.

Moody was descended from one of New England's oldest

families. The first William Moody of Suffolk, England, landed in Ipswich in 1634, and a year later became one of the original proprietors of Newbury, Massachusetts. The future Justice was born at the family homestead in Newbury on December 23, 1853. His father was a dairy farmer who ran a country store in later life. One of Moody's earliest memories was of wearing a Lincoln-Hamlin campaign badge; "from childish impulse I was then a Republican," he later reminisced. Moody was educated in the common schools of Danvers until he was sent to Phillips Academy in Andover to prepare for Harvard College.

At Andover, Moody studied classics and excelled at base-

ball--a sport that was to be a life-long passion. He entered Harvard in 1872, but proved to be an indifferent student, barely surviving the first two years. In his junior year he took courses with Henry Adams, an experience which seemed to transform him intellectually. Inspired by Adams' course in medieval institutions, he wrote a senior thesis and received honors at commencement in 1876. Undecided for a time about the future, he attended lectures at the Harvard Law School for one term, then left to read law in the office of Richard Henry Dana, eminent Boston lawyer, and author of the literary classic *Two Years Before the Mast*. After only eighteen months of study, Moody pleaded with the board of bar examiners in Salem to hear him. Skeptical because of his brief apprenticeship, the board finally agreed. Moody's performance is legendary; it was the best the board had ever heard.

At age twenty-five Moody opened an office in the town of Haverhill on the Merrimac River and waited for clients. Moody earned only \$300 the first year, not enough to pay the rent. After a few years, however, he built a wide general practice and represented a few business firms. With success came increased involvement in the Republican party. Moody was twice elected district attorney of the eastern district of Massachusetts. This office brought him wider recognition, particularly for his part as

As a life-long Republican, one of William Henry Moody's earliest memories was of wearing a Lincoln-Hamlin campaign badge. Pictured below is a Currier & Ives engraving depicting a Republican banner for that 1860 election.



a prosecutor in the celebrated murder trial of Lizzie Borden--accused of the brutal slaying of her aged parents with an axe. He considered the five years as district attorney as the best single experience of his life. "That kind of practice to a lawyer is what a surgeon or physician gets in a hospital. You have no client at your side to make suggestions and to expect a verdict when you are not entitled to it."

Moody entered national politics when he was elected to fill a vacancy in the House of Representatives in 1895, and went on to serve in Congress until 1902. There, Moody made his mark as a master of parliamentary procedure and for his dogged attention to the details of legislation in committee and on the floor. He was chief lieutenant to majority leader "Uncle Joe" Cannon and a close associate of Thomas B. Reed. In a time of extraordinary party discipline, Moody followed the Republican program on the large issues: currency, tariff, and immigration controls. He asserted his independence, however, on constitutional and legal questions. He supported civil service reform, the eight hour day for government workers, and favored the direct popular election of Senators. He spoke out as well against southern disfranchisement of the Negro, and tried unsuccessfully to have the House investigate voting practices in the South.

Eight months after Theodore Roosevelt had assumed the presidency upon the assassination of President William McKinley, he named Moody to be Secretary of the Navy. The President said he was looking for a cabinet officer who could work harmoniously with Congress and explain administration policies. Moody's two years in this office coincided with Roosevelt's program of naval expansion. In addition to more battleships, Congress voted increases in the number of officers and seamen, and bases were established in Cuba and the Philippines. A reorganization of the department, long advocated by knowledgeable naval officers, began under Moody's direction. Roosevelt was largely his own secretary, but the office brought out Moody's capacity for effective administrative management.

When Attorney General Philander Knox resigned in June 1904, Moody's extensive career at the bar made him a natural choice for the chair. Roosevelt's attack on the trusts had just begun with the government's victory in the Northern Securities case, and Moody, as a member of the Cabinet, had been in close touch with the work of the Justice Department. It was his recommendation that trusts should be prosecuted under the criminal as well as the civil provisions of the Sherman Anti-Trust Act--something Knox had declined to do. With the election of 1904 over, President Roosevelt gave him the green light to proceed against the most flagrant offenders. Suits were initiated in eighteen cases--eleven being criminal prosecutions. Favorable judgments were secured against such giants as the paper trust, the coal and tobacco trust, and the beef trust. Moody personally tried the latter case in the lower federal court; during his term he argued more cases than any of his predecessors. Justice Holmes said: "He made some of the best arguments I ever heard for their combination of latent fire, brevity, insight, and point."

Moody was at the point of returning to private practice in Boston when Justice Henry Billings Brown retired from the Court in June 1906. After months of indecision, Roosevelt selected his Attorney General and personal confidant to fill the vacancy. Although some members of the press feared he would



not be impartial in passing upon progressive legislation, Moody was confirmed by the Senate on December 12. He took his seat next to Justice Holmes on December 17, 1906.

In his all too brief tenure, Justice Moody participated in the disposition of only 1,000 out of a possible 4,500 cases; he spoke for the Court in 61 cases, and issued five dissents. Though he lacked prior judicial experience, his wide knowledge of public affairs was a valuable asset in dealing with the variety of cases that came before the Court. Personal relations were harmonious and there is evidence that he was often persuasive in winning over some of the brethren to his side. And behind the scenes, the new Justice continued his close association with Roosevelt. He contributed to a presidential speech highly critical of conservative judges; the President in turn consulted him at times on patronage and other matters.

Justice Moody brought to the Court strong convictions on the proper role of judges in a democratic society. There were too many instances, he felt, in which judges were striking down or narrowly interpreting economic and social legislation on the basis of their own notions of wise public policy. Like Holmes, he would allow legislatures the widest possible leeway in coping with the emerging problems of an industrial society. Unless a law was unconstitutional beyond all rational doubt, it should be upheld. The greatest danger of the times, in his view, came not from the executive or legislative branches--adequate political safeguards were available there. "But if the Supreme Court is thought to exceed its authority, our system places no power over it or to inquire into or correct its errors. More accurately, that

Court in legal theory can do no wrong, because its judgment of what is right is final." Judicial restraint was at the core of his jurisprudence.

The scope of the national commerce power was a crucial question constantly coming before the courts. Moody adhered to what he described as the Wilson-Hamilton-Marshall theory, namely, that Congress's power under the commerce clause was plenary, and limited only by explicit constitutional prohibition. Thus he dissented in the Employers' Liability Cases (1908), when a badly divided majority struck down a federal statute which shifted liability for injuries, from workmen to the railroads. That Congress had hitherto declined to regulate employer-employee relationships was no argument against its power to do so. "The fundamental fallacy of this argument is that it misunderstands the nature of the Constitution, undervalues its usefulness, and forgets that its unchanging provisions are adaptable to the infinite variety of conditions of our national life," wrote Moody.

Subsequently, in a similar case his liberal nationalist philosophy prevailed. In *St. Louis & Iron Mountain Southern Railway Company v. Taylor* (1908), he spoke for the Court in sustaining the Safety Appliance Act of 1893, against the complaint that it imposed a hardship on interstate carriers. While admitting the hardship, Moody argued that Congress had every right to place the blame for injuries resulting from defective equipment upon those best able to bear the cost. He was at odds with the majority again, however, in several other commerce clause cases involving decisions of the Interstate Commerce Commission. He was

willing to acknowledge that in some circumstances states under their police powers could regulate the purely local aspects of interstate commerce, but the fact that Congress had not acted on a subject did not automatically mean that the states were free to act. "A power clearly withdrawn from the State and vested in the Nation, can no longer be exercised by the State, even though Congress is silent."

Despite his strong nationalism, Justice Moody was ready to respect the claims of federalism, especially in the field of criminal law. In *Twining v. New Jersey* (1908), Moody's best known case and a landmark for many years, the Court ruled, over the sole dissent of Jus-



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The President reading his message to the Cabinet before sending it to Congress.

President Theodore Roosevelt reads his message to the Cabinet before sending it to Congress in this 1903 photograph. Pictured from left to right: George B. Cortelyou, Secretary of Commerce and Labor; Attorney General Philander C. Knox; William H. Moody as Secretary of the Navy; John Hay, Secretary of State; President Roosevelt; Ethan A. Hitchcock, Secretary of the Interior; Elihu Root, Secretary of War; Leslie M. Shaw, Secretary of the Treasury; James Wilson, Secretary of the Interior.



tice Harlan, that the guarantee against self-incrimination in the Fifth Amendment was not binding on the states. They should be free to fashion their own codes of criminal procedure, as long as the fundamental requirements of due process were met. In the mid 1920s, when the Court began to incorporate selective liberties of the federal Bill of Rights into the due process clause of the Fourteenth Amendment, the *Twining* opinion gradually eroded, but it was not specifically overturned until 1964. Moody's suggestion in the opinion that some of the Bill of Rights provisions might be enforceable against the states foreshadowed the future course of judicial development.

Justice Moody's judicial career was effectively ended by a breakdown of his central nervous system in the spring of 1909. Although he was unable to sit with the Court for several months, it appears that in a few routine cases his vote was counted. A bachelor, he retreated to Haverhill where he was attended to by his sister. Justice Moody retired officially on November 20, 1910, under a special act of Congress extending him full pension benefits. He lived at home as an invalid, visited on occasion by political leaders, until he died on July 2, 1917.

**William H. Moody is pictured at right in 1905, the year after he was appointed Attorney General. On December 17 of the following year he assumed the Supreme Court seat vacated by the retirement of Justice Henry Billings Brown.**



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