



Society Holds Seventeenth Annual Meeting

The Annual Meeting of the Membership of the Historical Society was the first event of the evening portion of the Seventeenth Annual Meeting of the Society held on June 15th. Once again, the Supreme Court chamber was the setting for the Society's business meetings.

Leon Silverman, President of the Society, presided over the meeting during which he presented a report on the status of the Society and its activities. Of special note was his announcement of the successful conclusion of the Endowment Fundraising campaign. He expressed his thanks, and those of all the Officers and Trustees of the Society, to Justin Stanley, Vincent Burke, and the many others who had worked to achieve this goal. He thanked the many Society members who had made personal contributions to the fund as well and noted that following the meeting of the Board of Trustees that evening, Justice O'Connor would present awards in recognition of major leadership donations to the fund.

Mr. Silverman then called upon Mrs. Virginia Daly to present



The Chief Justice is joined by Mrs. Leon Silverman (left) and Mrs. Vincent Burke (right) in presenting the traditional opening toast to the President of the United States at the Society's Annual Dinner



Dean Erwin N. Griswold, who was elected to his second three-year term as Chairman, addresses the Board the Trustees in the Supreme Court Chamber.

the recommendations of the Nominating Committee for the election of Trustees. The names were presented for consideration, after which the following individuals were elected to a three-year term as Trustee of the Society: George Adams; Vera Brown; John T. Dolan; John D. Gordan, III; Michela English; Philip B. Kurland; Frank McNamara; Leon Polsky and Foster Wollen.

In addition, Mrs. Daly presented the names of the following individuals for re-election to an additional three-year term on the Board of Trustees: Barbara Black; Patricia Dwinell Butler; F. Elwood Davis; Erwin Griswold; Geoffrey Hazard, Jr.; William Barnabas McHenry; Phil C. Neal; Charles Renfrew; Kenneth Rush; Bernard Segal and Obert C. Tanner. All were re-elected to an additional term of office.

Following the election of Trustees, the General Membership meeting was adjourned, and the Annual Meeting of the Board of Trustees was convened. Erwin N. Griswold, Chairman of the Board of Trustees, presided over the meeting. In his opening remarks, Dean Griswold commented that the Society had accom-

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A Letter From the President



Leon Silverman

We were honored to have so many past and present members of the Court in attendance at this year's Annual Reception and Dinner. We are especially grateful to the Chief Justice for allowing the Society to use the building for the day and for his kind remarks about the Society at the Annual Dinner. I also take

When Frank undertook the chairmanship of that committee in 1988, the Society's membership was slightly over 2,600. He organized a network of State Membership Chairs, which is now in its third incarnation, and set increasingly higher annual goals, culminating in a membership of 4,500 by the time of the annual meeting. The Society's members now provide approximately one-quarter of a million dollars in revenues per year.

Frank has done a superb job as Membership Committee Chair, and the Society owes him a debt of gratitude. Although other obligations necessitate that he step down as Membership Committee Chairman, I am delighted to report that he will continue service as one of the Society's Vice Presidents.

Yet one other remarkable economic success will be posted when the Society publishes its annual audit in the 1992 Annual Report. Although closing balances will not be available for several weeks, the Society's Kiosk, or gift shop, is likely to report a record sales year with gross revenues exceeding \$550,000. This is an almost incredible increase of 1100 percent over our 1985 sales figures. It is a credit to both Frank Gilbert's Facilities Committee, which supervises the Kiosk operation, and to our outstanding Kiosk Manager, Jeff Tait, that kiosk revenues have developed into a major source of support to the Society's programs.

Our programs, after all, are the Society's reason to exist. I am gratified to report that our increased revenues are providing substantial support to many new and existing programs.

Within the past few days, our Publications Director, Clare Cushman, completed a manuscript for a new collection of illustrated biographies of the Court's 106 past and present Justices. This 440 page book will be published sometime next year by Congressional Quarterly, Inc. and will include a foreword by the Chief Justice, rare historical photographs, and biographies written by some of the Nation's leading scholars. It will be a major contribution to the available reference works on this subject and a significant addition to the Society's list of publications.

Equally important, the illustrated biographies will be made available at a sufficiently affordable price to ensure its broad distribution. This project is very much in keeping, not only with the Society's mission of preserving the Court's history, but with disseminating knowledge of that history to a large audience.

During the past year the Society also continued its support for the editorial work necessary to publish a ten-year update to *The Supreme Court of the United States: An Index to Opinions By Justice, 1789-1981*. This is a valuable one-of-a-kind printed reference work which would not otherwise be published were it not for the Society's support. Though printed only in small quantities, *The Index* is commonly stocked in research libraries around the country, providing the only printed index to the Justices' opinions available.

The Documentary History of the Supreme Court of the United States, 1789-1800, continues to occupy a central position in the Society's research and publications program. Directed by Dr. Maeva Marcus, the project has published three volumes to date, with a fourth expected later this year. Four additional volumes are expected between now and 1998.

Like *The Index to Opinions*, the *Documentary History* is published in relatively small quantities, but its impact reaches far beyond those numbers. The three volumes which have appeared

this opportunity to acknowledge and thank Justice O'Connor for presenting awards to some of the Society's State Membership Chairs and Endowment Leadership Donors at the Society's Annual Membership Meeting.

Another article appearing in this issue of the *Quarterly* details the events surrounding the Seventeenth Annual Meeting, and I will not here repeat that summary. But I will remark upon some of this year's noteworthy accomplishments which were reported by Dean Griswold and me to those attending the meetings.

One major accomplishment which was reported at the General Membership Meeting was the success of the Society's endowment campaign. A few days preceding the meeting a \$25,000 commitment by the New Jersey firm of Crummy, Del Deo, Dolan, Griffinger & Vecchione elevated the total of pledges and funds received, less fund-raising expenses, to \$2,511,000. The Society's endowment campaign goal was \$2.5 million.

The Society is indebted to many individuals, firms, foundations and corporations for this accomplishment. We are especially grateful to our past President, Justin A. Stanley, ably assisted by Kathy Piva, for having the vision to initiate this campaign and the fortitude to see it through to a successful conclusion. I also take this opportunity to thank Bill Gossett, whose initial gift of \$44,000 provided the seed money for the endowment. There are many others who should be and will be acknowledged appropriately in our next Annual Report.

Many of the endowment contributions were made in the form of pledges to be paid over a five year period. Nevertheless, the principal in hand is already generating over \$100,000 per year in interest income which we are using to support the Society's many program endeavors. This will grow as the principal accumulates. And, while we have reached our immediate goal of \$2.5 million, it is our intention to continue to add to the endowment whenever the Society's financial condition makes it practical to do so.

Concurrent with the completion of our initial endowment goal, the Society achieved another major victory in its ongoing membership campaign. Membership reached a record high 4,552 members as of June 30th--thanks to the unflagging efforts of Frank Jones' Membership Committee.

thus far have received outstanding reviews within the academic community, and that praise has helped to establish the Society's reputation for supporting serious research of the highest quality.

In addition to the publications projects which I have already mentioned, the Society has devoted a great deal of effort during the past year toward expanding its programs in other areas. Throughout this past Spring, a newly established oral history project, funded by the Society, began interviewing some of the Court's retired Justices.

The Program Committee, chaired by E. Barrett Prettyman, Jr., views these interviews as the essential core around which a larger collection of oral histories may evolve. But to ensure these very important interviews can be preserved and transcribed, the Program Committee is recommending an expenditure of \$21,000 on oral histories of the retired Justices in Fiscal Year 1993. Our 1993 budget will include that amount.

I hope that funds will also be available to continue the Society's encouragement of outside scholarship. A few weeks ago, the Chief Justice presented the first Supreme Court Historical Society Triennial Book Prize to Professor David Currie for his book *The Constitution in the Supreme Court* (see article on page twenty).

The prize, which includes a \$5,000 check from the Society, was conceived by the Publications Committee, chaired by Kenneth S. Geller, to recognize and promote outstanding book-length scholarship on the Supreme Court. The Society also recognizes from time to time outstanding article-length works published in our own *Journal of Supreme Court History* with the award of our Hughes-Gossett Prizes for Historical Excellence. The *Journal* itself has gained a reputation as a unique forum for historical scholarship on the Court.

An important project during this past fiscal year which did not require substantial financial support from the Society was the recently established National Heritage Lecture. Initiated last November, this new lecture series was co-sponsored by the White House Historical Association and the Capitol Historical Society. It featured an address delivered in the Supreme Court Chamber by Justice Anthony Kennedy, to the members and friends of all three organizations. We anticipate this will be part of an ongoing series which in coming years will focus on each of the three branches of government.

Based upon the success of this lecture, the Program Committee has begun exploring additional cooperative projects with other historical societies, and hopes to announce later this year the establishment of a five-part lecture series on the Court's Jewish Justices to be co-sponsored by the Jewish Historical Society of the Greater Washington Area.

During this past year the Society also provided substantial financial support to the work of the Court Curator's Office. Much of this support is provided at the recommendation of the Acquisitions Committee, chaired by Pat Butler. Society funds are used to acquire items of historical interest which the Curator often incorporates into displays for the benefit of the Court's 800,000 annual visitors. The majority of this year's funds were devoted to refurbishing the Ladies' Dining Room.

Society revenues for Fiscal Year 1992, which ended June 30th, are expected to total approximately \$1,106,000, the first time we have exceeded the \$1,000,000 mark in the Society's seventeen

year history.

The Executive Committee is keenly aware that the Society must strive to operate on a balanced budget and I am delighted to report that preliminary figures indicate we did so this year. Nevertheless, the need to prepay obligations, which would in normal course have been payable during our next fiscal year, and the increase in our Kiosk inventory in order to prepare for anticipated increased demand during this coming summer, will result in a more modest surplus than would otherwise be the case.

Our Fiscal Year 1993 budget, developed by our Treasurer, Peter Knowles, and the other members of his Budget and Finance Committee, projects that, even after expanding various of our programs, the Society will post a somewhat larger surplus in Fiscal Year 1993.

This will require some considerable planning, particularly in the area of fund-raising. At its last meeting, the Executive Committee authorized the creation of an ad hoc Development Committee, which has been reviewing the Society's overall revenue needs and expense projections for the coming years. This committee, chaired by George Adams, will present a comprehensive report to the Executive Committee at its July meeting which will outline a plan to assure the Society's continued ability to perform, and indeed increase its activities in servicing the Court.

I am happy to say, it is a plan which anticipates continued growth in the support the Society extends to educational programs and to historical research. It is also a plan that can succeed only through members' continued dedication to the Society and its mission.

In sum, the Society has continued to expand its activities, has increased its membership and is well on the road to greater financial stability. Its dedicated staff, headed by David Pride and Kathleen Shurtleff, has performed yeoman's service.

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Author Liva Baker Delivers Society's Seventeenth Annual Lecture In the Supreme Court Chamber

The Supreme Court Chamber provided the setting for the Seventeenth Annual Lecture held on June 15, 1992. As the first event of the day-long Annual Meeting, the Lecture sets the tone for the Annual Meeting. Ms Liva Baker's presentation was a wonderful beginning for the day's events.

Ms Baker spoke "about a relatively obscure footnote to some larger events of history that's always interested me. . . . This little sidelight on constitutional history I've chosen to tell you about poses the general question: What did the first Justice John Marshall Harlan . . . really mean when he wrote in 1896 in his dissent to Plessy v. Ferguson that "Our Constitution is color blind"."

Ms Baker told the assembled group that Justice Felix Frankfurter had been particularly interested in Harlan's intent when making this statement, especially as it applied to the concept of public school desegregation. Frankfurter had participated in the Supreme Court's decision in Brown v. The Board of Education, and in the summer of 1956 he began to discuss with his new colleague on the bench, John Marshall Harlan (II), the grandson of the first Justice Harlan, rationale behind the statement.

Ms Baker noted that in order to understand Frankfurter and Harlan II's discussions "... it's important to know something about Plessy, about Harlan I, and about his approach to civil rights."

Outlining the background of Plessy, Ms Baker explained some of the peculiarities of the Louisiana laws of the 1890s, noting that an understanding of these laws would give some "idea of the complexities of race relations in the years following Reconstruction and of the infinite pains Southerners took to insure the separation of white and black."

The majority opinion in Plessy shamelessly upheld the racial prejudices inherent in the Louisiana laws. Writing for the Court, Justice Henry Billings Brown of Massachusetts stated that notwithstanding the fourteenth amendment, "[l]aws permitting, even requiring, their separation [black and white races] in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures." In conclusion, he summarized that "[i]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

There was one dissenter to Plessy--John Marshall Harlan (I), "The big Kentuckian, Harlan I, known, among other things, as the last of the tobacco-spitting justices, did not subscribe to the majority's view. Not by a long shot." Harlan I seemed an unlikely dissenter to the case, as he had been raised in the South and his family had, in fact, been slaveholders. Harlan spoke out boldly against the Emancipation Proclamation, and even though he fought for the Union during the Civil War, Harlan continued to defend the slaveholder's right to own slaves. He also publicly denounced the Thirteenth and Fourteenth amendments to the Constitution.

Reconstruction changed Harlan's opinions about race



Society President Leon Silverman introduced Liva Baker to members at the Society's Annual Lecture.

relations. "Lynchings and beatings of Negroes by racists helped him to change his mind about a lot of things, including his views on the Civil War Amendments to the Constitution." Harlan was appointed to the Supreme Court in 1877 and became a "dedicated supporter of civil rights." He was the only dissenter in the Civil Rights Cases of 1883, and again in 1896 in Plessy. In his dissent in Plessy he wrote eloquently of his feelings, declaring that:

in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color blind, and neither knows nor tolerates classes among citizens. . . .

This statement has become a classic in constitutional law. The phrasing was not original with Harlan, however. "He had discovered it in fact in the brief for Plessy, which argued: 'Justice is pictured and her daughter, the Law, ought at least to be color blind.'

Ms Baker noted that Harlan's ardent protest was penned using the same inkwell that Roger B. Taney had used when authoring the Court's opinion in the Dred Scott case. Harlan had received the inkwell from the Marshal of the Court not long after he joined the Court and Mrs. Harlan "believed he had

taken considerable satisfaction in the idea that he was using it to argue, in effect, for reversal of Taney's opinion . . ." Harlan concluded that the Louisiana statute that justified separate accommodations for black and white travellers was "inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and the letter of the Constitution of the United States."

Continuing her talk, Ms Baker noted that after Harlan I's death in 1911, he passed into a kind of obscurity. He was rescued from this obscurity following the decision in Brown v. The Board of Education when his dissents in the earlier civil rights cases were revived and re-examined.

In the middle of 1956, Felix Frankfurter began a dialogue with his new colleague on the bench, Harlan II, the grandson and namesake of the first John Marshall Harlan. The conversations seem to have been prompted in part by Frankfurter's concerns about the violent reactions against Brown that were taking place in the Southern states. The other factor that stimulated the discussion was Frankfurter's reading of a case filed in 1897, only one year after Plessy, in which Harlan seemed to reverse his stance against racial segregation.

The case involved was called Cumming and concerned a suit brought by blacks in Richmond, Georgia, against the local board of education, complaining that tax money was being spent to build high schools for white children, while no facilities were available to black students beyond grammar school. Frankfurter learned that the lower Court judge, E. H. Callaway, a native Georgian, had supported the blacks' cause and had enjoined the board of education against spending more public funds for white high schools until blacks were provided with equal facilities.

The case was appealed to the Supreme Court of the United States where the lower court ruling was reversed. In reading the opinions on the case, Frankfurter was surprised to learn that Harlan I had not only voted with the majority in this ruling, but had written the opinion for the Court. His eloquent language of only the year before seemed to have been forgotten as he stated that maintenance of public schools, is a state responsibility "except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land."

Frankfurter determined to discuss the seeming discrepancy in

the two opinions with Harlan II. In July of 1956, Frankfurter wrote Harlan II, who was vacationing at the time, and continued a dialogue that had apparently started sometime earlier in the summer. Frankfurter enclosed a copy of the Cumming case along with a short biographical sketch of the lower court judge, E. H. Callaway, whom he referred to as a "true-blue southern Southerner," so that Harlan II could respond. Referring to Harlan I's opinion in Cumming, Frankfurter expressed his feeling that it was highly unlikely "that a judge who thought segregation was unconstitutional would have written that opinion."

Harlan II responded, noting that Plessy "is little basis for thinking that the old boy would have voted against school segregation. While he did say in Cumming that a state system of education was a state matter, he also qualified it by stating that it could not run afoul of the Constitution--and earlier he went out of his way to note the anti-segregation argument--and left it open." Harlan II said that while he could not prove it, his "instinct was that [Harlan I] would have been against segregation--voted against it I mean."

Ms Baker continued her talk noting that further correspondence exists between Frankfurter and Harlan II, but the question never seems to have been answered definitively. Frankfurter seemed to hold to the opinion that Harlan would not have supported school desegregation, while Harlan II seemed to feel he would have. Apparently neither could verify their interpretations, and Ms Baker speculates they "may simply have agreed to disagree, neither yielding." She noted they became close personal friends and served together on the Court for six years where they became "the conservative consciences of an activist Court."

Editors note: The correspondence between Felix Frankfurter and John Marshall Harlan (II) is in the Frankfurter papers at Harvard Law School, and is used with the permission of the Law School.

The full text of the Seventeenth Annual Lecture will be published in the Journal of Supreme Court History, 1992 Yearbook of the Supreme Court Historical Society.

Judicial Fellowships Program Seeks Applicants

The Judicial Fellows Commission invites applications for the 1993-94 Judicial Fellows Program. The Program, established in 1972 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who have an interest in judicial administration and who show promise of making a contribution to the judiciary.

Four Fellows will be chosen to spend a calendar year, beginning in late August or the first of September 1993, in Washington, D.C. at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission. Candi-

dates must be familiar with the federal judicial system, have at least one postgraduate degree, and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories but will not exceed the GS 15, step 3 level, presently \$68,515.

Information about The Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. (202) 479-3374. The application deadline is November 13, 1992.

Annual Meeting (continued from page one)

plished many worthwhile things during the year. He added that one of the most significant projects was the preparation of the manuscript for the illustrated biographies of the Justices of the Supreme Court.

He noted that within a few days the completed manuscript, which contains biographies of the Court's 106 past and present Justices, will be submitted to the publisher. The 440 page book will be published next year by Congressional Quarterly, Inc. and will include a Foreword by the Chief Justice, along with biographies written by some of the Nation's leading scholars and rare historical photographs. It will be a major contribution to the available reference works on this subject and a significant addition to the Society's list of achievements.

He added his thanks to those who had made completion of the Endowment Fund possible and called upon Virginia Daly for the presentation of the Report of the Nominating Committee. Mrs.



Above: Justice O'Connor (left) presents an Endowment Leadership Donor award to Mrs. Jeanice Opperman in recognition of her \$25,000 contribution to the Society's Endowment campaign.

At right: Annual Meeting Chairman William Bradford Reynolds welcomes members and their guests to the Annual Dinner in the Court's Great Hall.



Justice O'Connor is greeted by Society Vice President Frank Jones, who chaired the 1991-2 Membership Committee. The Justice attended the Annual Meeting to present awards to State Membership Chairs and Endowment Leadership Donors.

Daly presented the recommendations of the Nominating Committee. A vote was taken and the following individuals were elected unanimously to the positions indicated: Erwin N. Griswold for an additional three-year term as Chairman of the Board of Trustees; Dwight Opperman for a three-year term as Vice President; S. Howard Goldman, Justin A. Stanley and M. Truman Woodward, Jr., each for one-year terms as at-large members of the Executive Committee.

At the conclusion of the business portion of the meeting, Dean Griswold called upon Justice O'Connor who had graciously consented to make special award presentations in recognition of outstanding service to the Society. Vincent C. Burke, Jr., Chairman of the Special Gifts Committee came forward at that time to assist in the presentation of awards to major leadership donors to the Endowment fund. The first presentation was made to Mrs. Laura Phillips of the Clark-Winchcole Foundation. Mr. Burke noted that the Clark-Winchcole Foundation has not only contributed to the Endowment fund, but also has been generous in donating funds for general support of the Society. The next person honored was Mrs. Jeanice Opperman, for her generous donation to the Endowment fund. The third person recognized was John T. Dolan, Esquire, representing the law firm of Crummy, Del Deo,

Dolan, Griffinger and Vecchione.

Frank C. Jones, Chairman of the National Membership Committee for the Society, assumed the podium after the presentation of the Endowment awards to announce the presentation of several awards to State Membership Chairs who had done an outstanding job in recruiting new members of the Society during the past year. He noted that nineteen State Membership Chairs achieved their annual goals this year. Presentations were made by Justice O'Connor to those Chairs who were present at the meeting. Those recognized were Hugo L. Black, Jr., Esquire, of Florida; Ed Hendricks, Esquire, of Arizona; while the third presentation was made to Joseph E. Frank, Esquire, of Vermont.

In addition to the three presentations, Mr. Jones recognized the outstanding efforts of the additional sixteen individuals who met their annual goals but who were not present: Victor F. Battaglia of Delaware; Richard B. Baxter of Michigan; Leonard E. Eilbacher of Indiana; James M. Hall of Ohio; Joan M. Hall of Illinois; Eugene M. Haring of New Jersey; Paul M. Hawkins of Georgia; Alston Jennings of Arkansas; John T. Jessee of Virginia; Harvey C. Koch of Louisiana; John G. Koeltl of New York; Michael D. O'Keefe of Missouri; Donald F. Paine of Tennessee; Rafael Escalera Rodriguez of Puerto Rico; Henry E. Simpson of Alabama; and Lively M. Wilson of Kentucky.

Following the meetings, guests attended the Annual Reception held in the East and West Conference rooms and their adjacent patios. Guests were entertained with music performed by string quartets provided by the U.S. Army Band.

The Annual Dinner was held in the Great Hall of the Supreme Court building which had been decorated with flags of all the states of the Union and with a large flag of the United States displayed between the columns at the front of the room. Annual



The Chief Justice poses for a photograph with members of the United States Army Chorus. Later that evening the chorus performed a musical program for Society members and guests.



Justice Scalia (second from left) shares conversation with Mrs. Bonnie O'Keefe, Theodore B. Olson and Michael O'Keefe (far right) at the Annual Reception. Mr. O'Keefe is the Society's State Membership Chair for Missouri.



Retired Chief Justice Warren Burger, the Society's Honorary Chairman, chats with Society member Edward Sheridan of Lansing, Illinois at the Annual Reception.

Meeting Chair, William Bradford Reynolds, welcomed the guests to the dinner and called upon the Chief Justice, who was greeted with a standing ovation. He spoke briefly regarding the Society's important work in assisting the Court with appropriate activities.

At the conclusion of dinner, the guests were serenaded by the Strolling Strings of the U.S. Army Band whose unique performance never fails to delight. Mr. Reynolds then called up the U.S. Army Chorus under the direction of Major Gary Lamb. The chorus performed a brief program ranging from show tunes to patriotic songs revealing the range and quality of the performers.

At the conclusion of the program, Mr. Reynolds thanked those who had performed, the staff of the Marshal's Office of the Supreme Court who had provided assistance and help during the day and the evening, as well as the staff of the Historical Society for their work in making the event possible. He then adjourned the Meeting until the spring of 1993.

Membership Update

The following members have joined the Society between March 16, 1992 and June 30, 1992. Names and honorifics appear as they do on membership applications.

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 Chervis Isom, Esq., Birmingham
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Chief Justice Warren Honored On New Stamp

Courtesy, U.S. Postal Service

The Lower Great Hall of the Supreme Court building was the setting on March 9, 1992 for the unveiling of a new postage stamp honoring past Chief Justice Earl Warren and his long career of public service to the American people. The ceremony was held on the anniversary of Warren's 101st birthday and was conducted by the U.S. Postal Service in cooperation with the Supreme Court of the United States.

Presiding over the ceremony was Helen M. Bainsford, Postmaster of Washington, D.C. The program opened with a special presentation of the National Anthem followed by a welcome and introduction of distinguished guests by Joseph Harris, General Manager/Postmaster of the Southern Maryland Division of the U.S. Postal Service. The honored guests for this occasion were three of Chief Justice Warren's children: Virginia Warren Daly, Secretary of the Supreme Court Historical Society, Nina "Honeybear" Brien, and Robert Warren. Mrs. Earl Warren was unable to attend the ceremony, but the event was videotaped for her.

Chief Justice William H. Rehnquist delivered remarks commemorating the occasion in which he briefly outlined Chief Justice Warren's career, as well as outlining the history of postage stamps depicting Supreme Court Justices. The text of his speech appears below:

I am happy to participate in this ceremony honoring Chief Justice Earl Warren through the issuance of a United States postage stamp bearing his likeness. This year marks the 101st anniversary of the birth of Earl Warren. Reasonable people may ask, why issue a stamp and schedule a ceremony such as this one hundred and one years after he was born? The answer is simple: both the stamp and the ceremony were originally scheduled for the centennial of his birth, but due to problems with the design the date of issue was postponed. We now have a very fine stamp, for which it was worth waiting an extra year. Earl Warren served as Chief Justice of the United States from 1953 to 1969, and it is most fitting that our country pay tribute to his numerous accomplishments in this way.

Mr. Postmaster General, at a ceremony similar to this held in this building two years ago, I complained bitterly to you about the spare representation afforded to Justices of this Court on our country's postage stamps. Today you have taken a step towards giving the Third Branch its philatelic deserts. Earl Warren now joins John Jay, John Marshall, William Howard Taft, Charles Evans Hughes, and Harlan Fiske Stone to make six Chief Justices who have appeared on stamps.

It is interesting to speculate as to the philatelic future of the Earl Warren stamp, as contrasted to the first two John Marshall stamps. The Warren stamp is being issued in a twenty-nine cent denomination, which of course is the current first class postal rate. This means that it will have wide circulation and wide use, making his imposing features familiar to many who do not know them. But it also means that the stamp will probably never attain any great



The Earl Warren stamp was issued by the United States postal service commencing on March 9, 1992.

value as a collector's item because of the huge numbers that will be issued to fulfill the need for first class postage. The first two Marshall stamps, on the other hand, were as I have noted in a five dollar denomination. Around the turn of the century, when these stamps were issued, five dollar stamps were used only to send heavy packages overseas by parcel post, and there was little demand for them. The result was that many fewer of the five dollar denomination were issued than of the two cent denomination--and as a result both of those Marshall stamps are today worth several thousand dollars apiece in fine mint condition. The Earl Warren stamp will never attain that value, but it will serve many more postal users; I think Earl Warren would be pleased to see his stamp used that way, rather than having a much smaller number of copies repose largely in the albums of collectors.

In addition to the six Chief Justices, two Associate Justices have appeared on United States stamps. In 1986 a stamp was issued in honor of Associate Justice Hugo L. Black on the 100th anniversary of his birth. Justice Black's stamp was designed by Connecticut artist, Christopher Calle, who also designed the Warren stamp. The Black stamp is a fine five cent denomination of the "Great Americans" series.

Associate Justice Oliver Wendell Holmes, Jr., appears on the fifteen cent maroon denomination of the "prominent Americans" issue of 1968. By happenstance, a later version of this Holmes stamp is the most extensively used

of all stamps depicting the Justices. Ten years after the original commemorative Holmes stamp was issued, the postage rates were raised from thirteen cents to fifteen cents. The Post Office faced an emergency need for fifteen-cent stamps, having only a two-month supply of the "A" nondenominational stamps that are used in such situations. The die used for printing commemorative stamps is often not well-suited for mass production, so a new master die of the original Holmes stamp had to be created. This was done quickly, and, during the first two weeks of June, 1978, 300 million Holmes stamps were printed. The new stamp was used at a rate of 10 billion per year until the postal rates changed again. Prior to 1978, the Post office estimated that they had sold only 11 million of the Holmes commemorative stamps each year.

Although it may be difficult to predict which Justices will be honored by being portrayed on a postage stamp, it is very clear that Earl Warren deserves this tribute. His was a long and distinguished career of public service, first, for his home state of California and then for the entire nation. Warren has been described as a man with "granite integrity", a deep-seated sense of fairness and a concern for human dignity. He was born on March 19, 1891, in Los Angeles but was raised about 100 miles away in the town of Bakersfield. Earl Warren was of Scandinavian descent on both sides of his family--his father immigrated from Norway and his mother immigrated from Sweden. I like to think of him as the first of the great Scandinavian-American Chief Justices.

As a student in the local public schools, Warren particularly enjoyed his history classes. His boyhood enthusiasm for sports, especially hunting, fishing, baseball and football, remained life-long interests. While his sister Ethel studied the piano, young Warren took clarinet lessons, soon earning a place with the town band. As a youth, Warren earned pocket money and saved for college by taking on a variety of summer jobs, including working on an ice wagon, distributing newspapers and driving a mule-drawn grocery wagon. This hard work eventually paid off, for he started college with the sum of \$800 from his savings. Warren completed both his undergraduate and law school degrees at the University of California in 1912 and 1914 respectively.

When the United States entered World War I in 1917, Warren enlisted in the Army as a private, later achieving the rank of first lieutenant by the War's conclusion in 1918. Following his discharge, Warren held a captaincy in the Reserve Corps until 1935. Upon completion of his active military service, Warren's career as a civilian public servant began in 1920 when he joined the Alameda County District Attorney's Office. Just eleven years later he was elevated to that office's top post where he earned the label of "a crusading" district attorney. From 1939 until 1943, Earl Warren held the elected position of Attorney General of California.

Beginning in 1942, he was thrice elected to four-year terms as Governor of California. Even more to his credit, under the system of cross-filing which then obtained in

California, he obtained not only the Republican nomination for Governor but also the Democratic nomination seeking his second and third terms, so that he ran unopposed in the general election. While serving as Governor, he was Governor Thomas Dewey's running mate in their unsuccessful 1948 Presidential campaign.

On September 30, 1953, President Dwight Eisenhower nominated Earl Warren to be Chief Justice of the United States. Warren, who had been far away from the active practice of law since his days in the Alameda County District Attorney's Office, faced a tremendous challenge. During the previous year the case of Brown v. Board of Education of Topeka had been argued to the Court, but instead of deciding the case the Court had set it down for reargument in the coming term. The question it raised was whether the states could require by law that black pupils and white pupils be segregated in public school systems. Chief Justice Warren realized that it was exceedingly important to obtain as many Justices as possible in support of an opinion which would outlaw such segregation. The southern and border states which followed this practice had relied upon the decision in Plessy v. Ferguson, decided more than half a century before, and there was bound to be resistance to the enforcement of any decree entered by this Court. But there would be far less resistance if the decree was unanimous. Warren labored long and hard to persuade all of the members of the Court, several of whom were very reluctant, to join his opinion which outlawed segregation by law in the public schools. To his great credit he finally accomplished this difficult task.

Beginning in the early sixties, when the appointment of Arthur Goldberg to the Court gave a liberal majority, the "Warren Court" handed down a number of decisions which greatly expanded the constitutional rights of criminal defendants and remade the judicial landscape in the area of congressional and state legislative districting. Warren authored the Court's opinion in Miranda v. Arizona in 1966, and joined with the majority in most of the other notable major cases during this period of time.

Only Warren's love of family surpassed his profound love of country and devotion to public service. Warren, the happy family man, complemented Warren, the public figure. Warren married the former Nina Meyers in 1925. The Warrens were the proud parents of six children, three sons and three daughters. We are pleased to have three of those children with us today--Mrs. Virginia Daly, Mrs. Nina Brien, and Mr. Robert Warren, as well as Mrs. James C. Warren, daughter-in-law of the Warrens, and several grandchildren and great grandchildren of the Chief Justice. Mrs. Nina Warren was unable to be with us--but today is her ninety-ninth birthday and the ceremony is being videotaped so that she will be able to see it with her family tomorrow. We are all thinking of you today, Nina, and I in particular am thinking of your Angel Food Cake.

Earl Warren, during his tenure as Chief Justice, participated in two ceremonies like this--one in 1958, for the cancellation of the fifteen-cent Rose Lake denomination

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Utah's Horseman: George Sutherland¹

by Jay S. Bybee

George Sutherland was born March 25, 1862 in Stoney Stratford in Buckinghamshire, England, one of only six justices born outside the United States.² His father, Alexander George Sutherland, was of Scottish descent; his mother, Frances Slater, was English. By baptism Sutherland was Episcopalian, but sometime in 1862 his father became a convert of The Church of Jesus Christ of Latter-day Saints (the Mormon Church), and in the summer of 1863 the Sutherlands left England to join the body of the Mormon Church in Utah. Although the family settled first in Springville, Utah, shortly after their arrival Alexander Sutherland renounced his new-found faith and moved to Montana. In 1869 the Sutherlands returned to Utah and settled in Provo. The elder Sutherland labored at various jobs, including a mining prospector, mining recorder, justice of the peace, postmaster and, ultimately, attorney.

Life in Utah Territory was frugal. Sutherland later recalled that:

[t]he average boy of ten . . . worked very hard. . . He milked, cut and carried the night's wood, carried swill to the pigs, curried the horses, hoed the corn, guided the plow, or if not, followed the task of picking up potatoes which had been upturned, until his young vertebrae approached dislocation and he was ready to consider a bid to surrender his hopes of salvation in exchange for the comfort of a hinge in the small of his back.³

At age twelve, young Sutherland became a clerk in a clothing store in Salt Lake City. He later worked in a mining recorder's office and as an agent for Wells-Fargo Company.

In 1879, when Sutherland was 17, he entered Brigham Young Academy (now Brigham Young University), where he came under the influence of its strong-willed headmaster, a German immigrant named Karl Maeser. Maeser, himself a convert to Mormonism, discussed the Constitution with his students and inculcated in them the idea that Providence had guided its framers.⁴ After two years study at the Academy, Sutherland entered law school at the University of Michigan in the fall of 1882. At Michigan, Sutherland studied under one of the greatest Constitutional scholars of the day, Dean Thomas M. Cooley.

Sutherland did not remain at Michigan to obtain his degree. He was admitted to the Michigan bar in March of 1883, and returned to Utah to join his father's law practice and to marry Rosamond Lee, a classmate from Brigham Young Academy.⁵ The Sutherlands were married nearly 60 years. They had three children: Edith, Emma and Philip.

Sutherland practiced law in Provo for ten years, first with his father and later with Samuel Thurman, who would serve as Chief Justice of Utah, and William H. King, who would become Sutherland's political opponent. Although not a Mormon, Sutherland maintained good relations with members of that church, even at a time when, politically, Sutherland believed he must oppose the Mormon practice of polygamy. Sutherland joined the Liberal Party in Utah, which had as its goal denying the admission of Utah to the Union until the Mormon Church ceased its practice of polygamy. In 1890 Sutherland ran his first campaign for public office, as the Liberal candidate for Mayor of Provo. He was soundly defeated. That same year the Mormon Church officially renounced its practice of polygamy. The Liberal Party disbanded and Sutherland declared himself a Republican.

In 1892, Sutherland sought the Republican nomination for Congressional Delegate. He lost that vote, although more narrowly than in his first electoral attempt. The following year he moved his practice to Salt Lake City, where he joined a prominent firm and helped organize the Utah State Bar Association. Even at this relatively young stage in his career, Sutherland's views on the role of the judiciary were well developed. In a speech to the Utah Bar in 1895, Sutherland told them that "[j]udges do not make laws, but declare them; the rules which govern their deliberations and decisions are to a large extent fixed and permanent, in no wise to be controlled by temporary considerations or policies."⁶ Sutherland declared that the judge's call was to "stan[d] as a shield to prevent the exercise of oppressive and arbitrary power on the part of the government."⁷ By 1896, at age 34, George Sutherland was elected to the Utah Senate, where he served as chairman of the Judiciary Committee. Four years later Sutherland was elected to Congress, narrowly defeating his former law partner, William King. Sutherland served a single term in the House of Representatives, preferring to return to law practice in Utah and to prepare for a run for a Senate seat. At that time, the U.S. Constitution still



Associate Justice George Sutherland (1922-1938)

Courtesy, Curator of the Supreme Court

provided for selection of U.S. Senators by state legislatures. In 1905, Sutherland prevailed in the legislative election over the incumbent Senator and returned to Washington.

During the two terms he served as Senator, Sutherland soon attained a national reputation for his knowledge of the Constitution and for his abilities as an orator, both on and off the Senate floor. He vigorously supported workman's compensation, improvements in the working conditions of seamen, and women's suffrage. Although the Nineteenth Amendment, extending the right to vote to women, did not pass until after Sutherland left the Senate, he was an early proponent of the amendment.

Any argument which I may use to justify my own right to vote justifies... the right of my wife, sister, mother, and daughter to exercise the same right.⁸

He was equally vigorous in opposing what he regarded as regulatory interference by the federal government in the affairs of individuals and businesses, and he opposed the Federal Reserve Act (1913), the Clayton Antitrust Act (1914), and the Federal Trade Commission Act (1914). Sutherland also voted against statehood for Arizona and New Mexico in 1912.

The Utah legislature returned Sutherland for a second Senate term. In 1913, with Sutherland's support, the U.S. Constitution was amended to provide for direct election of U.S. Senators (Amendment XVII). In 1916, for the first time, Sutherland had to stand for popular election to the Senate. This time his former law partner William King defeated him. Sutherland chose not to return to Utah, but remained in Washington to practice law. In 1916, he was elected President of the American Bar Association, succeeding his former Senate colleague, Elihu Root.

The election of Warren Harding as President in 1920 again boosted Sutherland into the public eye. Sutherland and Harding had served in the Senate together, and Sutherland had served as an advisor to Harding during his presidential campaign. In 1921, Sutherland served as Chairman of the Advisory Committee of the U.S. delegation to the International Conference on the Limitation of Naval Armaments. The following year he was counsel for the United States in the Norwegian Shipping case before the Permanent Court of Arbitration at The Hague. His lectures at Columbia University during this period were published as *Constitutional Power and World Affairs*.

In May 1921, President Harding had his first opportunity to make an appointment to the Supreme Court. The vacancy, how-

ever, was occasioned by the death of the Chief Justice, Edward Douglass White. The appointment was complicated by the fact that the position of Chief Justice had been sought, quietly, but deliberately, by former President William Howard Taft. Although the President appointed Taft as Chief Justice, Sutherland did not have to wait long. In September 1922, Associate Justice John Clarke unexpectedly resigned from the bench to pursue the cause of world peace. Sutherland was nominated by President Harding on September 5th and confirmed that same day by the Senate without discussion and without reference to committee - an honor usually reserved only for sitting Senators.

Sutherland was well acquainted with the Court and its work. He had known Chief Justice Taft and Justice Willis Van Devanter for several years. Although he frequently disagreed with Oliver Wendell Holmes and Louis Brandeis, the latter whom Sutherland had opposed in the Senate when Brandeis was nominated for the Court, his relations with his fellow Justices were warm and congenial.⁹ Justice Owen J. Roberts recalled that at the beginning of conferences, Justice Holmes would approach Sutherland and say, "Sutherland, J., tell us a story."¹⁰ On one

occasion, Justice Brandeis, upon reviewing Sutherland's strenuous dissent in a case in which the majority upheld Minnesota's post-Depression mortgage moratorium law, returned the dissent to Sutherland inscribed: "My Dear Sutherland: This is perhaps the finest opinion in the history of American constitutional law. Regretfully, I adhere to my error.-- Brandeis."¹¹

Just as Senator Sutherland had been regarded as thoughtful and well-spoken in the Senate, Justice Sutherland was an articulate and forceful voice on the Court - as Judge Harold Stephens of the U.S. Court of Appeals in Washington stated -- "almost Lincolnian in directness and simplicity."¹² He quickly formed an intellectual alliance with Justices Willis Van Devanter, James McReynolds, and Pierce Butler. Together, the "Four Horsemen" -- frequently joined by Chief Justice Taft or Justice Edward Sanford -- combined to strike down much regulatory and social legislation. During the nearly sixteen years Justice Sutherland served, the Court struck down some eighteen Acts of Congress; Sutherland voted with the majority in all but one of these. Dur-

ing the same period, the Court ruled more than 185 state statutes or local ordinances unconstitutional; Justice Sutherland was in dissent only nine times.¹³ All told, Justice Sutherland authored 320 opinions. Remarkably, only 24 of his opinions were written in dissent.¹⁴

--continued on next page



Sutherland as a young man.

Courtesy, Library of Congress

Sutherland (continued)

In Sutherland's view, a view well expressed in his early days in Utah and well known from his years in the Senate, the legislative reforms of the New Deal era infringed upon the rights of individuals to determine their own course -- their liberty to contract -- in violation of the Fifth and Fourteenth Amendments.¹⁵ In one of Sutherland's first opinions, the Court ruled unconstitutional the District of Columbia's minimum wage law for women. While acknowledging that "freedom of contract may lawfully be subjected to restraint" when legislation is required "in the interest of social justice," Sutherland explained that social well-being ultimately depended on the welfare of individuals: "To sustain the individual freedom of action contemplated by the Constitution, is not to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."¹⁶ In subsequent cases, Sutherland spoke for the Court to invalidate similar encroachments on the liberties of individuals: for example, a New York law prohibiting the resale of theater tickets at more than fifty cents above the face value of the ticket¹⁷; a New Jersey statute establishing fees that could be charged by an employment agency¹⁸; and a Pennsylvania law forbidding corporations to own pharmacies unless all of the stockholders were pharmacists.¹⁹

For Justice Sutherland, there was no inconsistency in the fact that the Court had so often disagreed with the political branches of government. The Constitution was law, and if it "[stood] in the way of desirable legislation, the blame must rest upon that instrument, and not upon the court for enforcing it according to its terms."²⁰ To Sutherland there was "a degree of elasticity" in the application but not the meaning of the Constitution and precisely that "application must expand or contract to meet the new and different conditions."²¹ In one of his last dissents, Justice Sutherland warned of the cost of the Court approving the social reforms: "Do the people of this land... desire to preserve those [liberties] so carefully protected? If so, let them withstand all beginnings of encroachment. For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."²² By 1937, Sutherland was 75, and President Roosevelt, wearied of the Court's assault on his New Deal legislation and frustrated by the "old men" of the Court, had proposed a plan to expand the number of justices on the Court. Under Roosevelt's plan, the President could appoint an additional justice for each sitting justice over 70 who would not resign or retire.²³ Justice Sutherland had previously considered retiring, but determined to remain while Roosevelt tried to pack the Court.²⁴ Roosevelt's plan was defeated in the summer of 1937, and on January 18, 1938, Sutherland resigned from the

Courtesy, Curator of the Supreme Court



Sutherland (front row, far right) was one of the more senior Justices on the Hughes Court of 1932. He was one of four Justices on that Court whom the press included in a conservative voting bloc known as "The Four Horsemen." The other members of this unofficial bastion of conservatism were Willis Van Devanter (front row, second from left), James C. McReynolds (front row, second from right) and Pierce Butler (back row, second from left).

bench. He died four years later, at age 80, on July 18, 1942, in Stockbridge, Massachusetts. Many of Justice Sutherland's opinions, particularly those dealing with the Fifth and Fourteenth Amendments, have since been overruled or allowed to slip into disuse. On the other hand, others, particularly those dealing with the separation of powers, are as articulate and current as when they were penned. In his day, according to Alpheus Mason, Sutherland was "as significant as Holmes or Brandeis."²⁵ Two generations later, Sutherland's influence on the Court cannot be overlooked. At a Memorial Service held at the Court in December 1944, Chief Justice Harlan Stone, his voice full of emotion, praised Justice Sutherland:

the so-called conservative temper of [Sutherland's] opinions was not inspired by any antagonism to progress in the law, but rather by the emphasis which Justice Sutherland placed on the constitutional protection of the few from the tyranny of the many. Indeed, these opinions were but steps in the process of finding solutions of what perhaps

has been the greatest problem of constitutional interpretation throughout the twentieth century, the need to bring into proper balance the competing demands, on the one hand that constitutional sanctions shall safeguard the individual from the abuse of power by the majority, and on the other that the Constitution be not so interpreted as to clothe the individual with power to restrict unduly the welfare and progress of the community as a whole.

Chief Justice Stone suggested that the Court was "perhaps still too close to the smoke of battle to see clearly or to say with omniscient finality precisely how the great constitutional issues of that period should have been decided," but, "[i]n any event wise men will not doubt that the viewpoint which [Sutherland] so ably represented must be reckoned with in the formulation of constitutional principles by a tribunal which must determine the boundaries and distribution of power under a federal constitutional system."²⁶

End Notes

1. This brief biography was prepared in connection with a forthcoming publication of The Supreme Court Historical Society and Congressional Quarterly on the lives of the justices.

2. The others were James Wilson (Scotland), James Iredell (England), William Paterson (born at sea while his parents were on their way from England to the United States), David Brewer (Born an American citizen, but in Asia Minor), and Felix Frankfurter (Austria). J. Paschal, *Mr. Justice Sutherland: A Man Against the State* 3 n.1 (1951).

3. G. Sutherland, "The Spirit of Brigham Young University" 18 *The Messenger* (No. 10) at 3-4 (address read at Brigham Young University on June 4, 1941) (quoted in Paschal, *supra* note 2, at 4).

4. Paschal, *supra* note 2, at 7 & n.16; F. Kirkham, "Intimations on Justice George Sutherland: A Good Man," *Clark Memorandum* 7 (Fall 1986) (from an address given November 1985 to the J. Reuben Clark Law School, Brigham Young University).

5. "Rosamond" is the spelling found in Paschal and in H. Stephens, "Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of George Sutherland, December 18, 1944," in *IV Memorials of the Justices of the Supreme Court of the United States* 382 (1981). "Rosamund" is the spelling preferred by Congressional Quarterly's *The Supreme Court at Work* and D. Burner, "George Sutherland" in *III The Justices of the United States Supreme Court: Their Lives and Major Opinions* 2134 (L. Friedman & F. Israel eds. 1969).

6. 2 Rep. Utah Bar Ass'n 47, 57 (1895) (also quoted in Paschal, *supra* note 2, at 27).

7. *Id.* at 47 (also quoted in Paschal, *supra* note 2, at 28).

8. 53 Cong. Rec. 11318 (1916) (also quoted in Paschal, *supra* note 2, at 92).

9. H. Stone, "Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of George Sutherland, December 18, 1944," in *IV Memorials of the Justices of the Supreme Court of the United States* 461 (1981).

10. Kirkham, *supra* note 4, at 7.

11. *Ibid.* The case is *Home Building & Loan Association v. Blaisdell*, 290 U.S. 398 (1934).

12. H. Stephens, "Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of George Sutherland, December 18, 1944," in *IV Memorials of the Justices of the Supreme Court of the United States* 392 (1981).

13. These figures are compiled from *The Constitution of the United States*, S. Doc. No. 82, 92d Cong., 2d Sess. 1609-12, 1677-1711, 1774-76 (1972).

14. Stephens, *supra* note 12, at 381.

15. Sutherland's opinions are reviewed generally in Paschal, *supra* note 2, and Burner, *supra* note 5. For a broader discussion of the era see D. Currie, "The Constitution in the Supreme Court: The New Deal, 1931-1940," 54 *U. Chi. L. Rev.* 504 (1987); D. Currie, "The Constitution in the Supreme Court: 1921-1930," 1986 *Duke L.J.* 65.

16. *Adkins v. Children's Hospital*, 261 U.S. 539, 561 (1923).

17. *Tyson & Brother--United Theatre Ticket Offices v. Banton*, 273 U.S. 416 (1927).

18. *Ribnik v. McBride*, 277 U.S. 350 (1928).

19. *Louis K. Liggett Co. v. Baldridge*, 278 U.S. 105 (1928).

20. *West Coast Hotel v. Parrish*, 300 U.S. 379, 404 (1937) (Sutherland, J., dissenting).

21. *Euclid v. Ambler Co.*, 272 U.S. 365, 387 (1926).

22. *The Associated Press v. National Labor Relations Board*, 301 U.S. 103, 141 (1937) (Sutherland, J., dissenting) (emphasis in original).

23. See G. Gunther, *Cases and Materials on Constitutional Law* 168 (9th ed. 1975).

24. Paschal, *supra* note 2, at 200 & n.125.

25. A. Mason, "The Conservative World of Mr. Justice Sutherland, 1883-1910," 32 *Am. Pol. Sci. Rev.* 443, 443 (1938).

26. Stone, *supra* note 9, at 462, 463-64.

Charles Evans Hughes and the "Revenuers"

The development of insulin for the treatment of diabetes does not seem to be a subject with which one would associate Charles Evans Hughes, but he did make an important contribution to the development of insulin through his association with Dr. William D. Sansum. Sansum also provided a link between Hughes and the "revenuers" who enforced the Prohibition laws.

The initial link between Sansum, Hughes and the "revenuers" was through insulin. The discovery of insulin is credited to two Canadian doctors, Frederick Banting and J.J.R. McLeod, of Toronto, Canada. While Banting is credited with the original concept of insulin, McLeod's help was instrumental in the production of insulin from animal pancreases. In fact, Drs. Banting and McLeod shared the Nobel prize for the "discovery" of insulin.

The work in Toronto was soon made known to the medical community throughout the world. Dr. William D. Sansum, "following Banting's paper and advice, had used alcohol extraction to make the first insulin in the United States, treating his first patient May 31, 1922."

Initially, Dr. Sansum found all the materials he needed in the Santa Barbara area, but by late 1922, the local slaughterhouse could not provide enough animal pancreases to meet the needs, so Sansum began to purchase additional material from a packing company in the Los Angeles area. The trip to Los Angeles was approximately 200 miles round trip. Transportation of the glands required some kind of preservative, and Dr. Sansum used large amounts of grain alcohol to preserve the pancreases.

Perhaps inevitably, one winter night, as Dr. Sansum was returning to Santa Barbara with a load of tin milk cans filled with alcohol and animal pancreases, he met a prohibition officer. When queried about the contents of the milk cans, Dr. Sansum told the officer that they contained animal glands, explaining that he was taking them to a hospital in Santa Barbara where

the insulin would be extracted. The officer was not impressed and demanded that the cans be opened for inspection. The smell of alcohol was overwhelming, and despite his assurances that the alcohol was being used for scientific purposes, the load of pancreases was impounded and Sansum was ticketed for violation of the prohibition laws.

While awaiting his appearance before a federal judge, Dr. Sansum read an article in a Chicago newspaper which fired his interest. The news item had originated in Toronto and reported: "Miss Elizabeth Hughes, fifteen-year-old daughter of the American Secretary of State Charles Evans Hughes, has seemingly been cured of severe diabetes and has returned to her parental home in Washington, D.C. after undergoing treatment here for the past five months under the personal care of Dr. Frederick G. Banting of the University of Toronto." Acting on impulse, Dr. Sansum wrote the Secretary of State outlining his problems and soliciting help.

Sansum found a sympathetic audience in Hughes. Elizabeth, his third daughter and youngest of his four children, had contracted diabetes at the age of 11. The common treatment for dia-

betes at the time was to restrict the diabetic's diet to near-starvation. By the age of 15, this treatment had taken a severe toll on Elizabeth and Mrs. Hughes, in desperation, contacted Dr. Banting at the University in Toronto seeking help for the near-fatal illness. At the time of her arrival in Toronto, Elizabeth although 15 years old, weighed only 45 pounds and her situation was critical. Elizabeth responded well to the treatments and in her letters home expressed herself in such phrases as "Oh, it is simply too wonderful for words, this stuff."

Given his daughter's experiences, it is probably not surprising that Secretary Hughes did respond to Dr. Sansum's request. Seemingly within the hour of receiving the letter, he telephoned the Secretary of the Treasury, whose department enforced the Prohibition laws. Dr. Sansum subsequently received a telegram signed by the Secretary of State himself, reporting that the Treasury Department had authorized Sansum to purchase and transport as much alcohol as was needful for his work. Hughes also reported in the telegram that the recent charges against Sansum would be dropped.

The next day, Dr. Sansum and his associate went to the federal building in Los Angeles to obtain their alcohol permit. There they "found a figurative red carpet spread for them." Dr. Sansum later wrote the parent of one of his young patients explaining his reception that day: "The Prohibition authorities were much impressed with so generous and unusual an offer coming from high in the federal government." Dr. Sansum was treated with great respect and was able to continue his work without interference.



Charles Evans Hughes with his daughter Elizabeth. Elizabeth Hughes was among the first citizens of the United States to receive life-saving insulin therapy.

Editor's Note: The Editors would like to acknowledge the assistance of Mrs. Harriet Griswold who provided source materials for this article. Mrs. Griswold corresponded with a number of people who contributed information, including Mr. William T. Gossett and Dr. W. P. VanderLaan of The Whittier Institute of Diabetes and Endocrinology in La Jolla. Dr. VanderLaan provided an excerpt from the book Continuing Quest by Walker Tompkins, relating the story of Dr. Sansum and Chief Justice Hughes. Interested readers are also referred to Mobil Masterpiece Theatre's production entitled "Glory Enough for All" concerning the discovery and development of insulin, as well as the experiences of Elizabeth Hughes. The program was aired on PBS in the late fall of 1990 and further information can be obtained by writing your local PBS station.

Courtesy, Library of Congress

Warren Stamp (continued from page thirteen)

depicting the first Chief Justice, John Jay, and another in 1962, in which the four cent commemorative stamp honoring the hundredth anniversary of the birth of Charles Evans Hughes was unveiled. So it is singularly appropriate that we who are gathered in this room should engage in a ceremony familiar to Earl Warren, in which we celebrate the 101st anniversary of his birth with the very visible sign of our respect for him and the high regard in which his memory is held by our nation.

At the conclusion of Chief Justice Rehnquist's remarks, Postmaster General of the United States, Anthony M. Frank, officiated at the dedication of the stamp. With Chief Justice Rehnquist assisting, Mr. Frank unveiled the design for the new stamp. Postmaster Frank noted that this ceremony was one of his last official duties as Postmaster as he was retiring later in the month. Mr. Frank explained that:

being the subject of a U.S. postage stamp has always been a singular honor, and remains so today. . . . Our stamp program provides an opportunity to celebrate the best of America's past and present, her people, and their contributions. We in the Postal Service are proud of our role in portraying the American experience to a world audience. And, we believe that stamps are an unbeatable

Wanted

In the interest of preserving the valuable history of our highest court, the Supreme Court Historical Society is seeking to contact relatives, associates, or any others who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature or any other materials related to the history of the Court and its members. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society's headquarters, 111 Second Street, N.E., Washington, D.C. 20002, or call (202) 543-0400.

way to focus attention on our nation's history and culture.

. . . Since the first U.S. issue appeared, stamps have honored statesmen and scholars, enduring principles, milestone achievements and great Americans.

. . . Earl Warren was a man of great wisdom and courage. The legacy of his court is one of progress, humanity and the rights of the common man. It is our hope that, starting today, Americans who see the image of Earl Warren in the upper right hand corner of their envelopes, will be encouraged to learn more about him and his remarkable achievements."

The Lower Great Hall was a particularly apt choice for the ceremony as it currently contains a display about the career of Chief Justice Warren. The display contains photographs and memorabilia covering many aspects of Warren's career, from his elective days in California, through his career as Chief Justice of the United States. Prepared by the Office of the Curator of the Supreme Court, the display made a wonderful setting for the dedication of the stamp.

Erratum

The previous issue of the *Quarterly* incorrectly identified the President who appointed Harlan Fiske Stone as Associate Justice. The President who appointed Justice Stone was Calvin Coolidge.

Chief Justice Rehnquist Presents the Society's Triennial Book Prize To University of Chicago Professor David Currie

The Society is pleased to announce the presentation of its first Triennial Book Prize. The award recognizes outstanding book-length scholarship on the Supreme Court published during the previous three year period and is aimed at stimulating the publication of scholarly works about the Court. David P. Currie received the award for his work, *The Constitution in the Supreme Court: The Second Century, 1888-1986*.

A special presentation ceremony was held in the Chambers of Chief Justice Rehnquist, during which Chief Justice Rehnquist presented the award to Professor Currie. Also attending the gathering were Mrs. Currie, Leon Silverman, President of the Society, Kenneth S. Geller, Chairman of the Publications Committee, Michael Cardozo, Chairman of the Board of Editors for the *Journal of Supreme Court History*, David T. Pride, Executive Director of the Society, and Clare Cushman, Director of Publications for the Society.

Professor Currie's book discusses constitutional cases, some easily recognized and others long forgotten, thus tracing the development and changes in judicial philosophy in the last 100 years. Published by The University of Chicago Press, this book is a sequel volume to his 1985 book, *The Constitution in the Supreme Court: The First Hundred Years, 1789-1888*. *The Constitution in the Supreme Court: The Second Century, 1888-1986* was the unanimous choice of the Triennial Book Prize Committee chaired by Professor Philip Kurland of the University of Chicago. Other members of the Committee were Judge David Levi of the U.S. District Court for the Eastern District of California, Professor John Mansfield of Harvard, and Anthony Lewis of *The New York Times*.

Both of Professor Currie's volumes have been highly ac-



The Chief Justice joins Society President Leon Silverman (left) and prize recipient David Currie (center) at the first presentation of the Supreme Court Historical Society Triennial Book Prize.

claimed and well received within the academic community. Currie was commended for taking highly emotional issues, like *Griswold v. Connecticut* and *Bowers v. Hardwick* and arguing them cautiously and with reason. Robert Stevens, in his review of the second volume described it as "a book that should be read by all those who care about the Supreme Court." The Society is pleased to award this, the first Triennial Book Prize, to Professor Currie for his outstanding work.

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