



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XIX

NUMBER 4, 1998

The *Amistad* Case and the Federal Courts

by Bruce Ragsdale



The Gilder Lehrman Collection and deposit at the
Philadelphia Museum of Art, Gift of the
Philadelphia Museum of Art, 1998

The Death of Capt. Ferrer, the Captain of the Amistad, July 1839. This drawing depicts the moment when the African captives in an effort to regain their freedom, armed themselves with cane knives and attacked the captain and crew of the vessel. This sketch was an advertisement for John Warner Barber's *History of the Amistad Captives*, published in New Haven in 1840.

**Editor's Note — The Amistad case has again captured the imagination of the American and international public as a result of the film Amistad. The story of the case is divided into two separate articles here. The first is excerpted from an article published in The Court Historian, a publication of the Federal Judicial History Office of the Federal Judicial Center, and is reprinted here with permission of that office. It considers specifically the jurisdiction and operations of the federal judicial system in the first half of the nineteenth century. The second half emphasizes the Supreme Court case.*

The release of the film *Amistad* and widespread interest in the story of the enslaved Africans who regained their freedom through the U.S. courts provides a rare opportunity to highlight the operation of the federal judiciary in the first half of the nineteenth century. From the moment that U.S. Navy officers took custody of the schooner *Amistad* and the Africans on board in August 1839, the captives' fate was tied to the jurisdictional authority and procedures of the federal courts.

As one of the most famous cases in the lower federal courts during the nineteenth century, the case drew unprecedented crowds of spectators into courtrooms, attracted the attention of journalists from all over the country, and inspired stage dramas, popular prints, and traveling exhibits that recounted the story. The Africans' search for freedom followed a complicated path of proceedings through every type of court in the federal judiciary, whose structure was quite different from what it is today.

The African Captives and the *Amistad*

The case had its origins in West Africa, far from the jurisdiction of the federal courts. In the spring of 1839, slave traders shipped more than 500 captured Africans to Cuba and sold the surviving captives there, in violation of Spanish law. Two Spanish planters purchased fifty-three Africans, most of them of the Mende people, and procured forged papers attesting to the legality of the sale. The planters then chartered
continued on page six

A Letter From the President



In 1999 the Society will be mounting its most ambitious educational program in its twenty-five-year history—affording members eleven separate opportunities to attend lectures at the Supreme Court.

The first of these programs is the Erwin Griswold Prize Lecture, in the Supreme Court chamber on February 25. The Prize, which honors

the Society's distinguished late Chair, is a \$5,000 award intended to recognize outstanding works on Supreme Court, constitutional and judicial history. Conceived to encourage more scholarship in those fields, the Prize has the added benefit of attracting prize-winning authors to the Court to deliver talks to the Society's membership. It is funded in considerable measure by Dean Griswold's former partners at Jones, Day, Reavis & Pogue.

This year's Prize winner is Professor Andrew L. Kaufman of Harvard Law School, who is being recognized for his biography of Justice Benjamin Cardozo. The Society is honored to have this lecture introduced by Justice Antonin Scalia. The lecture will begin at 6:00 P.M. on February 25, and will be followed by a reception in the Court's East and West Conference Rooms. Tickets are \$10 each. Invitations have been mailed, but members who wish to make reservations over the phone can do so by calling the Society at (202) 543-0400.

Just four weeks later, on March 24, the Society will sponsor a lecture on the Court's architect, Cass Gilbert, to be delivered by Paul Byard. One of the most noted architects of his time, Cass Gilbert worked closely with Chief Justices William Howard Taft and Charles Evans Hughes to design the Court's first and only building constructed specifically for its use. Previously the Court had been housed in various rooms in the Capitol building, and before that in the Independence Hall in Philadelphia and the since-razed Royal Exchange Building in New York when the federal government was located in those two cities respectively. Invitations to the Cass Gilbert lecture will be mailed sometime in late January or early February.

On two dates yet to be confirmed, but probably in May and June, the Society will cosponsor two programs with the Mount Vernon Ladies' Association as part of a larger program by the Ladies' Association to commemorate the 200th anniversary of President George Washington's death in 1799. The Society's role in this commemoration of the first President will be to examine the Washington-era Court which, for the only time in the Nation's history, was composed entirely of appointees of one President. Documentary History Project Editor Maeva

Marcus is developing a lecture on the Washington appointees that she will deliver at Mount Vernon. The Society also hopes to mount a reenactment of one of the seminal cases of the era, *Chisholm v. Georgia*. Invitations to these programs will be mailed to members in early March.

Sometime this year members will also be invited to the National Heritage Lecture, a jointly sponsored endeavor of the Supreme Court Historical Society, the White House Historical Association and the U.S. Capitol Historical Society. Stewardship for this program rotates annually between the co-sponsors with each organization assuming the principal sponsorship every third year. Society members will recall the most recent of these programs occurred last May when we were honored to host the Lord Chancellor of Great Britain. The White House Historical Association will assume the role of principal organizer for the event, and members may expect to receive invitations approximately three to four weeks in advance.

Again, on dates yet to be confirmed, the Society will undertake a five-part lecture series examining the First Amendment. Building on the successes of six highly successful series to date, the Program Committee has invited a formidable colloquium of scholars to take an in-depth look at the history of the Court's First Amendment rulings with a particular emphasis on free speech. Two of the lectures are anticipated to take place in the spring of 1999 and three in the fall. Barring scheduling conflicts, we hope to continue our practice of having each of the programs introduced by a Justice in the Supreme Court chamber and broadcast by CSPAN.

The first of these lectures will examine the origins of the First Amendment and the Alien-Sedition Acts, and will be delivered by Professor Murray Dry, a professor of political science from Middlebury College. The second lecture will look at free speech from the Reconstruction Era through the end of World War One and will be delivered by David Rabban of the University of Texas School of Law.

Professor Douglas Laycock of that same institution will deliver the third lecture in the series examining the "clear and present danger test." But lest an urban legend spring up that Texan academics have cornered the market on free speech is-

The Supreme Court Historical Society Quarterly

Published four times yearly in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 111 Second Street, N.E., Washington, D.C. 20002. Tel. (202) 543-0400, www.supremecourthistory.org. Distributed to members of the Society, law libraries, interested individuals, and professional associations.

Managing Editor
Assistant Editor

Kathleen Shurtleff
Christopher McGranahan

sues, the Society is also putting together a panel discussion on clear and present danger that will include Professor Philippa Strum of CUNY—Brooklyn College, Professor Walter Berns of Georgetown University, and another yet-to-be-announced panelist. The series will conclude in early November with an examination of free speech during the Warren and Burger Court eras to be delivered by Professor Lillian Bevier of the University of Virginia School of Law.

The Society is grateful, incidentally, to West Group, the Charles Evans Hughes Foundation, and Society Vice President Dorothy Goldman for their generosity in making this series possible. All three have been loyal and supportive of the Society's programs for many years and each does much to promote public education about the Supreme Court's history.

Saving the most prestigious of the Society's lectures for last, it is my distinct pleasure to announce that this year's Annual

Lecture will be delivered by Justice Ruth Bader Ginsburg. That lecture will take place at 2:00 P.M. on June 7 in the Supreme Court Chamber as part of the Society's Annual Meeting. While free to all Society members, it does require a reservation, as the Annual Meeting events have traditionally been fully subscribed for many years now.

As you can see, the Society has a very full agenda for 1999 with ample opportunities to attend lectures and functions in the Court. For those of you who do not find yourself in Washington at a time coinciding with one of these events, I urge you to keep an eye on the Society's website at www.supremecourthistory.org which is routinely updated with the schedule of CSPAN's broadcasts of Society events.

Leon Silverman

Erwin N. Griswold Prize Awarded to Andrew L. Kaufman

Cardozo, by Professor Andrew L. Kaufman of the Harvard Law School has been selected to receive the Society's Erwin N. Griswold Prize for the most significant publication in the field of Supreme Court history. Awarded when a work of sufficient merit is published, this prize, originally the Supreme Court Historical Society Triennial Book Prize, was named for Dean Griswold shortly after his death in 1994.

Professor Kaufman is the third recipient of the prize. Professor David Currie of the University of Chicago was awarded the initial prize in 1992 for *The Constitution in the Supreme Court: The Second Century, 1888–1986*. In 1995 the prize was awarded to Professor Gerald Gunther for his biography, *Learned Hand*.

Professor Kaufman is on the faculty of the Harvard Law School. He has been assembling material and reading cases for a biography of Associate Justice Benjamin N. Cardozo for forty years. A version of a chapter of the book appears in *Jewish Justices of the Supreme Court Revisited* published by the Society and was adapted from the lecture series on that topic. The end product of Professor Kaufman's labors was published in 1998 by Harvard University Press. *Cardozo* was the unanimous choice of the Griswold Prize Committee, chaired by Professor Gerald Gunther.

The award will be presented on Thursday, February 25, 1999, in a program held in the Supreme Court Chamber. Professor Kaufman will deliver a lecture that evening on Justice Cardozo prior to receiving the award. A reception will follow the program. Funding for the prize was provided in memory of Dean Griswold by his law partners at the firm of Jones, Day, Reavis & Pogue, which has been involved in the work of the Society since its inception.

Invitations to the event will be mailed to Society members

and reservations can be made through the mail, or by telephone. The cost is \$10 per person for the evening, which includes the cost of the reception. Additional information about the program will be posted on the Society's website, www.supremecourthistory.org.



Benjamin Nathan Cardozo served on the New York Court of Appeals from 1914 to 1932. He was elevated to the Supreme Court of the United States in 1932 where he served for five and one-half terms.

Collection of the Supreme Court of the United States

Tribute to Justice Lewis F. Powell, Jr.

In a beautiful church on a tree-lined street in Richmond, Virginia, people gathered on August 31, 1998, to pay their respects to Lewis F. Powell, Jr. A true Virginia gentleman, the accomplished and courtly Powell served on the Supreme Court from 1972 until his retirement in 1987. The funeral service was held in the church where the Justice had worshipped for many years of his life. His family members were joined by all nine members of the current Supreme Court and Retired Associate Justice Byron R. White, as well as many friends and colleagues.

Chief Justice William H. Rehnquist gave a short and meaningful tribute, highlighting his personal association with Justice Powell. He also discussed some of Powell's important contributions as a member of the Court. It was especially appropriate that the Chief Justice participated in the service, as Rehnquist and Powell became members of the Supreme Court on the same day in 1972, sharing an investiture ceremony. This was one of the few times in the history of the Court that two Justices were invested on the same day in the same ceremony. Rehnquist had

been appointed to the office of Chief Justice by the time of Powell's resignation from the Court in 1987.

Justice Sandra Day O'Connor gave a moving tribute to her former colleague. Ironically, she was a member of the audience the day of the investiture of Justices Powell and Rehnquist, a fact she noted at the beginning of the eulogy.

"... I was at the Supreme Court in January 1972 to witness the investiture of Lewis Powell and William Rehnquist. I met the Powells at the reception following, but little did I dream that I would know Lewis Powell as a colleague on the Supreme Court nine years later.

"Justice Powell was the ninety-ninth Justice to serve on the Supreme Court and perhaps the most reluctant. It is reported that, on the day in January 1972 when Lewis was

sworn in, Nan Rehnquist asked Justice Powell's wife, Jo, if it wasn't the most exciting day of her life. Jo reportedly said, 'No, it is the worst day of my life. I am about to cry.' Lewis Powell had turned down an appointment to the Court in 1969 and was prepared to do so again in 1972. Luckily for the Court and the Nation, he finally agreed to accept the nomination when President Nixon convinced him it was his duty to his country to do so.

"His family dates back to Thomas Powell who came to

the James River area of Virginia from England in 1635. Lewis was born in Suffolk, Virginia, but lived most of his life in Richmond. He was an able student and a good athlete—playing basketball and baseball. He learned how to shoot and enjoyed hunting. He also learned as a youngster the demanding nature of life on a farm—his father bought a milk cow named Mollie. Lewis was directed to feed her, take care of her, and milk her. Anyone who has done that knows there is never a day off. Lewis said one of his happiest days was some years later when he went out to the barn and 'found the damn cow dead.'

"He attended college and law school at

Washington and Lee University in Lexington, Virginia. He quickly demonstrated his leadership qualities—president of his fraternity, managing editor of the student newspaper, student body president. He graduated first in his class from law school, then did a post graduate year at Harvard.

"Lewis returned to Richmond to practice law and after a couple of years joined the law firm of Hunton and Williams, at the handsome salary of \$50 per month. Soon after, he married Jo Rucker—a beautiful and talented graduate of Sweet Briar. It was a marriage made in heaven, as they say. One that remained joyous and loving for over sixty years. They had four wonderful children—Jody, Penny, Lewis III, and Molly. Nine grandchildren, and one great grandchild.



Lewis F. Powell, Jr., receives his certificate of appointment as an Associate Justice from President Richard M. Nixon. Powell had refused a request to serve on the Court in 1969, but Nixon persuaded him that it was his civic duty to accept the nomination in 1972.

"He volunteered in the Army Air Force in 1941. He served in North Africa, Sicily, and England. Eventually he was assigned to military intelligence and served as a representative in the most sensitive and top secret intelligence group known as ULTRA. In the military service, he made a very important contribution to the victory of the allies, and it was a significant part of his life.

"After the War, he returned to Hunton and Williams. He represented some important clients, including Colonial Williamsburg.

"Qualities of leadership emerged again at once—within his law firm, in the House of Delegates of the American Bar Association, and as chairman of the Richmond School Board. In that capacity, he served on the board during the years immediately following the Supreme Court's decision in *Brown v. Board of Education* keeping the public schools open. Later he served on the Virginia State Board of Education. He supported reform of the curriculum, and he strongly opposed those who were proposing massive resistance to the desegregation of the public schools.

"He became president of the Colonial Williamsburg

Foundation and, in 1964, president of the American Bar Association.

"He served on the Supreme Court of the United States from 1972 to June 1987. He wrote more than 500 opinions, many very significant. It was a great privilege to serve on the Court with him for six full years. No one did more than Lewis Powell to help me get settled as a new Justice. He found us a place to live. He allowed me to hire one of his two secretaries as my chamber's secretary. Most important—he was willing to talk about cases and the issues. His door was always open. I miss those visits and discussions still today.

"He was very hard working. He went over every detail. He was concerned in every case about the equity at the bottom line—about reaching a fair and just result. He brought a lifetime of experience as a lawyer and as a leader. He was enormously kind and thoughtful. But underneath that kind and gentlemanly exterior was a firmness and resolve. He would hold his ground when he decided on a course of action.

"Despite the hard work, Lewis and Jo would occasionally attend social functions with their friends. Lewis was an excellent dancer and I had the privilege of dancing with him

continued on page sixteen



The Bellmead baseball team, Richmond, Virginia, circa 1925. Lewis F. Powell, Jr., is standing, far left. Powell graduated from McGuire's University School in Richmond in 1925 before going on to attend Washington and Lee University.

The Amistad Case (continued from page one)

the *Amistad* to transport the Africans to estates in a coastal province east of Havana.

During a storm the captives, led by Sengbe Pieh (known to the Spanish and Americans as Cinque), freed themselves from their irons, killed the captain and his cook, and took control of the ship. The Africans then coerced the Spanish planters to sail the ship to West Africa. After two months, during which time the planters directed the ship northward at night, the *Amistad* arrived in Long Island Sound with few remaining provisions and seriously damaged rigging. Lieutenant Thomas Gedney, of the U.S. surveying brig *Washington*, intercepted the *Amistad* off the New York coast, took custody of the Africans, and piloted the ship to Connecticut, where, unlike New York, slavery was legal.

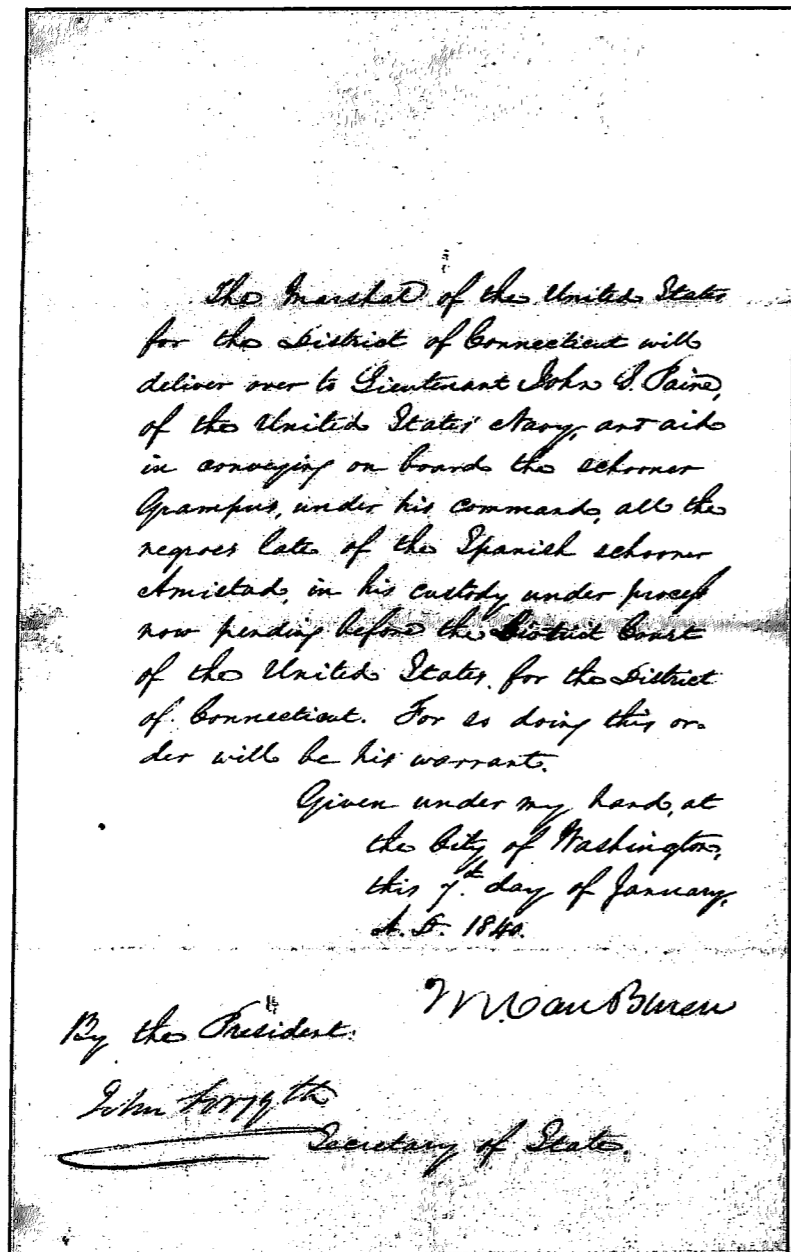
Once the *Amistad* and its occupants were in U.S. territory, various parties approached the federal courts to plead their interests. Lawyers hired by a group of abolitionists to represent the captives, sought their freedom. Gedney and a co-officer claimed salvage under federal law that awarded to anyone who saved a vessel in danger a portion of the value of that vessel and its cargo. Private citizens who earlier had met a shore party from the *Amistad* also filed salvage claims. The planters sought to reclaim the Africans they had purchased, and the Spanish owners of the ship and the goods on board filed a claim for their property. The U.S. attorney for Connecticut, representing the Van Buren administration and responding to the claims of the Spanish minister, sought the return of the Africans either to the Spanish authorities or to their native land, depending on the court's determination of

their legal status. The responsibility of sorting out the conflicting claims fell to federal judges sitting on district and circuit courts (both trial courts under the federal judicial organization then in effect) and, ultimately, to the Justices of the Supreme Court.

The Federal Courts' Jurisdiction

Within a day of the *Amistad's* arrival in New London, Connecticut, Andrew Judson, as judge of the U.S. District Court for the District of Connecticut, held a special court session on board both the *Washington* and the *Amistad* to determine the federal courts' jurisdiction in the case. After hearing testimony from the Spanish planters and Antonio, a slave owned by the slain ship captain, Judson ordered the U.S. marshal to hold the Africans in the New Haven jail along with Antonio and several African children who would serve as witnesses. Judson referred the case to the U.S. Circuit Court for the District of Connecticut to decide the procedural questions regarding the property and salvage claims as well as the possible indictment of the adult Africans for murder and piracy.

The Glendon Lehman Collection on deposit at the Pierpont Morgan Library, GLC 563601.



This letter from President Martin Van Buren directed the U.S. Marshal for the District of Connecticut to deliver the captives to the United States Navy for transport back to Cuba aboard the U.S. Navy schooner *Grampus*.

The circuit courts were the most important trial courts in the federal judiciary during the nineteenth century, responsible in 1839 for cases involving most federal crimes and civil suits. The circuit courts were unique in the federal system in that they were assigned no judges of their own. Each circuit court convened in a judicial district with a Supreme Court Justice and the local district court judge both presiding. Through much of the nineteenth century, Supreme Court Justices spent part of each year traveling

their assigned circuits and presiding over the U.S. circuit courts. At the time of the *Amistad* case, Smith Thompson served as the circuit Justice of the Second Circuit, which comprised New York, Connecticut, and Vermont.

When the U.S. Circuit Court for the District of Connecticut met at Hartford in September 1839, Judson sat as a judge along with Thompson. Capital cases were tried in the circuit courts, but Thompson instructed the grand jury that federal courts had no authority to try the Africans, since the mutiny occurred on a foreign vessel outside U.S. territory. Thompson denied the request of the Africans' lawyers for a writ of habeas corpus and charged the U.S. district court with determining the jurisdiction in which the ship was seized and the legal status of the Africans.

In the midst of the September session of the circuit court, Judson also presided as judge of the district court, occasionally on the same day and in the same courtroom in Hartford. The U.S. District Court for Connecticut, which, like other federal district courts had jurisdiction in admiralty and maritime cases arising within its boundaries and on the high seas, received filings from those claiming salvage and property. Lawyers for the Africans filed a plea that the captives were not legally slaves under Spanish law and should be freed by the federal court.

Judson set a trial date of January 7, 1840, at the courtroom in New Haven, and at that time the parties presented their arguments in the disparate claims of the case. In the months preceding the trial, a Yale professor of languages searched port towns of the northeastern states until he located someone able to translate the Mende language. Cinque, speaking through his translator, provided the court with a detailed narrative of his abduction and subsequent struggle for freedom.

Judson, a former congressman nominated to the federal

bench by Andrew Jackson in 1836, was the focus of national attention when he issued his decision on January 13. After establishing the U.S. district court's jurisdiction by determining that the *Amistad* was seized on the high seas and brought into a Connecticut port, Judson granted Gedney salvage in the ship and cargo for having saved them from entire loss. Gedney's claim for salvage in the value of the supposed slaves raised what Judson called "the all absorbing" question of the status of the Africans on board. After a review of Spanish law, Judson declared that the Africans had never been slaves in any legal sense. He ordered that the Africans be freed and delivered to President Van Buren for return to their native land under the terms of a congressional statute prohibiting the importation of slaves into the United States.

Appeal to the Supreme Court

Acting on the instructions from the Van Buren administration and in response to the request of the Spanish minister, U.S. Attorney William Holabird filed an appeal of Judson's decision. The owners of the *Amistad* also filed an appeal of the salvage award, which was to be deducted from the value of their ship and its cargo. As the trial judge, Judson was barred by statute from considering the appeal at the session of the U.S. circuit court in April 1840. In an effort to expedite the case's certain appeal to the Supreme Court, Thompson denied the Africans' request for dismissal and affirmed the district court's decision pro forma.

* Bruce Ragsdale is the chief historian in the Federal Judicial History Office of the Federal Judicial Center.



This portion of the *Amistad Murals*, "Trial of the Captive Slaves," portrays the trial in the district court in New Haven. Van Buren was taken by surprise when the judge, Andrew T. Judson, a staunch Democrat and a known supporter of slavery, ruled that the *Amistad* captives should be freed and returned to Africa by the President.

The New Haven Colony Historical Society.

The Supreme Court and the *Schooner Amistad*

by Kathleen Shurtleff

“The Supreme Court was yesterday the theater of great interest and attracted a crowded audience, the occasion being the argument of Ex-President Adams as an attorney at the Bar of that Court,” reported the *National Intelligencer* on February 25, 1841. The case that drew the seventy-four-year-old former President of the United States back to appear before the Bench after a thirty-two-year absence was officially recorded as the *United States v. The Schooner Amistad*, but it was popularly referred to as “the case of the African captives.” The case came to the Supreme Court on appeal from the circuit court. It was a sensational case that involved the Spanish crown, the American President, former-President John Quincy Adams, and a number of important legal figures of the day. Ultimately, the Supreme Court appeal involved days of impassioned rhetoric and the unexpected death of a Supreme Court Justice. Perhaps most importantly, the case underscored the vagaries of the American system, which attempted to balance the sometimes conflicting “sacred rights of property and liberty,” against the incongruity of a constitution that tolerated slavery, but also prohibited its propagation. In many ways the *Amistad* case became a visible symbol of the struggle to maintain the precarious and perilous compromise between the North and the South.

The decision of the district court was popular with the abolitionists, but not with the Van Buren administration. The Spanish continued to importune the administration for the surrender of the ship and all its cargo, including the “slaves.” The salvage value of the ship was considerable, with a cargo value estimated at \$40,000. Records at the National Archives detail that the cargo consisted of the following: “25 bags of beans, 25 boxes of raisons [sic], 10 doz. Morocco skins, 5 loz. calf skins, 11 boxes of crockery and glass, 30 pieces of uslin, 1 doz. shawls, gloves, fans, shirts. . . and also 54 slaves wit 51 male slaves and 3 young female slaves who are worth \$25,000 . . .” But as valuable as the contents of the ship were, the Spanish were vitally concerned with the continuance of slavery as an institution, and international recogni-

tion of their right to continue the practice. England and most of western Europe had forsaken the practice, and indeed outlawed it. Future slave rebellions were also a source of concern to the Spanish, who feared that if the *Amistad* captives won freedom, more rebellions would follow.

In the lower court trial, counsel defending the claims of the Spanish, had based their claims on a treaty that provided for the return of ships and cargo seized by pirates. The Attorney General of the United States, Felix Grundy of Tennessee, advised the Secretary of State, John Forsyth, in an



Cinque was the acknowledged leader of the captive Africans. Through a translator who spoke his native dialect of Mende, Cinque was able to give a detailed narrative of his abduction and subsequent attempts to become free again. This oil painting was painted by Nathaniel Jocelyn circa 1840.

official opinion that the Spanish were within their rights, predicating his decision upon his interpretation of the same treaty. Audaciously, the Spanish demanded not only the return of the ship and its cargo, but asked the President of the United States to provide an alternative vessel for transport as the *Amistad* would not survive a long voyage. Responding to the pressure, President Van Buren ordered a U.S. naval vessel, the schooner *Grampus*, be made available for return of the slaves to Cuba. The Presidential order came before the circuit court had reached a decision in the case, and the U.S. Attorney for Connecticut inquired of the Secretary of State whether he should carry out the order of the President if the ruling of the court was unfavorable. Forsyth replied that if the ruling was favorable to the government,

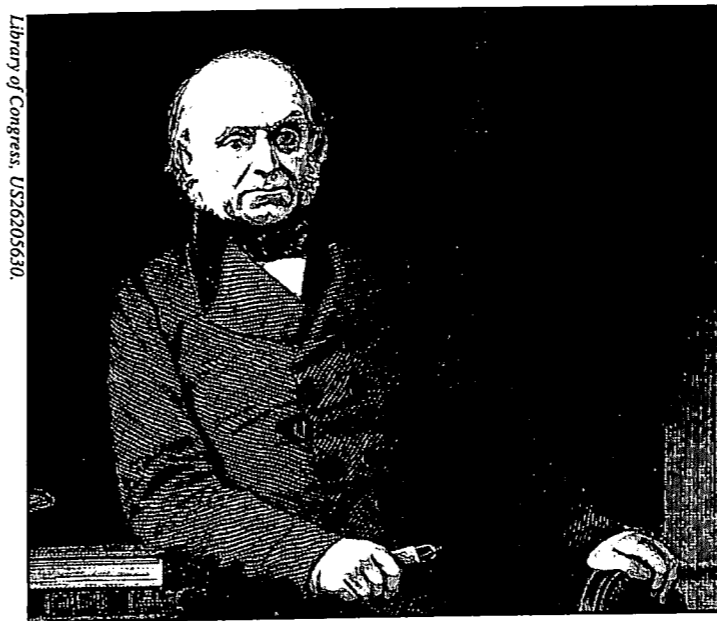
the “slaves” should be shipped off immediately, not allowing time for an appeal to be made. Van Buren’s order was postponed pending resolution of the case in the district court and was never carried out even though the ruling instructed that the Africans should be turned over to the President for return to Africa. The decision of the court was based on a statute dating from 1819 that provided for the removal of Negroes illegally brought into the United States.

The travails of the African slaves were well publicized, and emotions ran high surrounding their fate. Pitiably letters written in broken English by the captives were published regularly in *The Emancipator*. John Quincy Adams, in his capacity as a member of Congress, demanded publication of offi-

cial correspondence concerning the case, hoping to discredit the administration by publicizing its willingness to assist the Spanish in their attempts to return the Africans to slavery. When the Van Buren administration finally surrendered the papers to Congress, it was clear that some potentially offensive passages had been excised or altered. An ardent and vocal abolitionist, Adams sought to wring every drop of bad publicity from the situation. Attempting to counteract the effect of two powerful nations intriguing against the Africans, Adams invoked assistance from the British in bringing pressure to bear on the Van Buren administration on behalf of the captives.

Captured in the summer of 1839, it was not until January 1841 that the *Amistad* case appeared on the docket of the Supreme Court of the United States. The Court was comprised of nine Justices at that time: Roger B. Taney, Chief Justice; Henry Baldwin, Philip Pendleton Barbour, John Catron, John McKinley, John McLean, Joseph Story, Smith Thompson, and James Moore Wayne as Associate Justices. The size of the Court had increased beyond the six stipulated by the Judiciary Act of 1789 only recently, increasing to eight in 1838, and then to nine in 1840. The increase in the size of the Court corresponded to the creation of new circuits. These additions were intended to help alleviate the burdens on the previously existing circuits and to somewhat mitigate the difficulties of circuit service by the Justices.

Circuit duty was a point of contention with the Justices from its inception in 1789 until its demise in 1891. All the Justices complained about the poor conditions and great inconveniences they were forced to endure when travelling on circuit: the amount of time spent away from their families



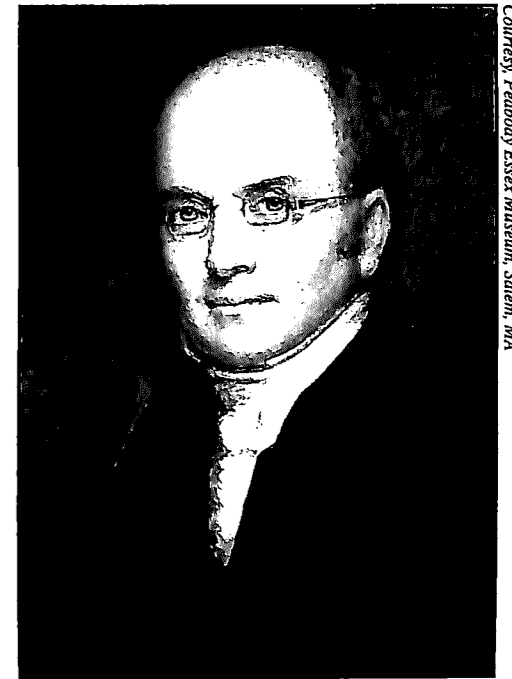
The irrepressible John Quincy Adams was seventy-three-years old and nearly deaf when he agreed to represent the *Amistad* captives in their appeal to the Supreme Court of the United States. The diminutive former President of the United States, son of a President of the United States, presented a long and often vitriolic argument before the Court.

and homes, the poor conditions of food and shelter at inns, and the dangers of travel were common themes. Occasionally the dangers extended beyond those attendant upon routine travel. Justice McKinley was “bodily assaulted in the street in Jackson, Miss., by a deputy marshal” during his circuit duty in 1840 and 1841. Without a Supreme Court Justice present, the circuit courts could not function. This became the subject of discussion by politicians who proposed to withhold \$500 from the annual salary of any Justice who refused to hold circuit court. When the Van Buren administration brought the *Amistad* case to the Supreme Court appealing the ruling of the lower court, Justice Thompson who had served on the circuit court, had the opportunity to reconsider his earlier pro forma decision.

Given the issues involved, any judgment by the Supreme Court was almost certainly destined to create disharmony in the country, if not outright fury. Hostility between slaveholders and abolitionists had become so pronounced that Congress had resorted to a policy of not discussing the subject. Oral argument at the Supreme Court took place over a period of eight days in the latter part of February and early March. Attorney General Henry D. Gilpin was sole counsel arguing the case for the government. His argument hinged on the assertion that as the papers of the *Amistad* were in good order there was no choice but to surrender the schooner, cargo and all, to the registered owners. Portraying the Africans as assassins and criminals, he contended that it was not necessary to check into the legal status of the human “cargo” aboard the ship as the ship’s papers gave no reason to consider them anything other than slaves. Gilpin’s presentation lasted approximately two hours.

Arguing for the Africans was Roger S. Baldwin who, aided by John Quincy Adams, had been involved with the case from the beginning. In his opening statement, Baldwin

continued on page fourteen



Writing for the Court, Joseph Story limited the ruling in the *Amistad* case to the circumstances of the captives, refusing to wade into the turbulent waters surrounding the larger “slavery question.”

Courtesy, Peabody Essex Museum, Salem, MA

Library of Congress, US20205630

William O. Douglas Centennial Conference

Friday, October 16, 1998, marked the centennial of the birth of Justice William O. Douglas, and the family and clerks of the Justice held a one-day celebration of his service as an Associate Justice of the Supreme Court of the United States. Cosponsored by the Supreme Court Historical Society, the conference consisted of two events: a symposium and a reception and dinner.

The first event was an academic symposium that examined the service and life of William O. Douglas, considering not only his work on the Court, but also his work in the nascent Securities and Exchange Commission, and some of his extensive and varied extra-judicial activities. The panelists included current and former law professors, practicing attorneys, a sitting Judge of a U.S. Court of Appeals, a retired Judge and Chief Judge of another U.S. Court of Appeals, political historians, and an endocrinologist who has devoted much of his free time to crusading for environmental issues. The variety and background of these panelists reflect something of the wide-ranging activities in which Justice Douglas engaged throughout his lifetime.

Three of the panelists had clerked for the Justice: Jerome B. Falk, Jr., The Honorable Betty B. Fletcher, and Lucas A. Powe, Jr., brought their unique perspective of personal association in that capacity to the session. The noted scholar Professor David Danelski, currently engaged in writing a biography of the Justice, has studied in depth the Justice's career at the Securities and Exchange Commission (SEC). Danelski discussed the results of his research in this area, highlighting a portion of the Justice's career, which has hitherto received little scholarly attention. [Douglas's contributions to the SEC were recognized earlier on October 16 at a special ceremony in the Commerce Building where a hearing room was named for the Justice.] Judge A. Leon Higginbotham had shared an intellectual friendship with the Justice, particularly as it related to the work of the NAACP and other human rights organizations. Dr. Edgar Wayburn spoke of his personal association with the Justice

as they worked together in the cause of environmental protection.

Following the seminar, guests viewed a special exhibit prepared by the Office of the Curator of the Supreme Court. The exhibit cases included many photographs taken during the Justice's service on the Bench, as well as documents and other items of memorabilia. William Alsup, a clerk to the Justice in the 1971 term, provided an enlargement of a photograph he had taken in 1971.

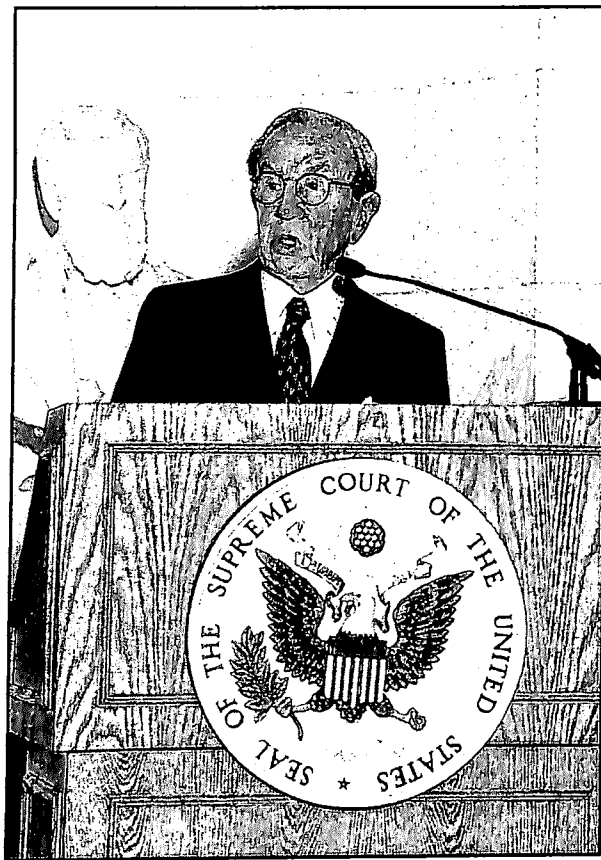
The reception and dinner provided an opportunity for family members and guests to meet together and reminisce. Music was performed during the reception by the Army Strings. One of the Justice's other special interests was made evident during the reception. For many years, Justice Douglas led an annual hike on the C & O Canal, which he had campaigned to save. Each year the Douglas hikers started their trek accompanied by the strains of a bagpiper. Following this tradition, a bagpiper played for the guests into dinner.

At the conclusion of dinner, the Strolling Strings of the U.S. Army Band provided a short concert, which was followed by several speeches. Opening remarks were given by David Ginsburg, the Justice's first law clerk in the 1939 term. He was followed by Sheldon S. Cohen, who was a personal friend and tax consultant to the Justice, as well as his literary executor. The Honorable Warren M. Christopher gave the keynote speech. Mr. Christopher served as a law clerk to Justice Douglas in the 1949 term. Following his remarks, Cathleen

Douglas Stone, Justice Douglas's widow, spoke.

Below is the text of the remarks made by the Honorable Warren Christopher. They detail an interesting anecdote in the life of the Justice that touches upon many of his unique personal interests and traits.

"On the anniversary of Abraham Lincoln's birth earlier this year, I made a speech on Lincoln's foreign policy. That seemed like a good idea because the subject matter was relatively narrow in scope and, therefore, fit nicely into twenty minutes.



The Honorable Warren M. Christopher gave the keynote speech at the Douglas Centennial Dinner. Mr. Christopher clerked for Justice Douglas in 1949.

Photograph by Steve Perleway.

"I considered a similar strategy for my remarks tonight: that is, an exposition on the foreign policy of William O. Douglas. But my research had scarcely begun when I realized I had it very wrong. I found the Justice's views on international affairs so comprehensive, so complex, and so interesting that they couldn't possibly be summarized, much less commented upon, in my brief remarks this evening.

"Faced with this reality, I decided to attempt something more modest. I would try to give you a snapshot of how the Douglas intellect and persona operated on the subject of international relations. The example I found, for which I am indebted to David Danelski, is drawn from a 1951 exchange between Justice Douglas and President Truman—talk about your irresistible forces and immovable objects.

"The exchange began with a press conference the Justice gave in San Francisco on August 31, 1951, on his return from a trip to Asia. He called for a political settlement with Red China that would involve U.S. recognition of the Communist regime in Peking. Such a policy, he said, would be 'a real political victory' but would require what he called 'straightforward and courageous thinking.'

"This was, to put it mildly, a bold suggestion, especially since we were then at war with China in North Korea.

"It was hardly surprising, then, that Justice Douglas's suggestion hit that straightforward and courageous thinker, Harry S Truman, right where he lived. He fired off a vintage Truman letter to Douglas in which he said:

"I was somewhat embarrassed by your statement on Communist China. As long as I am President, if I can prevent it, that cut throat organization will never be recognized as the government of China."

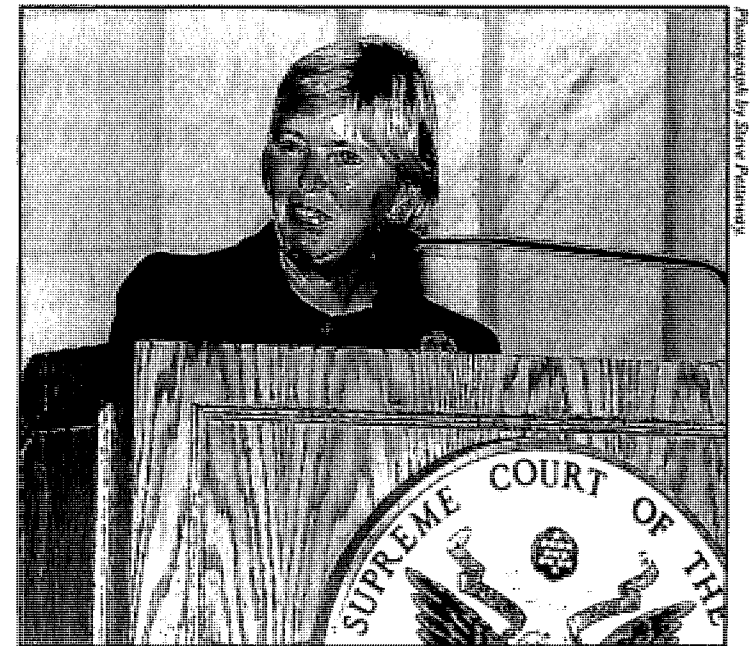
"To make sure his message was clear, Truman pencilled in this added sentiment:

"I am sorry that a Justice of the Supreme Court has been willing to champion the interest of a bunch of murderers."



Society Vice President Dorothy Goldman visits with Senator Howard Metzenbaum during the Centennial celebration.

Photograph by Steve Perleway.



Justice Douglas's widow, Cathleen Douglas Stone, was the concluding speaker at the dinner.

Photograph by Steve Perleway.

"In addition to attacking the substance of the Douglas statement, Truman went on to make it clear that he didn't think it was Justice Douglas's job to dabble publicly in foreign policy. He said:

"I am being very frank with you, Bill"—a point that, by this time, Douglas could not have missed—"because fundamentally I am very fond of you, but you have missed the boat on three different occasions if you really wanted to get into politics. Since you are on the highest Court in the land it seems to me that the best thing you can possibly do would be to give your best effort to that Court and let the President of the United States run the political end of foreign and domestic affairs."

"I'm somehow glad I wasn't around when Truman's letter was delivered by messenger to the Justice's chambers on September 18, 1951. While I can't reconstruct his reaction with any precision, the one thing I am sure of is that he did not consider accepting this broadside without comment.

"A week later, the Justice dispatched a four page single-spaced letter that encapsulates much of his approach to international affairs and to dealing with people who didn't exactly agree with him. The letter begins with a statement of regret for having embarrassed and offended the President by speaking publicly on the subject of China. Apology made, Douglas then launches into a full explication of his views on the subject.

"He begins by reciting what he heard on his trip from the man on the street—what he calls the 'non-Communist men and women of the colored races of the Far East.' He reports that these men and women urged that the U.S. make a "political" settlement with China so as to create alterna-

continued on page seventeen

Second Annual Meeting of Court Historical Societies Held on June 2, 1998

June 2, 1998, the Second Conference for State and Federal Court Historical Societies was held in the West Conference Room of the U.S. Supreme Court Building. Co-hosted by the Supreme Court Historical Society and the Office of the Curator of the Supreme Court, the program followed up on the successful conference held in June of 1997. The 1998 conference was chaired by Anne C. Peters, Deputy Director of the Massachusetts Supreme Judicial Court Historical Society. In addition to Ms. Peters, the Program Planning Committee included Nancy Dobson of the Florida Supreme Court Historical Society, Paul M. Lucko of the Texas Supreme Court Historical Society, Kathleen Shurtleff of the Supreme Court Historical Society, and Bradley B. Williams of the Ninth Judicial Circuit Historical Society.

Topics for the conference were chosen on a basis of relevancy and significance to court historical societies of all sizes and in all stages of development. Areas of discussion included fund-raising fundamentals, development of educational programs, and development of publications and the production of exhibits.



Participants at the second meeting of court historical societies were photographed on June 2, 1998, in the courtyard of the Supreme Court building.

The first presentation was made by Society President Leon Silverman who addressed the topic of institutional leadership and board development. After making prepared remarks, Mr. Silverman answered questions from conference participants. A discussion of fundraising fundamentals by Bradley Williams of the Ninth Judicial Circuit Historical Society, and Jack Hightower, Justice (Ret.), Texas Supreme Court, and former member of the U.S. House of Representatives, followed. During a break for lunch, there was an opportunity to examine public relations materials displays. Many of the participants displayed materials developed by their organizations, and a general exchange of ideas and information took place.

The afternoon session centered on development of publications and special projects. Panel participants included Nancy Dobson of the Florida Supreme Court Historical Society, Steven Flanders of the Committee on History and Commemorative Events of the Federal Courts of the Second Cir-

cuit, Paul Lucko of the Texas Supreme Court Historical Society and Kathleen Shurtleff of the Supreme Court Historical Society. Much of the discussion centered on the development of publications, the production of newsletters/magazines and other printed matter. A question and answer session also provided an opportunity for sharing ideas, experience and expertise.

Conference participants included Justice Gerry L. Alexander of the Washington Supreme Court, Catherine Fitts, Assistant Curator of the Supreme Court of the United States, as well as representatives of sixteen state historical societies, and representatives of the Federal Courts of the Second, Fifth, Eighth, and Ninth Circuits. Much of the credit for this conference and its predecessor belongs to Ellen Brennan Campbell of the Michigan Supreme Court Historical Society and Anne Peters of the Massachusetts Supreme Judicial Court Historical Society. Ms. Campbell and Ms. Peters recognized that most court historical societies have similar purposes and face similar problems. The Supreme Court Historical Society was pleased to assist in bringing these organiza-

tions together for this conference.

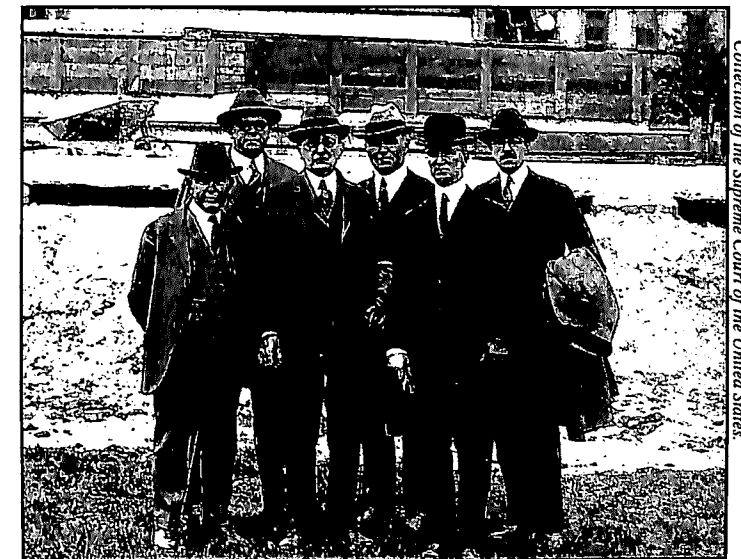
Ms. Peters notes that the third annual meeting will be held in conjunction with the Annual Conference of the American Association for State and Local History, September 29–October 2, 1999, in Baltimore, Maryland. An educational session is being proposed to foster discussion of issues common to court historical societies and groups preserving the history of other government institutions. Planning for the session and luncheon is being co-chaired by Anne Peters and Bradley Williams, together with D.A. Divilbiss of the Supreme Court of Missouri Historical Society, Steven Flanders of the Committee on History and Commemorative Events of the Federal Court of the Second Circuit, James Pfeiffer of the California Supreme Court Historical Society, and Ted Smith of the North Dakota Supreme Court Law Library. If you would like to be added to the mailing list for the event, please contact Anne Peters via telephone at (617) 742-6090, or via fax at (617) 523-2458.

Cass Gilbert Lecture

On March 24, 1999, the Historical Society will sponsor a lecture on Cass Gilbert and the architecture of the Supreme Court Building. The lecture will be delivered by Professor Paul Byard. Professor Byard is an associate professor in the Graduate School of Architecture at Columbia University, a partner in the architecture firm of Platt Byard Duvall, and an attorney.

Cass Gilbert was born in Zanesville, Ohio, in 1859. He was the principal architect for the Supreme Court, though he did not live to see the building completed. His other work includes the Woolworth Building and the U.S. Customs House in Manhattan, as well as the State Capitol of Minnesota.

The lecture will take place at the Supreme Court and will commence at 6:00 P.M. A reception will follow in the Court's East and West Conference Rooms. Members will receive invitations to the series approximately four to six weeks before the lecture.



Cass Gilbert and associates at the (Old) Executive Office Building construction site.

Trivia Quiz: Go West!

by Prof. James B. O'Hara

Like so many Americans, particularly in the nineteenth century, Supreme Court Justices from the East moved West. Identify these relocated Easterners.

1. This Justice moved from Kentucky to Iowa because he wanted to live in a free state after concerted efforts to abolish slavery in Kentucky failed.
2. This Justice, born in Philadelphia, went at a young age with his parents to settle in California. En route, he crossed Panama by rail before the construction of the canal.
3. This Justice was born in Maine, where his grandfather sat on the state Supreme Court. But he made his legal reputation in Illinois, as a specialist in appellate court litigation.
4. This Justice, a native of Indiana, was for a time Chief Justice of Wyoming.
5. After retiring from the Supreme Court, this Justice moved to San Diego, where he lived for more than twenty years.
6. This Justice, born in Connecticut, wrote *Personal Reminiscences of Early Days in California*.
7. This Justice, a New Hampshire native, became both Governor and Senator in Ohio.
8. This Justice, scion of a distinguished New England family, was both a state and federal judge in Kansas.
9. This Justice was born in Kentucky, but as an adult lived in New Mexico, Colorado, Missouri, and Iowa.
10. This Justice reversed the rule. Born in California, he was a lawyer and judge in Washington, D.C., and Boston before joining the Supreme Court.

Answers on page eighteen

The Court and *Amistad* (continued from page nine)

noted that the case “involves considerations deeply affecting our National character in the eyes of the whole civilized world, as well as questions of power on the part of the Government of the United States, which are regarded with anxiety and alarm by a large portion of our citizens. It presents, for the first time, the question whether that Government . . . can, consistently with the genius of our institutions, become a party to proceedings for the enslavement of human beings cast upon our shores, and found in the condition of freemen within the territorial limits of a free and sovereign State.”

As persuasive as Baldwin was, it was public perception that Adams would play a more important role in defending the “captive Africans.” Adams described Baldwin’s presentation on February 22: “sound and eloquent but exceedingly mild and moderate argument in behalf of the captives.” On February 23, the Court reconvened and Mr. Baldwin spent four hours completing his argument which centered on his contention that the United States had no right to “appear as parties in the cause, they having no interest therein.”

Adams recorded his experiences of February 24 in his diary: “. . . The Court-room was full but not crowded and there were not many ladies. I had been deeply distressed and agitated till the moment when I rose; and then my spirit did not sink within me. With grateful heart for aid from above, though in humiliation for weakness incident to the limits of my power, I spoke four hours and a half, with sufficient method and order to witness little flagging of attention by the Judges or the auditory—till half past three o’clock. . . . The structure of my argument, so far as I have yet proceeded, is perfectly simple and comprehensive, needing no artificial division into distinct points but admitting the steady and undeviating pursuit of one fundamental principle—the ministration of justice.” He explained that invoking a cry for justice was especially necessary given that an “. . . immense array of power—the Executive Administration, instigated by the Ministers of a foreign nation—has been brought to bear, in this case, on the side of injustice. . . .” Adams continued his argument on February 25, speaking for the entire session.

March 1st Adams recorded in his diary that he concluded his argument. “I spoke about four hours and then closed somewhat abruptly. . . .” The break in the argument of the case from February 25 to March 1 was due to the unexpected death of Justice Philip Barbour who died suddenly during the night of February 25. Judge Story recorded in his diary on February 28: “He [Barbour] dined heartily, and remained with the Judges in conference until after ten o’clock in the evening, and then in a most cheerful humor.” Chief Justice Taney explained that “[I]t was from one of these meetings, [a conference of the Court] which had been protracted to a late hour of the night, that we all parted from him apparently in the usual health; and in the morning we found that the As-

sociate whom we so highly respected . . . had been called away from us.”

It is difficult to assess if the Court was swayed by the legal acuity and eloquence of Adams’ oral argument, as it is not included in the *Federal Reports*. A large part of his presentation was a direct attack on the administration of Martin Van Buren, much of it levied against the outgoing President personally. In a letter to his wife, Story commented that Adams’ defense was an “extraordinary argument, . . . extraordinary . . . for its power, for its bitter sarcasm, and its dealing with topics far beyond the record and points of discussion.” In a time before the invention of stenography, the Reporter of Decisions customarily relied upon obtaining written copies of arguments from the legal counsel who had presented them. The Reporter of Decisions, Richard Peters, therefore requested Mr. Adams supply a copy of his oral argument for inclusion in the *Federal Reports*. According to Charles Warren’s *History of the Supreme Court*, published in the 1930s, Mr. Peters added a caveat that only the commentary directly pertinent to the case be submitted. Some historians believe that Adams informed Peters that he would not provide an edited version of his own argument to the Reporter, others believe Adams simply did not respond at all. According to a note in the *Federal Reports* Adams did not supply any copy to Peters, edited or otherwise. Explaining the omission of a report of the oral argument of Mr. Adams, Peters states:

It was the purpose of the reporter to insert the able and interesting argument of Mr. Adams, for the African appellees; and the publication of the ‘reports’ has been postponed in the hope of obtaining it, prepared by himself. It has not been received. As many of the points presented by Mr. Adams, in the discussion of the cause, were not considered by the court essential to its decision: and were not taken notice of in the opinion of the court, delivered by Mr. Justice Story, the necessary omission of the argument is submitted to with less regret.

In this paragraph, Peters not only informed his readers that Adams had not provided the copy, but he also took the opportunity to draw attention to the fact that much of the argument had not been to the point, nor effective. This must be one of the few instances where the Reporter of Decisions took the liberty of editorializing about the quality of an advocate’s argument in the *Federal Reports*.

Not to be outmaneuvered, and perhaps with a desire to have “the last word,” Adams published his argument independently, as a pamphlet. There is, of course, little way of knowing how much of the pamphlet is the actual argument presented before the Court, and how much was amplification and explication added by Adams after the fact. Indeed, it was the perfect op-

portunity to record the argument he wished he had made before the Court.

Writing for the Court, Justice Story stated that: “Upon the whole, our opinion is, that the decree of the circuit court, affirming that of the district court, ought to be affirmed, except so far as it directs the negroes to be delivered to the president, to be transported to Africa, in pursuance of the act of 3d March 1819; and as to this, it ought to be reversed: and that the said negroes be declared to be free, and be dismissed from the custody of the court, and go without day.” One African, Antonio, had been determined by the lower court ruling to be a slave, and the Supreme Court did not dispute this finding.

The ruling of the Supreme Court provided a “happy ending” for the survivors, with the exception of Antonio, who was to be returned to Cuba. However, the opinion did not resolve the question of slavery in the United States. Story had chosen to address only the specific circumstances and individuals, not the underlying issue of the continuance of slavery as an institution in the United States. In upholding the lower court’s ruling on Antonio’s status, the opinion tacitly acknowledged that slavery was, in certain circumstances, legally sanctioned.

David Brion Davis of Yale University evaluated Story’s opinion, observing that “. . . Associate Justice Joseph Story ruled for the court that the *Amistad* captives had exercised their basic right of self-defense, since they had been kidnapped in Africa (by Africans) and unlawfully transported to Cuba. But while Story freed the prisoners and undercut the emerging Southern view that black Africans were suited by nature to be slaves, he carefully upheld the ‘positive law’—in such regions as Cuba and the Southern states—that sanctioned black slavery.”

“What shall be done with them now that they are free?” Baldwin posed this question to Adams shortly after the Supreme Court verdict had been handed down, for no provision was made by the Court beyond declaring them free. It was virtually impossible to obtain a Congressional action allocating funds for their transportation back to Africa, and the new Tyler administration (Harrison having survived only a month after his inauguration) would not act in the matter without Congressional sanction. Appeals were made to Great Britain. These initially seemed promising, but time passed and no action was taken. Antonio was smuggled out of the country and reappeared in Canada by late April, living as a free man. Many of the other Africans had died in captivity, and three of those deaths had taken place after the Supreme

Court ruling had been issued. Ultimately, the abolitionists, aided by a missionary society, determined to bear the financial responsibility for returning the survivors to Africa.

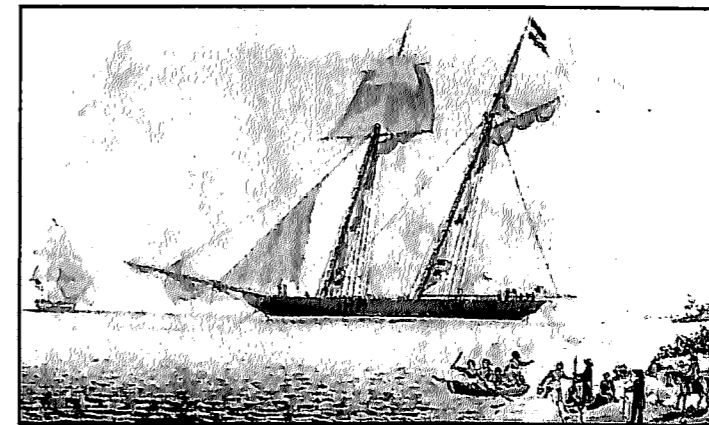
On November 27, 1841, the thirty-five survivors of the original fifty-three *Amistad* captives, departed New York on a ship named the *Gentleman*. Funds to finance the trip were raised through private donations, public exhibitions of the Africans in which they read and recited Biblical passages, and from the Union Missionary Society’s general funds. The ship arrived in Sierra Leone after a fifty-day voyage, almost three years after the Africans had left the continent in chains.

The *Amistad* case continued to be a topic of discussion long after the Africans returned to their native continent. Abolitionists used it to bolster their views, while the slave holders used it to show that black slavery was legal. For nearly twenty years, and through several administrations, various politicians renewed the issue of reparation to the Spanish crown. The Span-

iards claimed a cash settlement was due in lieu of the return of the captives. Such a reparation was actually included in the proposed Federal budget for 1846–47. John Quincy Adams rose on the floor of the House and launched a scathing attack criticizing the use of federal money to pay the Spanish crown for lost slaves and the funds were not appropriated. The last time the reparation was discussed in Congress was in 1860. The outbreak of

the Civil War finally brought an end to any discussion of payment to the Spanish government. The war also brought an end to constitutionally sanctioned slavery.

**Note: The Amistad case has been the focal point of public interest for the past year. A day-long seminar sponsored by the Gilder Lehrman Institute and the New York Bar Association was held on April 25, 1998. The Institute houses in its collection many original documents pertaining to the case. Mystic Seaport in Connecticut has included information about the case on its website to promote further research about the case. On March 8, construction commenced on a new teaching schooner to be named Amistad. When completed, the eighty-foot vessel will sail to various American ports, helping to bring the story of the original ship to life. While there are many sources available for further study, one excellent book available through the Society’s gift store is: Mutiny on the Amistad: The Saga of a Slave Revolt and Its Impact on American Abolition, Law, and Diplomacy, by Howard Jones (Oxford University Press).*



The *Amistad* was enroute from Havana to Puerto Principe when the Africans staged a successful rebellion against the captain and crew. The schooner was built in Baltimore and had been chartered for the voyage.

New Haven Colony Historical Society



Although reluctant to leave his wife and daughters, Powell enlisted in the Army Air Force in 1941. He served in North Africa, Sicily, and England. Lt. Lewis F. Powell, Jr., is shown in this photograph third from the left eating in a field.

several times. Lewis once asked me to speak at a meeting of the Richmond Bar Association. He introduced me and I still remember when he said now on my tombstone it will say 'here lies the first Supreme Court Justice to dance with another Justice.'

"Many of you may have read his wonderful biography by a former clerk, John Jeffries. As I read it I was struck by how Lewis Powell has followed General Robert E. Lee's precept:

"Do your duty in all things. You cannot do more. You should never do less.'

"As another observer of Lewis Powell said:

"For those who seek a perspective grounded in realism and leavened by decency, conscientious in detail and magnanimous in spirit, solicitous of personal dignity and protective of the public trust, there will never be a better Justice.'

"I would add:

"For those who seek a model of human kindness, decency, exemplary behaviour and integrity, there will never be a better man."

The concluding tribute was given by Justice Powell's son, Lewis F. Powell III. Speaking for the family, he gave warm and personal insight into his father as a parent, and as a husband. He noted that his father had been actively involved in the lives of his children, even after he became a member of the Court. In fact, Mr. Powell suggested that if one had characterized his father's parental style as "micro management," it would have been a gross understatement. In characterizing the loving relationship his parents shared, Mr. Powell explained that his father had written his wife on the eve of his departure for the European theater during the War. He told Jo that he could barely

see to write as his glasses were misted over with tears. Powell promised his wife in that letter that he would return from the War, that they would raise their children and grow old together, and live happily ever after. Lewis Powell III said in his estimation, and in that of his sisters, Justice Powell had kept that promise.

In a tender and humorous reminiscence, Lewis Powell III told of the telephone call he had made to his father to inform him that he had become the grandfather of a grandson who would bear the Powell name. Lewis Powell III told his father that he was planning to name his new son for his grandfather. Justice Powell thanked his son for the honor, but modestly told his son that he needn't feel obligated to name the baby after him. Powell III laughed and responded, "Okay Dad, then I'll name him for me." The Justice concurred in the decision.

The Powells lived most of their married lives in Richmond, and Justice Powell spent the years of his retirement there. His retirement was marked by active participation in the work of the Fourth Circuit until his health no longer allowed him to be engaged in the work. Mrs. Powell died in 1996, a little more than two years before the Justice. The Justice's last years were filled with family and simple pleasures.

Tributes written by his law clerks bear out the observations made by the Chief Justice and Justice O'Connor. Just a review of the titles of a series of short pieces published at the time of his death in the *Legal Times* reflects a great deal about the Justice and his relationship with his clerks and others. Published under a general heading of "We Will Miss Him," the individual articles were titled: "A Kindness that Never Faltered," "Heavenly Host," "I Shall Not Look Upon His Like Again," and "With Courtesy for All." Longer articles appearing in that same issue of the *Legal Times* are also strong indicators of the universal respect and devotion he commanded: "His Soul Will Wrestle with Every Case," "The Gentle Man in the Middle." Perhaps the closing line of Justice O'Connor's eulogy sum up the feelings of all of his colleagues and associates as succinctly as any other: "Lewis Powell, we love you and always will."



Photograph by Steve Perleaux.

In her eulogy, Justice O'Connor opined that Justice Powell was "perhaps the most reluctant" Justice to serve on the Court. Remembered by colleagues, friends and associates, Justice Powell lived, and served "With Courtesy for All."

tives to a Chinese alliance with Russia. Douglas says he feels just as his 'far East friends' do—that by diplomatic and political means the U.S. should promote in China the kind of counter-revolution against the Russians we were then promoting in Yugoslavia.

"Douglas's reply had a sharp geopolitical edge. Though characterizing President Truman's policy on China as, 'understandable' and 'perhaps the most popular view,' he predicts that if that policy is maintained, it will mean 'only tragedy to our country.' In what we now recognize as the rhetoric of the Cold War, Douglas argues that unless we pry China loose from Russia, Russia will have on her side the bulk of the peoples and wealth of the world.

"As if to draw himself a bit closer to Truman, notwithstanding their diametrically opposite positions, Douglas declares himself, like Truman, to be a committed anti-Communist. In his words:

"I hate Communism. I have been in Communist lands; I have traveled Communist borders; I have talked with Communist refugees; I have seen with my own eyes the impact of its venal, godless system, of its regime of terror.'

"Upon establishing this bond of mutual distrust for the Communist enemy, Douglas reaches the heart of his argument. Nationalism, the Justice continues, is the 'Achilles heel' of Soviet imperialism. Our strategy must be to play to the nationalistic, predispositions of countries like China that might otherwise be drawn into the Soviet embrace. Such an approach, he assures Truman, would not constitute approval of China's system of government. It would simply give America an opportunity to work with China at the diplomatic level.

"Having said his piece on the core issue, Douglas can't resist rebutting Truman's provocative statements about the proper role of a Supreme Court Justice. He stresses that he has no ambition but to remain on the Court, but in his view remaining on the Court is not inconsistent with expressing views on what he calls 'our shrinking prestige in Asia.' Such issues, he says, cannot come before the Court and therefore discussion of them poses no conflict. Whatever the merits of that premise, the closing words of the letter make it clear that he was absolutely determined to speak out on the issue of China. He writes that the issues he has touched on are not matters of politics but of what he calls citizenship and humanity:—matters, he says, 'on

which many during these anxious days are afraid even to speak.'

"The next link in this exchange takes a gentler turn. Truman, perhaps feeling he had gone a bit too far in his opening salvo, replies to Douglas a few days later with a conciliatory message. He says he feels much better after reading Douglas's letter and declares that there should be no 'misunderstanding' between them. Then in one of those endearing statements that rarely come from a President, he says: 'I am somewhat impulsive when I'm riled by the 90% opposition press. Someday when it suits you we'll have a talk and clear the air.'

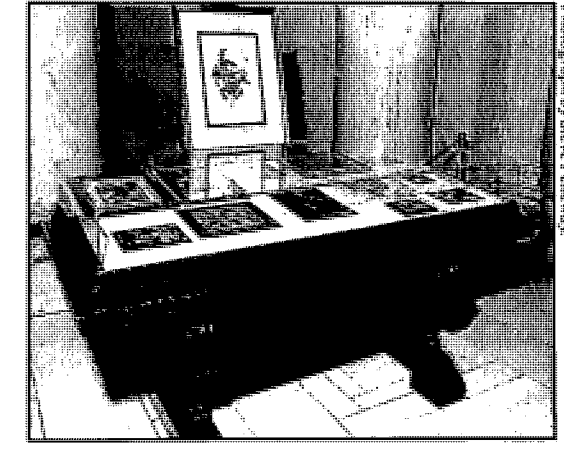
"The next day, October 3, Justice Douglas sent a one page handwritten note in reply. In it he says that the President's letter touched him deeply and that he carries no scars from the misunderstanding. 'Nothing,' he says, 'will dilute the abiding affection I have for you.'

"This exchange of correspondence between two icons of the time would be interesting simply for the fact of its occurrence. There is something in each of us that wants to know how great people converse with one another when they can do so privately and candidly. But I find much more interesting, and certainly of greater historical importance, the insight this material gives us on the man whose memory we honor tonight.

"It illuminates the characteristics of greatness that we divine from studying Justice Douglas's legal work: boldness, vision and an abiding respect for the people. There were few bolder thoughts that

a man of his stature could utter publicly than the suggestion that we offer an embrace to a nation regarded as a bastion of fanatical Communism. His dismissal of ideology as a necessary barrier to diplomatic relations, and his recognition that nationalism could serve as the fulcrum for prying nations loose from the Communist thrall—these prescient views mark him as someone genuinely possessed of that rare quality called vision. And finally, the starting and ending place for these ideas always came full circle: what did the common man think and what would be the impact upon him if we failed to act?

"There is one more thing that this interchange tells us about Justice Douglas. He was a man whose thoughts and actions could be neither defined nor confined by a job title. William O. Douglas was a man of the world."



A special photographic display documenting the service of Justice Douglas on the Supreme Court was prepared by the Office of the Curator of the Court.

Photograph courtesy of the Office of the Curator of the Court.

Trivia Quiz Answers



Collection of The Supreme Court of The United States.

Justice Stephen G. Breyer with his daughter Nell in front of the Supreme Court. Justice Breyer's move from West to East reflects the more complicated migration patterns of the latter twentieth century.

1. Samuel F. Miller abandoned his practice in Barbourville, Kentucky, to move to Keokuk, Iowa, in 1850.
2. Justice McKenna moved to California in 1854, when he was nine years old.
3. Chief Justice Melville W. Fuller settled in Chicago in 1856 and practiced law there before his appointment to the Supreme Court in 1888.
4. Willis Van Devanter was appointed Chief Justice of the Wyoming Territory. When Wyoming became a state in 1890, Van Devanter was elected to the State Supreme Court, but resigned shortly after to resume his political career.
5. John H. Clarke was appointed to the Court by Woodrow Wilson in 1916, but resigned in 1922 and then lived in California until his death in 1945.

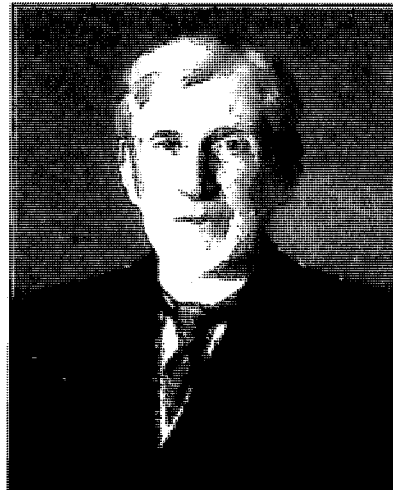
6. Stephen J. Field's book is a classic of Californiana, privately printed in 1893.

7. Salmon P. Chase, born in Cornish, New Hampshire, was also Secretary of the Treasury in Lincoln's cabinet before his appointment as Chief Justice in 1864.

8. David J. Brewer really came West. He was born in what is now Turkey, where his father was a missionary. After a childhood in New England, he settled in Kansas at the age of 22.

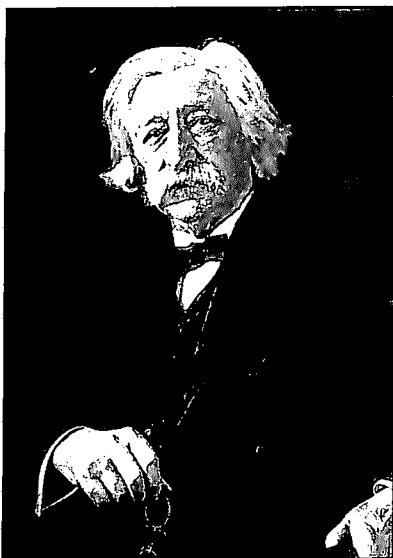
9. Wiley Rutledge was the peripatetic Justice whose academic career accounted for many of his moves. Although born in the East, he is buried in Boulder, Colorado—the most Western place of interment of any Justice.

10. Justice Stephen G. Breyer is the Justice who reversed the trend, moving from West to East. Born in California in 1938, Breyer came East to teach at Harvard, to hold various government posts, to sit on the First Circuit Court of appeals, and ultimately to sit on the Supreme Court.



Collection of The Supreme Court of The United States.

Born in Philadelphia to immigrant parents, Joseph McKenna's family moved to California in 1854 to escape nativist, anti-immigrant violence in that city.



Collection of The Supreme Court of The United States.

Dejected over a broken engagement to a young woman, Melville W. Fuller left Maine for Chicago in 1856. He remained there until confirmed as Chief Justice on July 20, 1888.

New Members October 1–December 25, 1998

Overseas

Yasuhiro Katagiri, Japan

Alabama

Warren B. Lightfoot, Birmingham

Arizona

Bruce R. Heurlin, Tucson
Lydia Platt, Phoenix

Arkansas

Jeff Weber, Little Rock

California

Sand Armstrong, Fallbrook
Phillip H. Cherney, Visalia
Gary R. Cloutier, San Francisco
Maureen Haight Gee, Santa Monica
James Himelhoch, Diamond Bar
Lon F. Hurwitz, Santa Ana
Kevin Olwell, Stockton
Larry N. Snow, Placentia
Patric M. Verrone, Pacific Palisades
Eugene Yee, Chula Vista

Delaware

Charlene D. Davis, Wilmington
John T. Dorsey, Wilmington
Drewry N. Fennell, Wilmington
John J. Paschetto, Wilmington
Christian Douglas Wright, Wilmington

District of Columbia

Micki I. Aronson
Philip Baten
Judith A. Hagley

Ernest B. Hueter

Gay Elizabeth Kang
Lee Minton
Michael S. Olson
Frank H. Wu

Florida

Frank M. Bedell, Orlando
Robert K. Senior, Coral Gables
Carol S. Walsh, Jr., New Port Ritzhey

Georgia

James Neil Farris, Atlanta
Matthew Glavin, Atlanta
Terry Leiden, Augusta
John G. Odom, Hahioa
Teresa Wynn Roseborough, Atlanta
Lloyd T. Whitaker, Atlanta

Illinois

Thomas S. Kiriakos, Chicago
Michael H. Minton, Chicago
Richard Pierce, Lincolnshire

Indiana

Richard R. Bleeke, Ft. Wayne
Francina A. Dlouhy, Indianapolis
Rebecca O. Goss, Indianapolis
J.B. King, Indianapolis
Arthur R. Whale, Indianapolis

Kansas

Jeffrey E. Goering, Wichita

Kentucky

John S. Smith, Lebanon

Louisiana

Allain C. Andry III, New Orleans
M. Hampton Carver, New Orleans
Calvin C. Fayard, Jr., Denham Springs
Conrad Meyer III, New Orleans
Ira J. Middleberg, New Orleans
R. King Milling, New Orleans
Garland R. Rolling, Metairie
Elizabeth H. Ryan, Slidell

Maine

Patricia Peard, Portland
William W. Willard, Portland

Maryland

Corinne P. Belcher, Silver Spring
Michael F. Duggan, Bethesda
D. Craig Horn, Laurel
Jerold L. Jacobs, Rockville
Joseph H. H. Kaplan, Baltimore
Steven Shore, Columbia
Norman D. St. Amour, Germantown
Mary Rose Walsh, Laurel

Massachusetts

Nancy E. P. Connelly, Boston
James M. Fox, Boston
Lawrence E. Kaplan, Boston
George J. Leontire, Cataumet
Tracy E. Palmer, Boston
Teresa A. Todino, Buzzards Bay

Michigan

Robert Seibert, Mt. Clemens

continued on next page

WANTED

In the interest of preserving the valuable history of our highest court, the Supreme Court Historical Society would like to locate persons 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. These items are often used in exhibits by the Curator's Office. 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. www.supremecourthistory.org

Membership (continued from previous page)

Minnesota

Jim Westman, Plymouth

Missouri

David E. Clarke, Greenville

New Jersey

Laurence T. Bennett, Haddonfield
Morris Brown, Ocean Township
Barry F. Gartenberg, Warren
Matthew R. Grabell, Hackensack
Jonathan M. Grubbs, Shrewsbury
Edward Harris, Milltown
John M. Newman, Morristown
John P. McDonald, Somerville

New York

Lawrence S. Bader, New York
John E. Beck, Pittsford
William B. Breslin, Saratoga Springs
Carey Dunne, New York
Dennis E. Glaser, Bronxville
J. Michael Keyes, New York
Alan Levine, New York
Denis J. McNerney, New York
J. Kevin McKay, Brooklyn
Peter G. Rimmer III, Ulster Park
James P. Rouhandeh, New York
Edward M. Spiro, New York
Marsha L. Steinhardt, Brooklyn
Raul F. Yanes, New York
Tova Zifzider, Brooklyn

North Carolina

Malgorzata Andrzejewska Graves, Asheville
Ron Halbrooks, Durham

Ohio

Timothy R. Juenke, Cincinnati

Pennsylvania

Mason Avrigian, Blue Bell
Christopher J. Brooks, Analomink
Anthony Carlis, Downingtown
Mark B. Cohen, Harrisburg
Allan H. Gordon, Philadelphia
Gregory R. Neuhauser, Harrisburg

**WANT TO JOIN THE
SUPREME COURT HISTORICAL
SOCIETY?**

Then visit at our website
www.supremecourthistory.org
or call,
(202) 543-0400.

Sandra S. Newman, Gladwyne
William D. Strong, Newtown

Puerto Rico

Luis E. Pabon Roca, San Juan

Rhode Island

Mark B. Decof, Providence
Jerry Elmer, Providence
Edwin H. Hastings, Warwick
Barbara Hurst, Providence

Thomas J. McAndrew, Providence
Walter Reed, Providence

Tennessee

Sydney F. Keeble, Jr., Nashville

Texas

Jon Bible, Austin
Marilyn H. Ellington, Sugar Land
R. James George, Jr., Austin
Kathleen H. Olivares, El Paso
Louise Weinberg, Austin

Utah

Jack C. Helgesen, Ogden

Virginia

Albert J. Beveridge, Lexington
Marta Joy Borinsky, Lake Ridge
Burrus Carnahan, McLean
Virginia Chessnoe, Arlington
Stephen M. Duncan, Alexandria
Paul F. Garner, Fairfax
Robert W. Garrett, Jr., Falmouth
Michael Gasiorowski, Richmond
Gabriela Kovensky, Arlington
K. Christopher Schepis, McLean
David B. Sentelle, Fairfax
Christopher A. Somers, Springfield
Jeri Somers, Arlington
Karen Evans Weichbrodt, Alexandria

Washington

Patricia Bozarth, Spokane
Mark A. Erikson, Vancouver

Supreme Court Historical Society
111 Second Street, N.E.
Washington, DC 20002
www.supremecourthistory.org

NON PROFIT ORG.
U.S. POSTAGE
PAID
WASHINGTON, D.C.
Permit No. 8232