THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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Tribute to Justice Harry A. Blackmun

Tuesday, March 9, 1999 the body of Retired Associate Justice Harry A. Blackmun left the Great Hall of the Supreme Court Building where it had lain in repose for twenty-four hours. Colleagues, friends, and members of the public had filed past the bier to pay their respects to this Justice who served for twenty-fours years on the Supreme Court Bench.

Harry Andrew Blackmun was nominated to the Supreme Court by President Nixon on April 14, 1970. The Senate unanimously confirmed President Nixon's third choice for the seat, on May 12, 1970. During his service in the ensuing twenty-four years, the Justice acquired a reputation for his concern for "the little person" in formulating his judgments. It is a testament to his jurisprudence and long tenure on the Court, that when he retired he was hailed as one of the Nation's most respected jurists. Among the attributes repeatedly ascribed to the Justice throughout his career were his enormous appetite for work and his careful attention to detail, as well as his passion for justice and the law.

Courtesy of Mayo Clinic—News Bureau

Harry Andrew Blackmun served from 1970 until his retirement in 1994.

Early in his life, his hard work earned him a scholarship to Harvard where he graduated summa cum laude with a Bachelor's degree in mathematics in 1929. He followed that with an LL.B. from Harvard Law School in 1932, where he was taught by Felix Frankfurter, who would precede Blackmun on the Supreme Court Bench. Following a clerkship with U.S. Circuit Judge John B. Sanborn, Blackmun spent sixteen years in private practice, specializing in the fields of taxation,

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Memories of the 1937 Constitutional Revolution

by Warner W. Gardner

Mr. Gardner wrote some biographical notes about the preparation of this paper which the Editors quote herewith: "In the October Term, 1934, when the first of the New Deal statutes were invalidated, I was a clerk to Justice Stone. I was a junior in the Office of the Solicitor General in the 1935 Term, lending minor assistance in the defense of the next round of doomed statutes. In the early months of the 1936 Term, under the direction of Attorney General Cummings, I did the research and drafting which produced the early versions of the "court-packing" bill. I continued in the Office of the Solicitor General for the next four Terms (serving as First Assistant in the last three), luxuriating in the presentation of argument to a thoroughly sympathetic tribunal, as I continued on infrequent occasion to do in 1941-1943 as Solicitor of Labor then of Interior. . . .[T]he opinions which, making no gesture toward objectivity, are scattered through this piece are my own."

I have recently read a good many books and papers which undertake to explain the constitutional crises that arose and were resolved in the years 1935-1938. They range from the foolish, to the speculative, to the wise. But virtually all have in common at least a flavor of artificiality. The actors move across the stage on waves of footnotes, not on human feet. Words put into diaries or letters two-thirds of a century ago, when taken out of the context of their times, can mislead as well as enlighten. Inferences drawn from silence are even more hazardous. As Felix Frankfurter put it,

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A Letter From the President

This fall the Society will celebrate its silver anniversary. Marking the beginning of that celebration, the Society will hold the official opening of its new headquarters building at 224 East Capitol Street, N.E. in Washington, hopefully to coincide with the opening of the Court's next Term.

The move to the new building will also usher in a new era in the Society's history, beginning a second quarter of a century of service to the Supreme Court and the Nation. The new headquarters will better enable the Society to fulfill that mission by providing a conference room and library as well as much-needed office space.

There is a role for every member of the Society in its silver anniversary celebration. The Society has a number of standing and ad hoc committees whose volunteers will shape the Society's goals for its next twenty-five years. We have standing committees on programs, publications, acquisitions, membership, development, investment, budget and finance and facilities.

Additionally, the Society employs ad hoc committees to address special needs. One such committee established the Society's oral history program. Another reviews potential candidates for recognition by the Society's coveted Erwin Griswold Prize.

During the past four years the ad hoc Headquarters Search Committee conducted a thorough search of Capitol Hill for an appropriate site for the new headquarters. Once the site was selected, the committee identified architects and contractors to carry out the necessary renovations.

I regret to inform you that John Risher, the energetic chair of that committee has recently died, sadly before he could see the building completed. John believed in the headquarters project and worked long hours to resolve thorny contract negotiations and zoning issues related to its purchase. He was an exemplar of the kind of dedicated volunteer on whom the Society so heavily relies and his labors on its behalf helped to position the Society to better serve the Court and its membership in the coming quarter century.

The Society depends upon its members in many ways, from conceiving and carrying out policy and programs to providing financial support necessary to meet its program commitments. Yet the membership pool is limited to some degree to around 5,000. If the Society grows much larger than this it outgrows the Court's capacity to house lectures and the Justices' capacity to participate in them.

Accordingly, with our size limited for practical reasons, each member takes on added importance. Last year, for example, members fulfilled duties in over 200 committee assignments. Over 100 members qualified as Sustaining or Life members through their extraordinary financial support. Over 300 more made special contributions in addition to their membership support. And these rough calculations do not even begin to contemplate the incalculable contributions members make by reviewing books, writing articles, serving as speakers to other organizations, and other commitments of time and expertise. Our General Counsel, Bob Juceam could make a full-time practice of handling the Society's legal affairs on a pro bono basis, and he is but one of the stalwarts who have propelled the Society to a record of twenty-five years of accomplishment.

As we prepare to celebrate our silver anniversary, and to begin our next quarter century of service to the Court, I hope to call upon still more members for their help. If you are able to respond with a commitment of time or financial support, I will be grateful.

Leon Silverman

John R. Risher, Jr. and Associate Justice Ruth Bader Ginsburg.

The Supreme Court Historical Society

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Managing Editor Kathleen Shurtleff
Assistant Editor Christopher McGranahan

Belva Lockwood's First Appearance at the Supreme Court

by Clare Cushman

The next issue of the *Journal of Supreme Court History* will include an article by Jill Norgren, a professor of political science at the City University of New York, whose original research establishes that Belva Lockwood, the first woman to argue before the Supreme Court of the United States, did so in 1880, shortly after she was admitted to the Supreme Court Bar.

In 1879, Lockwood, a Washington D.C. attorney with a thriving local practice, became the first woman admitted to the Supreme Court Bar. Prior to her admission, the Supreme Court and the D.C. Court of Claims had refused to allow women to practice before them because of their sex. Undaunted, Lockwood struggled for five years to gain admission to the Supreme Court Bar by engineering passage of a bill in Congress permitting women to practice before the nation's highest court. The legislation forbade the federal courts from preventing women from practicing before them and Lockwood joined the elite bar shortly thereafter.

Library of Congress, USZ62-11080

Some popular accounts of Lockwood's career do not distinguish between the dates of her bar admission and her first argument. Other sources firmly indicate that Lockwood did not find an opportunity to argue a case before the high court until 1906, at the age of 79, when she successfully represented a segment of the Cherokee tribe in a dispute against the United States government.

This victory, at the time the largest claim ever made against the government, garnered much publicity for Lockwood. It is not surprising, then, that contemporary newspaper accounts and current reference books cite her appearance before the Supreme Court in the *Cherokee* case as her debut before the High Bench. However, recent scholarship by Norgren has documented a Supreme Court appearance by Lockwood just twenty months after the Court admitted her to practice before it.

On December 2, 1880, the Court heard a case, *Kaiser v. Stickney*, in which Lockwood's co-counsel, D.C. attorney Mike L. Woods, argued that a married woman's signature on a trust-deed used to secure a bank note was not sufficient to make the deed valid. Despite her opposition to the married women's property laws of the day, Lockwood continued this argument on behalf of her clients.

According to the *Evening Star*, "Mrs. Belva A. Lockwood, who had prepared and filed the original bill in the case, arose and expressed a desire to be heard in support of the appeal. The court said she might proceed. She then presented her views of the case in an argument of about twenty minutes' duration, and this was the first time Mrs. Lockwood had an opportunity to argue a cause in the U.S. Supreme Court."

This newspaper account is corroborated by the minutes recorded by the Supreme Court. Lockwood's 1880 Court appearance has likely been overlooked because the local D.C. case she argued was not historically significant. And, unlike the celebrated *Cherokee* case, the Court ruled against Lockwood's clients.

Norgren uncovered the evidence of the earlier oral argument while researching a biography on Lockwood. A presidential candidate for the Equal Rights Party in 1884 and 1888, Lockwood was also the first woman to run a full campaign for the presidency. Maureen Mahoney notes that, "The incredible perseverance of women like Belva Lockwood has finally brought us into a new era where women are commonplace in the courtroom and serious contenders for the Presidency. That is quite a legacy."

Lawyers Have Heart

Join the race against heart disease and stroke for the American Heart Association. The mission of the American Heart Association is to reduce disability and death from cardiovascular diseases and stroke, the #1 causes of death of all Americans.

Lawyers Have Heart is a 10K and 5K run and Fun Walk that raises funds for research and community education programs of the American Heart Association/National Capital Area Council. Since its inception in 1991, the event has raised over $1,500,000 and has featured thousands of Washington area private and government lawyers, members of the Administration, Congress, the Judiciary, legal assistants, law firm administrators, legal secretaries, law students, and those from the general public. The 10K race has a team category and you need at least 5 runners to form a team.

Help make Heart Disease and Stroke a thing of the past!

Lawyers Have Heart IX will take place 8:30 am Sunday, June 13, 1999 at the Washington Harbour, Georgetown Waterfront. For additional information, please call the American Heart Association at 202-686-6888.

New Exhibit on Display in the Supreme Court Building

A new exhibit organized by the Office of the Curator opened this fall at the United States Supreme Court Building in Washington, D.C. *High Courts of the World: An Introduction* brings photographs, artifacts and judicial attire from around the world into the Court's Lower Great Hall, providing a glimpse of life at some of the world's highest tribunals. More than 75 high courts participated in the exhibit, which evolved from a suggestion by Chief Justice William H. Rehnquist during a meeting with Curator Gail Galloway.

Visitors test their knowledge of high court trivia by playing the "High Courts Information Center" quiz.

In 1997 high courts around the world were contacted for material. During the eighteen months that followed Assistant Curator Matthew Hofstedt organized the objects received. With the help of legal experts he then developed text and captions for them. Assistant Curator Catherine Fitts worked closely with a design team to create the exhibition space.

The exhibit consists of six sections, each addressing a different topic and distinguished by a recessed arch. Throughout the exhibit, photographs of the high courts, their courtrooms and judges are used to illustrate each topic. Small icons of the building of the Supreme Court of the United States indicate text specifically related to this high court. They were included to provide points of reference for visitors.

The first section, "What are High Courts?," provides background information on the topic for the visitor. The next section, "The Judicial Process," follows. It describes how legal issues reach these high courts and their roles within their respective legal systems. The work of the high courts is the subject of "Procedures." The largest section in the exhibit is titled "Architecture," which examines the homes of high courts worldwide. "Judges/Justices" focuses on the individuals who make up high courts, how they are appointed and removed. A brief description of "International Courts" follows.

The exhibit concludes with the "High Courts Information Center," featuring a computer database of information about the world's high courts. The database is accessible through three terminals in the exhibition hall. Visitors can use them to learn about high courts around the world, or test their knowledge of the high courts using the Information Center's quiz.

Membership Update December 26, 1998 to March 30, 1999

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1999 Lecture Series

The First Amendment: Free Speech, Political Rights and Liberties

April 21, 1999 — The Origins of the First Amendment and the Alien and Sedition Acts
Professor Murray Dry
Professor Dry of Middlebury College introduced the origins of the First Amendment, and discussed the first major challenge to those rights, The Alien and Sedition Acts of 1798. Justice Sandra Day O'Connor introduced Professor Dry.

May 4, 1999 – Free Speech: "The Lost Years"—1870-1917
Professor David Rabban
Chief Justice William H. Rehnquist introduced Professor David Rabban of the University of Texas School of Law in the second program of the series. Much has been made of the First Amendment jurisprudence of World War I and beyond. However new scholarship indicates that before World War I there was a libertarian radicalism that laid the groundwork for what followed. This lecture examined cases from this era.

October 6, 1999 —Free Speech: The Clear and Present Danger Test 1917-1953
Professor Douglas Laycock
This lecture will reconsider the "Clear and Present Danger Test" that Justice Oliver Wendell Holmes, Jr., introduced in *Schenck v. United States* during World War I, also with its subsequent applications by Justice Brandeis and others. Professor Laycock teaches at the School of Law at the University of Texas and will be introduced by Justice Stephen G. Breyer.

October 13, 1999 – Panel Discussion of the Clear and Present Danger Doctrine
Panel Discussion with Professors Philippa Strum, Walter Bearns and Floyd Abrams
Justice Anthony Kennedy will moderate a panel discussion on October 13. The discussion will consider First Amendment case law from 1917 to 1953 from a variety of viewpoints.

November 3, 1999 – Free Speech: The Warren & Burger Courts
Professor Lillian BeVier
Professor BeVier of the University of Virginia School of Law will consider free speech cases of the Warren and Burger Courts and their impact on political speech and liberties. Professor BeVier will focus on the Warren Court's expansion of First Amendment rights and subsequent constraints imposed by the Burger Court. Justice Clarence Thomas will introduce Professor BeVier.

Invitations to the lecture series have been mailed. Reservations may be made by reply card, or by telephoning the Society's main office at (202) 543-0400.

The 1999 Lecture series was made possible by gifts from the West Group, Dorothy Tapper Goldman, and the Charles Evans Hughes Memorial Foundation.

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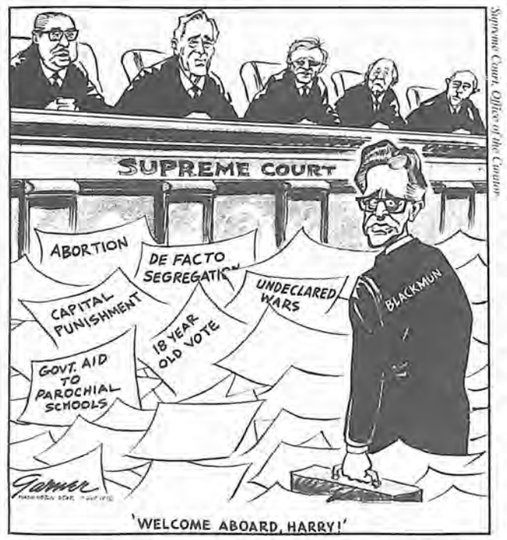
Blackmun Memorial *(continued from page one)*

trusts, estates and civil litigation. During that period he also taught real property and tax courses at St. Paul College of Law and later at the University of Minnesota Law School. In 1950, Blackmun became the first resident counsel for the Mayo Clinic, where he served for nearly a decade before President Eisenhower named him to the U. S. Court of Appeals for the Eighth Circuit. His service on that bench was terminated by his nomination to the Supreme Court.

A memorial service for Justice Blackmun, who died on March 4, 1999, was held in Metropolitan Memorial United Methodist Church in Washington, D.C. The service was attended by many of the sitting Justices of the Supreme Court, and included remarks by three of his former law clerks, one of his grandchildren, and one of his three daughters. Speaking for the Court, Justice Stephen G. Breyer made the following comments about Justice Blackmun, his career and service, and his contributions to the jurisprudence of the Supreme Court:



Supreme Court, Office of the Curator

This cartoon from the *Washington Star* depicts some of the cases with which the Court was grappling during Blackmun's first term on the Bench.

> In 1996, Justice Harry A. Blackmun gave a lecture at the Supreme Court Historical Society [the 1996 Annual Lecture, the text of which appears in *The 1996 Journal of Supreme Court History*] about the "Story-Holmes Seat," the Supreme Court seat to which he had been appointed. Harry spoke of his predecessors, including Felix Frankfurter, Benjamin Cardozo, Oliver Wendell Holmes, and, in particular, Joseph Story, whom Harry himself later portrayed in a cameo movie role in *Amistad*. Harry concluded:
>
> There is a challenge that abides in the very appointment to a seat that has been occupied by persons of such recognized ability and accomplishment . . . . A sterling example begets emulation and challenge.
>
> I'm not surprised Harry Blackmun wrote those words. Harry liked challenges. And we all know that he met this one.
>
> His legacy obviously includes *Roe v. Wade*. Harry said, "We all pick up tabs. I'll carry that one to my grave." But, momentous as that decision was, it hardly captures the full range of Harry's Supreme Court accomplishments. These accomplishments reveal a vision, a conscientious, humane judicial vision, which he applied in one area of the law after another. Harry Blackmun wrote "equal protection" opinions that insist upon equal treatment of the races, of men and women, of citizens and aliens, including seminal cases, such as *Stanton v. Stanton*, where the Court held that a State may oblige parents to support female and male children alike, for as Harry said, a "child, male or female, is still a child." He wrote First Amendment opinions, some of which shaped the protection the First Amendment grants to private expression in public forums. He drew upon his own lifelong interest in science to develop a framework for the handling of scientific evidence, a framework that melds the scientist's search for the truth with that of the law. And he set forth his views in strong dissents, discussing, for example, the use of "race" to get "beyond racism," where he knew, because he lacked the voting power of five, that he must rely upon his power to persuade in order to shape future law.
>
> I mention this range of judicial work, which spans the full body of the law, from antitrust to interstate taxation, because it leads us back to Harry Blackmun the man. What was it about that man, appointed to the Court at age 61, an age when many think about retirement, which allowed him to develop that broad vision and to accomplish so much.
>
> It cannot be simply his background, for that background, while consistent with his vision, does not compel it. We all know the external facts: How Harry was from Minnesota; how he went to Harvard on a not-very-generous scholarship, supplemented by his working as a janitor, postal worker, a court-painter (not royal courts, handball courts), a crew launch operator, a math paper grader; how he began as law clerk for the very Eighth Circuit judge he eventually replaced, became a member of a law firm, counsel to the Mayo Clinic, and federal appeals court judge; all before his Supreme Court appointment. (He called himself, the President's third choice, "Old number three," both out of modesty and to suggest that the best laid plans of any of us can go astray, sometimes through serendipity.)
>
> Nor can we credit his training as a mathematician, at least not directly. Of course, Harry's *summa cum laude* in mathematics might have helped him keep track of the baseball statistics, which he carefully followed and which he used in his famous baseball opinion, *Flood v. Kuhn*. He kept the Court's statistics. ("Chief," he apparently would say, "the numbers tell the story.") And it took a mathematician to make certain each June, when the Term's difficult opinions are handed down one after the other, that the Court did not release an opinion on Tuesday that referred to a case that would not appear until Thursday. That never happened while Harry Blackmun was a member of the Court. His mathematics background further revealed itself when he retired at 85: "I know what the numbers are," he said. "It's time." Justice Souter later replied, "I dissent."
>
> Nor can I give much credit to his dry middle-western slightly sardonic sense of humor, though I liked it. He told the doctor who told him—at the age of 88—to take a day off each week, "All this staying home Wednesday amounts to is cheating the government out of an honest day's work."
>
> We can give more credit to his enormous diligence. Harry kept careful notes in a beautifully written hand. He checked every citation himself by hand. And he would ask his dear Dottie to help by reading certiorari petitions to him as they drove each summer from Washington to a Wisconsin lakeside cottage. We can imagine him sitting on the porch, looking out across the lake, Dottie swimming, the sun rising, thinking how wonderful the early morning light was—"perfect," he might say, "for doing certain work."

National Geographic Society, photo: Joseph Baltes

Garrison Keillor, the radio personality, referred to Blackmun as "the shy person's Justice." Early in his Supreme Court career Justice Hugo L. Black advised him to "Never show the agony." Blackmun, shown here in his Chambers, was never able to internalize Black's advice and said that often the experience of being a Justice was lonely and painful.

> I'd like to emphasize, however, several other characteristics that I believe were particularly important. Harry developed his views of the law, whether of individual cases or of the Constitution itself, slowly over time. But once he reached a decision on a matter of principle, he was firm. Unpopularity may have displeased him, but it would not shake him. He would sometimes read those criticisms publicly, making clear that he had considered the criticism, but, still, he had to make up his own mind. Here is his response to one long very critical letter, which ended by asking Harry if he would resign. His reply, "Dear Sir, No. Sincerely, Harry A. Blackmun."
>
> Harry did something remarkable at age 61. He made a direct conscious effort to reach out and to understand those whose life experience was different than his own. That is why every summer he would lead a seminar at Aspen where men and women of very different points of view would come together to discuss justice. That is one reason he loved to talk to students from all backgrounds. He used his free time, his reading, his conversations, his power of imaginative understanding, to help assure that the experience, say, of those whose poverty made it difficult for them to find representation before our Court, would percolate through his own mind and thereby affect the decisions he was called upon to make. It is not often that a man or woman of 61, in a cloistered office, manages through the years to find, not a narrowing, but a broadening of mind, of outlook, and of spirit. But that is what Harry Blackmun found.
>
> There is yet another word that continually reappears in descriptions of Harry Blackmun, along with words like "gentle," "modest," and "careful." That word is "compassionate." Harry cared—first of all of course for his marvelous family, his beloved life's companion, Dottie, whom he liked to call "Miss Clark," his three daughters, Nancy, Sally and Susie, whose very differences (which he described as, one more intense," one with a special "sense of fairness," one with a "deep sense of adventure") gave him what he referred to as great "joy." He cared for his loyal staff. Wanda has been with him for close to twenty-five years. He cared for his law clerks. He cared for Court employees, whom he would often ask, for example, "How are the kids doing."
>
> His vision as a Justice grows out of that compassion, which reveals itself in his effort, through imagination and will, to understand the individual human beings whose lives his opinions would affect. In 1994 Harry wrote for himself a list of 27 human "needs," which he kept in his office. On that list, along with "truth," "clarity," "courage," "perspective," "faith" and a "sense of humor," appears the word "compassion." He lived that list.
>
> Is his "caring" important in respect to the law? Harry Blackmun properly understood that it has everything

Continued on page nineteen

Jefferson v. Marshall: the Aaron Burr Conspiracy Trial

by Christopher McGranahan

A toast popular in 1807 went "Aaron Burr - may his treachery to his country exalt him to the scaffold, and hemp be his escort to the republic of Dust and ashes." Few political figures in U.S. History have fallen in public esteem so rapidly and completely as did Aaron Burr. In 1801 he was nearly elected President of the United States, eventually losing, to Thomas Jefferson. Burr went on to serve as the nation's third Vice-President where his talents for alienating potential friends and infuriating rivals soon undid him. He left office in March, 1805 financially ruined, a political outcast, and wanted in the states of New York and New Jersey for the murder of Alexander Hamilton.

Burr then did what so many down-and-out Americans did at that time, he headed west to rebuild his fortune. Unfortunately, questions regarding the subversive nature of his plans brought him back east to Richmond, Virginia, on March 26, 1807, to stand trial for treason and high misdemeanor. At this time in history, Supreme Court Justices still "rode circuit," presiding over cases now taken by the U.S. Court of Appeals, and Virginia was then in the territory of Chief Justice John Marshall.

Library of Congress, USZC4-1674

Wanted in New Jersey and New York for killing Alexander Hamilton in a duel, Aaron Burr headed west hoping to rebuild his fortunes. Suspicions regarding the subversive nature of Burr's plans led to his arrest. He was brought east again to stand trial in Richmond for treason.

Burr argued that he would be unable to get a fair trial, and with good reason. On January 22, 1807, Jefferson declared in a special message to Congress that Burr's "guilt is placed beyond question," and news stories about the case tarred Burr as the villain. By the time he had arrived in Richmond he had already been found guilty in the court of public opinion. There was extreme pressure on Chief Justice Marshall to allow a similar verdict in the court of law.

The following is a story of that trial. We tend to think of the U.S. Constitution as if it had been brought down from the mountain etched in stone. In 1807, however, it was still a new document. Jefferson, for one, had become deeply skeptical of an independent judiciary, particularly one dominated by his rivals. After only nine months in office, Jefferson wrote to a friend: "The Federalists have retired into the judiciary as a stronghold... and from that battery all the works of republicanism are to be broken down and erased." Furthermore, Jefferson and Marshall despised one another, both personally and professionally. During the Presidential election of 1801, then Representative Marshall was asked by his friend, Alexander Hamilton, to support Jefferson over Burr. On New Year's Day 1801, Marshall responded:

> To Mr. Jefferson whose political character is better known to me than that of Mr. Burr, I have felt insuperable objections. His foreign prejudices seem to me totally to unfit him for the chief magistracy of the nation which cannot indulge those prejudices without sustaining deep and permanent injury. Your representation of Mr. Burr, with whom I am totally unacquainted, shows that from him still greater danger than even from Mr. Jefferson may be apprehended. But I can take no part in the business. I cannot bring myself to aid Mr. Jefferson.

President Jefferson's tenure in office was punctuated by clashes with the judiciary. Actions such as the repeal of the Judiciary Act of 1801 and the impeachments of Federalist judges were Jefferson's method of attack. Both he and the Republicans watched the trial closely for the opportunity to use the Burr case against Chief Justice Marshall and the Supreme Court.

The Aaron Burr conspiracy trial was a morass of conflicting statements, vague intentions, and colorful characters, infamous, famous and soon-to-be-famous. Two issues, however, dominated the proceedings. The first was the court's ability to subpoena the testimony of a sitting president, the second was the definition of treason. The first issue came to the fore soon after the grand jury trial commenced on June 9, 1807. Aaron Burr demanded as evidence a letter sent by General Wilkinson to President Jefferson. Wilkinson had forwarded correspondence between himself and Burr to Jefferson, but removed evidence of his own participation in the alleged conspiracy. Chief Justice Marshall found in favor of the defendant and subpoenaed the letter. Jefferson refused to provide the letter or to testify in person before the court. He did, however, offer to provide transcripts of portions of the letter. Neither Marshall nor Jefferson were interested in pressing the issue, and the subpoena issue quietly faded once the trial moved to other issues.

Of greater importance was establishing the legal definition of treason. The prosecution depended heavily upon the English common law version, whereby even contemplating the king's death could be considered treason. The framers of the Constitution, however, defined treason in far narrower terms; "in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort" and provided that "No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court."

The prosecution had scores of witnesses to suspicious actions committed by Burr, but not one witness to any actual deed. Marshall ruled that without two witnesses to the act of treason, or to the procurement of men and arms for the expedition, the prosecution could not present testimony from supporting witnesses.

While this ruling could not have been totally unexpected, it left the prosecution little with which to work. On September 8, 1807, the jury found Aaron Burr "not guilty by any evidence submitted to us." The wording of the verdict reflected the feeling of some jurists that Marshall had denied them the right to hear the evidence gathered by the prosecution, a feeling shared by much of the country, and nearly all the Republicans. However, the law regarding treason was straightforward, and Marshall would not bend the rules simply because the defendant was seen as unscrupulous and was disliked by the general populace.

Many Republicans were prepared to impeach Marshall. However, foreign policy issues, particularly in regard to Great Britain, demanded immediate attention. Reluctantly, Jefferson was forced to shelve plans to act against Marshall and to turn his attention abroad. As Marshall biographer Albert J. Beveridge noted, "the thunders of popular denunciation [against Justice Marshall were] gradually swallowed up in the louder and ever-increasing reverberations that heralded approaching war with Great Britain."

As for Aaron Burr, Harman Blennerhassett, a co-defendant in the trial, observed ". . . time will prove him incapable in all his future efforts as he has been in the past." After the trial Burr faded away as one of history's more tragic figures.

New Members *(continued from page five)*

William W. Oliver, Bloomington
Henry J. Price, Indianapolis

Kansas
Geary N. Gorup, Wichita
Lou Falkner Williams, Manhattan

Kentucky
Thomas Emberton, Edmonton
Joseph R. Huddleston, Bowling Green
Steve D. Hurt, Burkesville
Perry Lewis, Hartford
Reed Moore Jr., Tompkinsville

Louisiana
Jesse R. Adams Jr., New Orleans
Peter G. Alongia, Metairie
Joseph A. Barre, New Orleans
Carolyn Grill-Jefferson, New Orleans
James C. Gulotta, New Orleans
Richard P. Ieyoub, Baton Rouge
Allan Kanner, New Orleans
G. Paul Marx, Lafayette
Revius O. Ortique Jr., New Orleans
Stewart F. Peck, New Orleans
Edward F. Sherman, New Orleans

Maine
Constance Barrett, Cape Elizabeth
Edward R. Benjamin Jr., Portland
Eugene H. Gaudette, Sanford
Cabanne Howard, Augusta
Lisanne N. Leasure, South Portland

Maryland
Steven A. Belknap, Catonsville
David Borinsky, Baltimore
Faye Cohen, Chevy Chase
Charles M. Duffy, Chevy Chase
Mark A. Graber, Silver Spring
Charles M. Johnson, Baltimore
Katherine Jones, Rockville
Walter J. Leonard, Chevy Chase
William & Elizabeth McGranahan, Gambrills

Massachusetts
John Cain, Boston
Frances S. Cohen, Boston
Mathew Longanecker, Somerville
Harry S. Martin, Cambridge
William J. Nanrrow, Brighton
Bruce Peabody, Brookline
Alan Rogers, Chestnut Hill
Lisa J. Steele, Bolton
Meredith D. Stricker, Amherst

Michigan
Scott R. Harrison, Grandville
Suzanna Kostovski, Detroit
Sandra VanBurkleo, Grosse Point Park

Minnesota
Karl Cambronne, Minneapolis
David F. Herr, Minneapolis
Michael McCarthy, Minneapolis

Mississippi
Christy D. Jones, Jackson
Pamela Knox, Jackson
Louis H. Watson Jr., Jackson

Nebraska
William J. Brennan, Omaha
Patrick B. Donahue, Omaha
Michael Kinney, Omaha
William Jay Riley, Omaha
Michael F. Shill, Omaha

Nevada
Doris D. Dwyer, Fallon
Robert W. Musser Jr., Las Vegas

New Jersey
Jessi L. Biamonte, Pompton Plains
Henry Gorelick, Avalon
Edward A. Hogan, Morristown
Richard Kahn, Basking Ridge
Jonathan Lurie, Newark
Donald Mculey, Nutley
Darryl M. Saunders, Newark
Howard J. Schwartz, Morristown
Paul B. Thompson, Newark

New Mexico
Michael T. Newell, Lovington

New York
Walter P. Arenwald, Scarborough
Henry P. Bubel, New York
A. Vincent Buzard, Rochester
Paul J. Camilleri, Middle Village
Jane E. H. Cooney, New York
Rolande Cutner, New York
Cheryl Lynette Davis, New York
Gerald Director, White Plains
Thomas E. Engel, New York
Irwin Engelman, New York
David Frey, Staten Island
Richard Keller-Coffey, Poughkeepsie
Jeffrey Kraus, Staten Island
Vivian Maese, New York
James G. McCarney, New York
Frederick M. Molod, New York
Howard Schweber, Ithaca
Timothy P. Selby, New York
Harry Smith, New York
Jennifer L. Sulzberger, New York
Philine G. Vega, Yonkers
Harvey Weitz, New York
William M. Wiecek, Syracuse

North Carolina
Kristi Bowman, Durham
Kearns Davis, Greensboro
Heather MacKenzie, Winston-Salem
Martin B. McGee, Concord
Stephen Middleton, Raleigh

Continued on page twenty

Constitutional Revolution *(continued from page one)*

"The dictum that history cannot be written without documents is less than a half-truth if it implies that it can be written from them [alone]."

In this view it seems worth relating what a participant remembers of those days. My participation was at the working level, not in a policy position, but was rather well-rounded. An additional impetus to record my memories is found in my belief that no other participant now lives to give a firsthand account of the events.

My experience may show that I am entitled to speak. It does not demonstrate that I speak truly. I have, at an advanced age, been presented with ample evidence that my memory is often quite unreliable. However, the historians' careful work with the documents, disparaged only a paragraph ago, has proved most helpful to me in checking and ordering my own recollections.[1]

I.

I do not believe it possible to understand the constitutional issues of the 1930's without a lively appreciation of the perilous state of the national economy at that time. On Roosevelt's inauguration day on March 4, 1933, every bank in the country was closed, some of their own necessities and others because of Roosevelt's immediate and wise exercise of a wholly nonexistent power. They were reopened a week later, on the gamble that a Government guarantee would stem the hemorrhaging. The game succeeded and by 1935, with the help of the early New Deal measures, there had come a very modest improvement in employment, production, wages and prices. The improvement was seen, at least by the Roosevelt Administration, as problematic and dependent upon successful operation of the agricultural, industrial, financial, and public works measures of the New Deal, those already in precarious place and those yet to be developed.

The resulting fear of unemployment and hunger, of deserted farms and bankrupt factories, haunted every New Deal participant. New programs were needed, and immediately. Legislation, and to a degree its defense, were not occasions for a leisured elegance. Yet of the 30 books and papers I have read, only two of them so much as mention the pressing economic needs of the nation, or the resultant pressure for haste by its attorneys. One rather prolific author, indeed, makes tasteless sport of the urgencies felt by those who were working, night and day, with dedicated intensity some sixty years before he ventured his opinion that they should have realized that it was all unnecessary.

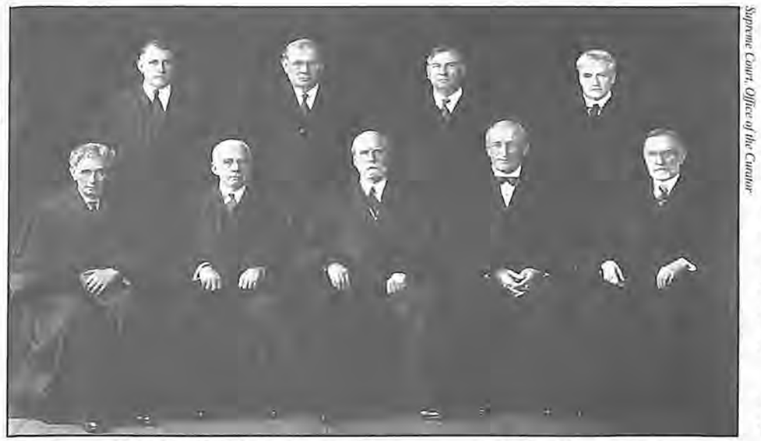
It was not enough that the Roosevelt administration had set about with "endless energy and bold improvisation" to find remedies for the imperiled economy. It was evident by the summer of 1936 that the federal courts did not favor economic experimentation.

The Court in the first week of 1935 invalidated the "hot oil" provision of the Petroleum Code by an 8-1 decision that Congress had delegated too much of its legislative power. The case was encrusted with bizarre errors of administration. One, the inadvertent elimination of the criminal provision of the code which the suit sought to enjoin, was discovered only when the Government's Supreme Court brief was being written. The other administrative error gripped the Court's attention as the plaintiff's attorney described, in the nasal drawl of hill-country Texas, a step-by-step search through local, state and national offices for a copy of the governing regulation, finally finding it "in the hip pocket of the federal agent in the next field to the east." I like to consider that, although obviously not a familiar of the law books, he was the founding father of the *Federal Register*.

In February the Court decided the Gold Clause Cases. I found its argument memorable chiefly because of the remarkable muscular coordination of the attorney for Bankers Trust. He was plump, white-haired and impeccably dressed. When the iniquities of the Congress led him to fling his arms to the sky, out sailed his false teeth. With a fluid, one-handed gesture, he caught them at knee-level, inserted them in his mouth, and continued his argument imperturbably and without perceptible pause. The Court upheld 5-4 the power under the currency clause to devalue the dollar and to invalidate the gold clauses in private contracts; it held 8-1 that Congress could not violate its own contracts, but that the plaintiff suffered no damages because, had he been paid in gold, the required surrender of the gold for devalued currency would have been valid under the currency clause. If one brushed aside the metaphysics as incomprehensible, or even indefensible, the Government had won, and had escaped the almost unimaginable chaos which would have resulted if two years of financial and commercial activity had left every major payee in the nation with a claim for two-thirds more.

National Portrait Gallery, NPG.83.43

On Inauguration Day March 4, 1933, Chief Justice Charles Evans Hughes administered the oath of office to Franklin Delano Roosevelt as depicted in this drawing by Miguel Covarrulias.



Supreme Court, Office of the Curator

The Court which clashed with the New Dealers was comprised of: (left to right, front row) Associate Justices Louis D. Brandeis, Willis Van Devanter, Chief Justice Charles Evans Hughes, James McReynolds, George Sutherland, (back row left to right) Owen Roberts, Pierce Butler, Harlan Fiske Stone and Benjamin Cardozo.

Any benign confidence that arose in February was short-lived. In May the Court, by a startling 5-4 decision, invalidated the Railroad Retirement Act. The opinion by Justice Roberts found distasteful a few provisions, such as allowing retirement after 30 years service even though not 65, which was "clearly an arbitrary imposition of liability to pay again for services long since rendered and fully compensated," while coverage of a former employee recently re-employed was "arbitrary in the last degree:" and was "taking the property of one and bestowing it on another" (295 U.S. at 349-354). Not content with trashing the Act in the name of due process, the Court gratuitously went on to exclude social programs from the commerce clause. If aged employees were a hazard, they could be discharged without pension; fostering a contented mind is not regulation of transportation, it is "an attempt for social ends to impose by sheer fiat non-contractual incidents upon the relation of employer and employee." The conjoined commands of the commerce and due process clauses, as decreed by the Court, seemed to me to be close to a ruling that the Congress could fix a speed limit on interstate trains but nothing more.

Three weeks later the Court, sitting for almost the last time in the small, dark room which had long ago housed the Senate, buried the National Industrial Recovery Act, one of the major elements of the New Deal. The opinion by Hughes held that extraordinary conditions could not enlarge powers not granted; that the delegation of legislative power (in most cases to trade associations) was invalid because it was subject to no standards; and that regulation of hours or wages after the interstate commerce was completed was not within the commerce clause. Justices Stone and Cardozo concurred, specially, but none dissented. The NRA was not very popular among the New Deal attorneys, since its icon, the Blue Eagle, seemed to live in a trade association cage, but they were distressed that *Schechter*, along with *Ashton*, blocked the way to any national regulation of the national economy.

The Court on the same day held that the President could not remove the Chairman of the Federal Trade Commission because of his dogged resistance to any vitalization of that agency. One commentator finds this a major defeat for Roosevelt, equal to those enforcing the asserted constitutional limitations. This was simply not the case; the decision was an irritant but not a disaster.[2]

The fears of constitutional impotence were, early in the next Term, expanded to the Government's efforts to relieve the agricultural disaster. January brought the invalidation of the Agricultural Adjustment Act in *United States v. Butler*. The Government had sought to raise the disastrously low prices of the basic commodities by imposing a processing tax to finance payments to farmers for reducing their production. Reed's workmanlike argument seemed faded in comparison with the flamboyance of George Wharton Pepper but Reed offered even higher drama when, overcome by strain and overwork, he fainted at the conclusion of his reply. Justice Roberts, writing for a 6-3 Court, held that Congress could not tax and spend to promote the general welfare when the activity was one left to the states. While the program of purchasing a reduced production, "killing little pigs," was not very attractive in a nation with several millions of hungry people, it was disheartening to have the whole area of agriculture removed from federal power.

The Court in May reinforced its demolition of federal powers under the commerce clause by invalidating the Bituminous Coal Act, which had authorized fixing minimum wages and prices. Justice Sutherland, writing for the five-man majority in *Carter v. Carter Coal Co.*, declared comprehensively that neither manufacture nor production was "commerce," and that Congress' power was not enlarged merely because the states could not act. Moreover, delegation of wage-fixing power to a private group was a plain violation of due process. While the price-fixing provisions might be valid (the Court had sustained bituminous coal price fixing agreements designed to aid the mine operators in *Appalachian Coal v. the United States*), they

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Constitutional Revolution *(continued from page twelve)*

were so closely related to the wage provisions that they, too, fell, despite the statutory severance clause.

A week later a 5-4 majority (including Roberts but not the Chief Justice) mounted the pinnacle of judicial arrogance by

Library of Congress, USZ62-13407

The National Industrial Recovery Act (NIRA) was dealt a mortal blow by the Supreme Court when it ruled that "extraordinary conditions could not enlarge powers not granted." This cartoon refers to the *Schechter* poultry case which was popularly dubbed the "sick chicken case."

invalidating the Municipal Bankruptcy Act. The Act applied only upon request of the state municipality, and, indeed, in *Ashton*, Texas had specifically legislated to approve seeking relief under the Act. Fiscal affairs, wrote Justice McReynolds, were the concern of the State alone, and the powers of Congress could not be enlarged by the consent of the State.

The final trip of the tumbrel to the new marble stand carried the New York law fixing minimum wages for women, which fell by the usual 5-4 majority. Justice Butler's opinion rested in part on New York's asserted failure to request that the ruling in the predecessor case *Adkins v. Children's Hospital* be overruled, and in part on the assertion that the due process clause forbade governmental interference with the freedom of women to contract.

A number of the commentators have suggested that these litigating disasters were at least in part due to the incompetence of the Government attorneys. I would agree that Biggs' 1933 appointment as Solicitor General was a two-year disaster, that Assistant Attorney General Stevens was an indifferent advocate, and that Richberg and his NRA staff were ill-suited for thoughtful constitutional litigation. But these commentators move much too easily from court defeat to lawyer incompetence. None, in explaining litigation strategy, notes the marked difference in strategic control between agencies (such as the Labor Board) who get into court only on their own enforcement initiative and those who are vulnerable to injunction by threatened litigation. Most (properly) find a great improvement when Reed became Solicitor General, without noting that *Schechter*, *Butler*, and *Ashton* were lost upon his arguments. Several scholars applaud Fahy's role in the Labor Board cases without noting that he was also prominent among the lawyers whom they condemn for having lost *Panama Refining*. None recognizes, when apportioning praise or blame among the agency attorneys, that from mid-1935 on constitutional issues were developed by joint work between the agency attorneys and the Solicitor General's Office, with the latter in charge. Above all, it is hard to believe that anyone could read the vehement text of the crippling decisions of 1935-1936 and believe that even Daniel Webster, coached by Demosthenes, could have changed a single vote.

Whatever may have caused the decisions, there they were. Almost any action by the federal government to advance or to control the national economy would require a different constitution than that being forged by five elderly men to whom the New Deal was abhorrent.

The problem was forecast and a simple solution offered in 1787: amend the constitution. But this was not a rational solution in 1936. First, it did not, then or now, seem possible to draft a sensible amendment which would loosen the due process constraints, expand the commerce powers of the Congress, and yet preserve state sovereignty. Second, state legislators were sometimes more responsible to generous lobbyists than to abstract principles of good government, and it would require only one house in only thirteen states to reject the amendment. Third, one could not expect final action within a decade. The Child Labor Amendment, surely what one would consider the least controversial social legislation which could be proposed, was languishing on its deathbed eighteen years after *Hammer v. Dagenhart* and twelve years after the Congress proposed the amendment.

The cautious approach to salvation would be to await the retirement of some of the five justices who were determined to preserve the 19th century world they had known in their youth. But the actuarial prospects of an early redemption by death were slight. In 1936 Van Devanter was 77, McReynolds and Sutherland 74, Butler 70 and Roberts 61. If these ages suggest some eventual vulnerability to ordinary mortality, one need only consider what Chief Justice Taft, fearful of liberal appointees by President Hoover, on December 1, 1930 wrote his brother:

> I am older and slower and less acute and more confused. However, as long as things continue as they are, and I am able to answer in my place, I must stay on the court in order to prevent the Bolsheviki from getting control. . . the only hope we have of keeping a consistent declaration of constitutional law is for us to live as long as we can.

If such was the fear of Hoover appointments, presumably shared by the four Justices who outlived Taft, consider how fierce must have been their determination to continue by longevity to block appointments by Roosevelt.

I was in hearty agreement with the conviction of the Roosevelt administration that the nation was in peril unless something was done to restore to Congress the power to govern. The difficult question was "What?"

II.

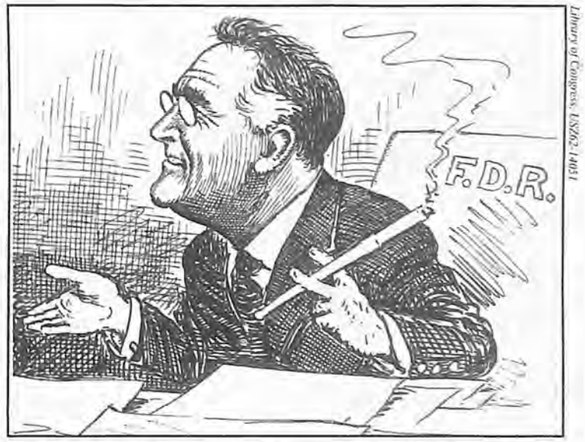
The November election produced an overwhelming victory for Roosevelt; 523-9 in electoral votes and 62% of the popular vote. Roosevelt had not attacked the Court in his campaign, but the Republicans had made much of his earlier criticisms. In any case, the extraordinary endorsement of Roosevelt and the New Deal must necessarily have led the President and his aides (all the way down to me) to have believed that, one way or another, they could bring the Court's excesses under control.

President Roosevelt, who would sometimes subject unvarnished fact to a romantic or utilitarian supervision, explained when the court-packing bill was introduced that many people had for a year been sorting out thousands of ideas by which to escape the barriers erected by the Court. Right after the election, he said he asked two people-the Attorney General and the Solicitor General-to distill the results of all these studies; when this had been done they, in company with the President, had worked out the bill which he had submitted to the Congress. The commentators have accepted and elaborated on this account with some enthusiasm. My recollection is rather different.

In the last week of September (just after my 27th birthday) Solicitor General Reed told me to report to Attorney General Cummings for a special assignment. Cummings informed me that the President was determined, if reelected, to find an escape from the Supreme Court's version of constitutional limitation. He told me to bring together all sensible suggestions and to evaluate each. He did not present me with a collection of the "countless memoranda" or the "two fat volumes" which later commentators put in his possession. It is my recollection, to which I could not take oath, that I started from scratch, with my horizons expanded only by an occasional conference with Cummings. There were undoubtedly many memoranda addressing the problem in the files. I can only suppose that Cummings did not present or mention them to me either because he had a low opinion of their quality or because he wished me to cover the same ground with an unsullied mind.

On December 20, I submitted a sixty-five page memorandum. The lapse of two and a half months reflected the circumstance that the memorandum was a part-time commitment. [My collection of briefs indicates that I wrote or substantially edited half a dozen Supreme Court briefs in the fall of 1936. I was also rather active in the lower court defense of the windfall income tax.] It was addressed to the Solicitor General in response to a protocol either required or imagined. Reed in fact distanced himself as far as was feasible from the project. I do not know whether his discomfort reflected a natural conservatism or an instinct that as the principal advocate before the Court he should not be plotting against it.

The profusely documented memorandum took this course: (a) The power of the courts to declare legislation unconstitutional was too clear to challenge. (b) The Court could not be forced to accept Congressional findings of fact as conclusive. (c) The Congress could not oust state courts of jurisdiction to decide constitutional questions unless it preserved such jurisdiction in the federal courts. (d) Congressional control of court procedure could not be stretched to cover a requirement for a supermajority to invalidate legislation. (e) A long exploration of the Congressional power to control the jurisdiction of the lower federal courts and of the appellate jurisdiction of the Supreme Court ended with a more or less evenly balanced result, resolved in favor of invalidity because of an assumed judicial hostility and because of the possibility that the constitutional issue could be raised in a case of original jurisdiction. (f) There is undoubted Congressional power to change the number of Justices on the Court, as it had done five times in the past, so long as no sitting Justice was ousted. There were grave questions of policy which were enumerated but without any conclusion as to their resolution. (g) Somewhat less than a page was devoted to dismissing "the most cynical of the proposals," to provide a reduction in retirement pension for each year by



Library of Congress, USZ62-14051

The Roosevelt administration sought new and sometimes daring solutions to the problems confronting the country. For the first few years, however, the Supreme Court struck down most of the "New Deal" legislation.

which retirement was deferred past 70, as unquestionably constitutional but unacceptable as a matter of policy and politics. (h) An undated supplement concluded, rather summarily, that

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Constitutional Revolution *(continued from page thirteen)*

the Congress could strip the Supreme Court of its appellate jurisdiction and create a new highest court which would have final jurisdiction to review federal and state court decisions, leaving the Supreme Court only its original jurisdiction, but that such a result was too distasteful to be acceptable.

A day or two after submission of this memorandum Cummings directed me to put together a draft bill for the enlargement of the Court. In April 1963 I gave a hasty and informal account of the drafting to a daughter who wanted vicariously to impress a history teacher. It said:

> So far as I know, only Cummings, Reed and I were aware of the project. . . . The 'working party' was generally down to Cummings and myself. He was a man who seemed to me to have a very high order of largely unrecognized professional talents and, as is not usual in such situations, the job was a joint product.

[I note that subsequent commentators seem close to unanimous in dismissing Cummings as a mere politician. This is a faulty judgment, but it is hard for me to form a correct one. He had a quick mind and sensitive ear for language, and I saw no reason to doubt that he was an able lawyer. He was also a politician without discernible scruple. I here relate and deplore his major failure of judgment in promoting the court-packing bill as one to relieve the burdens on the aged, but this did not weaken my overall admiration for his capacities.]

More precisely defined, the first several drafts took this course: I would prepare, in the course of a day or two, the first or a new draft. At his next free time Cummings and I would sit down for an hour or two and work over the draft, word by word, with roughly equal contributions from each. The first four or five drafts must have been prepared in this manner. My January 15 memorandum refers to "Draft No. 8." If the first draft is estimated at December 12, they succeeded each other on the average of every 4.2 days and 4 or 5 would have been produced by the end of the month.

Supreme Court, Office of the Curator

In 1936, Willis Van Devanter was 77 years old. In the years 1932-1936 he had consistently voted in the majority in the 5-4 opinions which negated most of the New Deal programs.

My initial drafting was confined to the Supreme Court but Cummings at an early stage asked that it be widened to include the lower courts with provision for cross-assignment of judges and creation of a 'proctor' for supervision of judicial administration. [We had almost an hour's debate over the appropriate title; I didn't like the word 'proctor' as it was too reminiscent of schoolboy discipline. I lost.] The central provision of the bill during this early drafting seemed to me both ingenious and entirely sound. Cummings directed a provision that an additional Justice be appointed for each Justice who did not retire after reaching the age of 70. Cummings had learned that during the Wilson administration Attorney General McReynolds had made a similar proposal concerning the lower courts. It had accordingly a perverse charm. I remember introducing what I considered to be a most important corollary, that no successor be appointed when the old codger who held on past 70 finally retired. I had mentioned this possibility in passing, in my December 10 memorandum. [Professor Corwin, in one of his recurrent offers of advice to government officials, described a roughly similar proposal in a letter to Cummings of December 16. By that time it would already have been in our draft.] The intention of the provision was to avoid the undesirable permanent expansion of the Court and would almost surely have resulted in uniform retirements at age 70. We had in mid-December a bill which I found entirely satisfactory.

Our circle of court packers was somewhat widened a week or so before Christmas. My own participation reached to three occasions. I was once, unaccountably, dispatched alone to the White House to explain the detail to the President. I met Sam Rosenman on the lower floor and we went to the President's bedroom where for something less than an hour I answered questions about the provisions and probable operation of the bill. I was struck by the small size and the austerity of the bedroom, and by the complete ease shown by the bed-ridden President, but remember no specific of the conversation. Rosenman explained that the President often conducted the morning's work in the comfort of his bed rather than in his wheel chair. Whatever I said during that meeting must have been satisfactory since a day or two later I was called to lunch at the White House with a group of aides led by James Roosevelt, then his father's chief assistant, again explaining the bill. At about the same time Ben Cohen and Tom Corcoran visited Cummings, to whom we also explained the provisions and expected operation of the bill. Some scholars have expressed doubt as to whether they knew of the bill at this time. My memory is entirely clear that one day toward the end of December, while I was still active as Cummings' assistant in this area, we discussed the bill at some length in the Attorney General's small office, he seated at his desk, Cohen and Corcoran on a sofa to the right of the desk, and I on the chair in front of the desk.

I cannot now trace the causal lines, but in roughly the last week of the year Cummings widened the Department of Justice group to include Assistant Attorney General McFarland, an able but not thoughtful administrator, and Alexander Holtzoff, an assistant without portfolio to the Attorney General, whom I considered neither thoughtful nor able. He had been active in this area both before and after my own assignment. At this time, Cummings, apparently on December 22, was led to an extravagantly bad decision. If the bill were justified as necessary to relieve aged men of a crushing burden, this sleight of hand might produce an enlarged Court without attention being directed to an effort to change "the law." This plunge into trickery I found deplorable; the Court was not overburdened and was known to all concerned to be current with their work. Permanent expansion of its numbers would seriously injure the Court, but the initially planned fall-back to nine as the overage Justices retired was dropped; the fall-back must have been seen as inconsistent with the professed need to lighten the burdens on the Justices. I have not known whom to blame, but for a half century have suspected Carl McFarland. Recently retrieved memoranda indicate that by January, Cummings was using Holtzoff as his primary assistant on the job, and the paternity of the concept in any case seems better fitted to Holtzoff than to McFarland.

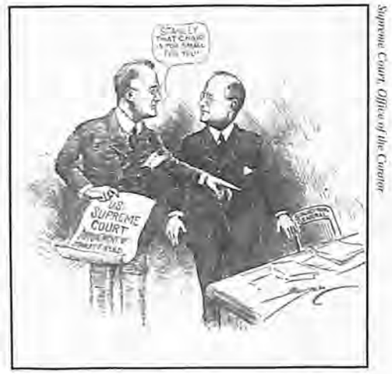
I dropped out of regular contact with the project at the end of December. I know (and now harbor a romantic regret) that I did not take an aggressively principled stand and say that I would not work on a bill that was a sleazy trick. Perhaps Cummings wanted a helper who was more enthusiastic; perhaps the Solicitor General's Office could no longer afford the distraction to one of its five attorneys; perhaps Cummings found Holtzoff more useful. In any case, my active role was only episodic at the end of December.

A recently located file contains fifteen memoranda which I sent the Attorney General (January 15 - February 22), or the Solicitor General for transmittal (apparently through Holtzoff) to the Attorney General (March 3 - July 16) answering briefly his supplemental inquiries relating to the project,[3] but it is plain that I was otherwise emeritus. Thus, on May 24 Cummings summarized for Reed still another suggestion from Professor Corwin and concluded "Perhaps Mr. Gardner might be willing to toy with it for a while." These isolated inquiries were my only contact with "court-packing" after 1936.

The shift from a direct confrontation with the Court's tyranny to the trickster claim of relief to the aged, which was so important to me, has been largely ignored by the many subsequent historians. It does, however, permit an explanation of otherwise inexplicable disavowals. I have noted Rosenman's company in our visit to the Roosevelt bedside in mid-December, yet he has said he first heard of the bill when a draft was shown him on January 30. Ben Cohen is reported to have written Brandeis that "neither I nor Tom was consulted in the formulation of the Court proposals." I have as to all three recorded their presence at a time when the bill and its proposed justification were in the form of a forthright attack on the Court's decisions, and have no doubt that they were unpleasantly surprised when they saw instead a bill to lighten the burdens of aged judges. That surprise could readily be converted in their minds into a surprise at the whole bill, especially when that larger ignorance was the more comfortable to explain.

III.

I had no part in the legislative activity, nor in the supporting justifications offered the Congress. I briefly report the principal milestones at secondhand and only for the sake of continuity.



Supreme Court, Office of the Curator

Franklin D. Roosevelt appointed Stanley Reed Solicitor General (right) hoping he could persuade the Supreme Court of the constitutionality of New Deal Legislation.

The President on February 5, 1937, sent to the Congress a proposal "to Reorganize the Judicial Branch of the Federal Government," accompanied by a letter from the Attorney General and a draft bill. Neither the President's message nor the Attorney General's letter contained a word of complaint about judicial tyranny; each was directed exclusively to the humanitarian goal of relieving aged men of their too heavy burdens.

The Attorney General adhered to this unfortunate justification when on March 10 he made the Administration's opening statement to the Senate Committee on the Judiciary. On the next day, Assistant Attorney General Jackson, never one to play follow-the-leader, made an impressive attack on the Court's constitutional decisions without mention of burdens cast upon the aged. Roosevelt himself quickly realized his mistake. In his press conference of February 12, and "Fireside Chat" of March 5 he spoke only of the Court's crippling decisions and neither mentioned the burdens of the aged justices.

Chief Justice Hughes, whose remarkable abilities included street-fighting, on March 21 sent Senator Wheeler a letter, noting the concurrence of Justices Brandeis and Van Devanter, which demolished the claim that the Court was either overburdened or behind on its work. On March 29 the Court, as will be developed below, overruled its invalidation of women's minimum wage law and on April 12 sustained the Labor Board cases. On May 18, just 90 minutes before the vote of the Senate Committee on the Judiciary, Justice Van Devanter announced that he would retire on June 1. The President had promised Senator Robinson, the powerful Leader of the Senate, the first appointment to the Court; Robinson had accordingly kept the bill alive, with at least fair prospects, but he died on July 13. One can debate which of these events was the fatal blow but none could doubt that in cumulative effect they put an end to "court-packing."

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Constitutional Revolution *(continued from page fifteen)*

IV.

The occasion for the court-packing bill seemed to have evaporated before the bill itself died. The 1937 and 1938 Terms of the Supreme Court produced an effective reconstruction of the 1936 Constitution which exceeded in extent and importance any amendment in our history other than the Bill of Rights and the Civil War amendments. While Chief Justice Hughes seemed appreciably more sympathetic to the Government's needs than he did in the 1936 Term, the revolution was essentially the work of a single man, Justice Roberts.

On June 1, 1936, Justice Roberts created the 5-4 majority which invalidated the New York minimum wage for women. Just 10 months later he created the 5-4 majority which on March 29, 1937, upheld the indistinguishable Oregon law and reversed the June result. His motivation has been much debated, but it could hardly have been a reaction to the court-packing bill. In 1955 Justice Frankfurter contributed a brief piece on Justice Roberts to the *University of Pennsylvania Law Review* much of which was given over to a memorandum to Frankfurter from Roberts. The account is flawed in respect of the earlier stages but seems conclusive that Roberts did not change his vote out of fear of court-packing. *West Coast* was argued on December 17 and the December 19 conference divided 4-4. Justice Stone was absent because of illness and the Court, or the Chief Justice, thought a 5-4 affirmance more seemly than 4-4 and so held the case until Stone's return. By December 19, when Roberts cast his vote, the court-packing bill could not have progressed beyond its second or third draft and could be found only on the desks of Cummings and Gardner; a "leak" or even an intimation could hardly have reached Roberts by then.

Library of Congress, USZ62-110699

The Railroad Retirement Act would have allowed retirement after 30 years service for employees not yet 65. The Court invalidated it by a 5-4 margin.

West Coast was the turning point, but once turned the new tide was encompassing. On the same day the Court unanimously upheld the railway labor act, ignoring the year-old *Alton* except for a passing citation that statutes cannot violate due process.

Only fourteen days later an opinion was issued in the decisive Labor Board cases, sustaining by 5-4 the power of Congress to regulate activities substantially affecting or burdening the free flow of interstate commerce; the effective control of interstate commerce, said Chief Justice Hughes for the Court, may require the regulation of intrastate activities, and it is not determinative that the activities are production rather than interstate trading or transportation. The five cases called up almost 500 pages of Government briefs, which had occupied almost a half-year of time by Wyzanski, assisted by Horsky, and working in day-by-day consultation with the Labor Board attorneys. The oral argument (by Reed and Wyzanski from the Solicitor General's Office, and by Madden and Fahy, Chairman and General Counsel of the NLRB) occupied four days. The opinions by the Chief Justice, among the most important of the century, showed a brevity (38 pages in total) and an alacrity (56 days) not often seen in recent Terms.

Two weeks later the Court, in 5-4 decisions with opinions by Justice Cardozo, sustained the imposition of taxes supporting unemployment compensation and old-age benefits. The Court rested decision on the simple power to tax, without entering into general welfare discussion.

The 1936 Term included, sandwiched between *Jones & Laughlin* and *Steward*, a gratifying, though little noted, decision sustaining the Government's efforts to retrieve something over a billion dollars of processing taxes invalidated by *Butler* but already recouped by the processors from their customers. I was detailed to work with Eugene Bogan, a young Treasury lawyer, to find a way to prevent this gigantic windfall. As the law then stood, only a retroactive income tax, and no retroactive excise tax, had been sustained. We accordingly cobbled together a very elaborate statute which taxed the windfall income derived from refunds of processing taxes, the burden of which had already been passed on to the customers. The tax was enacted and challenged quickly and reached the Supreme Court only fifteen months after the *Butler* decision. The Court, rather to our surprise, was unanimous in sustaining the tax.

Some unfinished business was tidied up during the next Term. The Congress had reenacted a municipal bankruptcy act, in every significant respect identical to that invalidated in *Ashton*. It was sustained by a 6-2 vote, Van Devanter and Sutherland having left the field of combat. Chief Justice Hughes distinguished *Ashton* on the ground of a few phrases in the new Act which more explicitly enlisted the cooperation of the State.

The 1937-1938 cases served to return the national economy to the control of the Congress, with the partial exception of agriculture. *Butler* was not reversed. Instead a number of decisions made piece-meal progress along the broad road of the commerce clause. The Congress never paid much attention to the *Butler* opinion declaring that Congress could tax and spend only on matters within its specific powers, and not for the general welfare. (297 U.S. at 69) It financed its "welfare" expenditures out of its general revenues and it was not easy for an opponent to show injury sufficient to get into court.

I thought that I owed Justice Stone a confession of my authorship of the original versions of the court-packing bill and at some time during the 1936 Term called upon him for that purpose. He was not distressed, but responded in terms humiliating to one possessed of the maturity of 27 years. He chuckled and said, "After all, you were very young."

The twelve months that began in the spring of 1937 saw the Constitution remade. It is natural to ask "Why?" It was not due to Roosevelt appointments, for there had been none during the 1936 Term when the Labor Board and Social Security cases were decided. Nor was it due to the court-packing bill. The 1937 revolution was the work of but one man, Justice Roberts, and as we have seen his dramatic reversal in *West Coast* came before he could have known of the bill.

My present belief is that Roberts, never a very predictable judge, changed course because of two factors: widespread academic and popular criticism of *Tipaldo* and the overwhelming support of the President and the New Deal shown by the election in November 1936. Chief Justice Hughes, a somewhat wavering supporter of the three-Justice liberal bloc in any case, and a foremost politician (as governor of New York and a narrowly defeated candidate for President), would surely have been influenced by that election and may well have proselytized Roberts.

Once the Roosevelt appointees joined the Court, beginning in September 1937, there was a half-century firm assurance that a laissez-faire economy was not a constitutional guarantee. In those circumstances, which I consider desirable, it seems very fortunate that the court-packing bill was not enacted, as it probably would have been had not Cummings persuaded Roosevelt that trickery, embodied in the concern for the burdens cast upon aged men, should replace confrontation. The bill presented to Congress (in contrast to the early drafts) could have permanently increased the membership of the Court by the appointments to vacancies created by over-70 hold-outs, to a maximum of 15. This I believe too large a number for a court which should act as a single body rather than through panels. Perhaps more importantly, none could really want an overtly politicized Court, nor a tradition of expanding the Court with each electoral reversal. It was a sensible price to be paid if necessary to rescue the nation from McReynolds et al., as seemed to be the case at the close of 1936. It was not a development to be welcomed if it was unnecessary.

While enactment, as it developed, was undesirable, the effort in itself contributed important values. It has been, and I hope it continues to be, a forceful reminder that constitutional ambiguities should be resolved in favor of the current goals of the nation rather than the standards current when the Justices were young.

The Court itself has on occasion testified to the continuing force of the 1937 lesson. Justice Stone, as the 1936 Term closed, hoped "that the reformation that seems to have been accomplished proves to be a permanent one" Justice White, writing for the Court in 1986, said:

> The court is most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or the design of the Constitution. That this was so painfully demonstrated by the face-off between the Executive and the Court in the 1930's, which resulted in the repudiation of much of the substantive gloss that the Court had placed on the Due Process clause. . . .

Justices O'Connor, Kennedy and Souter, writing for the fractured court in *Planned Parenthood v. Casey* said:

> The older world of laissez-faire was recognized everywhere outside the Court to be dead. . . [o]f course, it was true that the Court lost something by its misperception, or lack of prescience, and the court-packing crisis only magnified the loss.

Finally, Justice Souter has noted:

> The modern respect for the competence and primacy of Congress in matters affecting commerce developed only after one of the Court's most chastening experiences, when it perforce repudiated an earlier and untenably expansive concept of judicial review in derogation of congressional commerce power.

I am apprehensive of the Court's decisions in the coming years, but find comfort in the hope that recollection of the 1937 crisis will promote the survival of some restraint. In final result, then, I cling to the sanguine view that it was very good to have tried to pack the Supreme Court and very good to have failed.

V.

On March 1, 1937, the Congress enacted the wholly noncontroversial Sumners retirement bill, which was read to give the retiring Justice constitutional protection against a legislative reduction in his pension, such as had occurred in 1932 and 1933. The $20,000 salary of a Justice was traditionally contin-

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Constitutional Revolution *(continued from page seventeen)*

ued in his pension but was reduced to $10,000 on June 30, 1932 and to $17,000 on June 30, 1933. These reductions expired in June 1936. [By 1936 a benumbed administration must have realized, with a rumored stimulus from within the Court, that this was a demented economy for those anxious to rid the Court of its aged antagonists.] Justice Van Devanter retired from active service on June 1. We thought at the time that this was because of the new constitutional protection understood to have been occasioned by the Sumners bill.

The Van Devanter retirement finally opened the gate for a Roosevelt appointee, but at the same time it brought, in bizarre circumstances, another constitutional controversy to the Court. The President nominated Senator Hugo Black to the vacancy. On August 13 the Attorney General asked the Solicitor General for memoranda to be used on the Senate floor if any Senators continued to object that the Constitution in Article I forbade appointment of any member of Congress to a position created or in which the emoluments were increased during his term. No trouble arose in the Senate and we thought the issue over.

We were, however, ambushed by Virgin Islands political battles. I recall being told they had resulted in District Judge Levitt ordering the Governor jailed for contempt.[4] The territorial judge was removed from office but remained on the federal payroll. Cummings asked around the Department for a position Judge Levitt could fill. None was offered. The combative ex-judge accordingly spent his hours on the Department of Justice payroll preparing a motion to require Justice Black to show cause why he should not be ousted on the "emoluments" ground. I prepared a fairly elaborate brief opposing, but Chief Justice Hughes, who could recognize a can of worms as readily as any judge in history, dismissed the petition before our brief could be filed, on the evident ground that the petitioner had no Article III standing.

Such are my memories of an interesting period. "Of course, it was long ago, but at the time it seemed like the present."[5]

THE 1999 ANNUAL MEETING

The 24th Annual Meeting of the Supreme Court Historical Society will be held Monday, June 7, 1999 at the Supreme Court Building in Washington, DC. The Annual Lecture will be delivered by Associate Justice Ruth Bader Ginsburg, who will discuss the lives and contributions of Supreme Court spouses.

Timetable

2pm	Lecture in the Supreme Court Chambers.
6pm	Meeting of the general membership and Board of Trustees.
7pm	Reception
8pm	Dinner

NOTES

1 - The work of Professor William E. Leuchtenburg has proved extremely helpful. This piece has benefited more directly from a sizeable body of careful and knowledgable comment graciously offered by Professor Richard C. Friedman in repect of an early draft. He bears no responsibility for the opinions which, making no gesture toward objectivity, I scattered through this piece.

2 - Humphreys left intact the almost unlimited supervisory power found in White House control of future appointments, annual budget determinations for the agency, and the intangible but powerful force emanating from the "imperial presidency."

3 - The answers included: Jan. 15- Sumners' retirement bill had no harmful impact on "our proposal" but if retirements were encouraged, which seemed doubtful, the bill would lessen the need; Jan. 28- not much gained by stripping seniority privileges from over-70 judges; Feb. 3 - list of the changes in membership of Supreme Court 1789-1869; Feb. 3 - no real question as to power to make recess appointments to a newly created office but power doubtful if vacancy arose during session of Senate; Feb. 6- conceivable but unlikely that an over-age Chief Justice not covered; Feb. 6- ambiguities of Sumners retirement bill probably cured by clarity of committee report; Feb. 24 - only litigation can decide whether Sumners bill covers Court of Claims judges; April 9 - no doubt as to power to appoint successor to retiring justice; April 7 and July 16 - compilation of state provisions for judicial retirements; Apr. 12 - whether U.S. could, after intervention, appeal constitutional issue if private party did not [partial memorandum and Gardner authorship doubtful]; Apr. 17 - drafts of 5 constitutional amendments limiting judicial terms; Aug. 13- validity of Black appointment in light of emoluments clause; Oct. 14- no significant gain from legislation requiring senior circuit judge to be under 70.

4 - Here my memory is suspect. I checked Ickes' published diary and found no mention of the contempt order, although he was outraged that Cummings did not fire Levitt after he testified to the Senate Committee in opposition to the nomination of Lawrence Cramer as Governor of the Virgin Islands. *The Secret Diary of Harold Ickes*, p. 94.

5 - P. Steiner, *The New Yorker*, Sept. 2, 1997, p. 72.

Blackmun Memorial *(continued from page seven)*

to do with law. While Harry's list includes reminders of the importance of "precedent" and the fact that "law and morality are not always identical," it highlights the basic "need to appreciate that usually people - not just legal theory - are involved in the controversies that confront us." And Harry early marked the Law's concern for the people, when at age 21 he marked his own Bible, "read June 17, 1928," Chapter 5, verse 24 of Amos, that prophet of the poor: "Let justice roll down like waters, and righteousness as a mighty stream."

My colleague Justice Scalia wrote of Harry Blackmun: "No one was more dedicated to the rule of law, or more painstaking in the execution of his responsibilities on this Court. He was a good man and a good justice, deserving of the respect of all Americans." I agree.

We will miss Harry greatly, but we shall treasure the legacy he leaves us. The Chief Justice said yesterday that Harry "was a worthy successor to the predecessors in the seat which he occupied—Story, Holmes, Cardozo and Frankfurter." That brings us back to the words with which I began, words that Harry wrote about those predecessors: "A sterling example begets emulation and challenge." When Harry wrote those words he was not thinking of how his own example, of compassion and courage, might challenge us. He was not thinking that the words, "sterling example," "emulation," and "challenge" applied to Justice Harry A. Blackmun himself. But, of course, they do.

Articles in the *Legal Times* issue of April 11, 1994, the week following Blackmun's announcement of his impending retirement, capture some of the public perceptions of the Justice: "A Justice Both Humble and Wise," "The Humanity and Humility of 'Old No. 3'," and "A Careful and Sound Legal Analyst." Frank S. Holleman stated in his article "Justice Blackmun's work habits spring from his basic humility. He does not jump to the conclusion that a judge can make a decision based upon his memory of past decisions, a rigid ideology, an initial reaction to a case, or the first review of the briefs. . . . Just as he recognizes his own human frailty, Blackmun is always aware of the humanity of the people represented in the cases before him. The justice has paid special attention to the effect of the Court's decisions on vulnerable people. . . ."

William Alden McDaniel, Jr. who clerked in 1978, echoed these perceptions in his tribute to Justice Blackmun at the Memorial Service:

The careful work and long hours of study reflected in the Justice's opinions mark him as a great lawyer. Few great lawyers have been great men. . .[y]et the Justice managed both. . . He was a man of status and power, who emphasized the bond of common humanity he shared with everyone: the staff at the Court, to whose problems he listened; to the prisoners who wrote to him, whose letters he read, every one; to the petitioners and respondents whose cases he judged, persons like "poor Joshua DeShaney," whose anguish the Justice understood, and which he was not ashamed to acknowledge. He was a man of deep and broad learning, well educated and well read, who enjoyed learning from others right to the end of his life. He was a man of intellect, who was not afraid to reveal his emotions. He was a man vilified for his beliefs, who never returned vilification. He was a man of law who adhered to a fundamental belief that law must serve the people whose misery and need brought them to the bar of Justice.

Mr. McDaniel's further observed that "[t]he Justice lacked all pretension, all pompousness, all phoniness. He possessed dignity, character, a deep and quiet strength, a sure sense of who he was and what he wanted to do. When he did it, it was because he believed it to be the right thing to do, regardless of the opinions of the public, of the other Justices, or even of his own law clerks."

Pamela Susan Karlan, Law Clerk to the Justice in 1985 also spoke at the Memorial Service. She shed further insight on the unique personality of Justice Blackmun when she observed that ". . . by being with him, we became more conscious of our own traditions. By being with him, we learned about ourselves. In some ways, my year with the Justice made me more like him—more careful, more modest, more likely to use the word 'parameter' correctly. But in the end, it was just as important that my time with him made me more like myself. He appealed to the better angels of our individual natures."

Justice Blackmun will be remembered as a man of principle and honor, a man for whom public service was a public trust. Mr. McDaniel eloquently observed that "[w]hen the final history of this Republic is written, it will not be our vast material wealth, nor yet our great military capability, that will be the glory of our times. . . Rather, our nation's glory will lie in the fact that it lifted up to the seat of highest power Harry Blackmun and women and men like him, and they used that power not to preserve the status and wealth of those at the top of our society, but to enhance the liberty and dignity of those at the bottom."

New Members *(continued from page nine)*

Ohio
Michael Les Benedict, Columbus
G. Jack Benge, Bowling Green
Dennis W. Dunigan, Cincinnati
Ann Fidler, Athens
John P. Forran, Oxford
Kermit L. Hall, Columbus
Sam Krugliak, Canton
Christopher Seth Maynard, Cleveland Heights
Linda Przybyszweski, Cincinnati
Alan T. Radnor, Columbus
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Oklahoma
Steven L. Barghols, Oklahoma City
Allen E. Barrow Jr., Tulsa
Amelia A. Fogleman, Tulsa
W. Michael Hill, Tulsa
Patricia Ledvina Himes, Tulsa
Jerome A. Holmes, Oklahoma City
David L. Kearney, Oklahoma City
Eric R. King, Oklahoma City
James C. Lang, Tulsa
Debra D. Loeffelholtz, Norman
Henry A. Meyer III, Edmund
D. Kent Meyers, Oklahoma City
Hal H. Pennington, Dunn
Rob F. Robertson, Oklahoma City
Jerry Tubb, Oklahoma City

Oregon
David A. Corden, Portland
Corbett Gordon, Portland
Joshua E. Spooner, Portland

Pennsylvania
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Guy Beneventano, Harrisburg
Patrick C. Campbell, Philadelphia
Sherry M. Carr, Valley Forge
Deborah Ann Crinigan, Philadelphia
Diana S. Donaldson, Philadelphia
Michael J. Foley, Scranton
Cecily Giardina, Carlisle
William L. Henry, Brookville
Susan K. Herschel, Philadelphia
Janine M. Hoffman, Philadelphia
Wilbur L. Kipnes, Philadelphia
Philip Kircher, Philadelphia
William L. Leonard, Philadelphia
Steve Mathes, Philadelphia
F.E. McElwaine, Westchester
Walter M. Phillips Jr., Philadelphia
Frank C. Sabatino, Philadelphia
Berle M. Schiller, Bala Cynwyd
Steve Shadowen, Harrisburg
Ralph Sianni, Philadelphia
Barry Ungar, Philadelphia
Ralph G. Wellington, Philadelphia

Rhode Island
Victoria M. Almeida, Providence
Christopher E. Hultquist, Providence
John MacFadyen, Providence
Mark A. Pogue, Providence
Melvin L. Zurier, Providence

South Carolina
Walter J. Bristow Jr., Columbia
George B. Cauthen, Columbia
Sue C. Erwin, Columbia
D. Michael Kelly, Columbia
Eddye L. Lane, Columbia
John P. Linton, Charleston
Edwin P. Martin, Columbia
Jack Swerling, Columbia

Tennessee
Bernard E. Statland, Nashville

Texas
Nancy Atlas, Houston
Henry Binder, Houston
David E. Chamberlain, Austin
James A. DeMent Jr., Missouri City
Martha R. Fleisher, Dallas
David George, Houston
Heather Goldman, Ft. Worth
Robert A. Gwinn, Dallas
T. Richard Handler, Dallas
John C. Hart, Ft. Worth
Robin P. Hartman, Dallas
Burgain G. Hayes, Austin
Daniel A. Hyde, Houston
Harold M. Hyman, Houston
Keith Jaasma, Houston
Karen Jewell, Houston
Joel C. Lambert, Friendswood
Lynne Liberato, Houston
Randal Mathis, Dallas
Harriet Miers, Dallas
John D. Rainey, Victoria
Thomas C. Riney, Amarillo
Eduardo Roberto Rodriguez, Brownsville
Ronald D. Secrest, Houston
Kenneth R. Stevens, Fort Worth
Douglas G. Walters, Houston
Ed Wright, Dallas

Utah
Timothy Mark Chambless, Salt Lake City
Paul Felt, Salt Lake City

Vermont
Paul Gillies, Montpelier

Virginia
Robert S. Bersch, Roanoke
Stephen G. Bragaw, Sweet Briar
Charles O. Campbell, Arlington
John E. Clarkson, Norfolk
Gregory Victor Davis, Arlington
Charles H. Ford, Norfolk
Paul Gonson, Arlington
Charles Gould, Alexandria
Bernie Jones, Charlottesville
Wayne D. Moore, Blacksburg
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Leslie Rosenbaum, Alexandria
E. L. Ryan Jr., Norfolk
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Hunter W. Sims Jr., Norfolk
K. Alan Snyder, Virginia Beach
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Washington
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Wisconsin
Yaw Akuoko, Madison
Joseph Gordon Hylton, Milwaukee
Jonathan Raff, Fox Point

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, or would care to contribute to the newly established Acquisitions Fund, 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

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