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Abington School District v. Schempp: A Look Back

by Prof. Robert Langran

Editors Note: Part one of a two part series.

The relationship between Church and State in the United States has always been controversial. The Supreme Court has been at the heart of the issue with many of its decisions, one of the most important being the case of *Abington School District v. Schempp*, 374 U.S. 203 (1963). The 8-1 decision forbade the reading of the Bible in the public schools as a devotional exercise. The Court's conclusion was the result of its interpretation of the First Amendment clause respecting a prohibition against establishment of religion. The Justices held that although the government of the nation does not have to be hostile to religion, it does have to be neutral, and that the practice of Bible reading in the public schools destroys such neutrality.

The Court had decided several cases involving Church and State prior to *Schempp*, notably ones upholding text books being provided free of cost to all school children in a state, upholding reimbursing parents for the money they spent sending their children to school by public transportation, disallowing religious instruction during public school hours on school grounds but upholding the same when done off school

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Corbis/Be

June 17, 1963. Mr. and Mrs. Edward L. Schempp go through some of the more than five hundred letters received by them with the help of their children, Donna, 17, and Roger, 20. The couple's legal action started in a Philadelphia federal court against compulsory bible reading in public schools, resulted in the Supreme Court decision to ban such activity. The situation began in 1957 when their eldest son Ellory (not shown) then a junior at Abington Senior High School, was reprimanded for refusing to read from the King James Bible in class. Ellory graduated from High School long before the case made it to the Supreme Court. His parents, brother, and sister took up the case, however, arguing that as Unitarian Universalists the Bible was not an integral part of their belief system. The Abington school district argued that it was an issue of obedience, not religious belief, and not a First Amendment violation.

A Letter From the President

As a new organization, the Society concentrated most of its efforts on developing a membership base, producing publications and acquiring artifacts and memorabilia for use in the Supreme Court. These were worthy and important goals, all of which are ongoing, but success in these areas has provided a way for the Society to focus more time and resources on the development of educational outreach programs. This ability to provide meaningful educational programs, including lectures, symposia, and conferences, has been a primary objective of the Society since its inception. In the last five years, tremendous growth has been achieved as donor support has enabled the Society to realize some of these goals.

One of the most prominent aspects of this program activity has been the yearly lecture series, which have become an essential part of Society activity. Outstanding scholars and legal professionals from around the country have participated in these programs in past years, and this year's series on *The First Amendment and Free Speech,* is no exception. These programs provide a forum in which speakers share their expertise and experience with audience members assembled in the Supreme Court Chamber. Countless others are able to participate in these programs through the medium of cable television. C-SPAN network tapes and airs most of the programs over a period of time and the text of the lectures is published in the *Journal of Supreme Court History,* providing a permanent record.

I am aware that many of you are unable to travel to Washington for these programs. Some of you have suggested you would like to attend programs sponsored by the Society in your own area. Unhappily, that does not at the moment appear to be feasible given the small staff and limited operating budget of the Society. However, we have sought to bring the Society's work to other areas of the country. Member initiative has played an important part in developing these outreach efforts. One example is the annual breakfast meeting sponsored by the Arizona "chapter" of the Society. Under the leadership of Ed Hendricks, a breakfast event was organized in Arizona which has become an annual event. The baton of leadership for the meeting has passed from Mr. Hendricks to Larry Hammond who has continued the tradition. Speakers at past meetings include Chief Justice Rehnquist and Justice O'Connor. These events have been reported in past issues of the *Quarterly,* and we look forward to reporting on the program scheduled in February 2000. Joseph Frank organized luncheon meetings with guest speakers, providing a way for Society members in New England to hear an outstanding speaker and break bread with other Society members. These events have been organized on a self-supporting basis and could be emulated in other areas of the country. Society staff members can provide ideas and some assistance in planning such activities. State Chairs would also be a valuable source of help in developing local events.

Another important way in which the Society is able to expand its effectiveness in areas outside Washington, D.C., is through the Supreme Court Summer Institute program. In this program sixty teachers come to Washington to learn firsthand about the Supreme Court and how it works. A survey conducted this year with past participants, indicates that in school year 1998-99 more than 14,000 students were affected by this curriculum which used such instructional strategies as moot courts, case studies and guided discussions. This kind of educational outreach is of extreme importance to the Society.

The Society is considering other ways in which to expand its activities. One possibility is co-sponsorship of programs created with local historical groups. You will read on the facing page about such a venture with the South Carolina Supreme Court Bar and Historical Society. Collaboration with the Mount Vernon Ladies Association will result in two important programs. The reenactment of *Chisolm v. Georgia* held in June was enormously successful with participation by three leading legal figures, Solicitor General Seth Waxman, Judge Griffin Bell, and Justice Antonin Scalia. It was a stimulating exercise of the highest order. In September, the second program will take place at Mount Vernon. This cooperative association has been very rewarding, and we hope to consider additional options with other groups.

I am grateful for the many contributions you, our members, make to the success of the Society. In addition to vital monetary support, many of you have written articles and trivia quizzes, provided artifacts and memorabilia for display, delivered lectures or participated in some other vital way. As we work together in this new fiscal year, it will be our task and our pleasure to continue this important educational work.

Leon Silverman

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Special Conference of the South Carolina Historical Society

A jointly-sponsored Conference of the Supreme Court Historical Society and the South Carolina Historical Society will be held September 16 and 17, 1999 in Charleston, South Carolina. The overall topic for the conference will be **"A Haven for Dissenters: South Carolina and the Rise of Religious Freedom in America."**

The first event will be a banquet held on Thursday, September 16, 1999 at 7 P.M. in the Riviera Theater at Charleston Place. The keynote speaker for the evening will be The Honorable John T. Noonan, Jr., a Judge on the United States Court of Appeals for the Ninth Circuit. Judge Noonan's address is titled *"The Lustre of Freedom: The Development of Religious Freedom in America."* The dinner program will be open only to Supreme Court Historical Society or South Carolina Historical Society members.

Presentations at the Conference will examine in detail the rise of religious freedom in America, with emphasis on the South Carolina experience. This seminar has been certified for continuing legal education credits and will be held on the campus of the College of Charleston. The lectures will include: *"The Evolution of the Principles of the Free Exercise of Religion and the Separation of Church and State"* by Professor Van Alstyne of Duke University School of Law; *"James Madison: The Oblique View"* by The Honorable John T. Noonan, Jr.; *"The Development of Religious Freedom in South Carolina"* by Dr. Walter Edgar of the University of South Carolina; *"Early Constitutional and Statutory Protections for Religious Minorities in South Carolina"* by Professor James Underwood of the University of South Carolina School of Law; *"Seeking the Promised Land: The Afro-Carolinian Quest for Religious Freedom"* by Dr. Bernard Powers of the College of Charleston; and the concluding presentation *"A Beacon of Hope: The Development of Antebellum Charleston as North America's Largest Jewish Community"* by Robert Rosen and Richard M. Gergel.

Members of the Bar can receive MCLE credits for attending the program, but the seminar is open to all interested individuals. Registration for the two day program is $225, and the fee for Friday only is $155.For additional information contact the South Carolina Bar CLE Division, P.O. Box 608, Columbia, SC 29202-0608. 800-768-7787, fax (803) 252-8427.

2000-2001 Judicial Fellows Program

The Judicial Fellows Commission invites applications for the 2000-2001 Judicial Fellows Program. The Program, established in 1973 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who are interested in the administration of justice and who show promise of making a contribution to the judiciary.

Up to four Fellows will be chosen to spend a calendar year, beginning in late August or early September 2000, in Washington, D.C., at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission. Candidates must be familiar with the federal judicial system, have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories, but will not exceed the GS 15, step 3 level, presently $83,762.

Information about the Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room Five, Washington, D.C. 20543. (202) 479-3415. The application deadline is November 5, 1999.

Trivia Quiz: Who Wrote It

by James B. O'Hara

1. This Justice wrote a five-volume biography of George Washington.
2. This Justice wrote an historical sketch on the political battles surrounding the impeachment trials of Samuel Chase and Andrew Johnson.
3. This Justice wrote a comparative study of the legal systems of India and the United States.
4. This Justice's Civil War diaries and letters have been published.
5. This Justice wrote an analysis of Roosevelt's efforts to "pack" the Court.
6. This Justice wrote a biography of Revolutionary War General Nathaniel Greene.
7. This Justice wrote influential treatises on many aspects of law, including equity, contracts and constitutional law.
8. This Justice's oral history interviews became a best selling book.
9. This Justice had two best selling books condensed by Readers Digest.
10. These two Justices were the subjects of biographies written by their wives.

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Abington v. Schempp *(continued from page one)*

grounds, and upholding Sunday Closing Laws, or "Blue Laws."

Then in 1962, in the *Engel v. Vitale* case, the Court invalidated a brief prayer which the Board of Regents of New York State had composed and had urged various Boards of Education to adopt. The 6-1 decision was written by Justice Black, who felt the prayer a clear violation of the Establishment Clause. Only Justice Stewart dissented. This decision was largely unexpected, and the immediate reaction was one of incredulity. This soon gave way to severe criticism of the Court.

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Left to right: Edward Schempp; Donna Schempp; Roger Schempp; Sidney Schempp; Ellory Schempp & Josephine Hallett, a family friend, in front of the Supreme Court Building.

At that time many people were not ready for this decision. In the year between *Engel* and *Schempp*, there was time for review and reflection. Accordingly when the Court did what most people thought it would do in the *Schempp* case, the reaction was very different.

Schempp had its roots in a Pennsylvania law passed in 1913 which stated:

> At least ten verses from the Holy Bible shall be read, or caused to be read, without comment, at the opening of each school day, by the teacher in charge: Provided, that when any teacher has other teachers under and subject to direction, the teacher exercising such authority shall read the Holy Bible, or cause to be read, as herein directed. If any school teacher, whose duty it shall be to read the Holy Bible, or cause to be read, shall fail or omit to do so, said school teacher shall, upon charges proferred for such failure or omission, and proof of the same, before the board of school directors of the school district, be discharged.

This law put into words a practice prevalent in Pennsylvania and other states, a practice upheld by Pennsylvania courts once in 1885 and twice in 1898. The courts ruled that the reading of verses from either the King James or the Douay version of the Bible was an "embodiment of Christian morality," that "Christian morality is morality itself," and that it is the "function of the schools to teach morality."

Fifteen other state courts also upheld Bible reading, while four state courts had struck it down, and a fifth one ruled that the New Testament discriminated against the Jewish faith. Most of the states that had compulsory Bible reading laws provided that pupils could be excused from the exercise upon request.

At the time of the *Schempp* decision, twelve states and the District of Columbia actually required such readings. Six other states left the decision to local officials, as did New York City. In eighteen states Bible reading was permitted either due to the general terms of the law or by reason of silence on the subject. In most of the states where Bible reading was practiced, instructions were given that no comments were to be made regarding the passages, and while the statutes often did not direct what version of the Bible was to be used, it was usually the King James version. Finally, there were twelve states which, at the time of the *Schempp* decision, prohibited Bible reading in public schools.

This was the situation throughout the country when the Schempps came on the scene. Edward Schempp, an electronics engineer, his wife Sidney, their sons Ellory and Roger, and daughter Donna, had lived in Roslyn, Pennsylvania since 1949, where they attended the Germantown Unitarian Church. In March, 1957, Ellory the eldest, was sixteen years old and a junior in high school. Passages were read from the Bible in all of the Schempp children's schools. At Abington Senior High School the readings were given by students in public speaking as part of their training. By contrast, at Roger and Donna's schools, students took turns and could pick the passages they read. In all three instances the passages were followed by a reading of the Lord's Prayer during which all had to stand with bowed head and closed eyes.

In March, 1957, the Schempps' request for legal help to contest Bible reading was considered by a committee of the American Civil Liberties Union. On May 3rd the Board of Directors voted to help. Ellory Schempp had fomented the situation. He'd discussed religion, politics, and related subjects with fellow students from his English class, and concluded that Bible reading and the Lord's Prayer in public schools were not only undesirable, but were in violation of the First and Fourteenth Amendments. Therefore, in November 1956, instead of listening to the Bible reading, Ellory sat at his desk reading a copy of the *Koran*. He did not stand for the Lord's Prayer, but did for the flag-salute which followed. His teacher thereupon sent him to the principal, who in turn sent him to the guidance counselor

as he felt Ellory was in need of psychological help. That night Ellory addressed his letter to the Executive Director of the Philadelphia branch of the American Civil Liberties Union. Ellory opposed Bible reading on the grounds that, being a Unitarian, he did not believe in the Holy Trinity, and held the Bible to be a minor part of his faith.

Mrs. Madalyn Murray O'Hair and her two sons, William 16, and Garth 8, in front of the Supreme Court building February 28, 1963. Their case would be combined with the Schempp's by the Supreme Court.

Back at Abington High School a compromise had been reached whereby Ellory entered his home room in the morning, and went to the office during the morning devotions (both Pennsylvania and Tennessee labeled their Bible reading periods as "morning devotions.") This continued for the rest of the school year. In July, the ACLU found lawyers to handle Schempp's case. Henry W. Sawyer, of Drinker, Biddle and Reath was the lead attorney. He quickly developed the argument that reading the Bible in school constituted not only the establishment of a religion, but was also a violation of the Free Exercise Clause.

By this time Ellory was no longer excused from the morning devotions. The school had decided it was a matter of respect and obedience. If 1,600 other students could stand for the Lord's Prayer, "-why couldn't you?" Ellory Schempp's lawyers filed a complaint in the U.S. District Court, which a federal marshal served to the defendants — the School Board of Abington Township. The defense team included Philip Ward and one of his partners from the Philadelphia law firm of Montgomery, McCracken, Walter, and Rhoads. Before the trial actually started, Ellory graduated. However, his parents, brother and sister promptly became the plaintiffs in the case.

The trial took place at the U.S. Courthouse in Philadelphia before a special three-judge court. Normally only one judge hears a case at the District Court level, but three preside when a constitutional issue is involved. They were Judge Kirkpatrick, Chief Judge, U.S. District Court for the Eastern District of Pennsylvania; Judge Biggs, Chief Judge Third Circuit Court of Appeals; and Judge Kraft, District Judge, U.S. District Court for the Eastern District of Pennsylvania.

Mr. Sawyer's first point was that Ellory Schempp had been discriminated against even though he had been excused from devotions. He argued that a person who does not conform to the group is considered odd, especially among children of grade school and high school age. His second contention was that the devotions were not pedagogical in nature but were, in fact, religious ceremonies. Finally, he maintained that the King James version was a sectarian, religious work. Sawyer called attention to the dedicatory epistle which he claimed to be anti-Catholic in nature. The text says it is intended to give "such a blow unto that man of sin as will not be healed." That "man" obviously being the Pope, argued Sawyer. The text then explains the version's purpose as: "To make God's Holy truth to be yet more and more known to the people whom they desire still to be kept in ignorance and darkness." Again, he maintained, the "they" obviously referred to Catholics. Thus Sawyer contended the King James version was Protestant dogma directed against Catholics. Sawyer called on Rabbi Solomon Grayzel, a Biblical student and editor of the Jewish Publication Society of America, to present the Jewish reaction to the King James version. Dr. Grayzel contended that reading a sacred text should not to be imposed upon a minority with a different understanding of that text. Furthermore, the Bible cannot simply be read without comment. He testified that there are any number of verses that require explanation, without which the text has no meaning.

When it was time for Mr. Ward's argument, he asked the teachers and the principal why they considered Bible reading to be a good pedagogical practice; why it was done at Abington; and why they thought it was a good way to teach morality. Mr. Ward also attempted to show that the statute was not intended to teach religion; was not calling for a religious ceremony; and was not seeking to indoctrinate the children. He then brought in an expert witness, Dr. Luther A. Weigle, Dean Emeritus of the Yale Divinity School. Dr. Weigle argued that Bible reading was not a sectarian practice. Rather, it had moral value; it had literary value as a monument of English prose; finally, it had historical value, as a vital part of the making of American institutions. Upon cross-examination however, Mr. Ward conceded that, for a Christian, the Bible would not be complete without the New Testament, consequently Jewish people could regard it as sectarian.

On September 16, 1959 the court decided unanimously for the Schempps.

Part two of this article will appear in the next Quarterly.

Memorial Session for Justice Jewis F. Powell, Jr.

A special meeting of the Supreme Court Bar was convened the afternoon of Tuesday, May 18, 1999, to memorialize the life and career of Justice Lewis F. Powell, Jr. Following tradition, leaders of the Bar met to commemorate the life of the late Justice. Under the direction of the Solicitor General of the United States, The Honorable Seth P. Waxman, speakers provided their personal insights into the Justice and his work. Speakers for the program were The Honorable J. Harvie Wilkinson III, Chief Judge of the U. S. Court of Appeals for the Fourth Circuit; Professor Gerald Gunther, William Nelson Cromwell Professor of Law Emeritus, Stanford Law School; Christina Brooks Whitman, Professor of Law and Women's Studies, The University of Michigan Law School; and Walter E. Dellinger, III, Professor of Law, Duke University School of Law and former Acting Solicitor General.

At the conclusion of the presentations, a motion was made to adopt the written resolutions prepared by a special committee chaired by John C. Jeffries, Jr. A special session of the Supreme Court was convened at 3:00 P.M. Solicitor General Waxman presented the formal Resolutions of the Bar, after which the Attorney General, The Honorable Janet Reno, requested that the Supreme Court formally accept the Resolutions and make them a part of the official records of the Supreme Court. The Chief Justice responded, accepting the Resolutions and commenting on his former colleague's illustrious career.

A short ceremony followed in the Great Hall of the Supreme Court at which time the official oil portrait of Justice Powell was formally presented to the Supreme Court. The portrait was painted in the 1980s by portrait artist George Augusta. The Supreme Court Historical Society cosponsored the creation of the portrait and many of Justice Powell's Clerks and associates made donations to defray the cost of the portrait. In a very personal touch, six of Justice Powell's grandchildren were on hand to unveil the portrait.

Excerpts from the "Resolutions" adopted on May 18 follow:

Collection of the Curator, Supreme Court of the United States

During World War II Lewis Powell was one of twenty-seven "Ultra" Representatives who deciphered German messages encrypted with the allegedly foolproof Enigma Machine.

Lewis Franklin Powell, Jr., served on the Supreme Court from January 7, 1972, until June 26, 1987. Born on September 19, 1907, in Suffolk, Virginia, Powell lived most of his life in Richmond. His father was a successful businessman, with sufficient resources to send his son to a private boys' school in Richmond, then to six years at Washington and Lee University, where Lewis, Jr., earned both undergraduate and law degrees, and finally to one year at Harvard Law School. At Washington and Lee, he was the proverbial "big man on campus." He was elected president of the student body, tapped for a succession of exclusive clubs, and chosen to represent the school at the National Student Federation.

In 1931 Powell graduated first in his law school class at Washington and Lee, then went to Harvard. There the competition was entirely different. Powell took a seminar in Administrative Law taught by Felix Frankfurter, who would later succeed Benjamin Cardozo on the Supreme Court. Seated around the seminar table with the two future Justices were Harold Stephens, who would later serve on the D. C. Circuit Court of Appeals; Louis Jaffe, who had a brilliant career on the Harvard law faculty as a specialist in administrative law; and Paul Freund, who became a celebrated teacher of constitutional law and twice was seriously considered by President Kennedy for appointment to the Supreme Court. In this company, the graduate student from Virginia did not stand out. He sat at the far end of the table from the voluble professor, took copious notes, and said as little as possible.

Lewis Powell left Harvard at the depth of the Great Depression. He turned down an offer from John W. Davis to work at Davis, Polk, and Wardwell for the munificent salary of $150 per month and took a job in Richmond for one-third that rate. He was to practice law in Richmond for nearly 40 years, eventually becoming the city's leading lawyer and one of its foremost citizens. Much of that time Powell spent building a corporate practice at the great law firm that would one day bear his name (Hunton, Williams, Gay, Powell & Gibson), but to an astonishing degree he also devoted himself to public service. In the history of private practice, there is no better example of the lawyer as public citizen than Lewis Powell.

In the early years, Powell's public role was strictly local. He volunteered at the Legal Aid Society of Richmond, involved himself in a host of other civic activities, and became active in the local bar. For Powell, as for so many members of his generation, service on a broader scale began in the aftermath of Pearl Harbor. Too old to be drafted, Powell had good reasons not to volunteer. In 1936, he had married Josephine Pierce Rucker, a woman of striking beauty, vivacious temperament, and an immense capacity for supporting her husband. By 1941, they had two daughters. Powell's law partners urged him to stay home, saying that he might leave a wife and two small children with no means of livelihood, but, as Lewis told Jo, "I could never have looked my children in the face if I had ducked this responsibility."

It was not in Lewis Powell's nature to duck any responsibility. In 1942, he joined the intelligence branch of the Army Air Forces and in September of that year, found himself one of 16 officers crammed into a double berth on the *Queen Mary*, as the fast ship sped to Europe with a precious cargo of 17,000 American servicemen. Powell's unit spent six weeks in England, then shipped to North Africa. The air campaign was hard on the 319th Bombardment Group, and losses of men and airplanes mounted. When the unit was pulled from combat in February 1943 for rest and refitting, Powell transferred to the intelligence staff at the North African headquarters for Anglo-American air forces, where he helped plan the bombing campaign for the invasion of Sicily.

In August 1943, Powell was beginning to work on the planned invasion of the Italian mainland, when suddenly and mysteriously he was ordered back to the States. At first, it seemed that he had been brought home only to update Army manuals, but it soon became clear that he was in fact being interviewed for the most elite and unusual of all military intelligence services—the so-called Special Branch. The Special Branch was the organizational home of 28 American officers recruited to advise senior Allied commanders on the use of "Ultra" intelligence. That name referred to radio intercepts encoded on the German enciphering machine "Enigma" and deciphered by the British through painstaking analysis at a secret installation outside London. Since the Germans used the Enigma machine for high-level radio traffic, the ability to decrypt Enigma intercepts gave the British access to the most secret of Germany's wartime communications. The challenge was to put this information to good use without revealing its source, for once the Germans suspected that the Enigma encoding mechanism had been broken, the intelligence would end.

Collection of the Curator, Supreme Court of the United States

Lewis Powell was nominated by President Nixon and unanimously confirmed December 6, 1971. He is shown here (second from left) with other members of the Burger Court, and is seated between Justices Rehnquist and Blackmun.

Powell's job, and that of the other 27 Ultra representatives, was to receive Ultra decrypts, interpret them in light of other intelligence, present the findings to senior commanders, and make sure that no action taken on the basis of this information would reveal its source. For this purpose, Powell was assigned to the United States Strategic Air Force, where he eventually became head of the Operational Intelligence Division, comprising about 40 officers and as many enlisted personnel. In that capacity, Powell often represented his superiors at General Eisenhower's daily briefing, held originally in London and subsequently in the Petite Trianon at Versailles. Operational intelligence rewarded a lawyer's skills. Powell analyzed evidence, organized it coherently, and presented it to his superiors, all the while balancing loyalty to their aims and objectives with the independence of judgment necessary to a good counselor. From this experience, Powell gained a firm sense of his own competence and fitness to command.

At the end of the war, Powell returned home with the rank of full colonel, a chest full of decorations, and a set of long-stemmed champagne glasses that he had "liberated" from the basement of Hitler's retreat at Berchtesgaden. Powell also came home a patriot. Although his love of country was not of the sloganeering, flag-waving variety, Powell never doubted the broad alignment of national self-interest with world peace and freedom. For Powell, American mistakes

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Powell Tribute *(continued from page seven)*

were aberrational, not symptomatic. He had an ardent faith in this country's essential rightness, a faith powerfully reinforced by his service in World War II. In a long life of distinguished achievement, there was no part of his career of which Powell was more proud.

Photo by Franz Jantzen, Collection of the Curator, Supreme Court of the United States

Justice Powell's family stands by as his grandchildren unveil his portrait at the reception in the Supreme Court's Great Hall.

Back in Richmond, Powell renewed the process of building a law practice. Somehow he also found time to do pro bono work for a variety of local organizations, including the Red Cross, the Virginia Home for Incurables, the Retreat for the Sick Hospital, the Family Service Society of Richmond, and even the Garden Club of Virginia. He became known as the leading "free" lawyer in Richmond, a reputation, he later said, that was "not given the highest rating by partners concerned with cash flow."

By far the most important—and the most controversial—of Powell's local activities was his stewardship of the Richmond public schools during the early years of desegregation. Powell was appointed to the Richmond School board in 1950 and elected its chairman two years later. In 1954, the Supreme Court announced the beginning of the end of the Old South in *Brown v. Board of Education*, and one year later ordered desegregation to begin "with all deliberate speed." Today, *Brown* is universally admired as both right and necessary. Indeed, no other decision in this century is so secure in moral standing or public esteem. It therefore requires an act of imagination to reconstruct the South's original response. In 1956, Senator Harry Flood Byrd, acknowledged leader of Virginia politics, called for "massive resistance" to the Supreme Court order. The Byrd organization's successful candidate for governor echoed that call: "Let there be no misunderstanding, no weasel words, on this point: We dedicate our every capacity to preserve segregation in the schools." To back up that bluster, the state prepared to shut down public school altogether rather than allow black and white to s[illegible] together. This policy was shameful in origin, unlawful in operation, and disastrous in consequence. Public schools were closed in several Virginia cities and later in Prince Edward County, and for nearly a decade Virginia fought desegregation to a standstill.

It was Lewis Powell's fate to confront the hysteria of massive resistance in the capital of the old Confederacy. Publicly, he said nothing. Even when the Richmond City Council, which appointed School Board members, demanded to know Powell's position on desegregation, he refused to elaborate on a press release of deliberate vagueness. For the eight years in which Powell was chairman of the Richmond School board, neither he nor that body took any public position on "massive resistance." Behind the scenes, however, Powell fought hard against it. He made a futile effort to dissuade Senator Byrd from this perilous course and staunchly supported Virginia moderates. In particular, Powell did battle with "interposition," the purported theoretical justification for massive resistance. Interposition advocates claimed for each state the right to defy and disregard Supreme Court decisions that they believed to have departed from the Constitution. In a letter to the governor, in a memorable debate before an influential group of the state's leading lawyers and businessmen, and in innumerable private conversations, Powell assailed this pernicious doctrine. It was, he argued, "no less than a proposal of insurrection" against the national government, reflecting an "attitude of lawlessness" which would not be tolerated in an individual and which would bring discredit on the state. Eventually, interposition and massive resistance ran their course. When Powell stepped down from the Richmond School Board, integration had begun, albeit just barely. Critics could and did complain about the pace of progress, but the schools had been kept open.

In 1964, Powell moved onto the national scene as President of the American Bar Association. In his inaugural speech in August of that year, Powell outlined three initiatives. First, he called for comprehensive reform of legal ethics. This project, which began under Powell's leadership, replaced the 1908 canons of ethics and a new Code of Professional Responsibility was adopted by the ABA in 1969. Second, Powell announced a massive project on standards for the administration of criminal justice. Chief Judge Edward J. Lumbard of the Second Circuit chaired this effort. Participants included academics, lawyers, and judges, including four future Justices of the Supreme Court—Powell himself; Warren Burger, who eventually succeeded Lumbard as overall head of the project; Abe Fortas, who served on a committee on the conflict between free press and fair trial; and Harry Blackmun, who sat on a committee on the role of the trial judge. Third, Powell called for a dramatic expansion of legal services for the poor. This proposal led to Powell's most notable accomplishment as President of the ABA—the birth of the Legal Services Program.

The Family Service Society of Richmond, where Powell had worked, was representative of traditional legal aid societies. Led by establishment lawyers, staffed largely by volunteers, and allied with the local bar, their goal was not to attack poverty as such but to provide adequate legal representation for those who happened to be poor. Lyndon Johnson's "War on Poverty" spawned a radically different approach. In November 1964, Sargent Shriver, director of a newly created federal agency called the Office of Economic Opportunity, called for a federal program of legal aid for the poor. His proposal raised fears that lawyers' traditional freedom to represent their clients as they thought best would be subordinated to the dictates of bureaucrats and social workers. Moreover, Shriver spoke of training lay persons to act as "legal advocates for the poor," handling tasks that historically had required lawyers. Private practitioners foresaw publicly funded competition for the struggling neighborhood lawyer. Complaints poured into ABA headquarters, demanding that the organization mobilize against the federal proposal, but Powell refused. Instead, he placed his personal prestige on the line to forge an alliance between the federal anti-poverty activists and the establishment lawyers of the ABA. Through delicate negotiations and personal leadership, Powell worked out a compromise. The ABA agreed to support the federal program, and the OEO agreed to allow existing legal aid societies to participate in federal funding. The federal program was redesigned to protect the traditional independence of lawyers and to make certain other concessions, and the energies committed to existing legal aid societies were now harnessed in the federal program. To everyone's astonishment, Powell secured *unanimous* ABA endorsement of this arrangement and staged a "symbolic handshake" in which Shriver announced a National Advisory Committee on which Powell and the other ABA leaders agreed to serve.

Years later, when Powell's nomination to the Supreme Court came before the Senate Committee on the Judiciary, Jean Camper Cahn, who had originally proposed the Legal Services Program to Sargent Shriver, wrote an extraordinary 18-page letter recounting Powell's role in these torturous negotiations. She recounted how he had worked closely with the all-black National Bar Association and how he had invited her to become the first African-American lawyer, male or female, to address a plenary session of the ABA, and predicted that Powell would "go down in history as one of the great statesmen of our profession."

In the late 1960s, Powell became increasingly prominent as a conservative voice on crime. He used the ABA presidency as a bully pulpit, insisting on the rule of law, criticizing civil disobedience on both the left and the right, and reminding everyone that the first duty of government is "to protect citizens in their persons and property from criminal conduct—whatever its source or cause." In 1965, Lyndon Johnson named Powell to the President's Commission on Law Enforcement and Administration of Justice. When its final report, *The Challenge of Crime in a Free Society*, was published in 1967, Powell issued a "Supplemental Statement" (he was careful not to call it a dissent), asking whether *Miranda v. Arizona*, had gone too far and suggesting the possibility of a constitutional amendment. Powell's speeches and his participation on the crime commission established him as a critic of the Warren Court—a responsible and respectful, but unmistakably conservative, critic of the Warren Court's work in criminal procedure.

It was this reputation, coupled with Powell's long list of accomplishments and distinctions, that attracted the attention of President Richard Nixon. In 1969, when the Senate rejected the nomination of Clement Haynsworth of South Carolina, Powell made the "short list" for appointment to the Supreme Court but withdrew from consideration. At 62, he thought himself too old and, as he wrote the Attorney General, feared "that the nomination of another southern lawyer with a business-oriented background would invite—if not assure—organized and perhaps prolonged opposition." After the disastrous nomination of G. Harold Carswell, the President turned to Harry A. Blackmun of Minnesota, who was confirmed without controversy in June 1970.

Barely a year later, the retirements of Justices Hugo Black and John Marshall Harlan created two new vacancies, and again attention turned to Powell. Twice the Attorney General urged Powell to take the job, and twice Powell declined. Finally, the President himself called, spoke of Powell's responsibility to the country, and insisted that it was Powell's *duty* to accept the ap-

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Photo by Franz Jantzen, Collection of the Curator, Supreme Court of the United States

Justice Clarence Thomas speaks with Justice Powell's son, Lewis F. Powell, III, and his daughter, Emily Powell during the reception in the Great Hall.

Membership Update March 31, 1999 to June 30, 1999

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Francois-Henri Briard
Ji-Hyung Cho

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Quinton F. Seamons, Pheonix

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Christopher Heller, Little Rock
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Sam Laser, Little Rock
Steve Quattlebaum, Little Rock
Richard Watts, Little Rock
Rhonda F. Wood, Conway
G. Alan Wooten, Fort Smith

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Pius Joseph, Glendale
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Suzanne Douglas Kahn, Rancho Santa Fe
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Aline Lee, Walnut Creek
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Tony Marlow, Paso Robles
Susie Martin, Cupertino
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Victoria Stosel, San Pedro
Thomas H. Tate, Beverly Hills
Arne Werchick, Truckee

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Marlin Buse, Boulder
Judge Carrigan, Boulder
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Powell Tribute *(continued from page seven)*

pointment to the Supreme Court. When this approach proved successful, President Nixon announced the nominations of Lewis F. Powell, Jr., of Virginia and William H. Rehnquist of Arizona to the Supreme Court. On January 7, 1972, they took their seats as the 99th and 100th Justices of the Supreme Court.

Justice Powell served from that date until he retired, a few months short of his eightieth birthday, in 1987. In those years, neither liberals nor conservatives dominated the Supreme Court. With left and right in ideological balance, the Court embarked on a pragmatic search for justice, order, and decency in a changing world. Surprisingly, Justice Powell, whose pronouncements on criminal procedure had made him seem reliably conservative, found himself at the political center of a divided Court. Often, his was the decisive voice. The record he compiled is not that of a dependable champion of left or right but that of a thoughtful moderate, steadfast in firm convictions but respectful of compromise, a judge mindful of context and distrustful of sweeping generalization, and committed above all to the institution and the country that he served.

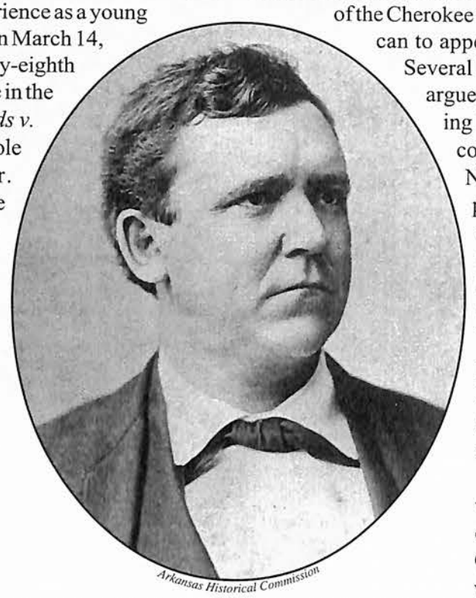
WANTED

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

Interesting Events at the Supreme Court Bar

by Kathleen Shurtleff

In September 1997, the editors received a letter from Arne Werchick of Truckee, California. Mr. Werchick raised some questions which grew out of his experience as a young attorney at the Supreme Court Bar. On March 14, 1968, just a few weeks shy of his twenty-eighth birthday, Mr. Werchick argued a case in the Supreme Court in the case of *Edwards v. Pacific Fruit Express*. Appearing as sole counsel for the Petitioner, Mr. Werchick argued the case and at the commencement of the session, had the opportunity to move the admission of his father, Jack Werchick, to the Bar of the Court. Mr. Werchick wrote to the editors to inquire if either of these circumstances was unique in the history of the Supreme Court Bar. Specifically, was he the youngest person to argue before the Court, and was he the only person to move admission to the Bar of his own parent.



Arkansas Historical Commission

Augustus H. Garland has the dubious distinction as the only litigant to die while arguing before the Supreme Court.

After making some inquiries, it became apparent that records about Supreme Court Bar members are not complete. Over the last twenty or thirty years, however, several offices in the Supreme Court have attempted to compile material documenting or recording unique experiences before the Bar. Documentation efforts have been made by the offices of the Curator of the Court, the Clerk of the Court, and the Public Information Office to record "unusual" happenings in the Courtroom. These three offices have graciously provided much of the information for this article. It is our hope that this article may elicit responses from readers who are aware of other singular circumstances, and that this may form a kind of "starting point" for the compilation of such information. The Society and the appropriate Offices of the Court can then go forward and continue to add interesting information as it is uncovered.

In 1990 the Office of the Curator of the Court prepared an exhibit about the Supreme Court Bar. At that time, they estimated that 185,000 attorneys had been admitted to the Supreme Court Bar, with approximately 5,000 new attorneys being admitted each year. The first member of the Bar was Elias Boudinot of New Jersey who was admitted on February 5, 1790. Seventy-five years later, on February 1, 1865, Dr. John S. Rock became the first black member of the Bar. The first woman to join the Supreme Court Bar was Belva Lockwood who was admitted on March 3, 1879. In 1870 Elias C. Boudinot, (apparently not related to Elias Boudinot of New Jersey) a member of the Cherokee tribe, became the first Native American to appear before the Supreme Court Bar. Several Presidents of the United States have argued before the Supreme Court, including John Quincy Adams, Abraham Lincoln, William H. Taft and Richard M. Nixon, although none of them appeared before the Court while they were serving as President. Other famous individuals include John Marshall, Daniel Webster, Henry Clay, Francis Scott Key, and Thurgood Marshall. It is interesting to note that the future Great Chief Justice, John Marshall, appeared before the Supreme Court as an attorney only once, and he lost the case.

In the nineteenth century, there were several incidents which stand out as unusual in the history of the Court. One of these occurrences was the appearance of former President of the United States John Quincy Adams as an advocate before the Court in the famous *Amistad* case in February 1841. At the time of his argument, Adams was seventy-three years old and thirty-two years had passed since his previous argument before the Court. This may well be the record for the greatest length of time lapsed between arguments before the Court. His argument in the *Amistad* case is further distinguished by its absence from the *Federal Reports*. (See Volume XIX, No. 4 of the *Quarterly* for additional information on this circumstance.)

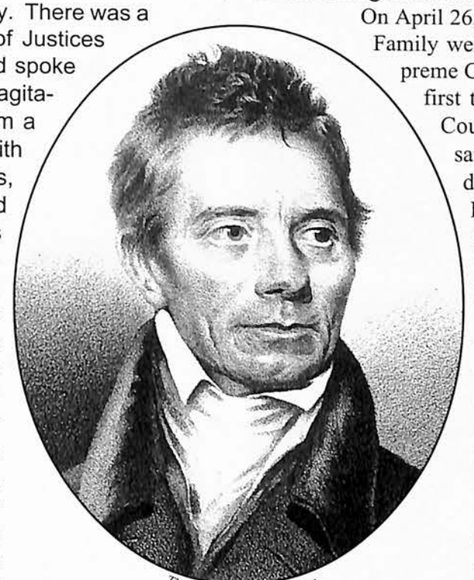
An even more dramatic moment from the waning days of the nineteenth century took place on Thursday, January 26, 1899—the day an attorney collapsed and died during oral argument. At 12:15 PM, former Attorney General Augustus H. Garland collapsed while presenting oral argument in a case styled as *Blanche K. Towson et al., appellants vs. Christiana V. Moore et. al.* A story in the January 27, 1899 edition of *The Washington Post*, titled **Death Ended his Plea**, recounted the dramatic events:

Former Attorney General Augustus H. Garland was stricken with apoplexy while addressing the United States Supreme Court at 12:15 o'clock yesterday afternoon, and died within ten minutes. The occurrence came with startling and tragic unexpectedness, changing the usual calm and dignity of the court into temporary confusion, while the dying man was carried from the chamber in a futile effort to alleviate his condition.

When the court convened at noon, Mr. Garland resumed an argument in the case of *Towson vs. Moore*, which was begun on Wednesday. There was a full bench, with the exception of Justices Brewer and White. Mr. Garland spoke calmly and with no evidence of agitation or effort. He had read from a law volume and had followed with the sentence: "This, your honors, is our contention." As the last word was uttered, Mr. Garland was seen to raise his hand then gasp. He tottered and fell sidewise, striking against a chair and overturning it as he fell heavily to the floor. A succession of loud, deep gasps came from him as he lay on the floor. . . . A deathly pallor had overspread his face, and this soon gave place to a deep purple, which foretold the gravity of the attack. . . . He was carried from the chamber across to the room of Chief Clerk McKenney and there placed on a sofa. Senator Gallinger, who is a physician, was near at hand. . . . Within ten minutes from the time of the stroke Mr. Garland breathed his last. . . . The court in the meantime had postponed the case in which Mr. Garland was engaged, and until the seriousness of the attack was known had proceeded with other business. Word of the tragedy was soon noised through the Capitol, and Senators and Representatives hurried to the court room. . . . After the death of the former Attorney General became known the Supreme Court adjourned for the day . . . upon the motion of Attorney General Griggs. . . .

It is said that never before in the history of the United States Supreme Court has an attorney been stricken with death while making an argument there. There have been cases in which counsel have fallen stricken with illness, but no case in which death has followed within a few minutes as happened yesterday.

Mr. Garland appears to hold at least one other record for unique experiences before the Court, as reported in the story in the *Washington Post*. On May 1, 1890, Mr. Garland moved "the admission of Grover Cleveland to the bar of that court. This was after Mr. Cleveland had served four years as President, and is the only instance of an ex-President being admitted to practice before the Supreme Court. John Quincy Adams was admitted to practice before the court on February 7, 1804, before he was made president, and practiced there after he ceased to be President. President Harrison was admitted to the court long before he became President.



The Virginia Historical Society

Walter Jones holds the official record for the most appearances as an advocate before the Supreme Court.

On April 26, 1954 three members of the Everett Family were sworn in as members of the Supreme Court Bar. This is believed to be the first time in the history of the Supreme Court Bar that three members of the same family were sworn in on the same day. On April 26, 1954, Katherine Robinson Everett, her husband, R. O. Everett and their son, Robinson Everett became members of the Supreme Court Bar.

On Monday, December 11, 1967, three brothers were admitted simultaneously to the Bar of the Supreme Court of the United States. These individuals were Dean George Rallis, Lee George Rallis and Chris George Rallis. The admission of the three Rallis brothers to the Supreme Court Bar is part of an American dream story. In the early 1900's, George and Georgia Rallis immigrated to the United States from Greece. In their pilgrimage from New York to Sioux Falls, South Dakota, they sold apples on street corners to make their way. They dreamed of sending their three sons to law school, which they did. The admission of their three sons to the Supreme Court Bar was the fulfillment of a dream. Almost thirty years later, on February 19, 1997, Ronald Dean Rallis, Sr., Dean George Rallis, Jr., and Kirk Dean Rallis, the three sons of Dean George Rallis Sr. and his wife Marion, simultaneously took the oath of admission to the bar of the Supreme Court of the United States as their father and uncles before them.

On April 22, 1991 a father and son argued on the same day for the first time in the history of the Court (at least as far as it is recorded.) The 10:00 AM case was argued by Robert G. Pugh of Shreveport, Louisiana representing the respondents in two cases, *Chisom v. Roemer* and *U.S. v. Roemer* (Governor of Louisiana). Robert G. Pugh, Jr., represented the appellee, the Governor of Louisiana, in the case *Clark v. Roemer* in the afternoon case.

Major David Jonas of the U.S. Marine Corps, was the first Marine to appear in military uniform before the Supreme Court on March 29, 1994. While the records cannot guaran-

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Unusual Facts *(continued from page thirteen)*

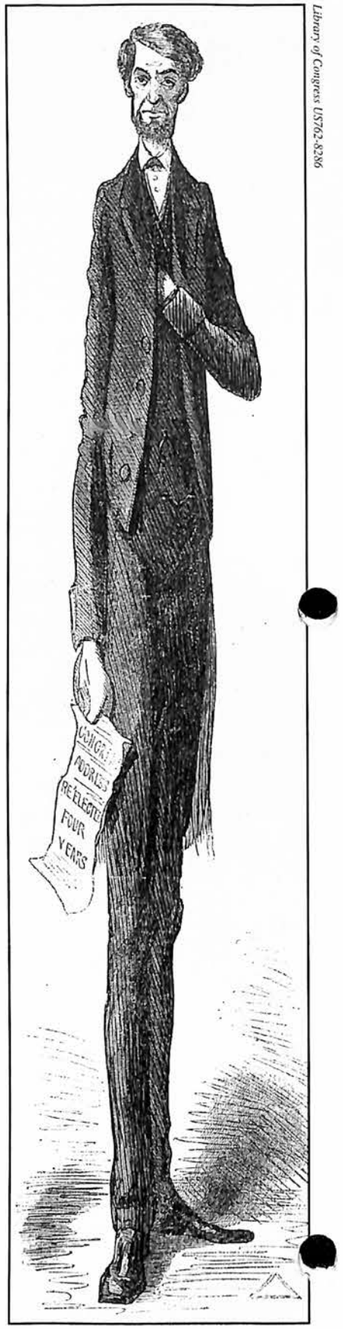
tee that no other military officers had ever argued in the Supreme Court in military uniform prior to Major Jonas, changes in procedures make it likely that he was the first in any branch of the service. William Suter, Clerk of the Court noted that prior to 1984, certiorari did not apply to the Court of Military Appeals and court-martial cases got to the Supreme Court only rarely through a long process of seeking habeas in a district court. Thus, it is very likely that Major Jonas was the first military officer in uniform to argue before the Court.

Lieutenant Colonel Kim L. Sheffield, of the U.S. Air Force, argued for the respondent in *US v. Scheffer* on November 3, 1997. She was the first Air Force officer to argue in uniform at the Supreme Court, and the first female military officer to argue in uniform before the Court. She was the third military attorney to argue at the Supreme Court in uniform. Sandwiched between Major Jonas and Lt. Col. Sheffield was an appearance of a Coast Guard officer who appeared in uniform when he argued in the March 1994.

Another trend-breaking fashion appearance in the Supreme Court Chamber occurred on Monday, March 20, 1995 when Robert D. Luskin appeared before the Court wearing an earring in his left ear. Mr. Luskin's appearance was the first time that a male attorney had worn an earring while arguing in the Supreme Court Chamber. This event spawned a number of articles, including one in a Los Angeles legal daily and an article in the *Washington Post* by Saundra Torry. Speaking of the flood of commentary Mr. Luskin's earring had spawned, Ms. Torry wrote: ". . .in the staid world of trial law, the earring was viewed as a daring breakthrough. Luskin had pushed the envelope in court, where the conservative suit and muted tie have reigned for decades. In a debate on Lexis Counsel Connect, a computer network with thousands of lawyer subscribers, some praised it as a refreshing show of individuality; others thought Luskin had gone too far." While the incident resulted in a lot of editorial commentary, the Court is still out with its verdict.

Photo by Franz Jantzen, Collection of the Curator, Supreme Court of the United States

Although no sitting president has appeared before the Supreme Court, William H. Taft (above) and Abraham Lincoln (right, from an 1864 campaign poster) are two of the presidents who have argued before the Court.



Library of Congress LC-B762-8286

Sometimes being admitted to the Supreme Court Bar is a family affair. On Tuesday, October 4, 1994 nine members of one family were sworn into the Supreme Court Bar. Congressman John LaFalce of New York moved admission of nine members of a family on that day. The family consisted of a father, Samuel Perla; his four sons, Gregory Perla, Jeffrey Perla, Mark Perla, and Keith Perla; one daughter Cynthia Meckler; and two daughters-in-law, Marilyn Palumbo-Perla, and Mary Perla. Reportedly the family met with Justice Antonin Scalia prior to their admission to the Bar. After they were sworn in, the family sat and listened to the first argument of the day. Perla told reporters that he planned to have a party of 200 friends join the family in Salvatore's Italian Garden in his home town the Friday following the admission ceremony. One interesting fact that Tony Mauro reported was that the Perla Family connection with the law started in 1957. Mr. Perla was working as a cab driver at the time, but won $16,000 as a contestant on a television quiz show. He used his earnings to pay his tuition so that he could attend law school at the University of Buffalo.

Another probable familial first occurred on November 13, 1996 when a husband and wife argued a case together before the Supreme Court. Thomas H. Speedy Rice and his wife, Judy Clarke, argued for the respondent in *Edwards V. Balisok* The records show that Mr. Rice presented argument, but was accompanied at counsel table by Ms. Clarke.

In October, 1997 the Court's records show that a husband and wife each argued a case before the Supreme Court in a matter of eight days. On Monday, October 6, 1997 David Strauss of Chicago, Illinois argued in case no. 96-643 *Steel Co. v. Citizens for Better Environment*. On Tuesday, October 14, his wife, Benna Ruth Solomon, argued in *Chicago v. International College of Surgeons*. This was probably the first case of a husband and wife arguing in the same argument session. Ms. Solomon was no stranger to the Court when she made that appearance in 1997, having clerked for Justice Byron R. White from August 1, 1979 through June 30, 1980.

A trio of sisters were admitted to the Supreme Court Bar on March 2, 1998. Susan Orr Henderson, Karen Orr McClure and Joanne Orr, attorneys from Indianapolis and Covington, Indiana were sworn in before the Supreme Court. The three sisters are members of the Richard Henry Lee chapter of the National Society Daughters of the American Revolution.

Tuesday, March 21, 1995 marked another "what-was-believed-to-be-a-first" in Supreme Court advocacy: when an attorney argued two cases in succession before the Supreme Court. Jeffrey P. Minear, Assistant to the Solicitor General of the United States, argued two cases in succession: *Kansas v. Colorado*, and *Nebraska v. Wyoming*. On December 2, 1997, Solicitor General Seth Waxman argued two cases, back-to-back before the Court. The Solicitor General not only argued in two cases on the same day, but without any rebuttal separating the arguments. In an unusual move, the petitioner in the 10:00 AM argument did not argue in rebuttal. Thus, when Mr. Waxman completed argument for the respondent in the first case, he remained at the podium while Chief Justice Rehnquist called the second case and immediately began his argument for the petitioner in the second case. But further research revealed two earlier instances of "double-play" presentations were given by William C. Bryson who argued two cases on March 21, 1989, and John Glover Roberts who argued two cases in such circumstances on January 15, 1991.

Stanley Geller may be the record-holding attorney who can claim the longest period of time elapsed between arguments on the same case. He argued for the respondent in *Aguilar v. Felton* for the first time on December 5, 1984. When the case was docketed for a second appearance it was restyled as *Agostini v. Felton.* Mr. Geller appeared for the respondent for the second time on April 15, 1997, with approximately twelve and one-half years between the two arguments.

In a modern-day exception to the norm, John G. Roberts, Jr. argued four cases in the October 1997 Term. During the

Photo by Franz Jantzen, Collection of the Curator, Supreme Court of the United States

Solicitor General Seth Waxman, shown here with Justice John Paul Stevens, is one of the very few advocates to have argued back-to-back cases before the Court.

October term Mr. Roberts appeared in approximately one-month intervals: October 6, 1997; Nov. 4, 1997; December 10, 1997; and January 21, 1998. This is a record for modern attorneys not on the staff of the Solicitor General of the United States. Research in the Court's early history would probably reveal that Mr. Roberts' accomplishment is not unique. Frequent appearances before the Court were not unusual in the early nineteenth century when the Supreme Court Bar was small and litigants hired Washington area attorneys to represent their cases before the Supreme Court. Walter Jones, Francis Scott Key, Thomas Swann and William Wirt all are likely candidates to have equaled or surpassed Mr. Roberts' record.

Francis Scott Key was admitted to the Supreme Court Bar on February 10, 1807. His age at the time of his admission is difficult to fix. Some records show that he was born in August of 1779, and others report it was August of 1780. Either way, it appears that Mr. Key was younger than Mr. Werchik's "just a few weeks short of my 28th birthday" at the time of his first appearance before the Court. If Key was born in 1780, he would have been 26 years and six months old, if he was born the previous year, he would have been 27 years and six months of age. Whatever his exact age, Key made an interesting entrance into practice before the Court less than two weeks after he was admitted to its bar when he represented two defendants, Dr. Justus Erick Bollman and Samuel Swartwout, in a habeas corpus hearing. These individuals had served as couriers between Aaron Burr and General Wilkinson in the spring of 1806 in the so-called Mexican conspiracy. Other unique aspects of Key's career included service as United States Attorney for the District of Columbia three times, under two different Presidents. He ultimately

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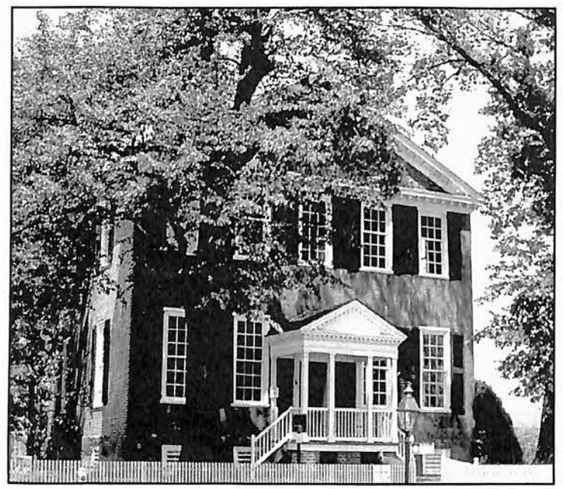
The Marshall House

by Marion Harland

Editors Note: In 1897, Marion Harland published Some Colonial Homesteads and Their Stories*, which contained information about houses in America of historical importance, as well as vignettes about the individuals who had dwelt in the houses. Excerpted here is part of a chapter which deals with John Marshall's home in Richmond. The vignettes about his character, family and lifestyle, reveal much about the Great Chief Justice and his life of the bench. The Marshall House still stands in Richmond and is open to the public. It is maintained by a nonprofit organization which raises funds to oversee the restoration and maintenance of the house.*



Chief Justice John Marshall's home in Richmond, Virginia.

The house built by John Marshall, - -United States Envoy to France 1797-98, Member of Congress from Virginia 1799-1800, Secretary of State 1800-1801, and Chief Justice of the U.S. Supreme Court 1801-35, - -and in which he resided until his death, except when the duties of his office called him to Washington, is still standing in Richmond, Virginia on the corner of Marshall and Ninth Streets. . . .

By an odd, and what seems to us an inexplicable, mischance, the architect, in Judge Marshall's prolonged absence, built the whole mansion "hind-side before." A handsome entrance-hall and staircase, the balusters of which are of carved cherry, dark with age, are at the back, opening toward the garden and domestic offices. . . . [E]very dish of the great dinners, which were the salient feature of hospitality then, must have been brought by hand across the kitchen-yard, up the back steps through the misplaced hall, and put upon the table which, we are told, was set diagonally across the room to accommodate the guests at Judge Marshall's celebrated "lawyers' dinners." . . .

Mrs. Ruffin [the granddaughter of Marshall] gives a graphic description of these feasts, as beheld by her, then a child, peeping surreptitiously through the door left ajar by the passing servants. The Chief-Justice sat at the head of the long board nearest the fireplace, his son-in-law, Mr. Harvie, at the foot. Between them were never less than thirty members of the Virginia Bar, and the sons of such as had grown, or nearly grown lads. The damask cloth was covered with good things. . . . The witty things said, the roars of laughter that applauded them, the succession of humorous and wise talk, having for the centre of all, the distinguished master of the feast, have no written record but were never forgotten by the participants. . . .

Old residents of the Virginia capital like to tell stories of the well-beloved eccentric who made the modest building on Marshall Street historical. The quarter was aristocratic then. . . . Nothing could make Judge Marshall fashionable. His disregard of prevailing styles, or even neatness in apparel, was so well known that these peculiarities attracted no attention from his fellow-citizens. He was a law unto himself in dress and habits. His cravat - - white by courtesy - - was twisted into a creased whip by his nervous fingers, and the knot was usually under his ear. He wore his coat threadbare without having it brushed, his shoes were untied and the lacings trailed in the dust, and his hat was pushed to the back of his head.

In action he was no less independent of others' example and criticism. It was the custom then, in the easy-going, hospitable city, for gentlemen who were heads of families to do their own marketing. The Old market on lower Main Street witnessed many friendly meetings each morning of "solid men," and echoed to much wise and witty talk. Behind each gentleman, stood and walked a negro footman, bearing a big basket in which the morning purchases were deposited and taken home. About the market-place also hung men and boys, eager to turn an honest shilling by assisting in this burden-bearing if need offered.

Judge Marshall shook hands and chatted cheerily with acquaintances, who were all friends and admirers, and when his purchases were made, shouldered his own basket or, if as often happened, he had forgotten to bring it, loaded himself up with the provisions as best suited his humor. His invariable practice was to carry home whatever he bought at stall or shop.

My childhood recollection is vivid of a scene described to my hearing by a distinguished Richmond lawyer, now dead, of a meeting with the great jurist on the most public part of Main Street on morning in Christmas-week. A huge turkey, with the legs tied together, hung, head downward, from one of the Judge's arms, a pair of ducks dangled from the other. A brown-paper bundle, ruddied by the beefsteak it enveloped, had been forced into a coattail pocket, and festoons of "chitterlings"- - a homely dish of which he was fond . . . overflowed another, and bobbed against his lean calves.

Another story is of a young man who had lately removed to Richmond, who accosted a rusty stranger at the entrance to the Markethouse as "old man," and asked if he "would not like to make a ninepence by carrying a turkey home for him?" The rusty stranger took the gobbler without a word, and walked behind the young householder to the latter's gate.

"Catch!" said the "fresh" youth, chucking ninepence at his hireling.

The coin was deftly caught, and pocketed, and as the old man turned away, a well-known citizen, in passing, raised his hat so deferentially, that the turkey-buyer was surprised into asking,

"Who is that shabby old fellow?"

"The Chief-Justice of the United States."

"Impossible!" stammered the horrified blunderer, - -"why did he bring my turkey home, and - - take - - my ninepence?"

"Probably to teach you a lesson in good breeding and independence. He will give the money away before he gets home. You can't get rid of the lesson. And he would carry ten turkeys and walk twice as far for the joke you have given him."

Collection of the Curator, Supreme Court of the United States

John Marshall's disregard for the clothing fashions and mannerisms of his time was legendary. Appearing more the tatterdemalion than Chief Justice, he preferred to patch together his old suits and stockings, long after they had gone out of style. The people of Richmond loved him for his eccentricities, however, and stories of his odd habits were told well into the next century.

Unusual Facts *(continued from page fifteen)*

appeared in 152 cases before the Supreme Court making him one of the top advocates in the number of appearances before that Court.

Walter Jones holds the official record for the most appearances as an advocate in the Supreme Court, with 317 oral arguments, of which 169 appearances fell in the years 1815-1835 alone. The record is even more impressive as it was set in a time when oral argument was not confined to a half-hour period, but could take place over a number of hours, even a number of days. Many of the cases in which Jones participated are great landmark cases of Supreme Court history: *McCulloch v. Maryland*, *Ogden v. Saunders*, *Binney v. Chesapeake & Ohio Canal Company*, and *Vidal v. Girard*, to name but a few. As Rex Lee stated in an address commemorating the Bicentennial of the Supreme Court's first session, "It is a record which, given today's realities, is surely safe for all time. For Mr. Jones, there will be no Roger Maris or Hank Aaron."

Deputy Solicitor General Lawrence Wallace broke the 20th century record for number of appearances in argument before the Supreme Court on December 8, 1997 when he appeared before the Supreme Court in his 141st argument as an advocate for the government. That argument nosed him ahead of the previous 20th century record holder, John W. Davis who had 140 arguments. The argument that put Wallace over-the-top was *Quality King Distributors v. L'Anza Research International*, a gray market copyright case. In all 141 appearances before the Court, Mr. Wallace has represented the U.S. Government. Davis, however, argued both as a private lawyer and as Solicitor General. Wallace joined the Office of the Solicitor General nearly thirty years before his 1997 record-breaking appearance. He was hired by then-Solicitor General Erwin Griswold who argued more than 127 arguments during his long career, both in private practice, and as Solicitor General. Mr. Wallace's milestone appearance was noted that day from the bench by Chief Justice Rehnquist. Later in the day, Attorney General Reno gave a reception to honor Mr. Wallace which was attended by four members of the Supreme Court.

Clearly there are many other "unique" or "first" experiences relating to appearances by advocates before the Supreme Court Bar. Additions or corrections would be welcome. If you have had a unique experience, or if you are aware of one, through personal experience or research, we would be pleased to receive the information so that we can add it to this article and continue the record. From time to time, it may be appropriate to publish additions in the *Quarterly*, and we would welcome that opportunity.

Who Wrote It
Answers

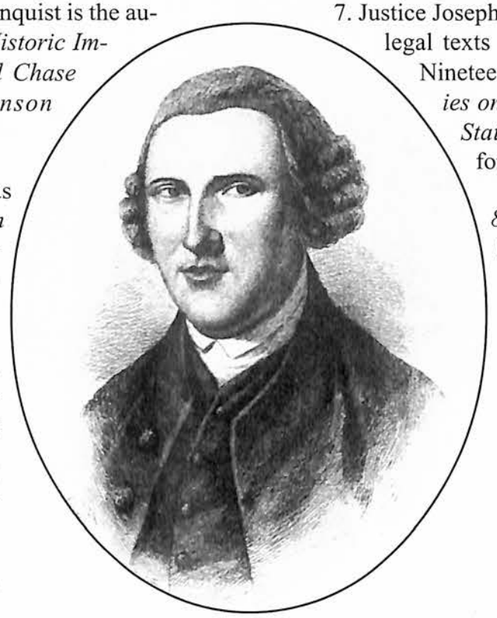
1. John Marshall *wrote The Life of George Washington*, published between 1804 and 1807. It was the first biography of Washington.

2. Chief Justice William H. Rehnquist is the author of *Grand Inquests: The Historic Impeachments of Justice Samuel Chase and President Andrew Johnson* (1992).

3. Justice William O. Douglas wrote *We the Judges: Studies in American and Indian Constitutional Law from Marshall to Mukherdea* (1955).

4. Touched with Fire (1946) collects the surviving Civil War letters and diary fragments of Justice Oliver Wendell Holmes, Jr. and is edited by Mark DeWolfe Howe.

5. Justice Robert H. Jackson published *The Struggle for Judicial Supremacy* in 1941, the same year he joined the Court.



Chief Justice William Rehnquist described the political battles surrounding the impeachment trials of Samuel Chase (shown above) and Andrew Johnson.

6. Justice William Johnson wrote *Sketches of the Life and Correspondence of Nathaniel Greene* (2 volumes, 1822).

7. Justice Joseph Story's treatises were standard legal texts and references throughout the Nineteenth Century. His *Commentaries on the Constitution of the United States* is still in print in abridged form.

8. Felix Frankfurter Reminisces (1960) was edited by Harlan Phillips.

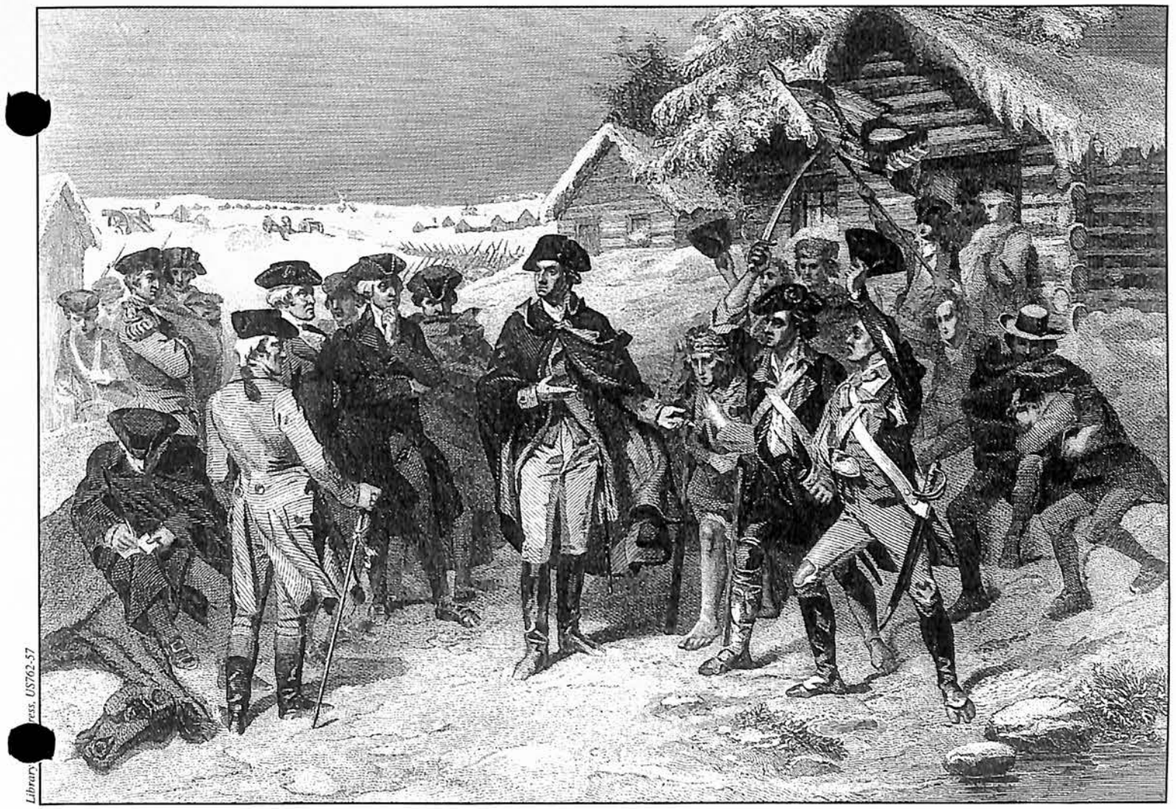
9. Once again, the author is Justice William O. Douglas. The books were *Of Men and Mountains* (1950), and *Strange Lands and Friendly People* (1951).

10. Clarinda Pendleton Lamar wrote *The Life of Joseph Rucker Lamar 1857-1916* (1926). Dorothy Goldberg was the author of *A Private View of a Public Life* (1975).

LBJ Library, NARA

Collection of the Curator, Supreme Court of the United States

Justice Lamar (right) was the subject of his wife Clarinda P. Lamar's book, *The Life of Joseph Rucker Lamar 1857-1916*. Dorothy Goldberg was the author of *A Private View of a Public Life*, a book about her husband Justice Arthur J. Goldberg (shown left with President Lyndon Johnson). Dorothy Goldberg was an accomplished painter, writer, and an activist on women's issues.



Library of Congress, US762-57

John Marshall's biography of our first president, *The Life of George Washington*, was the first ever written about him.

John Marshall's biography of our first president, *The Life of George Washington*, was the first ever written about him.

1999 Calendar of Events

September 14, 1999—The Supreme Court of President George Washington
The second lecture in a two-part collaboration with The Mount Vernon Ladies' Association will be held at Mount Vernon, Virginia. Dr. Maeva Marcus will present an overview of the first Supreme Court of the United States.

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. Professor Laycock teaches at the School of Law at the University of Texas. The Professor will be introduced by Justice Stephen G. Breyer.

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

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.

National Heritage Lecture

The Eighth Annual National Heritage Lecture will be held at 7:30 p.m. on Wednesday, September 29, 1999 at the Gilbert Grosvenor Auditorium of the National Geographic Society in Washington, D.C. Professor David Herbert Donald, a Pulitzer Prize winning historian and author of *Lincoln* will speak on the Lincoln White House. The primary sponsor of this year's lecture is the White House Historical Association

The National Heritage Lecture is hosted on a rotating basis by the historical societies of the three branches of government. Supreme Court Historical Society members should expect to receive invitations to the Heritage Lecture six weeks prior to the lecture.

New Members *(continued from page eleven)*

Murray Richman, Bronx
Paul K. Rooney, New York
Michael S. Ross, New York
Leonard B. Sand, New York
Jerry Lawrence Siegel, New York
Joseph A. Stern, New York
John O. Tramontine, New York
Charles R. Wall, New York
James H.R. Windels, New York

North Carolina
Gardner Altman Jr. White Oak
Carmen J. Battle, Fayetteville
Frank Boardman, Carrboro
Kimberly Martinez, Durham
Karen McKaig, Charlotte
Jason B. Sprenkle, Charlotte
Sandra Tudor, Charlotte
Joseph W. Womack, Mocksville

North Dakota
Myron H. Bright, Fargo
Daniel M. Traynor, Devils Lake

Ohio
Deborah Cook, Columbus
Jennifer Lynn Duvall, Columbus
Stephen J. Habash, Columbus
Mark J. Hedien, Columbus
Essi Johnson, Columbus
Fred Mills, Cleveland Heights
Thomas J. Scanlon, Cleveland
Timothy Taylor, Cincinnati

Oregon
Jane E. Angus, Lake Oswego
Paula A. Barran, Portland
Mona F. Buckley, Portland
Mary McCauley Burrows, Eugene
Joyce E. Cohen, Portland
Patricia Cornett, Grants Pass
Julie Graniel, Portland
Kirk R. Hall, Lake Oswego
Todd Hanchett, Portland
David Hytowitz, Portland
LeAnne K. Jabs, Portland
Mark A. Johnson, Portland
Lawrence B. Rew, Pendleton
Jeff Sapiro, Lake Oswego
James M. Sumner, Salem
John J. Tyner III, Hillsboro
Stephen S. Walters, Portland

Pennsylvania
Elizabeth K. Ainslie, Philadelphia
Maureen Anderson, Newtown
Edward L. Baxter, Philadelphia
Carmen P. Belefonte, Media
John Robinson Block, Pittsburgh
Nancy J. Bregstein, Haverford
James M. Brogan, St. Davids
Melanie Bruno, Philadelphia
Andrew A. Chirls, Philadelphia
James E. Colleran, Philadelphia
Andrew J. Conner, Erie
Mary Dean, Philadelphia
Jerald M. Goodman, Philadelphia
Norman Hegge, Jr., Philadelphia
C. Clark Hodgon, Jr., Philadelphia
Ronald Karam, Philadelphia
Thomas R. Kline, Philadelphia
Marilyn Z. Kutler, Philadelphia
William Maffucci, Philadelphia
Lawrence G. McMichael, Philadelphia
James D. Pagliaro, Philadelphia
Michael O'Hara Peale, Jr., Ft. Washington
Gene E. K. Pratter, Philadelphia
Abraham C. Reich, Philadelphia
John S. Roberts, Jr., Wynnewood
James J. Rodgers, Philadelphia
Bruce Rosenfield, Philadelphia
Deena Jo Schneider, Philadelphia
Denise Davis Schwartzman, Haverford
Theodore O. Struk, Pittsburgh

Puerto Rico
Courtney R. Carroll, San Juan

Rhode Island
Gordon P. Cleary, Providence
Michael W. Long, Providence
Brooks R. Magratten, Providence
Wendy L. Preston, Providence

South Carolina
James M. Bagarazzi, Greenville
C. Mitchell Brown, Columbia
Clarence Davis, Columbia
Lynn Dickinson, Fort Mill
Richard Mark Gergel, Columbia
James K. Lehman, Columbia
Douglas F. Patrick, Greenville

Texas
Kent Altshuler, Houston
William Patrick Bishop, Houston
William Book, Houston
W. Robins Brice, Houston
Elaine V. Brzezinski, Dallas
Max Buchwald, Plano
Richard R. Burroughs, Cleveland
Stephen P. Carrigan, Houston
Mitchell C. Chaney, Brownsville
Larry Condra, Abilene
Charles A. Deacon, San Antonio
Edwin R. DeYoung, Dallas
Robert Eckels, Houston
Julius Glickman, Houston
Jeanette Goodman, Dallas
Robert F. Gray, Jr., Houston
James Greenwood, III, Houston
Tim T. Griesenbeck, Jr., San Antonio
David Guinn, Waco
Hugh E. Hackney, Dallas
John A. Heller, San Antonio
Douglas Henderson, Webster
Steven Jansma, San Antonio
Gregory H. Kahn, Houston
Rodney C. Koenig, Houston
Jeffrey S. Kuhn, Houston
Elaine Lawson, Houston
Emmett Lockett, San Antonio
William E. Matthews, Houston
Kevin McCullough, Plano
LeAnna Morse, McAllen
George B. Murr, Houston
Yolanda M. Palmer, Brownsville
Gary L. Paulson, Cypress
James D. Penny, Houston
Allan Port, Houston
Joseph W. Royce, Houston
Sandra Jackson Sheppard, El Paso
Lita Shub, San Antonio
Ashley C. Specia, San Antonio
Richard T. Stilwell, Houston
David Van Susteren, Houston
Wesley R. Ward, Houston
David F. Webb, Houston
Gary B. Webb, Houston
David B. Weinstein, Houston
Wallace White, Jr., Houston
Alvin Zimmerman, Houston

Utah
Robert S. Campbell, Jr., Salt Lake City
Stephen G. Crockett, Salt Lake City
Robert Peterson, Salt Lake City
Alan L. Sullivan, Salt Lake City
Francis M. Wikstrom, Salt Lake City
Elliott J. Williams, Salt Lake City

Vermont
Norman E. Watts, Woodstock

Virginia
Donna Abruzzese, Springfield
James E. Adams, Oak Hill
Marc E. Albert, Alexandria
Ashby B. Allen, Richmond
Everette G. Allen, Jr., Richmond
Jean-Claude Andre, Charlottesville
Susan Anthony, Arlington
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