THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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Associate Justice Tom C. Clark: A Centennial Celebration

by Mimi Clark Gronlund

O may I join the choir invisible
Of those immortal dead who live again
In minds made better by their presence
-- George Eliot

A day rarely goes by that I do not think of my father Tom C. Clark whose one hundredth birthday we celebrate this year. Tom Clark died more than twenty-two years ago at the age of seventy-seven, yet he lives on in the memories of those whose lives he touched and through the accomplishments of his long life in public service. Perhaps as we face the death of a loved one, or contemplate our own mortality, one of the greatest comforts is that we will be remembered and that our lives have meaning which, at least in some small way, will transcend the grave. Tom Clark's life of exceptional dedication and purpose clearly fulfills this goal.

Life for Tom Clark began in Dallas, Texas on September 23, 1899. His parents William H. Clark and Virginia Maxey Falls were both from Mississippi, growing up at a time when that state was still suffering from the aftermath of the Civil War. William Clark moved to Texas in search of opportunity and

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Collection of the Curator, Supreme Court of the United States

The members of the Warren Court circa 1963 posed for a casual picture. On the front row from left to right are Tom Clark, Hugo L. Black, Chief Justice Earl Warren, and William O. Douglas. On the back row, from left to right are Byron R. White, William J. Brennan, Jr., Potter Stewart and Arthur Goldberg. Associate Justice Tom C. Clark had, by this time, been on the Court for about fourteen years. Appointed by President Harry Truman August 12, 1949 and confirmed August 18 of that same year, Justice Clark served nearly eighteen years on the United States Supreme Court. Justice Clark left the Court in 1967 because his son Ramsey had been nominated attorney general in February 1967. Since many of the Court's cases came from the Justice Department, Clark would have to vote on his son's cases. He resigned to avoid the slightest appearance of conflict of interest.

A Letter From the President

While the Society is pressing forward with a variety of programs, the focus of attention this month undoubtedly will be the opening of the new headquarters at 224 East Capitol Street, N.E. I refer to it in the future tense by necessity at this writing, as the new headquarters is not yet complete. But owing to the lead time in publishing the *Quarterly*, by the time you read this the Society should be securely ensconsced. I am equally confident that by next issue there will be photographs available of some of the rooms.

The new building will be named Opperman House, in honor of our Chairman, Dwight D. Opperman, whose extraordinary support has made this project possible. Those who know Dwight know that his modesty allows him to accept this sort of recognition with great reluctance. In deference to Dwight, I will say no more.

A number of other major contributiors also helped to make the headquarters project a reality. The Clark-Winchcole Foundation chaired by Society Vice President Vincent C. Burke, Jr. deserves the Society's warm thanks. We are also deeply indebted to another of our Vice Presidents, Dorothy Tapper Goldman and Society Trustee Agnes Williams for major contributions to the headquarters fund. Indeed it gives me great pleasure to note that the library in the new building will be named in honor of Dorothy and her late husband S. Howard Goldman, whose generosity to the Society has touched almost all areas of its endeavors. Trustee Ruth Insel also contributed to the Headquarters fund, and the Society is grateful for that gift as well.

Speaking of the library, I should note that it is a major attribute of the new headquarters, not only in terms of its attractive architecture, but also as a consequence of the rare book collection it will house. Professor James O'Hara of Loyola College in Baltimore has donated to the Society a lifelong collection of books relating to Supreme Court history—many of which are rare first-edition biographies of past Justices. The collection is priceless, not only in terms of its monetary worth, but also as a valuable resource to support the Society's historical research and publications programs. Members visiting Washington are encouraged to make use of it. Members are also encouraged to avail themselves of a members' lounge located on the third floor of the new building. Though perhaps not appointed with the accoutrements of a traditional private club, it is a large comfortably furnished room overlooking the Folger Shakespeare Library and the Library of Congress, a convenient half-block walk from the Court.

In addition to these facilities, the new headquarters provides much-needed office space for the Society's staff. Opperman House affords the Society a modern electrical system, computer networking and handicapped accessibility for its members who are mobility challenged.

Turning briefly to programs, I should note that this issue of the *Quarterly* includes a report the Society commissioned by an independent firm to analyze the effectiveness of the Supreme Court Summer Institute for Teachers (see page nine). The Society has been funding this program, which brings secondary school teachers to Washington to study the Court, for several years now, and the Program Committee thought a sufficient time had passed to examine its long-term benefits.

The results, I think you will see, are quite encouraging and confirm the wisdom of the Society's investment in this important program. I hope that you will find time to read some of the report's findings as I think they also reflect the membership's wisdom in making a continuing commitment to the Society.

Fortuitously, the move to the new headquarters building will coincide almost precisely with the twenty-fifth anniversary of the incorporation of the Society. As we move forward into a new era and new location, we look forward to continuing our commitment to programs, symposia, publications and other activities that will increase awareness and understanding of the Supreme Court's role in American life.

Leon Silverman

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Managing Editor Kathleen Shurtleff
Assistant Editor Christopher McGranahan

Teachers Learn "Human Side" of Court

by Jen Fordyce

The fifth annual Supreme Court Summer Institute took place at Georgetown University Law Center from June 17 through June 29 of this year. The event was cosponsored by the Supreme Court Historical Society and Street Law, an organization dedicated to educating citizens globally about law, democracy and human rights. Again, the Institute blended the excitement of visiting Washington, DC with the knowledge of some of the nation's foremost experts on constitutional law to create the experience of a lifetime.

At one of the receptions held in conjunction with the Summer Institute, Verna Williams, Vice President of the National Women's Law Center poses with Hawaii teacher, Della Au. Ms. Williams spoke to the teachers about her experience arguing before the Court in the case of *Davis v. Monroe*.

High school law and government teachers from around the country competed for the thirty spaces available at each of the two institutes. The sixty total selected participants arrived from as far away as Hawaii and as near as Maryland for five days of intense training, site visits, guest speakers, and the opportunity to learn effective methods of teaching the Supreme Court to high school students.

Conference participants thoroughly enjoyed the "human side" of the Supreme Court revealed by the Supreme Court Summer Institute. Personal stories shared by guest speakers John Roberts, of Hogan and Hartson law firm and Clerk of the Supreme Court William Suter were highly lauded. "The Institute humanizes our Judicial Branch of Government," remarked Susie Martin of California. "It will help my students to relate to government in a more personal way." The participants also enjoyed Sunday evening discussions with reporters Laurie Asseo of the Associated Press and Frank Murray of the *Washington Times*. Both shared their views on "The Supreme Court, Values, and American Life" and how the media shapes all three.

Other highlights for the participants included an "insiders" tour of the U.S. Supreme Court and the Saturday case study and mock trial activities. This year, the Institute focused on *Chicago* v. *Morales*, *Wyoming* v. *Houghton*, and *Davis* v. *Monroe*. Guest resource people for these activities included Miguel Estrada who wrote an amicus brief for *Chicago*, and Verna Williams who argued and won the Supreme Court case on behalf of Davis. The hands-on experiences with people who were actually involved with the cases added excitement and a sense of reality for the teachers. "Debating and sparring with Miguel Estrada over *Chicago* v. *Morales* was a highlight for me," said Jim Clifford of Connecticut. Greer Burroughs of New Jersey called the Institute an "excellent, hands-on experience to study the Supreme Court and issues of Constitutional Law."

The guest resource people seemed to enjoy the sessions as much as the participants. Verna Williams, of the National Women's Law Center said, "It was a wonderful experience ...interacting with the teachers. They were a great group, really energetic. I found the whole Institute to be a lot of fun." John Copacino, a professor at Georgetown Law School, agreed, calling the teachers "tremendously engaged, curious, and interested."

Perhaps the most memorable experience for the teachers, though, was the private reception held in the Court's west conference room, hosted by Justice David H. Souter the first week and Justice Sandra Day O'Connor the second. Each of the two Justices had words of encouragement and inspiration for the teachers. Justice Souter also made the request that the teachers let their students know that the Justices are nine colleagues who respect one another, even in times of disagreement, and that above all, they are also nine friends.

In the coming school year, this summer's sixty participants will train co-workers using the knowledge they have gathered at this Institute in the hopes of conveying in-depth information about the Court to as many students as possible. Additionally, they will bring a new dynamic to their own classrooms and the students they teach every day. "This conference has sharpened my ability to wield my intellectual sword with a more learned hand," remarked Rebecca Bouchard of Massachusetts, and that is something that can only benefit her students.

Thanks to Jovette Gadson for her help with this article and with the entire Institute.

Jen Fordyce is a program coordinator for Streetlaw. For more information on the Supreme Court Summer Institute, visit the web site at http://www.streetlaw.org/scipage.html or call Jen Fordyce at 202.293.0088,x237.

sent for his nineteen year old bride soon after he established himself as a lawyer in Dallas. His law practice grew nicely, as did the family – ten children, seven of whom survived to adulthood. Tom was the seventh child and third son. The family seemed to thrive on work, and the children contributed to the maintenance of their home and lifestyle from the time they were able to walk – the boys doing outdoor chores in the large vegetable garden and tending the few farm animals kept on the property; the girls sewing, cooking and helping their mother with other household tasks. Hard work was viewed as a responsibility and source of satisfaction, not as a burden. There was also time for fun, and one of my father's favorite activities was his membership in the Boy Scouts. He joined shortly after the first Boy Scout troop was established in this country, and in 1913, at the age of 14, became one of the first Eagle Scouts in the United States.

Collection of the Curator, Supreme Court of the United States

When the Supreme Court visited the White House on October 16, 1945, Tom C. Clark was Attorney General of the United States. On the first row (left to right) Robert Jackson, President Truman, Hugo Black and Felix Frankfurter. On the second row are Stanley Reed, Harold Burton, Wiley Rutledge and Frank Murphy. On the third row William O. Douglas is on the far left — Howard McGrath (Solicitor General from October 1945-Oct. 1946), and Tom C. Clark are to the right.

According to family lore, my grandfather wanted his son Tom to become a general and sent him to the Virginia Military Institute, considered the "West Point of the South." It was the first time my father had been away from his family – or outside the state of Texas – and the "rat" system at VMI was a harsh introduction to the world beyond Texas. Still, my father looked back at his year at VMI with affection and loved to tell stories about his harrowing experiences as a "rat." Family finances prevented him from remaining at VMI, so he returned to Texas where he completed both his undergraduate and law school degrees at the University of Texas at Austin. Most important, while a law school student at the university, Tom Clark met his future bride Mary Ramsey, a lovely sophomore from Dallas whose father had served on both the Texas Supreme Court and the Texas Court of Criminal Appeals. Three years later, in 1924, they married, and their devotion and love for more than 52 years of marriage was an inspiration to all who knew them.

After graduating from law school in 1922, Tom Clark joined his father and brother in the family firm. However, public service attracted him, and after several years in private practice he joined the Dallas District Attorney's office as an Assistant District Attorney in charge of civil litigation. District Attorney Bill McCraw was a dynamic character with political ambitions. He and my father became close friends, and eventually went into private practice together. It was natural when McCraw decided to run for state Attorney General that Tom Clark became his campaign manager. The campaign was successful. Bill McCraw was elected Attorney General of Texas, and Tom Clark returned full-time to private law practice. Public service beckoned again, however, when an opportunity to join the federal government came in 1936. He accepted the offer, and our family moved to Washington D. C. in the spring of 1937, excited at the prospect of a temporary adventure. After all my parents were Texans and planned to return to their home state within two years.

When my father joined the Department of Justice in 1937, he thought he had been appointed an Assistant Attorney General. When he arrived in Washington, he discovered that he was a "special attorney" in the War Risk Litigation Unit of the Claims Division– a much lower position in the Department's hierarchy. Mother and other family members believed that the mistake resulted from a misunderstanding between Senator Tom Connally of Texas, who was my father's sponsor for the position, and President Roosevelt, but in a 1972 interview, my father indicated that his opposition to Roosevelt's Court-packing plan may have been the cause. The facts remain cloudy and the reason for the switch in positions is still questionable.

Despite the disappointment, my father remained with the government. The next few years were disruptive for our family as my father was sent to New Orleans for six months and then to California to head the Antitrust Division's west coast office. We were living in California when Japan attacked Pearl Harbor. Because the Department of Justice already had offices established along the west coast, Tom Clark immediately became involved in the war effort. He was appointed Civilian Coordinator to the Western Defense Command and was initially responsible for organizing the evacuation of enemy aliens from zones declared "prohibited" or "restricted," and for serving as the Department of Justice's spokesman on policies concerning aliens. After Executive Order 9066 was issued in February 1942, he was placed in charge of coordinating the evacuation and identifying locations for the internment camps. Years later, in retrospect, he regretted his involvement in this unjust policy, describing it as his "biggest mistake" and "a sad day in our constitutional history."

We returned to Washington in the summer of 1942 when my father was placed in charge of the War Frauds Unit, then part of the Antitrust Division. This responsibility led to a close association with Senator Harry S. Truman, Chairman of the Senate Committee to Investigate the National Defense Program. The two worked together on a number of war frauds cases and developed great mutual respect and a warm personal relationship.

In 1943 Tom Clark finally achieved his goal of becoming an Assistant Attorney General – first of the Department's Antitrust Division and six months later of the Criminal Division. His involvement in war frauds investigations continued, as did his friendship with Senator Truman.

Our family was planning to return to Dallas when President Roosevelt died in April 1945. A month later President Truman appointed Tom Clark Attorney General of the United States. At 45, he was one of the youngest Attorneys General in our history and the first to have worked his way up through the ranks of the Department of Justice. For four years my father served in that position during an era of great turbulence as the country adjusted to the new conditions of the postwar world. A different kind of war began – the Cold War – and a new political climate with the advent of the McCarthy era. Tom Clark was involved in maintaining a balance between national security and personal liberty. Some believed that the Attorney General's loyalty program swung the balance too much on the side of the government and national security; others, led by Senator McCarthy, attacked Clark and the Truman administration for favoring individual freedoms to an extreme and for being "soft on communism."

Stirrings of the civil rights movement also began during my father's tenure. Attorney General Tom Clark expanded the Department's fledgling Civil Rights Section, despite the objections of FBI Director J. Edgar Hoover. Clark and Solicitor General Phil Perlman wrote an amicus curiae brief, "To Secure These Rights," in *Shelley v Kraemer*, a precursor to the Supreme Court's landmark *Brown v. Board of Education* decision. The brief argued that private agreements, known as restrictive covenants, excluding non-Caucasians from owning and using property could not be enforced by the courts.

Four years is a long time to remain Attorney General, so by spring of 1949 my father once more began to consider returning to private practice. These plans ended permanently when Associate Justice Frank Murphy died suddenly on July 19, 1949, and President Truman appointed Tom Clark to fill the vacancy. My father became an Associate Justice at a time when the Court was deeply divided. A newspaper cartoon at the time of the appointment showed Chief Justice Fred Vinson looking down at a picture of my father with the caption: "Thank heaven he's good-natured!"

The change from the fast-paced, often hectic Attorney General's office to the quiet, scholarly environment of the Supreme Court was not easy for action-oriented Tom Clark. He himself admitted that it took at least three years to adjust to his new job. For the first few years on the Court he was

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Library of Congress, LW-12648-1

Justice Clark greets Robert F. Kennedy at a reception in the White House celebrating enactment of Civil Rights legislation. While serving as Attorney General, Clark co-authored an amicus curiae brief with Solicitor General Philip Perlman in *Shelley v. Kraemer,* which maintained that restrictive covenants excluding non-Caucasians from owning and using property could not be enforced by the courts.

Tom Clark Centennial *(continued from page five)*

closest philosophically to Chief Justice Vinson. A decisive difference occurred in 1952 when he sided with the majority in *Youngstown Sheet and Tube Co. v. Sawyer* which ruled that President Truman's seizure of the steel mines was unconstitutional.

Tom Clark's work on the Court reflected his background and personal experiences. He tended to come down on the side of the government when national security was an issue. Other Justices relied upon him for his knowledge and expertise in antitrust cases. He consistently supported civil rights and the principle of equal justice for all. He was not an ideologue but, as described by former law clerk Robert Hamilton, was "invariably open-minded" and typically "came down on the side of the people."

Tom Clark wrote decisions that continue to be debated today. In 1961, writing for the majority in *Mapp v. Ohio*, he argued that states, as well as the federal government, are prohibited from using in court evidence obtained illegally. The following year, he wrote a concurring opinion in *Baker v. Carr* which allowed federal courts to accept cases challenging legislative apportionment when equal protection was involved. In 1963 he wrote for the majority in the school prayer case *Abington School District v. Schempp*. The decision overturned a state law requiring Bible reading at the start of each school day in the public schools. He described the reading as a "devotional exercise" and consequently a violation of the separation of church and state.

In 1967, my brother Ramsey was appointed Attorney General of the United States by President Lyndon Johnson, and my father, still vigorous and youthful at 67, retired to avoid any appearance of conflict of interest. If he was torn in making this decision, he never showed it. Indeed, his pride in Ramsey's appointment was enormous and brought him as much, probably more, happiness and satisfaction than any of his own accomplishments.

He never looked back but always looked forward, and the extent of his activities during his so-called "retirement" years defies adequate description. Improving the country's administration of justice system was a major effort that had begun while he was still an Associate Justice. In 1961, the American Bar Association created a Joint Committee for the Effective Administration of Justice, and Tom Clark became its chairman. He and others succeeded in obtaining a grant from the Kellogg Foundation which was used to establish training programs for state trial judges in every state. In 1963, the Joint Committee established the National College of State Trial Judges. Now known as the National Judicial College, that institution continues to be foremost in providing training and continuing education for judges throughout the country.

In 1967, Congress established the Federal Judicial Center for the purpose of modernizing the federal court system. Tom Clark had been a major advocate for the Center and was appointed its first director. He served for two years and succeeded in getting the Center off to a successful start. He retired from the position at 70, the mandatory retirement age.

Courtesy of Mimi Clark Gronlund

The Clark Family gathers for a portrait at the Court on Tom and Mary Clark's 40th Wedding Anniversary. From left to right behind the Justice and Mrs. Clark are Ramsey and Georgia Clark, Mimi Clark Gronlund and Tom Gronlund.

Always interested in history and its preservation, he was one of the founders of the Supreme Court Historical Society and became the first chairman of the board of trustees.

Tom Clark was the only Supreme Court Justice to sit on every judicial circuit in the country, filling in as a senior judge wherever needed. In a conversation with Ramsey in the spring of 1977 he asked Ramsey to guess how many cases he had heard during the previous year. Ramsey estimated that 125 cases would be a big year on the Supreme Court, and so, wanting to pick a number higher than the actual one, he guessed 150. The answer was 270.

He was scheduled to sit on the Court of Appeals for the Second Circuit in New York City on June 13, 1977. When he did not appear at the courtroom Monday morning, Judge Irving Kaufman became alarmed and sent marshals to Ramsey's apartment where my father was staying. Ramsey and his wife Georgia were out of town. As was his habit, he had laid his clothes and papers out neatly in preparation for the next day. He died peacefully in his sleep of heart failure.

Courtesy of Mimi Clark Gronlund

The author dancing with her father at the 1949 Inaugural Ball.

Tributes poured in following his death. Associate Justice Lewis F. Powell declared that Tom Clark was "...personally known and admired by more lawyers, law professors and judges than any justice in the history of the Supreme Court."

His colleague and good friend Associate Justice William Brennan stated: "His great distinction as a judge is the reflection that it is wrong to live life without some deep and abiding social commitment."

Laurence Hyde, Dean of the National College of State Trial Judges at that time, wrote: "History will record Justice Tom C. Clark among the giants in the improvement of the administration of justice. His contributions are as great as those of any justice in history."

Associate Justice Thurgood Marshall, who filled his seat on the Court when he retired, noted his contribution to civil rights: "Tom Clark is also to be remembered as the first Attorney General to file a brief amicus curiae in a civil rights case.... This act was doubly important because it was the first brief by an Attorney General in favor of civil rights, and it was ordered by a man from Texas."

Alice O'Donnell, his longtime secretary and a close personal friend of the family, touched upon the humanity of Tom Clark: "Above all he was a human being. In all positions he held, his door was always open. And through those doors walked everyone from a messenger or driver up to the Chief Justice. Each was accorded the same courtesy. He listened and if he felt it was warranted, he interceded to help with a problem. He gave us a lot."

Very little has been published about Tom Clark. Several Ph.D. dissertations have been written on specific aspects of his career. Evan Young, a graduate of Tom C. Clark High School in San Antonio Texas, amazed by the lack of information when preparing a graduation speech about Tom Clark, wrote a book, published in 1998, for a younger audience that is a biographical sketch of Tom Clark's life. Others have tried to preserve his legacy. Following his death in 1977, Tom Clark's former law clerks established the Tom Clark Judicial Fellow award as part of the Judicial Fellows Program. The Program provides an opportunity for outstanding individuals to contribute to the improvement of judicial administration. Each year one of the Judicial Fellows is selected as the Tom C. Clark Fellow and given a framed bow tie – a Tom Clark trademark – from my father's extensive bow tie collection.

Tom Clark would not be concerned about being remembered, but for those of us who knew and loved him remembrance is important. For me, as a daughter, the memory of his constant support and unconditional love continues to be a source of strength and comfort. For others, both those who knew him and those who did not, my father clearly serves as a role model for public service. Never motivated by material wealth, he was driven by the desire to make a difference, to do the best job possible at whatever he undertook, and to serve others in both the public and private arenas of his life.

Tom Clark, as we reflect upon his life on the 100th anniversary of his birth, is worthy of emulation, for he gave of himself unselfishly and strove to make our country a better place for all its citizens.

Mimi Clark Gronlund is the daughter of Justice Tom Clark. The one-hundredth anniversary of his birth was September 23, 1999.

Celebration of the Twenty-fourth Annual Meeting

June 7, 1999

Members and officers of the Society gathered on Monday, June 7, 1999 to celebrate the Twenty-fourth Annual Meeting. Justice Ruth Bader Ginsburg addressed a capacity audience at 2 PM in the Supreme Court Chamber. Speaking on the topic of Supreme Court spouses and their accomplishments and contributions, Justice Ginsburg provided fascinating information about the changing role of Supreme Court spouses by focusing on four individuals: Polly Marshall, Sarah Story, Malvina Harlan and Helen Taft. The text of her complete remarks will be printed in a future issue of the *Journal of Supreme Court History*.

Associate Justice Ruth Bader Ginsburg delivered the Twenty-fourth Annual Lecture. The topic of her lecture was the spouses of Supreme Court Justices.

Following tradition, the Annual Meeting of the General Membership of the Society was held at 6 PM in the Supreme Court Chamber. At the meeting, President Leon Silverman gave a brief overview of the year. Mr. Silverman observed that membership was at a record high of 5,530, with the organization "conducting more programs, underwriting more research, publishing more books and supporting more educational programs than it has undertaken at any time in the past quarter of a century of its existence." Volunteer contributions of members have been an essential element of these accomplishments. Mr. Silverman noted that during the past year over 200 members have served on committees, over 100 have qualified as life or sustaining members, and another 300 have given contributions over and above membership dues to support the programs.

After Mr. Silverman's remarks, Virginia Warren Daly, Secretary of the Society and Chair of the Nominating Committee, presented a slate of candidates for election to the Board of Trustees. Elections were held and the following individuals were elected to serve an initial three-year term on the Board of Trustees: **Osborne Ayscue, Edward Brodsky, Robert Juceam and Gene Lafitte**. Voting upon a second set of nominations resulted in the following individuals being elected to serve an additional three-year term on the Board of Trustees: **Wade Burger, Vincent C. Burke, Jr., Sheldon S. Cohen, Virginia Warren Daly, William Edlund, Charles O. Galvin, Kenneth S. Geller, William E. Jackson, Frank C. Jones, Peter A. Knowles, Mrs. Thurgood Marshall, Vincent L. McKusick, Joseph**

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Following the Annual Dinner guests enjoyed a concert by the Sea Chanters of the United States Navy, under the leadership of Master Chief Musician M. Gretchen Ellrod and musical director Musician First Class Mel Kincaid.

The Supreme Court Summer Institute:

A Retrospective Assessment, 1995 - 1998

Overview and Methods

The purpose of this report is to provide the Supreme Court Historical Society (SCHS) with findings from a survey of teachers and law-related education instructors who participated in one of the six Supreme Court Summer Institutes held by Street Law from 1995 to 1998. Education Resources Group (ERG) was commissioned by the SCHS to: (1) measure the impact of participation in the Institute on teachers' classroom practices and (2) develop recommendations for the Institute's future. Data collection was designed to elicit participants' answers to the following questions.

1. How has the Institute affected teachers and their selection of course materials and instructional strategies for their classrooms?

- Do participants' students respond differently to Institute instructional approaches than they do to more traditional approaches of teaching law-related topics?
- How have participants been able to train other teachers using the Institute's materials and instructional strategies?
- How have participants been able to influence law-related course development in their schools or districts?
- How have participants used the Institute as an information and networking resource?

Table 1. Survey Return Rate

Year	Surveys Mailed/Delivered	Surveys Received	Return* Rate
1995 (1 session)	25/23	14	61%
1996 (1 session)	35/34	16	47%
1997 (2 sessions)	60/60	32	53%
1998 (2 sessions)	59/59	33	56%
Total	179/176	95	54%

*** Return rate calculation based on number of deliverable surveys.**

Survey respondents had an average of 20 years of teaching experience when they participated in the Institute. As shown below, respondents in the first two Institutes (1995 and 1996) were more experienced (with 23 and 21 years), while 1997 and 1998 participants had only 19 years of experience on average. It is noteworthy that close to two-thirds (63 percent) of all participants had taught for 20 or more years.

ERG conducted the following data collection activities to assess progress in these areas: (1) phone interviews with a small sample of Institute facilitators and panelists to inform survey development; (2) a survey of all 179 participants in Institute sessions held from 1995 to 1998; (3) in-depth follow-up phone interviews with 16 participants who responded to the survey and were available by phone; (4) a two-day documentation of one of the 1999 Summer Institutes; and (5) a review of the Institute's program materials.

ERG interviewed two Institute facilitators and two panelists in January, 1999 to gain a deeper understanding of the Institute's goals, objectives, and desired outcomes. One facilitator and one panelist have been involved with the Institute since its inception in 1995 and the others since 1996.

A six-page survey was mailed in February, 1999 to all 179 participants of past Institutes. (They resided in 39 states, the District of Columbia, and overseas military posts.) Follow-up notices were sent to all participants and phone calls were made to participants from the 1995 and 1996 sessions to encourage them to return completed surveys. (Early returns were most sparse from these two cohorts.)

ERG interviewed 16 survey respondents during May and June, 1999 to deepen its understanding of the perceived benefits of the Institute experience and its impact on classroom practice. These 16 interviewees were selected randomly from among 64 respondents (two-thirds of returns) who indicated they were willing to talk with ERG about their use of Institute content and instructional approaches.

An ERG team member documented two days of the first 1999 Institute session to deepen ERG's understanding of participants' reactions to it, and to observe first-hand (1) the content presented and (2) how new instructional strategies were taught. The documentation also corroborated Street Law's agenda and purposes for the Institute.

Survey Respondents

Ninety-five participants (54 percent of the 176 deliverable surveys) responded to the survey. Table 1 illustrates that similar proportions (47 to 61 percent) of responses were received from each of the four cohorts.

ERG also interviewed 16 randomly selected teachers who indicated on their completed survey forms a willingness to be interviewed by phone. Six attended the Institute in 1995; four each attended in 1996 and 1997; and two attended in 1998. They had an average of 21 years of teaching experience, so they closely resembled the total respondent group from which their names were selected.

The 89 teachers taught 180 social studies courses (two different courses apiece on average). One-third of these courses were government courses; about one-quarter were law-related education (LRE) courses; 21 percent were U.S. History courses; and 11 percent were advanced placement government courses. Over 16,000 students were served by these courses, primarily in regular government classes. (See Table 3.)

Findings

Key Assessment Questions: How has the Institute affected teachers and their selection of course materials and instructional strategies for their classrooms?

Affects on Teachers

Two-thirds of survey respondents participated in the Institute to gain more knowledge about the Supreme Court. They added that the Institute offered (1) strategies for how to incorporate material about the Court into their curriculum; (2) a vehicle to enhance their teaching skills by learning new instructional approaches; (3) a unique, interesting professional development opportunity; and (4) training from an organization with an outstanding reputation.

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Institute Assessment *continued from page nine*

About 55 percent of respondents had participated in LRE workshops and conferences prior to their Institute experience. Most wrote that the Institute was superior to these.

The real difference is the focus on a single institution with the ability to go into great depth on the topic.

The Institute was superior in content and atmosphere. Its resources and setting made it special.

The Institute was very focused because the instructors were competent and well-prepared, the size and composition of the group were just right, and time was used appropriately.

Seventy percent of respondents wrote that the Institute experience had heightened their interest in teaching about the Supreme Court. Interviewed teachers confirmed that the Institute provided valuable new knowledge about the inner workings of the Court (e.g., its operations and the way the Justices make decisions) and the personalities of the Justices and other Court personnel.

A teacher said the Institute added to her understanding of the Supreme Court in a way that could only be obtained by actually being there and studying with experts.

Being in the Supreme Court and attending a reception with Justice O'Connor were interesting experiences to relate to students. They gave one teacher "authority" on the subject because he was able to provide authentic descriptions of the process, the people, and the institution.

One teacher relayed to students "war stories" shared by attorneys who had argued before the Court and Court personnel (the Court Clerk and Marshal's office).

Teachers praised the Institute for capitalizing on Washington D.C. assets (e.g., the capital buildings, monuments, and museums) and introducing them to the Court's people and processes. These elements created a unique, stimulating experience for teachers with an established interest in the Court. One described how its people "came to life" and became "more than people who Americans read about" in the newspapers.

Teachers at the June, 1999 Institute were enthused about observing a Supreme Court session and meeting Justice Souter at a private reception. The Justice's remarks were personal and encouraged the teachers to tell their students that the Court was a "human institution." He shared a story about his relationship with another Justice and described how they have learned to disagree with one another without making disagreements personal.

Teachers also benefited from interaction with other experienced teachers, who were "like-minded Supreme Court junkies." Several teachers commented that it was rewarding to be "treated as a true professional" by Institute facilitators, presenters, and fellow participants.

Transfer to Classrooms

Teachers reported using Institute teaching strategies and materials in their courses, teaching more (and in greater depth) about the Court since their Institute experience, and understanding the Court better. In interviews teachers said the Institute helped them teach "more effectively." Several respondents' confidence in teaching about the Court was strengthened by the Institute. The experience "reassured" one teacher, for example, that cooperative learning strategies and hands-on, interactive approaches were appropriate and beneficial for students.

Fifty-seven percent of survey respondents and most of the interviewed teachers reported that they use Institute lessons, materials, resources (e.g., web sites) and instructional strategies (e.g., moot court, case studies, or jigsaw activities) in their courses which integrate Supreme Court content. The most commonly transferred instructional approaches were moot court (64 percent of respondents) and case studies (61 percent). This means the majority of teachers use both strategies. About one-third of survey respondents also use each of guided discussion, outside resource persons, and the jigsaw activity.

A government class teacher designed a moot court using Institute materials: over five class periods students played the roles of Justices, attorneys for both sides, and organizations filing Amicus briefs.

One teacher presented several Supreme Court cases (both old and new); students examined the Constitutional issues involved, then voted on how they would decide the cases, as if they were Supreme Court Justices.

Before the Institute one teacher used only benchmark Court cases: now she has her students investigate current cases by researching, evaluating, and attempting to predict the Court's decisions.

Outside resource people (e.g., local lawyers and judges) have been used in new ways: a local lawyer adopted one class and hosted field trips to the county court house, where students observed court in session and met court personnel. Students returned to the court house to conduct their own trials and participated in a debriefing session with the judge from the trial they observed.

Teachers also use Institute materials and instructional strategies in such courses as world history, sociology, geography, and economics courses. Thirty-six percent of respondents changed how they taught these other courses, using Institute materials for curriculum enrichment and more hands-on, student-centered instruction.

The case study method and moot court have universal application in most social studies courses. For example, world history class students tried Charles I for abuse of office; another class held a divorce trial to decide if "Mrs. America" should be granted a divorce from "Mr. Spain" for problems that occurred between them during the exploration of the new world.

Legal cases on racial issues and criminal rights make sociology and Western Civilization courses more interesting. For example, sociology students look at Jim Crow laws and Supreme Court cases to explore the issue of race in society.

For a Law and Youth course, one teacher emphasized the role of Court in everyday lives by looking at cases on school searches, police conduct, school segregation, and privacy on the Internet.

About 15 percent of respondents stated that their teaching did not change as a result of the Institute although they believed it has been influenced. A few teachers said the Institute had reinforced the approaches they were already using in their classrooms.

2. Do students respond differently to Institute instructional approaches than they do to more traditional approaches of teaching law-related topics?

Forty-eight percent of survey respondents believed their students were more engaged in school when they used Institute-promoted strategies to teach about the Supreme Court: half of this group believed students used more critical thinking and analytical skills with these strategies; 39 percent reported that their students have increased understanding of the Court.

Institute strategies are current, oriented to teenagers, and hands-on. Students love to discuss the material and thrive in this atmosphere: their active involvement helps make instruction and learning meaningful.

Students enjoy the case study method, which makes law topics more relevant and concepts more easily understood. They have good questions when an outside resource person comes to class and respond well to working as teams.

Other benefits associated with using Institute strategies were that students take more responsibility for their own learning; they have more real-world experiences; and they learn tolerance for others' viewpoints. Also, students' ability to work with others and sense of how organizations function improves.

Teachers believe their students respond enthusiastically to both content about the Court and the interactive, hands-on instructional approaches: "they cannot be isolated from one another." Content is very important to the learning process and strategies help students discover how topics are relevant.

Teachers' interest in a topic also motivates students. A teacher stated, "there is no denying the power of a teacher turned on to a subject."

The following topics, according to teachers, were most engaging for students:

- examining actual Supreme Court cases (85 percent);
- process used by Supreme Court to make decisions (77 percent);
- deciding which cases will be heard by the Supreme Court (68 percent); and
- role of the Supreme Court in American life (62 percent).

Teachers reported that students were most interested in specific cases about students' rights (e.g., drug testing of student athletes); search and seizure; and life and death issues (e.g., physician assisted suicide). About one-quarter of the teachers said that both they and their students found 1st Amendment cases (i.e., freedom of speech, religion, assembly) interesting. They also were interested in cases on the 4th Amendment (i.e., search and seizure) and 14th Amendment (due process and equal protection).

Table 2. Years of Teaching Experience

Year	N* 1999	Average # Years Teaching	During Institute
1995	13	27	23
1996	15	24	21
1997	29	21	19
1998	32	20	19
	89	22	20

** Six of 95 respondents were not classroom teachers (e.g., they are retired or were law-related education instructors).*

3. How have participants trained other teachers using the Institute's materials and instructional approaches?

Over 84 percent of respondents had shared material on Court topics and instructional approaches with other teachers. Half of these made presentations or conducted workshops at statewide conferences. About one-third conducted workshops within their department, school, or district. Some shared informally or gave no description of the setting in which they shared.

About one-third shared more than the required number of times to earn a stipend from Street Law, holding two to four workshops at the local and/or state level (Institute applicants must agree to conduct at least two workshops for ten teachers each during the school year following their Institute experience, receiving a $200 stipend for these workshops).

One teacher held a three-hour workshop with civics and government teachers in her county: she also presented a workshop at the State Social Studies Conference to more than 60 teachers, sharing Institute materials and lessons she had developed.

A teacher presented to pre-service social studies methods students (18 to 30 per class) at a local university. She has also held workshops for several years at a statewide LRE conference sponsored by the Minnesota Center for Community Legal Education.

One teacher updated a curriculum guide with case studies for the Texas State Bar Association. She also uses it in her government and LRE courses.

A LRE teacher developed curriculum guides for each term of the Supreme Court for use in a program presented to over 4,500 students in her state. She also produced a demonstration videotape for local judges and attorneys to view in preparation for their roles as resource people in her LRE courses.

Half of the teachers who shared reported their colleagues had a positive or excellent response to Court topics and strategies. One-third reported that other teachers were using the strategies and material in their classrooms. Others did not know how colleagues had responded because they did not make any follow-up efforts after the training session/workshop.

Half of respondents who shared believed the Institute had prepared them well to share with other teachers: they liked the Institute's discussion of practical applications of content and strategies; "excellent modeling" of instructional approaches by facilitators; and high level of participant involvement which allowed teachers to share their own experiences in conducting workshops and training other teachers.

About one-quarter of those who shared with other teachers offered the following general comments on how the Institute could have better prepared them:

- examine more cases which are of special interest to students;
- look at how to effectively use outside resource people;
- develop a good class-length video on the Supreme Court;
- develop strategies for teaching special education students;
- provide more copies of materials to take back for training; and
- provide to past participants new strategies and materials on current cases.

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Institute Assessment *continued from page eleven*

The objective of the "The Art of Training Teachers" session held on the final day of the 1999 Institute was to develop a list of workshop "do's" and "don'ts" and a framework for an actual workshop. Teachers worked in small groups to conceptualize the target audience, setting, time, title, marketing strategy, draft agenda, outcomes, and materials needed. The most common workshop ideas developed were for state LRE conferences, school or district workshops, and pre-service workshops at teachers' alma maters. The facilitator concluded the session with a "double debrief" activity to examine outcomes on two levels: (1) how the session worked for them in the role of teachers as students and (2) how they will implement the workshop in their role as teachers.

4. How have participants been able to influence law-related course development in their schools or districts?

Fifty-nine percent of respondents reported they were involved in related curriculum development: most of this group wrote LRE curriculum and/or served on LRE curriculum committees for their school or district. A few gave examples of other curriculum-related projects including writing curriculum guidelines or preparing curriculum materials for distribution at a conference.

Related to curriculum development, 72 percent of respondents believed the Institute's curriculum helped them meet state and/or district social studies curriculum standards.

About one-third cited U.S. History standards related to the judiciary and the Supreme Court.

One teacher used Brown v. The Board of Education *to meet this standard: "understand how the Constitution can be a vehicle for change and resolving issues, and a device for preserving values, and principles of society."*

Other teachers used the interactive strategies and hands-on activities to simulate real-life experiences and help students meet more generic performance standards (e.g., problem-solving and critical thinking skills).

Table 3. Social Studies Courses Taught and Number of Students

Courses	Kinds / # Courses	Estimated # Students**
Regular Government	58	7,210
AP Government	20	695
U.S. History	38	2,990
LRE	43	2,790
Other*	21	2,495
Total	180	16,180

** Includes, for example, geography, sociology, and world history.*
*** Includes pre-service and in-service teachers, primarily under "other."*

5. How have participants used the Institute as an information and networking resource?

Twenty-eight percent of respondents stayed in touch with colleagues from their Institutes, for example, at state and regional LRE or social studies conferences. Many established relationships or worked more frequently with local judges and lawyers. Teachers recommended the following ways to increase networking between participants, state LRE-resources, and local attorneys and judges.

- Organize state-level mini-institutes to expand existing LRE networks or establish new ones in states where former Institute participants reside.
- Organize a state-level lawyer/teacher institute for local attorneys and judges.
- Compile a guest-speaker list of former Supreme Court clerks.
- Design a current resources newsletter.
- Design a webpage and listserv for participants to use for networking.

Conclusions and Recommendations

The Institute is an outstanding professional development opportunity for experienced social studies teachers and LRE instructors. Former Institute participants overwhelmingly believe it was a "first-class" experience on both personal and professional levels. Participants described their experience at the Institute as "collegial," "intellectual," and "inspiring."

Teachers enjoyed the "D.C. experience" and the opportunity to learn about and meet individuals who are an integral part of the institution, including the Justices, the clerks, and the attorneys. The Institute integrated the D.C. setting with an up-close examination of a larger-than-life institution, about which many teachers had taught for years but never experienced first-hand. This experience enabled them to teach with new confidence about the Court.

The Institute has influenced participants' approaches to teaching about the Supreme Court and in some cases influenced their classroom practices in other courses. (1) Participants apply their knowledge about the inner workings of the Supreme Court to expand and deepen their coverage of the Court to their students. (2) Participants' instructional approaches are influenced by the Institute's effective presentation of case studies, simulations of real-life events (i.e., moot court), and cooperative learning strategies (e.g., jigsaw).

The following recommendations are derived from an analysis of teachers' survey responses and interviews during the spring, 1999.

- Continue to use current Institute format because it successfully integrates new Supreme Court content, instructional approaches, and classroom applications which are critically important to participants.
- Continue to recruit a core of experienced teachers as Institute participants while emphasizing each cohort's diversity (i.e., years of teaching, race/ethnicity, gender, and geography).
- Keep the Institute in D.C. and incorporate time to visit the Library of Congress and the Georgetown University Law Library so teachers can learn more about how to access and use "first source" materials in their classrooms.
- Continue to require Institute participants to train other teachers and explore how additional stipends and materials may be made available for participants who wish to expand their training activities.
- Explore with Street Law how a follow-up Institute could be structured and supported. (One-third of survey respondents are interested in a follow-up Institute.)
- Explore more deeply how to provide post-Institute networking opportunities: teachers value the collegial and intellectual support they receive from fellow Institute participants.
- Provide assistance in getting access to and advising participants how to "use" local resource persons in their classrooms.

Annual Dinner *continued from page eight*

Dwight D. Opperman, Chairman of the Board, presided over the Annual Meeting.

Moderow, John Nannes, Gordon O. Pehrson, E. Barrett Prettyman, Jr., Harvey Rishikof, William P. Rogers, Jerold Solovy, Kenneth Starr and **Lively Wilson.**

The Annual Meeting of the Board of Trustees followed the meeting of the General Membership. Dwight D. Opperman, Chairman of the Board, presided over that meeting and opened it giving general comments on the activities and accomplishments of the Society during the past year. Prior to giving an update on the accomplishments of the Society during the year, Mr. Opperman commented on the outstanding and tireless efforts of Leon Silverman as President of the Society. He pointed out that in the past year the Society had sponsored nearly a dozen lectures, including one given by the Lord Chancellor of Great Britain, published three books, and provided support for four educational colloquia and a number of important historical research and preservation initiatives. Plans for the new year, the 25th year of the Society's operation, call for similar program commitment and activities. Following his report, Mr. Opperman called upon Mrs. Daly to present candidates nominated for election as officers of the Society. The following individuals were elected to serve as Officers of the Society in the capacities indicated: **Sheldon S. Cohen, Treasurer; Frank C. Jones, Vice President; E. Barrett Prettyman, Jr., Vice President; Virginia Warren Daly, Secretary; Vera Brown, At-large member of the Executive Committee; Robert Juceam, At-large member of the Executive Committee; Mrs. Thurgood Marshall, At-large member of the Executive Committee; John Nannes, At-large member of the Executive Committee; and Agnes Williams, At-large member of the Executive Committee.**

At the conclusion of the business portion of the meeting of the Board of Trustees, Mr. Silverman presided over an awards ceremony at which a number of individuals were recognized. The first awards announced were the Hughes-Gossett Awards for Historical Excellence. These awards are given to honor outstanding contributions to the *Journal of Supreme Court History*, and are awarded to recognize the accomplishments of those who are working to preserve the history of the Court. Justice Breyer presented the prizes. The first-prize winner, **Professor Robert Post**, was unable to be present for the award ceremony, but his article, "*Judicial Management and Judicial Disinterest: The Achievements and Perils of Chief Justice William Taft*" was selected by the Board of Editors to receive this honor. The student prize was awarded to **Patricia Franz**, who recently graduated from the Oklahoma College of Law. She received an award for her article, *"Ohio v. The Bank: An Historical Examination of Osborn v. The Bank of the United States."* Justice Breyer presented the award.

Special awards were presented by Justice Breyer recognizing significant contributions made by individuals who have given great service to the Society. The first award was presented to **Dwight D. Opperman** in recognition of his personal dedication to the work of the Society over many years, and specifically, in recognition of his personal generosity in support of

Membership Chairman Lively Wilson accepts an award from Justice Breyer. During his tenure Society membership reached a record 5,530 (topping off at 5,831 by the end of the fiscal year).

Society Trustee Foster Wollen was recognized on behalf of the Bechtel Group for that organization's support of the Society.

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American Constitutional History in Colleges

by Herbert A. Johnson

American constitutional history has become an endangered species in the curricula of our undergraduate colleges, as fewer and fewer history departments offer the course that once was a "must take" subject for students planning to enter law school. The decline in undergraduate course offerings has, in turn, threatened to reduce sharply the number of graduate students entering the field. Although no careful statistical study has been made, the lack of job openings in constitutional history has become a matter of considerable concern within the historical profession, as well as among law professors who teach constitutional law subjects.

On March 19-21, 1999 the Supreme Court Historical Society, in association with the University of South Carolina School of Law, held a highly successful teaching conference designed for historians, political scientists, and others who teach undergraduate courses in United States constitutional history. Forty-four scholars, ranging from graduate students completing their doctoral degrees to seasoned veterans of the classroom, met at the University of Maryland's Inn and Conference Center at College Park. Some taught in junior colleges which included constitutional history among their degree requirements, others were law professors who taught undergraduate courses as well as their professional school offerings.

A series of short papers sparked discussion on teaching methods, bibliography, and new approaches to the subject. **Michael Les Benedict** (Ohio State University) traced the evolution of constitutional history study from the 1890s. He pointed out that at the beginning of the twentieth century constitutional studies were treated as an important aspect of the general political history of the American people. However, as U. S. Supreme Court decisions began to play a larger role in constitutional understanding, the course of study perceptibly shifted to a more narrow emphasis upon the institutional and doctrinal foundations for the Supreme Court's constitutional opinions. The resulting divergence between constitutional history and mainstream history has been accelerated by the rise of a new professional interest in "living history," which stresses economic and social aspects of American life. Professor Benedict urged that constitutional history should once more broaden its approach, and accept the challenge of showing how state and public policy decisions have had a profound effect upon the life experiences of ordinary Americans. This would provide students with a view of the Constitution in action, and hence present a much more attractive course offering.

Sandra F. VanBurkleo (Wayne State University) echoed Benedict's view that constitutional history needed a broader perspective, but stressed the view that constitutionalism was layered rather than one-dimensional, and discordant rather than unitary. A "constitution of aspiration" demanded that historians consider the ways in which society creates and generates the rules that constitute a legal system. While scholars must focus initially upon the work of courts and legislatures, a more comprehensive picture demands attention to the exciting conflicts within society that shape and continue to impact upon the Constitution and its development.

Associate Justice David H. Souter meets with three Constitutional History Conference participants at a reception celebrating the completion of the Sixth volume of the *Documentary History of the Supreme Court of the United States, 1790 -1800*. Justice Souter was presented with a hard-bound edition of the volume by Society President Leon Silverman at the reception.

Using private law historical materials in conjunction with a constitutional history course, was the subject of **Herbert A. Johnson**'s paper. Suggesting that private law issues bring legal developments closer to a student's life experiences, Johnson pointed out that combining these two branches of historical study facilitates a more comprehensive understanding of major constitutional history events. He noted that some additional class time may be required to train undergraduates in case analysis, but felt that this time was well spent.

Political theorist **Robert L. Clinton** (Southern Illinois University) suggested that ancient and medieval political theory can provide a more perceptive understanding of the United States Constitution. Characterizing modern philosophical approaches to constitutionalism as the product of Hobbesian materialism and individualism, he suggested that there is an unfortunate tendency toward positivism in current constitutional studies. Constitutional scholars limit their inquiry to the text of the Constitution, and to Supreme Court opinions construing the document. This leads to an undue emphasis upon the internal consistency of the Constitution's text and the Court's decisions construing it. It also minimalizes concerns about the way in which constitutional law shapes society and is formed by social forces.

Law professor **Mark Tushnet** suggested that students might benefit from the introduction of a comparative element into their constitutional history courses. This would neutralize a natural tendency to assume that the American approach to a governmental problem is not just the best solution, but the only solution. For example, while legislators lack standing to challenge a constitutional provision under American law, the practice is freely available in Germany and elsewhere. The New Deal constitutional revolution gains a new perspective when students consider the contemporaneous upheavals that occurred in Australia, Canada, Argentina, and the Weimar Republic. All students can benefit from comparing differing constitutional solutions to similar governmental problems; among other things it helps them avoid the danger of ethnocentrism.

Dean **Kermit Hall**, at that time from Ohio State University, provided an exhaustive review of the textbooks and other materials that are available for teaching U. S. constitutional history, and **Herman Belz** of the University of Maryland provided suggestions concerning classroom teaching methods. During brief interludes, **Jonathan Lurie** (Rutgers University–Newark) challenged the group to identify which part of the Constitution cannot be amended. He provided an outstanding example of how students' constitutional knowledge can be enhanced by innovative teaching methods. **William Wiecek** (Syracuse University School of Law) demonstrated his electronic casebook and time line.

Prior to a Friday night dinner at the Supreme Court building hosted by **Justice David Souter,** the Conference participants enjoyed a witty, albeit learned, keynote address by Professor **Melvin I. Urofsky** of Virginia Commonwealth University. Urofsky described his experiences as a law student, noting the tendency of law professors to ignore both history and the biographical background of judges. He cited one example where a professor asserted that the existence of the Great Depression had nothing to do with New Deal legislation declared unconstitutional in *United States v. Butler,* 297 U. S.1 (1936). At another time, a prominent federal judge told him that judicial biography was not particularly helpful in understanding the decision a judge might render in a given case. On a more positive note, Urofsky pointed out that today's constitutional history teachers have a treasure trove of materials upon which to draw: judicial biographies, case studies, video tapes of cases, studies of the Supreme Court as an institution, doctrinal studies that can be used by undergraduates, and close and continuing media attention to the Court and its activities. These new resources make it possible to "put flesh" into the discussion of a key constitutional principle. Urofsky stressed the central role of the U. S. Supreme Court in our constitutional system, and noted that it is the envy of many other nations. The Court, the Constitution it construes, and new insights into mainstream economic and social history, provide more source material for study than ever before. As a consequence, American constitutional history can be better taught today than in the past.

Papers delivered at the Conference can be located on the World Wide Web at www.h-net.msu.edu/~law/

Herbert A. Johnson is Ernest F. Hollings Professor of Constitutional Law at the University of South Carolina Law School

Attention Federal Employees!

Once again, the Supreme Court Historical Society is a participant in the Combined Federal Campaign (CFC) of the National Capital Area. The Society's 1999 designation number is **7656**. Gifts made through the CFC support the Society's work in preserving and disseminating the history of the Supreme Court through public programs, workshops for teachers, publications, and our website. Please consider the Society when you review the list of Local Voluntary Agencies in the campaign catalog.

Abington v. Schempp: Part Two

by Robert Langran

On September 16, 1959 the U. S. District Court for the Eastern District of Pennsylvania decided unanimously for the Schempps. In his opinion Chief Judge John Biggs, Jr. stated:

In our view, inasmuch as the Bible deals with man's relationship to God and the Pennsylvania statute may require a daily reminder of that relationship, that statute aids all religions. Inasmuch as the 'Holy Bible' is a Christian document, the practice aids and prefers the Christian religion... thus strikingly has the Commonwealth of Pennsylvania supported the establishment of religion... We conclude also, that the reading of the Bible as required by the Pennsylvania statute prohibits the free exercise of religion... The right of the parent to teach his own faith to his child, or to teach him no religion at all is one of the foundations of our way of life and enjoys full constitutional protection.

The School Board promptly appealed to the Supreme Court, and the District Court allowed the Bible reading to continue until the Supreme Court could rule on the case.

Library of Congress, LC-U2648-3

Associate Justices Arthur J. Goldberg and Tom C. Clark. Justice Clark wrote the majority opinion in *Abington v. Schempp*, but nearly all the Justices authored concurrences giving their own conclusions in this highly controversial case.

The immediate public reaction was negative. In the Pennsylvania State Legislature Representatives Wood and Eshleman introduced an amendment to the Bible reading law, which passed easily and became effective on December 17, 1959. It stated:

At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon written request of his parent or guardian.

The purpose of the amendment was to make the law more permissive. Furthermore, there was no mention of any penalty for teachers who chose not to conduct the Bible readings in their classes.

Because of the amendment, the Supreme Court sent the case back to the District Court to be reheard on October 24, 1960, and the new trial took place on October 17, 1961. On January 4th the Schempps filed a supplemental complaint against the new method of Bible reading. It held that the morning devotions started at 8:15 with each pupil seated at attention, and then all would stand for the Lord's Prayer. Mr. Schempp did not seek to have his children excused this time because he did not wish to have his children singled out as "oddballs." He also felt they would miss important announcements which followed the morning devotions. This reasoning was stressed by Sawyer in the new trial, whereas Ward countered it was a matter of one person who does not want to share in a customary practice preventing the rest of the state from participating simply because that practice had religious connotations.

On February 1, 1962, the District Court, once again unanimously found for the Schempps. This time the decision was more heavily based on the Establishment Clause: "We hold the statute, as amended, unconstitutional, on the ground that it violates that establishment of religion clause of the First Amendment made applicable to the Commonwealth of Pennsylvania, by the Fourteenth Amendment." The court felt that the Holy Bible was a Christian document, hence reading it elevated Christianity over others religions. Further, the King James version seemed to give priority to some Christian denominations over others. It was also compulsory in that it required a written request for a child to be excused. Then the child could remain outside the room, but as Mr. Schempp had feared, the child would then miss the announcements which followed the recitation.

In their statement on the decision, The National Conference of Christians and Jews conceded that Bible reading could be a valid education exercise and in no way religious. However, in most states the Bible was read without comment and students who objected were excused. They concluded:

These provisions give the game away, for, if Bible reading were strictly educational, such provisions would be unnecessary. It is likely, therefore, that the Supreme Court will find that Bible reading is actually a religious exercise and it will go the way of the Regents' Prayer.

Once more, the practice was allowed to continue while the case was appealed to the Supreme Court. The Court agreed to take the case October 8, 1962. Both the state and the Abington School District filed briefs before the Court, and the oral argument was divided between Ward and John D. Killian III, Deputy Attorney General of Pennsylvania, while Sawyer argued for the Schempps.

Between the second decision of the District Court and the Supreme Court's acceptance of the case, the *Engel* decision was announced. Mr. Ward acknowledged it was a setback for him, for it showed that the Court was not going to accept even a slight exposure to religion in the schools. However, he pointed out that the Regents' Prayer had been created by New York in 1951, and thus had no great tradition supporting it as did the Bible. Mr. Sawyer saw the *Engel* decision as support for his position. Sawyer reasoned that in New York there was at least as much an establishment of, or participation by, the state as in Pennsylvania, except the Pennsylvania legislature had not composed the text of the King James Bible. The fact that each side was hopeful reveals the ambiguity of the *Engel* decision. Was the state-composed prayer different from reading the Bible, or did the fact that the state sponsored both practices make them equally objectionable? The Court needed to clarify this point.

When the Supreme Court agreed to hear the case, it said it would do so immediately following a similar Maryland case involving a rule by the Board of School Commissioners of Baltimore City. This rule required daily reading of the Bible and/or recitation of the Lord's Prayer, but had recently been amended to excuse students upon request. A suit was brought by Mrs. Madalyn Murray and her son William, a student at Baltimore's Woodbourne Junior High School, challenging the constitutionality of this rule. Both were avowed atheists. Mrs. Murray complained that on the first day William was excused from the exercises, he was shoved down two flights of stairs, was threatened by a group with a switchblade, and then beaten after school. Mrs. Murray claimed she was fighting for the right to exercise freedom of conscience. The Superintendent of Schools argued that the devotion established a moral tone for the day and inculcated moral and spiritual values into the children. Both the Supreme Court of Baltimore City and the Maryland Court of Appeals upheld the Baltimore practice.

The Supreme Court heard oral arguments in both cases on February 27th and 28th, 1963. Mr. Ward believed that it was not just the practice in Abington High School he was defending, but the rights of the more than 23 million children throughout the country who participated in Bible readings every morning. He tried to show that there was no religious instruction or indoctrination; he further argued that it was simply the method used in Pennsylvania, for many years, to teach morality to children. Mr. Sawyer contended that it was a religious exercise, wherein students were required to observe a high standard of decorum when saying the Lord's Prayer. The Bible reading accompanying the prayer further established it as a religious exercise. He felt it was disingenuous to claim that it was merely teaching morality and good citizenship.

Justice Goldberg asked Ward: "Aren't you denigrating the Bible when you say it's a source of morality? Isn't it a great religious document?" Ward answered that it was both. He thought it a monument in Western culture, a great source of literary beauty, but that this did not denigrate its religious meaning.

Justice Stewart then asked Sawyer: "By saying this is an establishment and even assuming that arguendo, and therefore, you can't have this ceremony—aren't you denying to those children who wish to pray their right to do so?" Sawyer answered:

No-one seeks to deny them their right to pray. In fact, to do so would be unconstitutional. They may pray, they may pray to themselves. They may even, themselves, organize people to pray at recess or at any time that wouldn't interfere with routine; what they do not have a right to insist on, however, is that the state put its *imprimatur* on this practice, that the state's machinery and aegis be used to promulgate their desire to pray.

Mr. Ward next tried to demonstrate that the Schempps' constitutional rights were not violated. They were not required to believe or disbelieve anything, or to profess a belief. They did not even have to be there when the Bible was being read. Justice Brennan asked Ward: "If this is not a religious exercise how is it you allow the children to be excused?" He answered by making an analogy to the flag-salute, which is not a religious exercise but from which children can also be excused, and by showing that in Pennsylvania a child can be excused from a medical or dental examination because of religious conviction. Mr. Sawyer would not concede the analogy, calling the excuse provision from Bible reading psychologically different. He pointed out that children of tender years will obviously shrink from being singled out from their fellows. The very act of requiring a written excuse by a parent to say: "I do not want my child to participate in the Bible ceremony" is requiring a pub-

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

lic profession of belief or disbelief which the Supreme Court has said is in itself unconstitutional. Ward challenged this point, asserting that a very religious person might not want her child present when the Bible was read, believing it only appropriate in Church. Thus, the law did not separate the believer from the non-believer:

National Portrait Gallery, Smithsonian Institution

Justice John Marshall Harlan joined with Justice Goldberg in his concurring opinion, which cautioned against taking the neutrality principle too far.

> There is nothing in the Constitution nor in the decisions of the Supreme Court nor in the writings of the Founding Fathers nor in what we know today that says government must be hostile to religion, that says the Constitution requires the Court to rip out of our public life every custom, however voluntary, that in some way reflects the religious tradition and origin of our country.

Brennan then asked Sawyer: "Well, what of the fact that this is, after all, a traditional practice in Pennsylvania?" The latter answered by stating:

> Really, the fact that it is traditional is not sufficient to save its constitutionality. One should be hesitant to overturn a practice long established, but if the traditional argument were to prevail, this Court would never have overturned school segregation in the South.

He also stated that he realized how our system uniquely places in the hands of nine men not only extraordinary power, but extraordinary responsibility and requires of them extraordinary discretion and courage.

After the oral arguments, the Court took almost four months before announcing its decision in both the *Schempp* and the *Murray* cases. Justice Clark wrote the relatively short opinion for the majority, at least in comparison with the concurring opinion by Justice Brennan. Justices Douglas and Goldberg also wrote concurring opinions, with Justice Harlan joining in Goldberg's. Justice Stewart was the lone dissenter.

Justice Clark began by admitting the close relationship in this country between religion, history and government, citing examples such as oaths of office, the Chaplains in Congress, and the short ceremony opening the sessions of the Court. However, that relationship was not so close as to harm the other great tradition of religious freedom. Thus, Clark drew out the twofold meaning of the First Amendment, that neither the federal nor the state governments could either hinder someone in the exercise of religion, or compel by law the acceptance of any creed or the practice of any form of worship. He determined that the position of the government toward religion must be one of neutrality. Clark felt that both clauses of the First Amendment called for this, but that a violation of the Free Exercise Clause is predicated on coercion, whereas the Establishment Clause violation need not be. In order to have a law violate the latter, all that needs to be shown is an "advancement or inhibition of religion" by the state.

Clark then stated that the Pennsylvania law violated the Establishment Clause because it establishes a religious ceremony. The majority did not doubt it was so, as the state forbade the Catholic version of the Bible to be used as an alternative, and amended the law to permit nonattendance at the exercises. This non-compulsion did not save the Bible reading from violating the Establishment Clause, for "that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause." Neither did the fact that it was a minor encroachment on the First Amendment, for "a trickling stream may all too soon become a raging torrent."

Clark next showed how the Court was not opposed to a study of the Bible or of religion when presented objectively as part of a secular program of education. Finally, he stated that the Free Exercise Clause did not permit a majority to use the machinery of the state to practice its beliefs. He said:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

Justice Douglas' brief concurring opinion showed the dangers that accompany a violation of the Establishment Clause, maintaining that the state is then assisting a church's efforts to gain and keep adherents. In the *Schempp* case, he reasoned, Pennsylvania was conducting a religious exercise, and was also using public funds, however small, to promote it. Douglas concluded:

> The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds financing religious schools... What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

In Justice Brennan's concurring opinion, he started by establishing the importance of the issue and acknowledging the deep conviction with which views on both sides were held. He said that previous decisions of the Court on the Establishment Clause showed that it was designed to prevent official involvement with religion which would tend to foster or discourage religious worship or belief. He thought it foolish to try to determine what the Founding Fathers would have thought about the Pennsylvania law, for on this question the historical record is at best ambiguous and statements can readily be found to support either side of the proposition. Furthermore, the structure of American education has greatly changed since the eighteenth century. Then most schools were private and as such, religious ceremonies were constitutionally unobjectionable. Finally, religious pluralism today is more diverse than it was then, and this had been the driving force behind the move to provide free public education. There a student is taught democratic values. Brennan argued:

> In my judgment the First Amendment forbids the State to inhibit that freedom of choice by diminishing the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures.

Brennan then went on to a summary of Supreme Court religious cases, with emphasis on those dealing with the Establishment Clause. When reaching the present cases, he illustrated the history of the use of prayers and Bible reading at the opening of the school day, noting there had always been a great deal of controversy concerning this. Thus decisions such as those in *Schempp* and *Engel* could hardly be thought to be radical or novel.

As for saying that Bible reading served secular ends, Brennan declared:

> While I do not question the judgment of experienced educators that the challenged practices may well achieve valuable secular ends, it seems to me that the State acts unconstitutionally if it either sets about to attain even indirectly religious ends by religious means, or if it uses religious means to serve secular ends where secular means would suffice.

He dismissed the argument that no specific denomination or religious group are favored or endorsed in Bible reading, saying:

> While Bible reading is almost universally required to be without comment, since only by such a prohibition can sectarian interpretation be excluded from the classroom, the rule breaks down at the point at which rudimentary definitions of Biblical terms are necessary for comprehension if the exercise is to be meaningful at all.

Finally, Brennan refuted the idea that, as there was no compulsion, Bible reading should be allowed, stating:

> Even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request. Such reluctance to seek exemption seems all the more likely in view of the fact that children are disinclined at this age to step out of line or to flout 'peer-group norms.'

In concluding his opinion, Justice Brennan denied that the Court's decision would declare unconstitutional any cooperation between religion and government, and he listed those forms of accommodation already considered by the lower federal and state courts, in the hope that they "will reveal that the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion."

Justice Goldberg's brief concurring opinion warned against taking the neutrality principle too far, saying:

> Untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of that noninterference and noninvolvement with the religious which the Constitution commands, but of a brooding and pervasive devotion to the secular and a passive, or even active, hostility to the religious. Such results are not only not compelled by the Constitution, but, it seems to me, are prohibited by it... It is of course true that great consequences can grow from small beginnings, but the mea-

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Justice Potter Stewart was the lone dissenter in *Abington v. Schempp*. He argued that the only "establishing" done by the Pennsylvania law was to withhold state hostility to religion.

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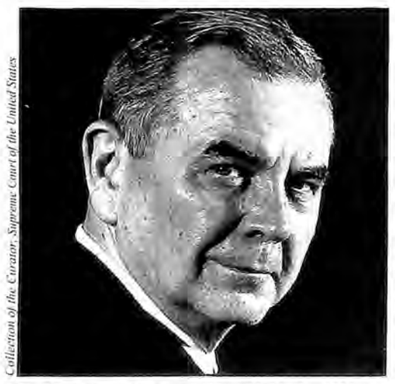
sure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

Finally there came Justice Stewart's dissent. He felt it a "fallacious oversimplification" to regard the two religion clauses of the First Amendment as establishing the standard of separation of church and state, and that the Court gave an insensitive definition of the Establishment Clause. He believed the Court should have undertaken an analysis of "neutrality," and stated that the only "establishing" that was done by the Pennsylvania law was to withhold state hostility from religion—"a simple acknowledgment on the part of secular authorities that the Constitution does not require extirpation of all expression of religious belief." He went on to say:

What is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs makes inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

Stewart chided the Court for deciding the case upon a supposition as to what might have happened to the two youngest Schempps had their parents requested they be excused from the morning devotions, arguing:

What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercise during school hours in such a way as to meet this constitutional standard—in such a way as completely to free from any kind of official coercion those who do not affirmatively want to participate. But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.



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Justice Brennan's concurring opinion in *Abington v. Schempp* turned out to be longer than the majority opinion written by Justice Clark.

When analyzing the *Schempp* opinions, it is plain that Justice Clark wrote the majority opinion mindful of the adverse public reaction to the *Engel* decision. He stressed the role of religion in public life, cited examples, and declared an objective study of the Bible in public schools was appropriate. Justice Clark used the Establishment Clause to overturn the Bible reading, holding that government sanction of any kind of religious practice for children in public schools amounts to an Establishment of Religion. Also, because state involvement gave the exercises an authoritative force, the fact that participation was voluntary was immaterial. What made the *Schempp* decision distinctive was the emphasis upon "neutrality." Some of the religious practices mentioned by Clark, such as the prayers in Congress and the Chaplains in the military, do not seem to involve strict neutrality, but they remain in force. Thus, the Court's concept of neutrality is one which balances Free Exercise against Establishment and is weighted in favor of Free Exercise.

Justice Brennan's opinion was noteworthy in that he discussed in great detail the problems raised under the Establishment and Free Exercise Clauses. He also expressed an attitude of neutrality listing six areas where the government may accommodate religion.

Justice Stewart argued that such exercises were constitutionally permissible. He saw neutrality in a different light than his fellow Justices, as something that required equal treatment for all who believe, doubt, or disbelieve. Thus he believed it was neutral for the state to authorize opportunities for religious practices in public schools so long as there were no preferences and so long as there was full freedom of nonparticipation. For him the use of the sweeping terms "no-aid-to-religion" and the "wall of separation" were a sterile approach to the First Amendment.

The reaction of the individual states ranged from passive acceptance to active defiance. Pennsylvania interpreted the decision as eliminating religious services and ritual but permitting the retention of God and religion in its school system.

The religious reaction to the *Schempp* decision was more voluminous and intense. In general, liberal Protestant groups backed the Court, as did Jewish groups, whereas Catholic and fundamentalist Protestant churches were opposed. While the organized religious reactions were numerous, they were also, for the most part, well thought-out and articulate, as opposed to the venomous responses to the *Engel* decision.

Those forces opposed to the *Schempp* decision had a number of courses available to them. They could comply with the decision; they could ignore it as if it had never been handed down; or they could fight to overturn it. Politicians were very active in this regard. One hundred and forty-seven proposals were introduced in Congress calling for a constitutional amendment to overturn the decision. One proposed amendment combining most of the suggestions contained in other proposals was introduced by Representative Frank Becker, (R., N.Y).

This amendment had support within the House and with outside groups such as Project Prayer and some state legislatures, but was generally opposed by religious leaders. The Becker amendment was never enacted by Congress, nor has any other amendment attempting to allow prayer in school as a devotional exercise by way of amending the Constitution.

Those who agree with the *Schempp* decision usually sympathize with people who would like their children to pray and read from the Bible each school day. They also believe, however, that public school is not the proper place. This position generally favors the study of religions and their place in history, but it considers engaging in religious devotions as inappropriate since too many are likely to be offended.

The question then arises as to the rights of the parents who favor the Bible reading. Do they not have rights equal in every respect to the rights of the former group? And are not those who would welcome reading of the Bible in the majority? The answer to both questions is clearly in the affirmative. Therefore the Court had to weigh the merits of each side's arguments, and decided to nullify the laws and practices of a number of states. It refused to validate any type of devotional services in the schools, no matter how brief, how nondenominational, or how non-compulsory in nature.

The case exemplifies our political processes in action by showing how one family can question a prevailing practice, demonstrate it as an infringement of basic constitutional rights, thus permitting the Supreme Court to overturn it. The case also demonstrated how pluralism operates in America. First there was religious pluralism, because even though a Unitarian family initiated the suit, all religious groups had become involved in the controversy by the time it was finally adjudicated. Not only were these various religions divided as to the merits of Bible reading in the public schools, but even within a particular denomination there was division.

Political pluralism is also evidenced, namely, the opposition between those who foster federal intervention in matters essentially local in nature, such as the public school system, and those who are against such intervention. Even here there is no uniform reaction, for a person can be in favor of the federal government stepping in when state and local authorities do not, and yet that same person's religious sect may oppose such federal action on other grounds.

The case also reflected the effects of regional or sectional pluralism. In *Schempp*, opposition was greater in the South and the mid-West than in the East and the far West, and that too affects the response of the individual to this kind of decision. In fact, the local reaction may well be the deciding factor in determining how particular persons will respond to a decision, especially if religious and political feelings described above pull in opposite directions.

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In his concurring opinion Justice Douglas focused on the dangers involved in a violation of the Establishment Clause. "In the relationship between man and religion, the State is firmly committed to a position of neutrality."

Naturally, these pluralistic factors in our society interact with each other; they do not operate in isolation. This is what makes a seemingly simple Supreme Court decision prohibiting prayers in public schools so complicated. A multitude of opposing elements in our country came into play, and that is what caused the reaction to *Schempp* to be so diverse, emotional and thoughtful.

Robert W. Langran is a Professor in the Political Science Department of Villanova University.

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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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