



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

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State Chairs and Donors Provide Essential Service to Society

Each year the National Membership Chair of the Society faces the somewhat daunting task of selecting a network of State Chairs who are asked to introduce the Society to colleagues and acquaintances. Spearheading the Membership Drive for FY 2000 and again for this year, FY 2001, is Gene Lafitte, an attorney in New Orleans, LA. Under Mr. Lafitte's leadership, these dedicated volunteers seek to inform people about the Society and its activities encouraging them to join in the important work by becoming members of the Society.

The State Chairs of the FY 2000 campaign gathered in the Supreme Court Building on March 27, 2000 to discuss their plans for the closing months of their campaign and to celebrate their successes. Supplementing their ranks were donors who have given generously to support the programs and activities of the Society. Justice Antonin Scalia and Mrs. Scalia graciously hosted the evening and Justice Scalia participated in the program.

--continued on page four



Edward R. Spalty of Missouri receives his award from Justice Scalia for his outstanding membership effort.



Bob Bergman received an award recognizing the contributions of the United Parcel Service Foundation.

A Letter From the President



Leon Silverman

There is a growing trend among boards of profit and nonprofit institutions alike to incorporate periodic retreats into the many and diverse management practices by which they administer the organizations they serve. This fall the Society held such a retreat, inviting a number of its Board members, major donors and scholars involved in the Society's programs to spend a day examining what the Society does, how to make more effective its present programmatic activities and what activities it could and should engage in which are not presently part of its program agenda.

The participants drew a number of conclusions based upon their review, many of which were aimed at improved communication and interaction with the membership.

The first among these was a suggestion to redraft the Society's mission statement to better enable those who are involved in the organization to understand the Society's purposes, and to allow the organization to more succinctly relate its mission to potential donors, prospective members and the general public.

Retreat participants also considered whether the Society should develop more of a regional presence by arranging regional programs, such as lectures in other cities possibly in concert with other organizations such as State Supreme Court Historical Societies or Circuit Court Historical Societies. Another option suggested was to expand the model initiative in the District of Columbia School System, to give the Society more presence in schools across the country. That program, as members may recall from my previous reports, places the Society in co-sponsorship with local school boards in developing classroom curricula on the Supreme Court and the judicial branch as a whole. There was also a consensus that the Society should look into seeking CLE accreditation for its lectures, so

that Society members engaged in the practice of law could derive some additional value through their attendance—and this too might augur in favor of regionally based programs. Alternatively, it was suggested that we should consider means of video-conferencing our programs to expand involvement by groups unable to participate locally.

Of course, these types of initiatives require substantial funding, and mindful of that, the retreat participants took a long look at the Society's financial base and means for expanding it. They felt strongly the Society needed to place substantial and immediate emphasis on its Annual Fund campaign and should consider adding a corporate sponsor program with assistance from corporate officers on the Society's Board of Trustees. They also suggested polling the membership to determine who among them might be in a position to identify sympathetic corporate and foundation donors.

It was also suggested that financial support from the Trustees should be given greater weight in the selection of future Trustees as well as being an important consideration when the Nominating Committee reviews current Trustees for additional terms—not the only consideration, since retreat participants recognized the benefit to the Society of having a Board that included scholars and legacy members (those with an historical connection to the Court) who might not be in a position to make significant monetary contributions. But, they observed, special programs like the Constitutional

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Kathleen Shurtleff
James B. O'Hara

History Consortium and a potential expansion of the D.C. School initiative will require major new funding sources. If the Society is to undertake these programs it will need to identify and acquire significant new resources to make them financially viable.

Among other conclusions at which the retreat participants arrived were:

The Society needs to begin looking to the future in terms of leadership—cultivating the next generation of leaders and establishing them within the Committee structure to assess their leadership qualities and build upon their interest in and loyalty to the organization.

The Society needs to improve communication with the Board to build the necessary ties it needs to have with Board members to assure maximum participation from this important resource. Toward this end, the retreat participants suggested a Board orientation for new Board members and asked that the Executive Committee consider other additional means of keeping the Board informed of the Society's activities on an ongoing basis.

The Society should also examine its constituencies—our members, the Board of Trustees, the Executive Committee, academics, law schools, lawyers, scholars, and judicial clerks to determine how well it is addressing these various groups' needs. Here again, the retreat participants wondered what additional means the Society might employ to more intimately involve Society members in the activities.

Following a presentation about the retreat's conclusions at its Fall meeting, the Executive Committee directed a redrafting of the Society's mission statement and immediately set into motion a drive to increase Board financial support for the Society's programs. They also directed the staff to develop an improved mechanism for Board selection, which should be ready for review at the Executive Committee's Spring meeting. The Program Committee was also charged with responsibility for proposing some regionally based programming, and as an experiment along those lines,

the Society will cosponsor an event in Richmond this Spring marking the two hundredth anniversary of Chief Justice John Marshall's appointment to the Bench, featuring an address by Justice Antonin Scalia.

While I expect more action to follow as a result of this retreat, one area that we have not yet had time to thoughtfully address is to what extent and how we might improve membership involvement and communication. Toward that end, one option being contemplated is conducting a membership survey. Others include a President's Report being mailed to members on a more frequent basis than is possible in the *Quarterly*, or, in light of the escalating cost of postage and mailing, making better use of the internet to communicate with members. If you have an opinion, I would be grateful to hear from you. Please write me at 224 East Capitol Street, NE, Washington, D.C. 20003 or call 202-543-0400 or 212-859-8080.

Leon Silverman

WANTED

In the interest of preserving the valuable history of the 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 and any other materials related to the history of the Court and its members. These items are often used in exhibits by the Court Curator's Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisition's Committee at the Society's headquarters, 224 East Capitol Street, N.E., Washington, D.C. 20003, or call (202) 543-0400. You may also reach the Society through its website at www.supremecourthistory.org.

State Chairs (continued from page one)

In his remarks, Mr. Silverman observed that "each of you has in common a will and commitment to serve this great institution in whose building we now reside. That, after all, is the Society's primary function. . . . Acquisitions are one important aspect of the Society's endeavors—the collecting of tangible connections with the Court's past. Publications are yet another." Using the *Journal of Supreme Court History*, and *The Illustrated Biographies* as two examples of Society publications, Mr. Silverman then mentioned the ". . . new volume which focuses on women and the Supreme Court—not only the two distinguished female jurists who now serve on the Supreme Court bench—but women who have shaped the law as litigants and litigators, women's rights issues, and other matters pertaining to women with which the Court has dealt in the past two centuries."

Recent years have seen expanded membership growth and participation. Coupled with generous support of donors, it has been possible to expand the Society's educational programs in an effort to fulfill this aspect of the Society's mission. To this end, Mr. Silverman observed, the "Society sponsors lectures, historical research projects, a summer institute for high school teachers interested in improving their capacity to teach about the Court, and educational colloquia and institutes devoted



Jack Levengard of Lexis Publishing is recognized for his company's valuable contributions to the work of the Society.



Paul Clement of King & Spalding was recognized for his firm's loyal support of the Society's programs and activities.

to the promulgation of constitutional law instruction on the college level. Many of the Society's long-enduring friends who are here this evening have given generously to these programs so that they could become a reality, rather than just a dream. As funds have become available, these educational programs have become an area of increasing focus and expanded activity over the past few years. A large number of the lecture programs have been taped and aired on CSPAN, dramatically increasing the number of individuals who are able to benefit from these informative and fascinating presentations."

In introducing Justice Scalia, Mr. Silverman outlined many of the ways in which Justice Scalia has supported Society programs in recent years. "Justice Scalia holds the singular distinction of having twice served as the Society's Annual Lecturer—once in 1984 while he was a Judge on the U.S. Court of Appeals for the D.C. Circuit, and again as an Associate Justice in 1997. He has written articles for Society publications. On frequent occasions he has availed the staff of the Documentary History of his expertise. He has supported numerous Society events, including previous convocations of our State Membership Chairs. He has also participated in reenactments of two historic cases: *The Gold Clause Cases* and *Chisholm v. Georgia*. . . ." It is clear that the Society is deeply in the Justice's debt, and still more so each time he does us the honor of participating in events such as this."

Justice Scalia made remarks commenting on the

Society's meaningful contributions to public education and the preservation of the Court's history. He observed that as a Nation the educational emphasis on constitutional history and the role of the judiciary is lackluster, if not outright deficient. Only twelve percent of the Nation's colleges and universities teach constitutional history at the undergraduate level. The Society's work addresses a serious void in this area. Its acquisitions are employed in the Curator's educational displays which create in the Court a learning environment for over one million annual visitors. After his formal remarks, Justice Scalia took questions from the audience, making candid and thoughtful observations on the role of the Supreme Court in American life.

Following the Justice's presentation, Mr. Lafitte made some comments about the State Chair Program. Mr. Lafitte observed "our State Membership Chairs give of their time and energy to build a vigorous membership base for the Society—a network of members that numbers nearly 5,600 today. We intend to increase that number in the remaining months of our Fiscal Year with a dynamic state-by-state campaign."

After Mr. Lafitte's remarks, Justice Scalia assisted in recognizing the State Chairs who had met or surpassed their yearly goals for obtaining new members. James Falk of Washington, D.C. was honored, as was J. Vernon Patrick of Alabama, Richard (Doc) Schneider of Geor-

gia, and Edward R. Spalty of Missouri. Other State Chairs who attended the program that evening were: **Walter A. Baker, Sixth Circuit Chair, Victor Battaglia** of Delaware, **Thomas E. Dwyer** of Massachusetts, **Frank G. Jones** of Texas, **Leonard N. Neihoff** of Michigan and **Benjamin (Terry) White** of Rhode Island. Mr. Lafitte observed that several individuals were repeating Chairs who have served the Society faithfully for several years. These include: James Falk, Richard Schneider and Benjamin White, all of whom have served in their capacities for several years. Other State Chairs who met or surpassed their goals for the year were recognized at the Annual Meeting in June.

Following that presentation, Mr. Silverman recognized donors whose support has made possible the realization of many Society programs and activities. The following individuals were recognized and received presentations: **Bob Bergman** of United Parcel Service Foundation; **Vincent C. Burke, Jr.**, of the Clark Winchcole Foundation; **Shannen Coffin** of Steptoe & Johnson; **Robert H. Craft** of Sullivan & Cromwell; **Paul Clement** of King & Spalding; **F. Elwood Davis** of The Bloedorn Foundation; **William Frank** of Skadden, Arps, Meagher & Flom; **Gretchen Greiner** of the Cafritz Foundation; **Tom Leighton** of West Group; **Jack Levengard** of Lexis Publishing; **Jerome Libin** of the Park Foundation, **Alan Maness** of State Farm Companies Foundation; and **Alice Starr** of the Mendell Family Fund.

Three additional individuals recognized for their long and loyal support to the Society were: **Patricia Dwinell Butler**; **Andrew Miller** of Dickstein, Shapiro, Morin & Oshinsky, and **Jay Range** of Hunton & Williams. Mr. Silverman recognized particularly the contributions of **Mrs. Butler** who as Chair of the Acquisitions Committee identified a need for an endowed acquisition fund and donated seed money to begin that fund and has continued to make contributions to the fund.

The FY 2001 Membership Drive is currently underway, again spearheaded by Gene Lafitte. Membership Chairs have been identified in many states and are already engaged in their recruitment efforts. Any member of the Society can assist in this important work, and indeed, Mr. Lafitte would welcome any volunteers to join him in the task. If you have questions about the program, or wish to participate in these efforts, please contact **Orazio Miceli, Director of Membership** for the Society at 224 E. Capitol Street, N.E., Washington, DC 20003, or **Gene Lafitte, Esquire**, Laskow & Lewis, One Shell Square, 50th Floor, New Orleans, LA. 70139.



Alice Starr received an award recognizing the generosity of the Mendell Family Fund. The Fund's contributions made possible the D.C. Public Schools initiative.

Supreme Court Institute 2000

Michelle Lipoff *

The Supreme Court Institute for Teachers 2000 finished another successful summer session. This institute continues to grow in its reputation and popularity among educators throughout America because of its ongoing dedication to the improvement of our understanding of the purpose and function of the Supreme Court.

As a returning participant to the institute, I am convinced that educators leave Washington, D.C. impressed by the quality of those leading the workshops as well as with a certainty that their teaching of the Supreme Court will be enriched. An added bonus beginning this year is the opportunity for teachers to work with their colleagues from around the country at both the middle and high school levels.

The conversations I had with the participants throughout their week in Washington confirmed my opinion of the benefits of the institute.

One memorable comment made to me reflected how impressed the teachers were with the variety of sessions offered and the quality of the presenters. Andy Preston from Waycross, GA commented that the institute contained "well-organized workshops with outstanding presenters and participants..." and Shelly Wilfong of Goshen, IN referred to the presenters as "first-rate experts on the Supreme Court." Such a ringing endorsement no doubt comes from the willingness of the presenters to make their material relevant to educators regardless of where they teach or their prior knowledge of the Court. I saw Ken Starr work closely with a group of ten teachers, all with diverse knowledge of the Court, to prepare them for the petitioner side of the institute's moot court, *Illinois v. Wardlow*. With only a limited amount of time, he carefully addressed individual concerns and prepared two teachers for oral argument even though the experience was new to them.

A second visible benefit of the institute is that the educators return to their respective schools inspired and invigorated. Linda Winstead of Madisonville, KY ex-

claimed, "The Supreme Court Summer Institute sponsored by Street Law is one of the most exciting academic experiences I have had in 21 years of teaching!" Many of those attending the institute would agree that there were frequent moments of inspiration. One noteworthy event was a reception with Justice Sandra Day O'Connor, who spoke of the importance of individual efforts to make a difference in the classroom and that educators should be valued for all that they do to help kids better understand their government.

Participants also felt personally connected to the material, and thus were eager to begin incorporating their new knowledge into their law classes. Sessions covering an insider's view of the Court like "Nominating a Justice to the Court: the Process and Politics," and "The 1999-2000 Term in Review: Views from the Left and the Right," allowed teachers to understand the inner workings of the Court from a uniquely intimate perspective. All attending the institute were presented knowledge that can make their teaching of the court personal and more interesting. Many participants with whom spoke felt that the knowledge they gained was indeed invaluable.



Justice O'Connor poses with participants in the Summer Institute. Michelle Lipoff, the author of this article is second from the right. Barbara Perry, a presenter in the Institute, is next to Ms. Lipoff

As I left Washington after my second year at the institute, I reflected on how once again, I felt as enthusiastic as I did when I had very little knowledge of the Court. Each teacher comes away affected by different moments; and for me, as an observer and helper I was amazed at how much learning is still possible because the content of what the Court examines continues to change. The background information may be the same, but as the cases change from year to year, so do our interpretations on the meaning of Court decisions.

Moreover, interacting with colleagues who share a similar passion for the Court is ultimately what made my experience this year so memorable. Working as a team to make sense of constitutional issues is incredibly rewarding, and I continue to be inspired to do my part in helping our students better understand the Supreme Court.

*Michelle Lipoff is a Social Studies Educator at Mundelein High School in Illinois.

Many Branches

By Prof. James B. O'Hara

A number of Justices have served in all three branches of government: legislative, executive and judicial. Match the clues to the Justice.

1. This is the only person in American history to serve as a Congressman, Senator, Cabinet Officer, Governor of a State and Supreme Court Justice. He was from South Carolina.
2. This Justice was a Congressman from Virginia and Secretary of State before his appointment to the Court.
3. This Justice was both a Governor of Ohio and Senator and Secretary of the Treasury before coming to the Court.
4. This Justice was Mayor of Cleveland and a Senator from Ohio prior to his appointment to the Bench.
5. This Justice was Mayor of Detroit, Governor of Michigan, and U.S. Attorney General.
6. This Justice served as a Congressman from Maine, U.S. Attorney General and a Special Ambassador to Mexico before coming to the Court.

7. This Justice was a member of the Continental Congress. After leaving the Court, he became Governor of his home state of New York.
8. Who is the Justice whose earlier service was as Mayor of Savannah and U.S. Senator from Georgia.
9. This Justice was U.S. Senator from Mississippi and Secretary of the Interior before coming to the Bench.
10. This Justice was U.S. Senator from Indiana and a member of the White House staff before his appointment.

Answers

1. James F. Byrnes	4. Harold H. Burton
2. John Marshall	3. Salmon P. Chase
3. James M. Wayne	9. Lucius Q. Lamar
7. John Jay	10. Sherman Minton
6. Nathan Clifford	
5. Frank Murphy	

New Membership Update as of October 31, 2000

Alaska

Peter J. Aschenbrenner, Fairbanks

Alabama

Beverly Poole Baker, Birmingham
Martin Nalls, Birmingham

Arizona

Lynn Cornell, Phoenix
Abby Dupke, Chandler

California

Cathy Alderman, Cottonwood
Connie Calahan, Sacramento
Kevin Cameron, San Francisco
Ryan Stanley Chin, San Francisco
Carmelina Frasca, Oakland
Barry Goode, San Francisco
Mary-Melissa Grafflin,
San Francisco
Judy Greitzer, Glendale
Gregory D. Hull, Palo Alto
Stacy L. Inman, Bakersfield
Gordon M. Park, Fresno
David G. Pursel, Danville
Tom Reynolds, Berkeley
George Riley, San Francisco
Ramona Ripston, Los Angeles
J. Bruce Robertson, Los Angeles
Tracy Thompson, San Francisco
David R. Virden,
Rancho Cucamoga
Edward Zwick, Santa Monica

Colorado

Howard J. Beck, Aurora
Carl A. Eklund, Denver
Walter M. Francis, Greeley
Gina Guy, Denver
Neil E. Piller, Longmont
Terri Trujillo, Denver

Craig L Truman, Denver
Charles Vavra, Louisville
Carmen Vien, Colorado Springs

Connecticut

Steven E. Arnold, Hartford
Jason Crowell, New Haven
R. Kent Newmyer,
Mansfield Center
Ann Marie Ward, Vernon

District of Columbia

Richard A. Baker
Lisa Bethel
A. Sheba Chaccko
Stanley A. Cook
Miguel A. Estrada
L. Poe Leggette
Doris Margolis
Robert C. McCandless
Roland A. Mitchell
Steven B. Pfeiffer
Booth Ripke
John Shakow
Michael Siem
Nancy E. Smith
Ashley Whitesides

Delaware

Alex J. Mili, Jr. Newark

Florida

Jacqueline E. Cannavan,
Hollywood
Arthur Catullo, Jacksonville
Jennifer Cook, Melbourne
Richard H. Davidson,
Daytona Beach
Delsie Dugah, Melbourne
Scott D. Makar, Jacksonville
Rita M. Sanderson, Ft. Lauderdale
Elliot Scherker, Miami

Georgia

Philip Brachman, Atlanta
Andy Preston, Waycross
Jay Alan Sekulow, Lawrenceville
Lisa L. White, Savannah

Hawaii

Larah Aguinaldo, Waipahu

Iowa

Jeanine Redlinger, Riverside

Idaho

Joe G. Vollmer, Boise

Illinois

Leo C. Backs, Jr. Chicago
Richard Biagi, Chicago
Hugh Flanders, Naperville
Michael Riggs, Downers
Jack Samuel Ring, Chicago

Indiana

Norma Coleman, Schererville
William Garrard, Mooresville
Mike Lewinski, Indianapolis
Mary Jo Ogren, South Bend
Elizabeth A. Smith, Indianapolis
Shelly Wilfong, Goshen
Lewis M. Woods, II, Pittsboro

Kansas

Nancy Thomas, El Dorado
Sandra Whittington, Wichita

Kentucky

Linda Winstead, Madisonville

Louisiana

Susan Buras, Metairie
Kenneth Michiels, Marksville
Betty Wilkerson, Baton Rouge

Massachusetts

Sandra Berman, Needham
Fred J. Franklin, Boston
Barry C. Klickstein, Boston
Franklin H. Levy, Boston
Christine Montilio, Boston
Jessica M. Natale, Newton
Alice Brandeis Popkin, Chatham

Maryland

Laurie Blalock, Ft. Meade
Dianne C. Cobb, Bethesda
Alan Freeman, Baltimore
Leonard Frenkil, Sr., Baltimore
Meaghan Gretson, Columbia
S. Lawrence Hammerman,
Stevenson
Norma Johnson, Takoma Park
Terry Monroe, Silver Spring
David P. Muth, St. Leonard
Karen Pierangeli, Silver Spring
Jennifer Purvis, Chevy Chase
Celeste Tanner, Baltimore
Jim Tennies, Baltimore
Stephen Trostle, Rockville
Benjamin R. Wolman,
Mitchelville
Charles and Laura Zellers,
Silver Spring

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Stephen J. Schwartz, Portland

Michigan

John Feikens, Detroit
Paul V. Gadola, Flint
Ronald J. Hansen, Detroit

Minnesota

JoEllen Ambrose, Andover
Sanders Gwin, Stillwater
Peter L. Olson, St. Paul
Wayne Strege, Minneapolis

Mississippi

Paul S. Funderburk, Tupelo
Reed Hillen, Tupelo
David Hunt, Clarksdale
T. K. Moffett, Tupelo
William E. Ready, Meridian
Jack Smith, Tupelo

Missouri

Rick Hardy, Columbia
Joseph Losos, St. Louis

Montana

Diane J. Rice, Harrison

Nebraska

Jeffrey A. Wagner, Papillion

New Hampshire

William A. Riley, Marlborough
Richard D Schubart, Exeter

New Jersey

Ricky Brown, New Brunswick
Mary Chernoski, Ewing
Christine Kleckner-Smith,
Monroe Township
Brad Weisberger, Pine Brook

New Mexico

Trent Grimes, Albuquerque
Steve Henley, Albuquerque
Cody K. Kelley, Albuquerque
Gerald Kendrick, Albuquerque
Frederic S. Nathan, Santa Fe
Stephen Weeda, Rehobeth

New York

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William Bohnett, New York
Joel R. Brandes, Garden City
Margaret Civetta, New York
Marilyn Heller, Floral Park
Wesley G. Howell, New York
Rick Keller-Coffet, Poughkeepsie
Michael Kennedy, Brightwaters
Leonard M. Leman, New York
Warren Martin, Palmyra
Thomas McGanney, New York
Philip J. Michaels, New York
Saul P. Morgenstern, New York
Bruce L. Paisner, New York
Kenneth Piech, West Islip
Jacob Reuther, New York
Paul C. Saunders, New York
Margaret Tyre, Rye
Steven Wolowitz, New York

Nevada

Kittie Hair, Henderson

North Carolina

Walter E. Dellinger, Durham
Harold L. Kennedy, III
Winston-Salem
Harvey L. Kennedy,
Winston-Salem
Sharon Lee Parker, Marion

North Dakota

Kermit E. Bye, Fargo

Membership (continued)

Ohio

Derek A. Farmer, Columbus
William R. Groves, Springfield
Terry Lee Hamilton, Ashtabula
Kay Slone, Columbus
Deborah Walko, Uhrichsville

Oklahoma

Geoffrey M. Standing Bear,
Pawhuska
Stanley M. Ward, Norman

Oregon

Joan Cisneros, Columbia City
Kathleen M. Correll, Portland
Kathleen A. Cushing,
Lake Oswego
Sharon Little, Lebanon

Pennsylvania

Georgette Distefano, Leeper
Vincent J. Ferrara, Indiana
Domenic Martelli, Parkesburg

Puerto Rico

Rivera Santos, Trujillo Alto

Rhode Island

Thomas More Dickinson,
Providence
C. Scott Stevenson, Providence

South Carolina

Ruth W. Cupp, Charleston
William U. Gunn, Spartanburg
John C. Kuzenski, Charleston
Thomas E. McCutchen, Columbia
Julius W. McKay, Columbia
Patsy Meeks, Spartanburg
William L. Pope, Columbia

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Darryl Anderson, Houston
Linton E. Barbee, Dallas
Brian Beckcom, Houston
Joseph Bourbois, San Antonio
Robert Brock, Houston
Jim Bullman, Mesquite
Oswin Chrisman, Dallas
M. Carter Crow, Houston
Osborne J. Dykes, III, Houston
Brett C. Govett, Dallas
William Fred Hagans, Houston
Hartley Hampton, Houston
David Harrison, Garland
Anne Heil, Houston
Charles B. Holm, Houston
Guy E. Hopkins, Conroe
Darrell Jordan, Dallas
Dodie Kasper, Frisco
Darin Lippoldt, San Antonio
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Anita Merrifield, Odessa
Jim Moseley, Dallas
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Karen Nakfoor, Houston
D. Dudley Oldham, Houston
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Wendy Sauer, Bellevue
Scott Urling, Auburn

Wisconsin

Kym Husom, Middleton
Barbara Tuszynski, Chenequa
Linda S. Vanden Heuvel,
Germantown

Wyoming

William Daniel Elsom, Cody

Taiwan

Martin Chen, Taipei

West Bengal, India

Abhijit Chatterjee, Calcutta

From Soliders to Justices: Holmes Fought for the Union . . . While Lurton Sided with the Confederacy

By Charles A. Earp*

When the Supreme Court sat for a group photograph in 1910 and 1911, four of its members were veterans of the Civil War.

Two, Justices John Marshall Harlan and Oliver Wendell Holmes, Jr., fought for the North; Justice Horace Harmon Lurton and Chief Justice Edward Douglass White fought for the South. In 1861, the oldest, Harlan was 28; the youngest, White, was just 16. All were officers, holding ranks from second lieutenant to colonel.

Holmes—the scion of a distinguished Boston family; famous son of a famous father—probably is best known of the four to both Civil War students and the general public. A three-year veteran of the Army of the Potomac, he served in most of the campaigns of that army from 1861 through summer 1864 as a line and staff officer and was wounded three times.

After graduating from Harvard, Holmes became a first lieutenant in the 20th Massachusetts Infantry, sometimes known as the Harvard Regiment, whose roster includes such names as Cabot, Revere and Whittier. Holmes' wartime letters and part of his diary have been preserved and were published in 1947 by the Harvard University Press. They make fascinating reading and form the principal source for this account.

The 20th Massachusetts soon found itself part of the Union forces engaged in one of the early battles of the war at Balls Bluff, Va., near Washington, October 21, 1861. For Holmes, it was a harsh introduction to war. As the regiment resisted a vigorous enemy attack, he was struck and knocked semiconscious by a spent bul-

let. Regaining his composure, he rejoined the defense only to be hit a second time, suffering a serious chest wound.

He describes his wounding and the move from the battlefield, across the Potomac River and through field dressing stations to Washington. He reflects on whether he is going to die, and what will happen if he does, and expresses his chagrin that there were several young ladies in Boston he was not prepared to leave.

In Washington, a close friend and fellow officer hired a carriage, the horse and driver of which both went to sleep whenever they stopped. On their way to take a train home, Holmes asked to see the White House, and they drove into the grounds past the front door. He did not meet Abraham Lincoln, although he would do so at a later date.

After recuperating, Holmes was promoted to captain in March 1862 and rejoined his regiment during Gen. George McClellan's Peninsula campaign in time for the Battle of Fair Oaks, also known as Seven Pines. The 20th Massachusetts was in combat throughout the rest of the campaign, particularly in the series of engagements known as the Battle of Glendale, and the final battle of the campaign at Malvern Hill, which Holmes called Malverton.

In September 1862, the Army of Northern Virginia invaded Maryland. In the climactic battle at Antietam, Holmes had perhaps the most publicized experience of his wartime career. The third Union assault of the day was launched by Gen. Edwin Sumner's 2nd Corps, and in the attack against the Confederates at the

--continued on next page



After his graduation from Harvard, Oliver Wendell Holmes, Jr. became a first lieutenant in the 20th Massachusetts Infantry.

Lurton and Holmes (continued)

Dunkard Church and the West Woods the regiment suffered heavy casualties. Among them was Capt. Holmes, who was wounded in the neck.

Holmes was taken to a field hospital in the Nicodemus farmhouse, the area surrounding the building was then briefly in Confederate hands. From there he was moved to the nearby village of Keedysville and finally to the home of a staunch Union family named Kennedy in Hagerstown, MD., a few miles north of the battlefield, where he spent several days receiving excellent care.

Because it hurt him to write, Holmes dictated to a young house guest of the Kennedys a letter to his parents on Sept. 22. He did it partially in Latin, and the young lady, who knew Latin as well as he did, had to admonish him for making what she considered too-personal comments about her in the letter. At the end, in his own hand, he admits he can write perfectly well.

Holmes' wounding proved to be one of the more publicized incidents of the war. Dr. Oliver Wendell Holmes, Sr. was a nationally known and widely read literary figure. Informed of his son's wounding, he immediately set out for Antietam to find his namesake, and wrote a lengthy piece about it called, "My Hunt after the Captain," which appeared in the *Atlantic Monthly*, one of the best-known journals of the day, in December 1862.

The captain's father related in great detail how he searched, finally catching up with his son at Harrisburg, PA. When he asked whether he had been able to tell his benefactors his name, the young soldier replied, "Yes, Father, all three of them."

On the Boston-bound train, the elder Holmes asked the captain who it was who had bandaged the neck wound and was told Jones. Later, Holmes' father learned that Jones' first name was Ellen—the 18-year

old to whom Capt. Holmes had dictated the letter of Sept. 22.

By December 1862, Holmes had rejoined his regiment in time for the Battle of Fredericksburg, but did not participate due to illness. The following January, the 20th was stationed in Falmouth, and Holmes acted as provost marshal of the town. The regiment remained there during the Chancellorsville campaign in May, left behind by Gen. Joe Hooker to deal with Confederates remaining in the vicinity of Fredericksburg.

On May 3, the regiment crossed the Rappahannock, passed through Fredericksburg, and while waiting to cross the canal beyond the town came under fire from Marye's Heights. Holmes suffered his third wound, this time in the foot, and underwent surgery to remove the ball and shattered bone.

He did not lose the foot but was unable to resume active duty until January 1864, when he returned briefly to the regiment. In February, he was assigned as aide to Gen. Horatio Wright of the 6th Corps, serving during the spring and summer. He had been present with Gen. John

Sedgwick just minutes before that officer was killed on May 9, and Holmes accompanied Wright when the general assumed command of the 6th Corps.

Holmes participated in the battles of the Wilderness, Spotsylvania Court House, North Anna River and Cold Harbor. He noted in a letter of May 11 that there had been continuous fighting for seven days, averaging about 3,000 casualties a day. Although now a staff officer, he was frequently under fire. On May 29, he had his narrowest escape in hand-to-hand combat and eluded superior numbers by lying along the side of his horse, Indian fashion.

July 1864 saw the third Confederate invasion of the North, this time by Gen. Jubal Early's corps, which defeated a small Union force under Gen. Lew Wallace at Monocacy



First Lieutenant Holmes was wounded on October 21, 1861 in the battle at Balls Bluff, Virginia. After his recovery he was promoted to Captain in March, 1862.



President Lincoln, shown here with his wife Mary Todd, joined defenders of Washington, D.C. to observe as the city was under assault by Jubal Early's forces in July, 1864. One author suggests that Holmes, wary of sharp shooters, and unwitting of the identity of the President, instructed the top-hatted target "Get down you damn fool!"

Junction, Md. and advanced on a virtually undefended capital. Wright's 6th Corps arrived in Washington in timely fashion, however, and filed into the northern fortifications of the city. As Wright and his staff surveyed the field from the ramparts of Fort Stevens, they were joined by a distinguished guest, President Lincoln.

His tall, top-hatted silhouette made a perfect target and efforts to persuade him to retire were unavailing. An officer fell wounded within a few feet of the President. Then a voice rang out above the noise of battle, "Get down, you fool." The President did.

This incident is the subject of dispute. Some accounts contend that Lincoln was admonished by a woman. Others believe it was Wright who respectfully but firmly ordered the President down from the rampart. John

Cramer, in his book *Lincoln Under Enemy Fire*, concludes that it was Holmes.

Holmes himself told the story, and is reported to have said, explaining his harsh language, that he did not recognize Lincoln until too late to check himself.

Holmes had been assigned to Wright's staff only temporarily; his three-year enlistment expired in July, and he was mustered out with the rank of Captain on July 17, 1864, having declined promotion to lieutenant colonel in 1863. He was brevet major, lieutenant colonel and colonel, U.S. Volunteers, that date to March 18, 1865.

Holmes then entered Harvard Law School and embarked on a career that would take him to the chief justiceship of Massachusetts and associate justiceship of the Supreme Court of the United States.

He remains the oldest sitting member, retiring at 91. He died in 1935, and President Franklin D. Roosevelt led the dignitaries who attended the military funeral in Arlington National Cemetery.

Holmes looked back on his service in the war in a Memorial Day address in 1884: "I think that, as life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived."

**Charles A. Earp is a member of the Baltimore Civil War Round Table and lives in Lutherville, MD. This article is one portion of an article originally printed on October 28, 2000 in The Washington Times and is reprinted with permission. The second half of the article concerning Justice Horace Lurton, will appear in the next issue of the Quarterly.*

Editors' Note: At the time of Justice Holmes' death, his Military Uniform from his service in the Army of the Potomac was found among his possessions. Attached to the uniform was a note written in the hand of the Justice which read: "The stains on this uniform are my blood."

Oops, or "Not Quite Final Resting Places"

By George A. Christensen*

Editors' Note: Mr. Christensen wrote this letter in response to the Trivia quiz in Volume XXI, Number 1, 2000, page 17-18. The cover note read in part: "I loved the new Quarterly and, for reasons about to be made clear in the enclosed, I found the Trivia quiz 'Final Resting Places' to be a real joy."

Dear Editor:

I always enjoy the *SCHS Quarterly* Trivia Quiz (but seldom guess more than 40-50% of the items correctly.) As the author of "Here Lies the Supreme Court: Gravesites of the Justices," published at pg. 17 in the *SCHS Yearbook* 1983, you may imagine my delight when discovering that *SCHS Quarterly*, Volume XXI, Number 1, 2000 contained the Trivia Quiz "Final Resting Places" by Assistant Editor James B. O'Hara.

While I did pass the quiz (score 90%), a few of the items gave me pause and now prompt me to put my two cents back into the game; in part, because I believe the quiz perpetuates one (of several) inaccuracies contained in my 1983 *Yearbook* article: and, in part, just for the cantankerous fun of it. My specific comments (and/or nit picking quibbles) to this entertaining Trivia quiz, are as follows (with apologies to Editor O'Hara.)

Item 1: Name the Justice buried in the same cemetery with J. Edgar Hoover and John Phillips Sousa. Answer Philip Pendleton Barbour. Absolutely correct (but I believe there is a typographical error in Sousa's middle name.

Item 2: Benjamin Franklin is buried in the same churchyard as this Justice. Answer: Wilson. Not exactly true. Christ Church, near Independence Park, in downtown Philadelphia has a churchyard on Fifth Street where Benjamin Franklin and several Signers are buried. In the precincts of Christ Church itself, on Second Street, one can find the 1906 reinterment site of Justice James Wilson on the south side of the building.

Item 3: Name a Justice buried in the same cemetery as world heavyweight champion Joe Louis. Answer: In Arlington National Cemetery any of the following: Black, Brennan, Burger, Douglas, Goldberg, Holmes, T. Marshall, Stewart, Taft, and Warren. Absolutely correct. This didn't seem like a trick question to me.



This monument at Arlington National Cemetery commemorates the life and service of William Howard Taft, who served as both President and Chief Justice.

Item 4: John C. Calhoun is buried in the same churchyard as this Justice. Answer: William Johnson. TRUE. My 1983 *Yearbook* article had left Justice William Johnson more than a bit "up in the air," with some confusion as to when, how, and IF Johnson's body had been returned from New York City to Charleston. Subsequent research I was able to conduct in South Carolina circa 1989 established to my satisfaction that Justice William Johnson truly is buried in St. Philips (West) churchyard, approximately 40 yards south of the monument to Vice President Calhoun.

Items 5, 6, and 7. Absolutely correct. No quibbles here.

Item 8: These two Justices rest in the same cemetery as two presidents of the United States. Answer: Daniel and Powell (at Hollywood Cemetery in Richmond, Virginia with Presidents Monroe and Tyler (and C.S.A. President Jefferson Davis. Correct. BUT, Arlington National Cemetery also contains the graves of two U.S. Presidents (Taft and Kennedy); therefore, if Item 8 were a "trick question," one could answer correctly with any two (out of ten) Court members buried in the same cemetery as world heavyweight champion Joe Louis, which brings us back to Item 3.

Item 9: Alexander Hamilton lies in the same churchyard as this Justice. Answer: Livingston. Sorry! WRONG. I immediately concede that it is true that Alexander Hamilton and Brockholst Livingston WERE buried at New York City's Trinity Church at the foot of (or is at the head of?) Wall Street in lower Manhattan, as I indicated in my 1983 *Yearbook* article; BUT Livingston's body was, in fact, moved in 1844 to Brooklyn's Green-Wood Cemetery.

Item 10: The founder of the American Girl Scouts and the composer of "Jingle Bells" share a cemetery with this Justice. Answer: Wayne. True. And this is the trivia question I guessed incorrectly. I had simply forgotten that Juliet Gordon Low was in Laurel Hills Cemetery in Savannah, Georgia and, I ruefully confess, I had never before heard of "Jingle Bells" composer James Pierpont.

What this exercise suggests to me is that scholarship in this area, as in all areas, needs to be frequently revisited and reverified. Final resting places, on occasion, turn out to be not so "final" after all. I acknowledge that my 1983 *Yearbook* article has been shown to contain a few errors of fact and interpretation; it needs to be corrected, amended and updated—in part, just to keep pace with our universal human mortality.

With apologies to Editor and Trivia Quiz compiler O'Hara, I hope to submit such an updated article to the *Journal of Supreme Court History* for their consideration in the near future.



When Associate Justice James Wilson was relocated from Edenton, North Carolina to his native Pennsylvania he was interred in the precincts of Christ Church in Philadelphia. Chief Justice Melville Fuller attended the service, visible in this photograph with his distinctive full head of white hair, white mustache and bow tie.

Society Co-Sponsors Second Conference: "Teaching Constitutional History to Undergraduates"

The Supreme Court Historical Society and the University of South Carolina Law School are pleased to announce the second conference entitled "Teaching Constitutional History to Undergraduates," to be held Feb. 15-18, 2001, in Washington, D.C. The conference will feature speakers and discussions of topics including the choice between competing canons, the incorporation of state constitutional histories into teaching about the U.S. Constitution, bringing relevant legislative histories into the teaching of particular constitutional provisions, and connecting constitutional history to the development of the American economy, among other relevant topics. A keynote address will be delivered by Kermit Hall; other invited speakers include Cornell Clayton, Howard Gillman, Mark Graber, Sally Hadden, Herbert Johnson, Patricia Minter, Elizabeth Monroe, Wayne Moore, Douglas Reed, Howard Schweber, Melvin Urofsky, and others. In addition to enjoying paper presentations, attendees will take part in small group discussions and make recommendations for ways to incorporate the speakers' comments into our teaching practices.

The conference will be held at the Key Bridge Marriott Hotel, close to a Metro stop and minutes from National Airport, and features dinner and a keynote address to be delivered at the Supreme Court. This promises to be a highly informative and valuable gathering

for teachers of history, political science, or political philosophy who focus on the historical development of American constitutionalism. Space is limited, so if you are interested in attending please respond as soon as possible to Sally Hadden at 513 E. Main Street, Bowling Green KY 42101. Please include your contact information, areas of interest, level of teaching experience (novice, intermediate, or senior), and whether you would be willing to submit a sample syllabus for distribution to the other conference attendees.

Costs: Registration (payable upon confirmation) costs \$15 for graduate students, \$25 for independent scholars, and \$50 for scholars affiliated with a university. The hotel has arranged a special rate for conference attendees: \$99 for singles or doubles, \$109 for triples, and \$119 for quads. Reservations are required by January 25, 2001. Call 1-800-228-9290 and mention the conference. A limited number of subsidies, to cover registration fees, room and board, will be available for graduate students and entry level faculty members (persons applying for subsidy should indicate that fact with their registration materials.)

Questions may be addressed to: Sally Hadden (shadden@mailers.fsu.edu), Howard Schweber (schweber@polisci.wisc.edu) or Jennifer Lowe (jmlowe@supremecourthistory.org)

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