



THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

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## BAR AND BENCH MEET TO PRESENT MEMORIALS TO THE LATE BYRON R. WHITE

November 18, 2002, members of the Bar of the Supreme Court, colleagues and family members of Byron R. White met in the Great Hall of the Supreme Court Building to hold a memorial session celebrating the many contributions of the late Justice. The heading in the "Resolutions of the Bar" indicating they were written "In Appreciation of the Man and of the Public Servant, Byron R. White," became the theme of the presentations.

The size of the assembled group required the session be held in the Great Hall of the Court. Theodore B. Olson, Solicitor General of the United States, called the session to order, making brief remarks in tribute to Justice White. The introduction of speakers was given by Larry L. Simms, a clerk to Justice White in the 1974 term.



Byron R. White was appointed to the Supreme Court Bench in April 1962. He served there for 31 years, with 20 Justices, including three Chief Justices.

The first presentation was made by the Honorable David M. Ebel of the U. S. Court of Appeals for the Tenth Circuit, who spoke on behalf of the other former clerks to the Justice. Judge Ebel served as a clerk in the 1965 term. He observed that one of the problems with being a legend in your own times is that it is sometimes difficult to see behind the image to the real person. That problem is exacerbated when the individual is a private and modest person by nature. These are challenges that must be confronted when examining the life of Byron R. White. Judge Ebel observed that the law clerks have together amassed a treasury of stories about the man behind the legend.

One cold November morning, Washington received a significant snowstorm. Two clerks arrived at work three hours late concerned about the reaction they would find there, but the Justice was not yet in the office, nor had he telephoned to indicate he would be delayed. When the Justice finally arrived he was oblivious to the concerns of the others in the office. Like many a good neighbor, he had been shoveling snow and pushing cars out of snowdrifts and had eventually made his way to work.

In one of the now legendary basketball games in the "highest court in the land," Justice White's "massive hand 'inadvertently' smashed the glasses off of one of the clerks and broke them. After the game, the Justice called one of his prior clerks from the previous year and said, 'Hey, I've got a new clerk here who has a problem with his glasses. Where did you used to get yours fixed?' When the new clerk took his broken glasses to the recommended optician, the only sympathy he got from the optician was, 'You work for that man White? He is an animal. You have to get contacts.'"

Justice White was a great supporter of his clerks, taking an interest in their personal and professional lives. One clerk and his wife put the Justice down as a reference for the adoption of a child from Chile. An official of Chile, referring to himself as "El Presidente," subsequently telephoned chambers. He said he refused to let the adoption go through unless he could meet the famous Whizzer White. El Presidente arrived at the Court while the Justice was in conference with

*Continued on page 4*

## A Letter from the President



The Society is making good progress on several fronts this year. In the event you have not already noticed, I would like to bring to your attention two areas in which we have been particularly active—the expansion and improvement of the Society's website

and our continuing push to build the Society's membership base. If you have not had a chance to look at the Society's website lately I urge you to do so. Recently, the Society's first on-line documentary, titled "FDR and the Court-Packing Controversy", debuted on our site—[supremecourthistory.org](http://supremecourthistory.org). This nine-minute documentary presents the story of President Roosevelt's 1937 attempt to pack the Court with new Justices favorable to his New Deal legislation. It features a wealth of still images and editorial cartoons from the time period as well as live audio of FDR's fireside chat defending his "Court-enlargement plan". Access via a high speed modem is recommended for optimal performance, but it can be viewed using a standard 56K phone modem if you are patient enough to let each of the three sections download.

The Society's website originated in 1997 with seed money from Lexis Nexis (\$10,000 for the first three years), The Annie Laurie Aitken Foundation (a \$25,000 grant) and Peter Knowles a Trustee and former Treasurer of the Society, (\$2,500 in memory of his late wife, Christina Knowles). This enabled the Society to post information about the wonderful events, publications and programs the Society creates, supports, and sponsors and disseminate information to a much wider audience than our traditional membership. Indeed, in one three-month period in 2002, the Society's website received 750,000 visitors. We hope that being able to access up-to-the-minute information about the Society has proved especially useful to our membership.

In 2000 the Polsky Foundation, led by Society Trustee Leon Polsky, raised the bar by granting the Society \$15,000 for a comprehensive upgrade of the website. This enabled us to hire Inheritance—a top-notch web design company that specializes in historical sites. Not only was the site redesigned, but considerable educational and historical information was added, including biographies of all the Justices, a general history of the Court, essays on how the Court works in its day-to-day functions, and a history of the building where the Court has been lodged. The Polsky Foundation grant also enabled us to post articles from our publications: more back issues of

*The Journal of Supreme Court History*, a featured article from the *Quarterly* magazine, and articles from current *Journals*. The upgraded site also now includes the Society's *Annual Report*—which saves the Society \$30,000 annually in printing and mailing costs, and makes the information immediately accessible to potential donors who want to learn more about the Society.

To support educational outreach, we developed a "Learning Center" section, providing links for teachers to two stellar educational programs the Society is proud to sponsor: Street Law's Summer Institute and [Landmarkcases.com](http://Landmarkcases.com). For further curriculum support, that section features sample cases and study questions from two educational books: *We the Students: Supreme Court Cases by and About High School Students* (Jamin B. Raskin, CQ Press 2000) and *Supreme Court Decisions and Women's Rights: Milestones to Equality* (Clare Cushman, CQ Press 2000). We will soon add sample lesson plans for high school teachers teaching Supreme Court history.

Information about attending the Graduate Institute for Constitutional History's Summer Institute is available in the "Learning Center" section. And in the "Prizes" section, scholars can find out how to submit their entries for the three academic awards that the Society sponsors. Also of interest to scholars is a new section called "Researching the Court," which is actually useful to anyone who has ever tried to look up something about the Supreme Court from figuring out which attorney argued a case, to determining where a Justice's papers are archived.

A second generous grant of \$14,000 from The Polsky Foundation in 2002 not only made the splendid new Court-packing documentary possible, but will also allow us to add more interactive components to keep viewers coming back again and again to the site. And we plan to expand the section on Oral Arguments by posting articles on the history of oral advocacy before the Court, women advocates, Presidents as Supreme Court advocates, etc. We will be calling on our members to submit personal reminiscences of their experiences before the Court if they think such memories will be of interest to others. Don't hesitate to let us know what features you think are missing from the Society's website.

### The Supreme Court Historical Society

## Quarterly

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Managing Editor  
Assistant Editor

Kathleen Shurtleff  
James B. O'Hara

Please make a visit to our improved on-line gift store while you are reviewing the improvements to the website. Shopping at the gift shop site is also now easier than it has been in the past. The expanded and improved gift shop portion now offers photographs and descriptions of more items than the previous site, including many of our most popular items. Members are entitled to a 20% discount on all items purchased through the shop. The improvements on the site allow members to calculate the discounted prices so you will be able to identify your savings immediately. Remember also that the proceeds from these sales help to sustain the Society's performance of its educational mission, so you can support the Society through purchasing items from the website.

Speaking to my second theme of membership, I am pleased to report that thanks to the continuing hard work of Membership Chair Ralph Lancaster, Vice-Chair Frank Gundlach, and their cadre of State Membership Chairs, our membership now stands at 4,886. I hasten to add that it is now possible for visitors to join the Society and pay enrollment dues online. So it is now easier than ever to support the Society. It is even possible to join the Society and then purchase items from the gift shop at the member's discounted price. Further, it is now possible to pay your renewal dues on the web site, or to make a gift to the annual fund. Just a few keystrokes can take care of any of these important transactions. All of the payment options are accessed through the Gift Shop portion of the website.

Your membership involvement in the Society is critical

### TWENTY-EIGHTH ANNUAL MEETING Scheduled for June 2, 2003

The Twenty-eighth Annual meeting of the Supreme Court Historical Society will be held on Monday, June 2, 2003 in the Supreme Court Building in Washington, D.C. The first event of the day will be a lecture given in the afternoon by Associate Justice Anthony M. Kennedy. Annual business meetings of the General Membership and Board of Trustees will take place starting at 6 P.M. The Black Tie Reception and Dinner will start at 7 P.M. There is no charge to attend the lecture, but a reservation and confirmation are required.

Reservations for the Annual Reception and Dinner will be taken in the order in which they are received, with priority given to those individuals who were waitlisted the previous year. We apologize in advance that space constraints dictate that **not all members wishing to attend the Reception and Dinner can be accommodated**. Please return your reservation request and payment upon receipt of the invitation. Confirmation or notification of waitlist status will be provided to each applicant. Members should receive invitations no later than 30 days prior to the event.

to the continuing well-being of the organization. Your enthusiasm has been manifest in many ways, and as President, I am especially grateful to you for your support. In the last issue of the *Quarterly*, I requested each member to consider passing on a membership application and brochure to a prospective member. To that end, a copy of the membership packet was enclosed with each copy of the magazine. Unfortunately, a few of our members were confused by the inclusion of the brochure, assuming that their memberships had lapsed, or they had otherwise been removed from the rolls of active members. I regret the concern many of you experienced, but when I consider the alacrity with which you responded it became clear that participation in the Society is very important to the members. Your eagerness to ensure that your membership was in good standing was indeed encouraging.

If that membership brochure is still on your desk, please consider sending it on to another individual who would benefit from participation in the Society. Alternatively, consider directing your colleagues and associates to the website where they can experience first-hand some of the benefits and services provided by the Society. Your participation, support and enthusiasm are vital to the success of the organization. Thank you again for all you have done and continue to do on behalf of the Society.

Frank L. Jones

## 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. Donations to the Acquisitions fund would be welcomed. You may also reach the Society through its website at [www.supremecourthistory.org](http://www.supremecourthistory.org).

See the article on page 6 about recent additions to the collection.

the other Justices. However, Justice White immediately left the conference and spent the next half hour warmly visiting with El Presidente and his entourage and assuring him that the law clerk was a person of flawless character. The adoption was approved." The Justice frequently referred to his clerks as "the great," or "the famous," and had generous conversations with their parents during which he would comment on what a fine young man or woman they had raised. Traditionally, on Thanksgiving Day the current clerks were invited to the Justice's home to eat with his family and enjoy the day. The celebration involved walks in the woods, competitive board games and attempts at riding a unicycle. Prior to the meal, White bowed at prayer to ask for blessings for the less fortunate.

Another tradition was golf in chambers. A course was laid out from the clerks' offices, through the secretary's office where the ball had to pass between two legs on a sofa, and into White's office. Scores were kept, of course. Shooting rubber bands into chandeliers in the ceiling also became a form of competition.

It was the Justice's nature to ask many questions of those he met or with whom he worked. He wanted to know every detail about every person and every place, but gave only guarded responses about himself. Once Judge Ebel and the Justice were shopping in a store that sold Indian jewelry. After asking a battery of questions of the sales clerk about her background, and the way the jewelry was made, the store clerk finally asked the Justice who he was. White replied, "Oh, I just work for the government, but my friend here is a United

States judge!"

After Justice White's health deteriorated, he and Marion returned home to Colorado. His personal effects were shipped there, where he proceeded to unpack and review things that had been in storage for many years. One day he came across an old high school notebook. Speech was difficult for him at that time, but he pointed and said "If," several times. When the notebook was opened, there in the Justice's own youthful handwriting was the poem "If" by Rudyard Kipling. He probably hadn't seen the notebook in 60 years, but he knew he had copied the poem there.

Justice White was a modest man, a kind man, a family man. He began every public speech, including the announcement of his retirement from the Court, with the words "Marion and I." He was competitive, but also a man of great faith. For the group of former Law clerks that is now 100 strong, Goodbye and God Bless.

Jack Miller was the second speaker on the program. Miller worked with White and Bobby Kennedy at the Department of Justice when White served as Deputy Attorney General of the United States in 1961. White had two important goals during his tenure at Justice: first to develop a plan to fight organized crime; second, he became a soldier in the battle for civil rights in the South. His contributions were very significant. He was possessed of an inviting and deep humility, and was one of the greatest naturally effective leaders the department has ever known. His qualities of humility, selflessness and purity of heart grew stronger during his lifetime. With some sadness he joined the Supreme Court, knowing it would necessitate his withdrawal from more active forms of public

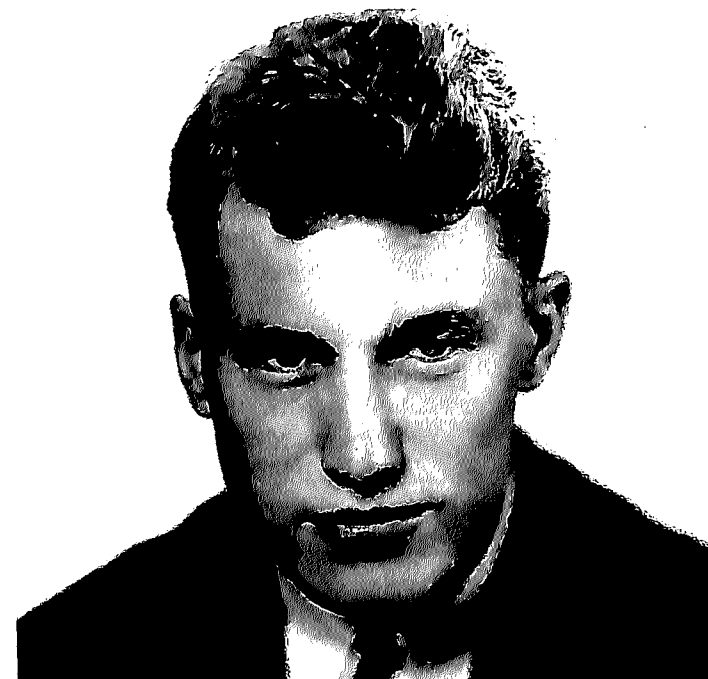
life. It was with absolute conviction that he approached his duties, his work and his commitment to the Court as an institution. I am as awed with his accomplishments at home as of his public accomplishments. He meant many things to many people. In the words of Shakespeare, "He was a man; take him for all in all; I shall not look upon his like again."

Seth Waxman, former Solicitor General of the United States, made the following personal observations as the third presentation of the program. "I met Justice White later in his life, approximately ten years and thirteen days ago. The occasion was the presentation of my first oral argument in the Supreme Court. I had been appointed to represent a twice-convicted murderer in a habeas case. Justice White did not look at me during argument, but sat facing the Justice sitting next to him on the Bench. Justice Scalia asked me how I would reconcile my reading of *Miranda* with some of the Court's post-*Miranda* cases?" Mr. Waxman responded that trying to reconcile the Court's 30+ post-*Miranda* opinions made his "mind feel like a bowl of spaghetti. Justice White swiveled his chair around to the front, looked me in the eye and said, 'How do you think we feel?'"

Mr. Waxman said Justice White was altered profoundly by his service at the Justice Department. He was deeply appreciative of the authority of the national government, and national judicial power, and had a keen sense of the role of the federal courts. He has been termed an apostle of judicial restraint, and this is true to an extent; however, in some instances he did not shrink from extending the jurisdiction of the Court into new areas. This is particularly true in the areas of rights for disabled individuals and women. In *Edwards v. Arizona* he extended the authority of the *Miranda* decision, a decision from which he had dissented. He felt strongly that if a state law violated a federal law, it had to be revoked. He was not known as a great dissenter, but when he wrote a dissent, it was powerful. In *Banco Nacional de Cuba vs. Sabatino* he wrote that the federal courts may not legislate, instead it is the role of the federal courts to determine, articulate and enforce the law.

Kate Stith-Cabranes, a 1978 clerk to Justice White, was the fourth speaker. She analyzed his career from her perspective as a law professor. Justice White has left an enduring judicial legacy. He believed in the law, and the fundamental promise that the law is not something to be feared, but is essential in a free and democratic land. He expected and insisted that federal officials act in good faith, but knew perfection was not possible. He believed in the federal legal system. He had respect for the law, respect for Congress and respect for government officials acting in good faith. His principles were not in vogue in the legal academy during his years of service. He believed in facts and in history, and was not swayed by concerns of his own popularity with Congress, with the law schools or with the press.

His jurisprudence and philosophy do not fit easily into a category, nor is it easy to assign him the label of either liberal or conservative. He believed in two fundamentals: the role of Congress, and the role of the federal government. Further he



An outstanding student, White won a Rhodes scholarship to Oxford. His studies there were cut short by the outbreak of war in Europe.

believed the role of the Supreme Court was to explicate the constitution. He also saw federal legislative authority as a fundamental principle of democracy. He was the preeminent nationalist on the Court in the modern era. He spent his time thinking and deciding cases, with an aim to secure rights and privileges to the citizens of this country, and to remedy the causes that led to the violation of those rights. Desegregation and voting rights were two principles to which he was unequivocally committed. Justice White placed his faith in the law—a law furnished by a free and self-governing people. He believed the constitution was intrinsically fair and he worked for a full realization of its principles.

He can be compared with the Great Chief Justice, John Marshall, in many ways. Both came from small towns; both protected their country through active military service; both were hard-working lawyers for a substantial part of their careers. Neither cared overmuch about his clothing. While Marshall was the original real federalist, Justice White was a nineteenth century federalist through and through; he wanted to take that philosophy forward. The tribute given to Marshall by a British jurist can be equally applied to Justice White: he was an apostle of integrity; he showed strength in his dealings; he exhibited true greatness in the midst of national upheaval; he obeyed the call of truth.

Below are Excerpts from the Resolution of the Bar presented to the Supreme Court in a brief session on November 18, 2002.

**Resolutions of the Bar of the Supreme Court of the United States  
In Appreciation of the Man and of the Public Servant  
Justice Byron R. White  
November 18, 2002**



Justice White was extremely supportive of his clerks, frequently referring to them as "the great" or "the famous." Justice White is pictured here with Rex E. Lee (left) who clerked in the 1963 Term. Lee later served as Solicitor General of the United States from August 1981 to June 1985.

## HUGHES COLLECTION OF UNDERWOOD & UNDERWOOD

### Recently Acquired

By Franz Jantzen \*

The Supreme Court recently acquired thirty-two photographs dating from 1916-1942 of Chief Justice Charles Evans Hughes and his son, Charles Evans Hughes, Jr., from the deaccessioned photo archives of the Underwood & Underwood press agency. The purchase from a North Carolina antiques dealer was made possible with funds provided from the Supreme Court Historical Society.

Underwood & Underwood was founded as a stereographic publishing firm in Ottawa, Kansas in the early 1880s by Elmer and Bert Underwood. They relocated to New York City in 1891, and by 1901 had dominated the industry, publishing 25,000 stereoviews a day. Stereoviews were the home videos of the era, and collecting stereoviews of scenes taken around the world provided popular home entertainment from the 1850s through the 1920s. A stereoview is made of two similar photographs mounted on a card. The two photographs were taken at the same time but at a distance of three inches apart—the distance between one eye and the other. When the two images are viewed through a special stereoscope they merge



Chief Justice Hughes' daughter Elizabeth volunteers for Herbert Hoover during the 1928 presidential campaign. She was a student at Barnard College at the time. She is pictured signing the First Voters' Book, a collection of signatures from across the country that was compiled and given to the President at the end of the campaign. Miss Hughes married William T. Gossett, and served as one of the founders of the Supreme Court Historical Society in 1974.



Underwood's original caption for this photograph, taken late in the day on November 6, 1916, confidently described the Republican candidate as "President-Elect Charles E. Hughes crossing the Hudson River at Rhinebeck, N.Y. on the last lap of the 30,000 mile campaign trip." In fact, he lost the election by a narrow margin to Woodrow Wilson.

back into one, while duplicating the perception of depth our eyes give us naturally. The special viewer, incidentally, was invented by the father of Justice Oliver Wendell Holmes."

With the development of 35 mm film, stereography fell out of vogue and the firm soon expanded into news photography and by the 1930s had branches in New York, Washington, D.C., Detroit, Philadelphia and Cleveland. The company went out of business in 1955.

The Hughes collection includes posed portraiture of the Chief Justice and his family, informal photographs, and photographs from the 1916 presidential campaign. Other photos will appear in future issues.

\*Franz Jantzen is the Collections Manager, Office of the Curator, Supreme Court of the United States, and an accomplished photographer in his own right.

## ROBERT H. JACKSON CENTER ESTABLISHED IN JAMESTOWN, NEW YORK

By John Q. Barrett\*

Before Justice Robert H. Jackson (1892-1954) was the architect of the world's first international criminal trial and American's chief prosecutor at Nuremberg of the surviving Nazi leaders (1945-46), an Associate Justice of the Supreme Court (1941-54), Attorney General (1940-41), Solicitor General (1938-40) and President Roosevelt's appointee to three other positions in the New Deal executive branch (1934-37), Jackson was for twenty years a lawyer and resident of the city of Jamestown in Chautauqua County, New York.

In Jamestown, which is located at the southern end of Chautauqua Lake amidst the beautiful woods and rolling farmlands of southwestern New York State, Robert Jackson was a leading citizen long before he came to national and international fame. He achieved great success in all facets of a generalist's law practice, participated in regional and state Democratic Party politics, raised his family, and developed the hometown affiliation and independent, small-town American identity that came, quite consciously and explicitly, to characterize much of his career, judging, speaking and writing. (Justice Felix Frankfurter, Jackson's friend and ally during their thirteen Terms together on the Court, joked often about Jackson dispensing "Jamestown justice" and he took those comments as high compliments.)

Given his city's defining importance in Jackson's life, it is particularly apt that Jamestown is now home to the Robert H. Jackson Center, Inc. The non-profit Jackson Center was founded in early 2001 by generous and insightful Jamestown residents. They recognized that Jackson's lasting importance made it vital to base and develop his legacy in the city where he, having attended no college and studied law as an apprentice with only one year of law school, began to practice law at age twenty-one and first made his defining mark.

The Robert H. Jackson Center honors Justice Jackson and advances his legacy through educational programming, exhibitry and a comprehensive web site ([www.roberthjackson.org](http://www.roberthjackson.org)), and by pursuing the relevance of his ideas to our time and generations.

The Jackson Center is located in a 19<sup>th</sup> century mansion that had been, since the 1920s, the home of several Masonic lodges, including Jackson's own. The facility, which is being restored and renovated, includes formal rooms, meeting rooms, exhibit space, a theater, a dining room, offices, and space for archival holdings and research.

In its less than two years, the Center has hosted a series of major events. In October 2001, it assembled former Nuremberg prosecutors Whitney Harris, Henry King and Bernard Meltzer for a roundtable discussion of Jackson at Nuremberg. Last September, the Center hosted Fred Korematsu, the unsuccessful petitioner in *Korematsu v. United States* (1944) (Jackson, J., dissenting) who decades later won dismissal of his criminal case and the presidential Medal of Freedom, for a conversation at nearby Chautauqua Institution. In October 2002, the Center hosted three of Justice Jackson's 1940s-era law clerks, Phil C. Neal (O.T. 1943 and O.T. 1944), Murray Gartner (O.T. 1944, O.T. 1945 and O.T. 1946) and James M. Marsh (O.T. 1947 and O.T. 1948) for a roundtable discussion of Jackson at the Supreme Court.

As these highlights demonstrate, the Jackson Center has begun a tradition of bringing prominent speakers and programs regularly to Jamestown, and it is generating considerable community and regional interest and attendance.

The Jackson Center will be officially dedicated on Friday, May 16, 2003. Chief Justice William H. Rehnquist, following in the footsteps of Chief Justice Earl Warren and the seven Associate Justices who traveled to Jamestown for Jackson's funeral in October 1954, will be the principal speaker at the Jackson Center dedication. Justice Sandra Day O'Connor also spoke in Jamestown



at the 1996 dedication of its Jackson statue.

Chief Justice Rehnquist was initially appointed to the Supreme Court in 1971 to succeed the second Justice John Marshall Harlan, who had occupied since 1955 the Court seat that previously had been Justice Jackson's. Rehnquist also was, after graduating from Stanford Law School in December 1951, one of Justice Jackson's two law clerks from January 1952 until the completion of the Court's October Term 1953. In agreeing to speak at the Jackson Center dedication, Chief Justice Rehnquist pays special tribute to the man who first brought him the Court.

\*John Q. Barrett is Professor of Law at St. John's University in New York City and the Elizabeth S. Lenna Fellow at the Jackson Center. His edited version of *That Man, Justice Jackson's previously unknown, New Deal insider's memoir of President Franklin D. Roosevelt*, will be published in 2003 by Oxford University Press.

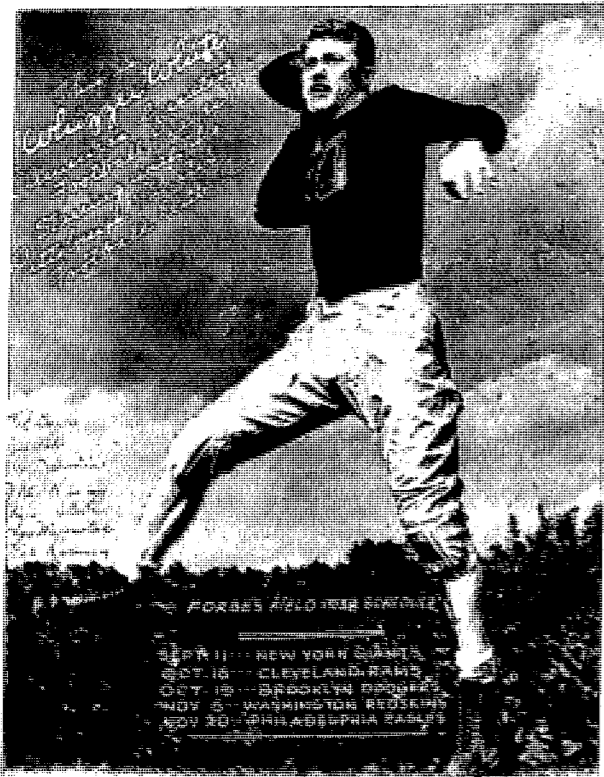
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The members of the Bar of the Supreme Court have met today to honor the memory of Byron R. White, Associate Justice of the Supreme Court of the United States, who died April 15, 2002 in Denver, Colorado, and to record their appreciation of the man and of the public servant.

When President John F. Kennedy nominated him to the Court, the President declared that Byron R. White had "excelled in everything he has attempted—in his academic life, in his military service, in his career before the bar, and in the federal government." "Few among us deserve such accolades," Justice Lewis F. Powell would later observe, "but President Kennedy did not exaggerate Byron White's achievements."

Byron Raymond White was born June 8, 1917, in Fort Collins, Colorado, but grew up in the small town of Wellington eleven miles away. His father managed a lumber yard. Wellington's economy was dominated by sugar beets, a crop demanding constant attention and back-breaking work, and both White and his older brother, Clayton S. (Sam) White, worked beet fields after school and during the summer from the time they could wield a hoe. Winters were harsh, spring brought strong winds off the front range, and summers were hot and dry. Character was shaped in the relentless competition between the land and the elements: self-reliance was not an abstraction.

By graduating first in his class from the tiny local high school, like his brother before him, Byron White earned a full-tuition scholarship to the University of Colorado. There he was a star in three sports (football, basketball, baseball), president of the student body, a junior selection to Phi Beta Kappa, and again, like his brother before him, a Rhodes

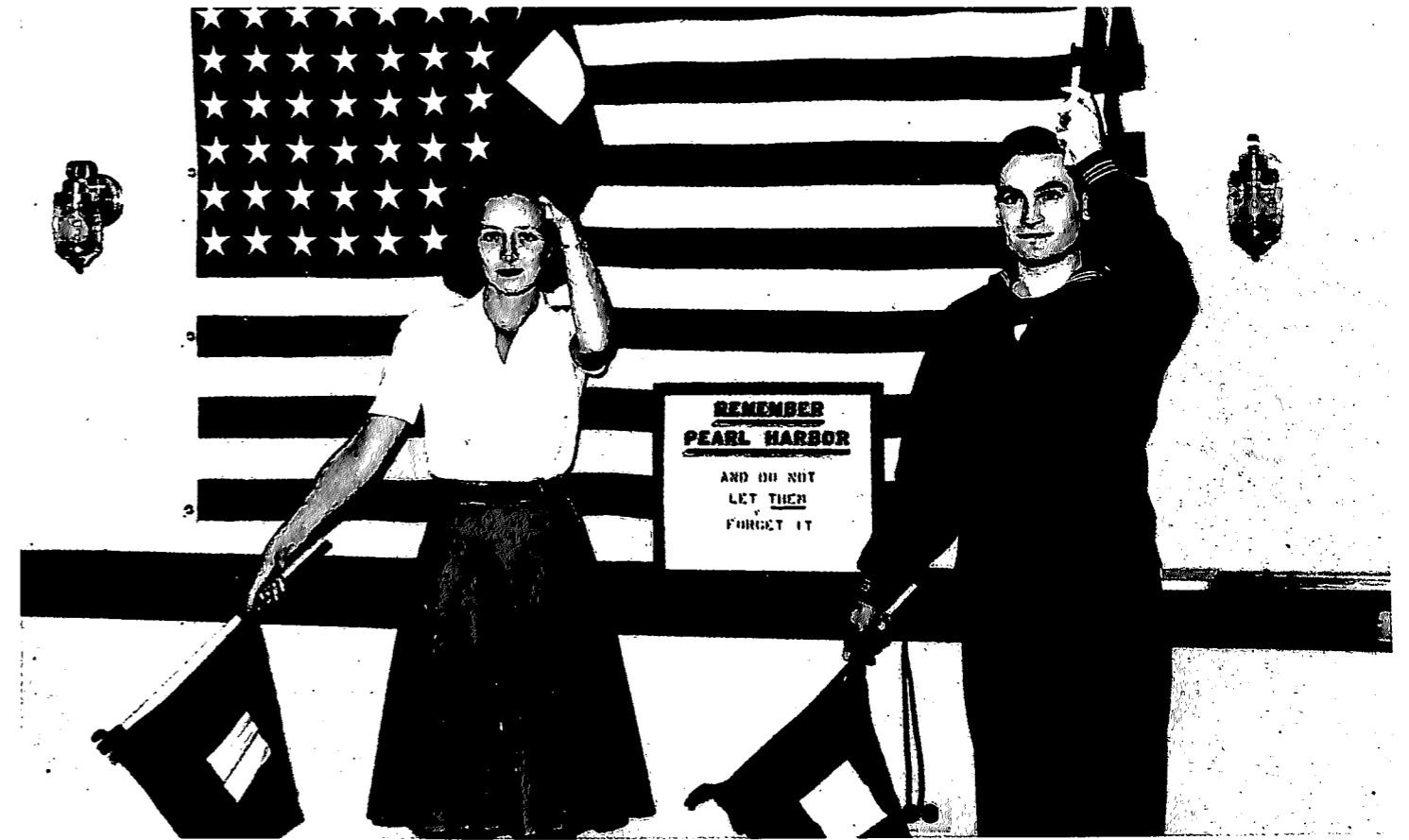


White played a season of professional football for the Pittsburgh Pirates and later while attending Yale Law School, he played two seasons for the Detroit Lions.

Scholar. His performance during his senior year is still statistically one of the most impressive in the history of intercollegiate football, capped by All-America honors and brilliant play in the second Cotton Bowl. So great was the press interest in the young scholar-athlete that the New York Basketball Writers' Association created the first National Invitational Basketball Tournament largely as a showcase for White and his teammates. White delayed his matriculation at Oxford to accept the highest salary ever offered to a player in the National Football League up to that time. Following the 1938 season, he spent two terms at Oxford studying law, but he returned home when World War II broke out in September 1939. He spent a year at Yale Law School, won the Cullen Prize for the highest grades in his first year, then took a leave of absence in each of the two succeeding fall terms to continue to play professional football, which financed his legal education, helped support the medical education of his older brother, and provided a retirement nest egg for his parents.

With the onset of World War II, White tried to enlist in the Marine Corps with the objective of becoming a fighter pilot, but he failed the colorblindness test and had to settle for Naval intelligence. He served with distinction, especially on Admiral Arleigh M. Burke's staff, and was awarded a Bronze Star. He provided intelligence analysis that was critical to the success of the Battle of Leyte Gulf in 1944, and Burke later wrote that White's performance when the *U.S.S. Bunker Hill* was burning at sea represented the epitome of courage, physical strength, and selflessness in a crisis. After the war, White returned to Yale, where he graduated first in his class and proceeded to a clerkship with Chief Justice Fred M. Vinson during October Term 1946. The term included a number of watershed cases that would serve, in ways he could not then imagine, as a precursor to future duty when he became the first former clerk to be appointed to the Court.

When the clerkship ended, White faced the choice of where to practice law. Many of his fellow clerks stayed in Washington, but the pull of home and family was too strong, and he returned to Colorado to practice in Denver. His marriage to Marion Lloyd Stearns, daughter of the President of the University of Colorado, on June 15, 1946, meant that all of his extended family were within a 50-mile radius of Denver, as were a wealth of friends and the favored pastimes of his youth, especially fly-fishing and hiking in the foothills. For more than a decade, White enjoyed a widely varied practice ranging from real estate, corporate work, antitrust, and labor law to tax and litigation, including complex antitrust cases and simple one-day trials. He represented large businesses, such as Boettcher & company, the Denver National Bank, and the Ideal Cement Company, as well as small companies and individuals. He also devoted enormous amounts of time to community service, including the Social Science Foundation at Denver University, Boy Scouts of America, the Urban League, the Denver Welfare Council, the YMCA, the Denver and Colorado Bar Associations, and the Denver Chamber of Commerce, and to numerous charities, principally the United Fund, Camp Chief Ouray for Children, the Rhodes Trust, and Rose Memorial Hospital. A registered Democrat,



While White was serving in the Pacific Theater during World War II, Marion Stearns, his future wife, served in the WAVES. She is shown giving semaphore signals.

he declined invitations to stand for public office and confined his political work to the grass-roots level. He once confided to a friend that he thought he could get elected to office, "Once." Too committed to his convictions, often too stubborn to compromise, and too disinclined to accommodate the press, he knew he was better placed behind the scenes than capitalizing on his early fame.

When Senator John F. Kennedy decided in 1959 to seek the Democratic nomination for President, his staff solicited White to manage the campaign in Colorado. The Senator was not well known in the West and his voting record on agricultural and reclamation issues did not endear him to those whose livelihoods depended on generous federal policies governing crop prices and water. White, who had known Kennedy first in England when Kennedy's father was Ambassador to the Court of St. James and then later when both were PT officers in the South Pacific, accepted the challenge and helped Kennedy make a respectable showing in the state party convention. At the national convention in Los Angeles, White became close to Robert F. Kennedy. When the Senator secured the nomination, White was named national chair of Citizens for Kennedy-Johnson. As a practical matter, the position provided Robert Kennedy with the daily opportunity to consult White for advice on campaign tactics and strategy as well as the welter of personnel judgments required by a national campaign.

After Senator Kennedy was elected, White was named Deputy Attorney General. His first task was to recruit the

Assistant Attorneys General who would be the front-line officers in the Department of Justice. When White finished the task, Alexander Bickel said "It was the most brilliantly staffed department we had seen in a long, long time" and that the quality of personnel bespoke a "vision of public service that would have done anyone proud." White also exercised unprecedented independence from senatorial prerogative in approved United States Attorneys, and once they were in office he monitored their major cases more closely than any of his predecessors had. In addition to making staffing decisions, he was responsible for supervising the vetting of more than one hundred judges nominated during the administration's first year. He received national attention during the Freedom Riders Crisis in May of 1961, when he organized and directed an ad hoc contingent of heroic federal officers to protect Dr. Martin Luther King and his supporters who faced life-threatening hostility to their protests against racial segregation.

When Justice Charles Evans Whittaker retired a year later, White became President Kennedy's first appointment to the Supreme Court on April 3, 1962. White served for more than 31 years; only eight Justices have held longer tenures. He served with 20 Justices, including three Chief Justices. During his career he wrote 1275 opinions: 495 opinions of the Court, 249 concurring opinions, and 572 dissents, including 218 dissenting from denials of petitions for certiorari. Imposing as they are, numbers are hardly the measure of the man, nor does the remarkable curriculum vitae capture either his character or his contribution to the nation.

what to some was breathtaking verve. As a young man, he had been catapulted uncomfortably into the public eye primarily because of his athletic prowess. That experience, plus innate modesty and shyness, made him allergic to the transparent celebrity that became the norm for public figures during his times in government. Few public figures in recent memory have cared so little about their popularity or even the judgment of history. Service, for him, was its own reward. Justice White remained secure in the values that were forged early in his life on the lonely high plains and confirmed as a young professional: He measured himself by his own extraordinary standards, filled each "unforgiving minute with sixty seconds worth of distance run," and was satisfied that the ultimate judgment lay beyond temporal realms. To

those who were fortunate enough to penetrate the wall of separation between public and private, he was, in the words of someone who knew him for most of his life, "remarkably tender and instinctively generous but neither wished to acknowledge it or have it recognized." No account of the man is complete without acknowledging the countless acts of kindness and quiet compassion that touched so many, especially during times of personal crises, but were, by instinct and design, seen by so few. . . .

*The entire text of the Resolutions can be found on the Society's website, [www.supremecourthistory.org](http://www.supremecourthistory.org), by accessing the special section.*

*This collection of photos shows "the once and future" Justice Byron R. White.*



In a characteristic pose (elbow bent and hand on his hip), retired Justice White was pictured with (left to right) Justice William J. Brennan, Jr., Chief Justice William H. Rehnquist, and Justice Sandra Day O'Connor at an event commemorating the Bicentennial of the Supreme Court.



The first former Supreme Court clerk to be appointed to the Supreme Court, the future Justice White is shown walking down the steps of the Supreme Court Building.



Justice and Marion White greet Justice David H. Souter. White's devotion to his family was manifest in all his actions.

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Shil Goswami, Rockville  
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# INSTITUTE FOR CONSTITUTIONAL STUDIES SUMMER SEMINAR

Scheduled for June 2003

The Supreme Court Historical Society is pleased to announce the fifth annual seminar for college teachers and advanced doctoral students, a program associated with the Institute for Constitutional Studies. This year the topic for discussion will be "Judicial Review," and the seminar will be led by Professor Gordon S. Wood of Brown University and Professor Larry D. Kramer of the New York University School of Law.

Critical moments in American constitutional history have been shaped or defined by the Supreme Court's efforts to resolve political problems that were recast in legal form: *Marbury v. Madison*, *Dred Scott*, the constitutionality of the New Deal, *Brown v. Board of Education*, and *Roe v. Wade* are some of the most noteworthy examples of this process. Yet after more than two centuries of debate and controversy, we still scarcely understand the intellectual and political origins of judicial review, much less the historical course by which it acquired its contemporary prominence. The seminar will focus broadly on these issues, exploring both the emergence and subsequent development of judicial review in American history. Our consideration will be both historical and normative, considering the place of judicial review within the shifting American understanding of democracy and democratic citizenship.

Participants will be required to identify their topics or research interests in advance and to provide a short bibliography of reading materials for seminar members to read. The topics and specific periods covered will thus depend on the

interests and expertise of the participants, and each regular meeting will concentrate on one participant's research topic. Time outside the scheduled meetings will be reserved for special events as well as for individual consultation with the seminar leaders. Participants will be expected, as a result of the seminar, to produce a draft of some significant part of their projects.

The seminar will meet in Washington, DC, for three weeks, June 8-27, 2003, and daily sessions will be held at Opperman House, the Supreme Court Historical Society's headquarters building. Participants will be housed in nearby university residence halls.

Enrollment will be limited to fifteen participants, each of whom will be awarded a stipend adequate to cover costs of travel, room, and board. Applicants for the seminar should send a copy of their c.v., a brief description (three to five pages) of the research projects to be pursued in the seminar, and a short statement of how this seminar will be useful to them in their research, teaching, or professional development. Materials may be sent either by regular mail or electronically. Hard copy should be sent to Maeva Marcus, Supreme Court Historical Society, 224 East Capitol Street, NE, Washington, DC 20003. Electronic files should go to [DocHistSC@aol.com](mailto:DocHistSC@aol.com). Further information can be obtained by contacting Maeva Marcus at (202) 502-1040 or by email at [DocHistSC@aol.com](mailto:DocHistSC@aol.com); or Melvin Urofsky at (804) 828-4387 or by email at [murofsky@vcu.edu](mailto:murofsky@vcu.edu).

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