



# THE SUPREME COURT HISTORICAL SOCIETY

# Quarterly

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## FROM BENJAMIN TO BREYER: IS THERE A JEWISH SEAT?

By Justice Ruth Bader Ginsburg

*Editors Note: This paper was originally given as an address at the University of Louisville, Louis D. Brandeis School of Law on February 11, 2003, on the occasion of the bestowal of the 2003 Brandeis Medal upon Justice Ruth Bader Ginsburg. The medal is given to recognize individuals whose lives reflect Justice Brandeis' commitment to the ideals of individual liberty, concern for the disadvantaged, and public service. The complete text of her paper was printed in Vol. 41, Issue 2 of the Brandeis Law Journal, and excerpts are reprinted here by permission.*

In 1993, the U.S. Supreme Court Historical Society sponsored a five-part lecture series on the Jewish Justices from Brandeis to Fortas. My aim in this lecture is first to describe an earlier figure, the first Jew nominated to serve on the U.S. Supreme Court. Then, after returning to Brandeis, I will endeavor to explain why I believe there will be no supplement to the Historical Society series ranking Justice Stephen Breyer and me as the sixth and seventh Jewish Justices.

The man who might have preceded Justice Brandeis by some 63 years as the first Jewish member of the Supreme Court had a less secure start in life than Brandeis did, and was a less saintly character. His name was Judah P. Benjamin. His career path is intriguing.

Born in 1811 in St. Croix in the Virgin Islands, the son of Sephardic Jews, Benjamin grew up in Charleston, South Carolina, and became a celebrated lawyer in ante-bellum New Orleans. Though his boyhood, unlike Brandeis', was heavily steeped in Jewish culture, as an adult he married outside the

faith in a Catholic ceremony, and did not keep Jewish laws or celebrate Jewish holidays. Yet he could not escape his Jewish identity. The world in which he lived would not allow him to do that.

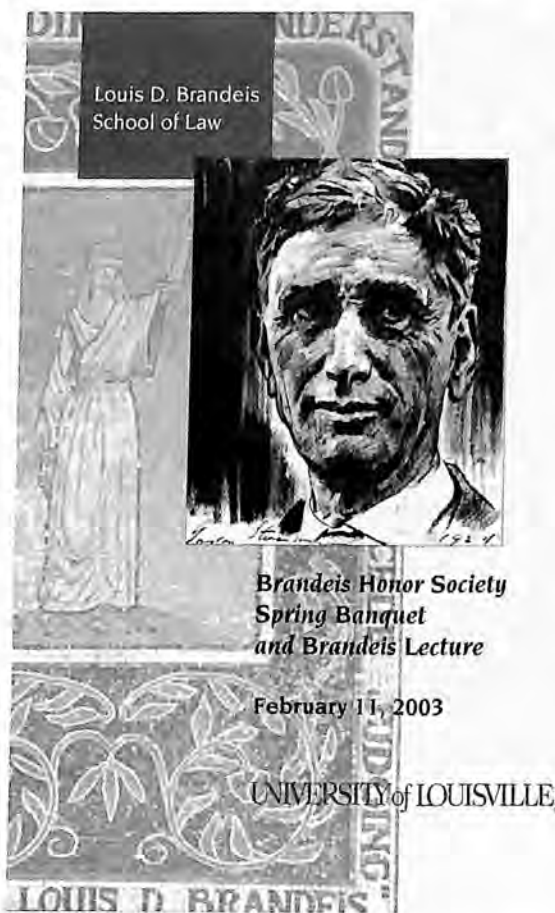
In 1853, President Millard Fillmore nominated Benjamin to become an Associate Justice of the United States Supreme Court. Elected the preceding year as one of Louisiana's two U.S. Senators, Benjamin declined the High Court nomination. His preference for the Senate suggests that the Supreme Court had not yet become the co-equal Branch of Government it is today. Benjamin was the first acknowledged Jew to hold a U.S. Senate seat; he was elected, in 1858, to a second six-year term.

Had Benjamin accepted the Supreme Court post, his service likely would have been shorter than the nine and a half years I have already served as a Justice (and far shorter than Brandeis' 23 years). In early 1861, in the wake of Louisiana's secession from the Union, Benjamin resigned the Senate seat for which he had forsaken the justiceship. He probably would have resigned a seat on the Court

had he held one.

Benjamin is perhaps best known in the United States for his stirring orations in the pre-Civil War Senate on behalf of Southern interests—orations expressing sentiments with which we would today no doubt disagree—and later for his service as Attorney General, Secretary of War, and finally Secretary of State in the Confederate cabinet of Jefferson Davis. Although Benjamin achieved high office, he lived through a time of virulent anti-Semitism in America. Politi-

*Continued on page 4*





## A Letter from the President



The Society is conducting a wide variety of programs for members in the weeks and months ahead. Members in California recently had an opportunity to attend a lecture by Justice Kennedy in California.

The program took place on September 25<sup>th</sup> in San Francisco, and is part of an effort to

conduct programs around the country for the benefit of members who do not have occasion to be in Washington on a regular basis. The event was organized by Society Trustees William Edlund, Charles Renfrew and Foster Wollen and consisted of a dinner followed by an address by Justice Kennedy. The audience was captivated by the Justice's presentation, and the evening was enormously successful.

On October 16, 2003, Professor James O'Hara will also be delivering a lecture on Justice William Brennan in Newark, New Jersey as part of a program the Society is co-sponsoring with the Historical Society for the United States District Court of New Jersey. Professor O'Hara, of Loyola College in Baltimore, chairs the Society's Library Committee, and is among the leading experts on judicial biographies in the country.

As we identify potential partners for other co-sponsored events, the Society intends to schedule additional programs from time to time, not only to expand its regional presence, but also to bolster the environment of cooperation and support among regional historical groups, bar associations and other entities which share a common interest in law-related education. There are, for example, a number of state supreme court, district court and circuit court historical societies with which the Society can partner to provide the members of both organizations opportunities to attend interesting and worthwhile programs.

Although the Program Committee is still working on dates, the Society will of course also be conducting its Leon Silverman Lecture series in Fiscal Year 2004. That series, named in honor of our distinguished Chairman, is partly funded by an endowment contributed by generous members and friends of the Society. In addition, the Society is grateful to the West Group for its continuing support to this worthwhile program.

This year the Leon Silverman Lectures will focus on oral advocacy before the Court. The series will include six lectures by distinguished scholars, and a panel discussion by former Solicitors General.

David Frederick, author of *The Supreme Court and Appellate Advocacy* (Thomson-West), and a partner at the firm of Kellogg, Huber, Hansen, Todd & Evans, will deliver a talk

on the early traditions of oral advocacy.

Professor J. Clay Smith of Howard University will deliver a lecture on African-American Advocates before the Court. Professor Smith's talk, it is hoped, will draw upon his research for two notable volumes he has published—*Emancipation: The Making of the Black Lawyer, 1844-1944* and *Rebels in Law: Voices in History of Black Women Lawyers*.

Professor Lincoln Caplan of Yale University, author of *The Tenth Justice: The Solicitor General and the Rule of Law*, will serve as moderator of a panel discussion by former Solicitors General, including Drew Days III, Seth Waxman and Kenneth W. Starr. The panelists will examine the role of the Solicitor General in representing the government before the Court.

Professor Mary Clark of the American University Washington College of Law, and a former Supreme Court Fellow, will deliver a lecture on female advocates before the Court.

Professor Melvin Urofsky, whose numerous publication efforts include chairing the *Journal of Supreme Court History's* Board of Editors, will examine the history of Justices as advocates in his lecture—focusing in particular on Louis D. Brandeis' advocacy before the Court prior to his appointment in 1916.

Professor Jonathan Lurie of Rutgers University will also deliver a talk on Justice Archibald Campbell, who resigned from the Court in 1860 only to return years later as an advocate to argue the *Slaughterhouse Cases*. Professor Lurie is presently working on a book on Justice Campbell and members will be treated to a glimpse of his research for that forthcoming volume.

The schedule for the FY 2004 series will be completed within the next few weeks and invitations will be mailed to members between 30 and 45 days preceding the first lecture. In keeping with the Society's long-standing tradition, each of the lectures will be introduced by a member of the Court. We anticipate that most or all of the lectures will take place in the Court Chamber unless they are preempted by the major renovation of the Supreme Court Building that began this summer and which will be continuing in various parts of the building over the next five years.

I look forward to seeing many of you in attendance during the course of these outstanding programs.

*James B. O'Hara*

### The Supreme Court Historical Society

## Quarterly

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Kathleen Shurtleff  
James B. O'Hara



The 2003 annual ornament is a work of art. This extraordinary eight-sided ball ornament is plated in 24kt gold and is decorated with four photographs of the Supreme Court Building, alternating with engraved panels containing decorative motifs used throughout the Building. The photos include an exterior view of the Supreme Court; the Great Hall with its grand columns and ceiling of rosettes; the Courtroom; and one of the two Spiral Staircases. The engraved panels contain four elements associated with the neoclassical style of the Building: a Turtle symbolizing longevity and the slow yet deliberate pace of Justice; a Ram, the symbol of strength; an Owl, a symbol of wisdom; and a Lion, representing guardianship.

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## TRIVIA QUIZ

By Professor James B. O'Hara\*

*Supreme Court followers all know that Solicitors General are charged with representation of the U.S. government before the Supreme Court, and that they must be "learned in the law." But can you answer these questions about our Solicitors General?*

- Many Solicitors General have become Attorneys General, and many have become Supreme Court Justices. Only one has held all 3 offices. Who was it?
- This Solicitor General ran for President of the United States—and won!
- This Solicitor General ran for President of the United States—and lost!
- This Solicitor General's father was on the Court.
- These two Solicitors General were appointed to the Court directly from their service as Solicitor General.
- This Solicitor General became a university president.
- This Solicitor General served in office under both a Democratic and a Republican President.
- This Solicitor General was the Watergate Special Prosecutor.
- This Solicitor General was the Whitewater Special Prosecutor.
- This Solicitor General was first the law partner of a Justice.

\*Professor O'Hara is a Trustee of the Supreme Court Historical Society and chair of the Library Committee.

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cal enemies called him Judas Iscariot Benjamin. He was ridiculed for his Jewishness in the press, by military leaders on both sides (by Northern General Ulysses S. Grant, and Southern General "Stonewall" Jackson), and even by fellow Confederate politicians.

After the Confederate surrender, Benjamin fled to England; en route, he narrowly survived close encounters with victorious Union troops, rough waters, and storms at sea. Benjamin's political ventures in the U.S. Senate and in the Confederacy of Southern States were bracketed by two discrete but equally remarkable legal careers, the first in New Orleans, the second in Britain.

Having left Yale College after two years without completing the requirements for a degree, and under cloudy circumstances, Benjamin came to New Orleans in 1832 to seek his fortune. He studied and worked hard, and was called to the bar that same year. Although he struggled initially, his fame and wealth grew large after the publication, in 1834, of a Digest of Reported Decisions of the Supreme Court of Louisiana and of that tribunal's pre-Statehood predecessor. Benjamin's book treated comprehensively for the first time Louisiana's uniquely cosmopolitan and complex legal system, derived from Roman, Spanish, French, and English sources. Benjamin's flourishing practice and the public attention he garnered helped to propel his 1852 election by the Louisiana Legislature to the United States Senate. (Recall that until 1913, when the 17<sup>th</sup> Amendment became effective, U.S. Senators were chosen not directly by the people, but by the legislatures of the several States.)

Benjamin's fortune plummeted with the defeat of the Confederacy. He arrived in England with little money and most of his property lost or confiscated. His Louisiana Creole wife and a daughter reared Catholic had long before settled in Paris; they anticipated continuing support from Benjamin in the comfortable style to which they had grown accustomed. He nevertheless resisted business opportunities in the French capital, preferring the independence of a law practice, this time as a British barrister.

Benjamin opted for a second career at the bar notwithstanding the requirement that he start over by enrolling as a student at an Inn of Court and serving an apprenticeship. This, Benjamin's contemporaries reported, he undertook cheerfully and with fabulous industry, although he was doubtless relieved when the Inn of Court to which he belonged, Lincoln's Inn, determined to admit him to full membership after six months rather than the usual three years.

Benjamin became a British barrister at age 55. His situation at that mature stage of life closely paralleled conditions of his youth. He was a newly minted lawyer with a struggling practice, but, he wrote to a friend, "as much interested in my profession as when I first commenced as a boy." Repeating his Louisiana progress, Benjamin made his reputation among his new peers by publication. Drawing on the knowledge of civilian systems gained during his practice in Louisiana, Benjamin produced a work in England that came to be known as



Judah P. Benjamin grew up in Charleston where he was educated in private schools. After refusing an appointment to the Supreme Court of the United States, he served as Attorney General, Secretary of War, and Secretary of State of the Confederate States of America.

Benjamin on Sales. First published in 1868, the book was a near-instant legal classic. Its author was much praised, and Benjamin passed the remainder of his days as a top earning, highly esteemed, mainly appellate advocate. He became a Queens Counsel seven years after his admission to the Bar. His voice was heard in appeals to the House of Lords and the Judicial Committee of the Privy Council in no fewer than 136 reported cases between 1872 and 1882.

A biographer of Benjamin tells us that, "[h]owever desperate his case, Benjamin habitually addressed the court as if it were impossible for him to lose." This indomitable case of mind characterized both Benjamin's courtroom advocacy and his response to fortune's vicissitudes. He rose to the top of the legal profession twice in one lifetime, on two continents, beginning his first ascent as a raw youth and his second as a fugitive minister of a vanquished power. *The London Times*, in an obituary, described Judah Benjamin as a man with "that elastic resistance to evil fortune which preserved [his] ancestors through a succession of exiles and plunderings."

The first Jew to accept nomination to the U.S. Supreme Court, of course, was Louis D. Brandeis, who grew up here in Louisville. Brandeis graduated from Harvard Law School in 1876 at age twenty, with the highest scholastic average in that law school's history. He maintained close and continuing relationships with his teachers there, and, at age 26, was called back to lecture on the law of evidence. During his days at the bar, Brandeis was sometimes called "the people's attorney," descriptive of his activity in the great social and economic reform movements of his day. He helped create the *pro bono* tradition in the United States. Spending at least half his work-

ing hours on public causes, Brandeis reimbursed his Boston law firm for the time he devoted to nonpaying matters.

Papers lodged here explain something of which I was unaware until preparing these remarks: his support of women's suffrage. As in other situations, he emphasized the obligations as much as the rights of citizenship. In 1913 he wrote simply and to the point: "We cannot relieve her from the duty of taking part in public affairs." This theme of civic responsibility seems to me Brandeis' *leitmotif* first as a lawyer, and later, as a judge.

Brandeis made large donations of his wealth from practice to good causes and lived frugally at home. A friend recounted that, whenever he went to the Brandeis house for dinner, he ate before and afterward.

Brandeis was appointed to the Court by President Wilson in 1916. Like me, he was 60 years old at the time of his appointment. One of his colleagues, James Clark McReynolds, was openly anti-Semitic, as were some detractors at the time of his nomination. When Brandeis spoke in conference, McReynolds would rise and leave the room. No official photograph was taken of the Court in 1924 because McReynolds refused to sit next to Brandeis, where McReynolds, appointed by Wilson two years before Brandeis, belonged on the basis of seniority.

Most people who encountered Brandeis were of a different view. Chief Justice Charles Evans Hughes described him as "master of both microscope and telescope." Commenting on his ability to transform the little case before him into a larger truth, Holmes said he had the art of seeing the general in the particular. President Franklin Delano Roosevelt, among others, called Brandeis not "Judas," but "Isaiah." Admirers, both Jewish and Gentile, turned to the scriptures to find words adequate to describe his contributions to U.S. constitutional



Although not a participant in religious ceremonies or observances, Louis Brandeis was the first person of Jewish heritage to serve on the bench of the Supreme Court of the United States.



Stephen G. Breyer was appointed to the Supreme Court in 1994. He is shown here at the White House greeting Justice William J. Brennan. Mrs. Anthony M. Kennedy is shown to the right of Justice Breyer. Justice Ginsburg believes that neither she nor Justice Breyer were appointed to the Court to fill a "Jewish" seat on the Court.

thought. He elaborated the canons of judicial restraint more powerfully than any other jurist, cautioning judges to be ever on guard against "erect[ing] our prejudices into legal principles." At the same time, he was an architect—a master builder—of the constitutional right to privacy and of the modern jurisprudence of free speech. He wrote, most famously:

Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.

Brandeis was not a participant in religious ceremonies or services, but he was an ardent Zionist, and he encouraged the next two Jewish Justices—Cardozo and Frankfurter—to become members of the Zionist Organization of America. Brandeis scholar Melvin Urofsky commented that Brandeis brought three gifts to American Zionism: organizational talent; an ability to set goals and to lead men and women to achieve them; and above all, an idealism that recast Zionist thought in a way that captivated Jews already well-established in the United States. Jews abroad who needed to flee from anti-Semitism, Brandeis urged, would have a home in the land

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of Israel, a place to build a new society, a fair and open one, he hoped, free from the prejudices that marked much of Europe; Jews comfortably situated in the United States, in a complementary way, would have a mission, an obligation to help their kinsmen build that new land.

When Brandeis retired from the Supreme Court in 1939 at age 83, his colleagues wrote in their farewell letter:

Your long practical experience and intimate knowledge of affairs, the wide range of your researches and your grasp of the most difficult problems, together with your power of analysis and your thoroughness in exposition, have made your judicial career one of extraordinary distinction and far-reaching influence.

That influence, I can attest, continues to this day.

Law as protector of the oppressed, the poor, the minority, the loner, is evident in the life body of work of Justice Brandeis, as it is in the legacies of Justices Cardozo, Frankfurter, Goldberg, and Fortas, the remaining four of the first five Jewish Justices. Frankfurter, once distressed when the Court rejected his view in a case, reminded his brethren, defensively, that he "belong[ed] to the most vilified and persecuted minority in history." I prefer Arthur Goldberg's affirmative comment: "My concern for justice, for peace, for enlightenment," Goldberg said, "stem[s] from my heritage." The other Jewish Justices could have reached the same judgment. Justice Breyer and I are fortunate to be linked to that heritage.

But Justice Breyer's situation and mine are distinct from that of the first five Jewish Justices. I can best explain the difference by recounting a bit of history called to my atten-

tion in remarks made last year by Seth P. Waxman. Seth served with distinction as Solicitor General of the United States from 1997 until January 2001.

Seth spoke of one of his predecessors, Philip Perlman, the first Jewish Solicitor General. Perlman broke with tradition in the 1940s and successfully urged in a Friend of the Court brief the unconstitutionality of racially restrictive covenants on real property. The case was *Shelley v. Kraemer*, decided in 1948. The brief for the United States was written by four lawyers, all of them Jewish: Philip Elman, Oscar Davis, Hilbert Zarky, and Stanley Silverberg. All the names, save Perlman's, were deleted from the filed brief. The decision to delete the brief drafters' names was made by Arnold Raum, Perlman's principal assistant and himself a Jew. "It's bad enough," Raum said, "that Perlman's name has to be there." It wouldn't do, he thought, to make it so evident that the position of the United States was "put out by a bunch of Jews."

Consider in that light President Clinton's appointments in 1993 and 1994 of the 107<sup>th</sup> and 108<sup>th</sup> Justices, Justice Breyer and me. Our backgrounds had strong resemblances: we had taught law for several years and served on federal courts of appeals for more years. And we are both Jews. In contrast to Frankfurter, Goldberg, and Fortas, however, no one regarded Ginsburg and Breyer as filling a Jewish seat. Both of us take pride in and draw strength from our heritage, but our religion simply was not relevant to President Clinton's appointments.

The security I feel is shown by the command from Deuteronomy displayed in artworks, in Hebrew letters, on three walls and a table in my chambers. "Zedek, Zedek, Justice, Justice shalt thou pursue," these art works proclaim, they are ever present reminders of what judges must do "that they may thrive." There is also a large silver mezuzah mounted

on my doorpost. It is a gift from the super bright teenage students at the Shulamith School for Girls in Brooklyn, New York, the school one of my dearest law clerks attended.

Jews in the United States, I mean to convey, face few closed doors and do not fear letting the world know who they are. A question stated in various ways indicative of large advances made. What is the difference between a New York City garment district bookkeeper and a Supreme Court Justice? One generation my life bears witness, is the difference between opportunities open to my mother, a bookkeeper, and those open to me.

With her husband Professor Martin Ginsburg at her side and President Bill Clinton (left) observing, Justice Ginsburg took the oath of office from Chief Justice Rehnquist (right) at a White House Ceremony.



## FY 2003 STATE MEMBERSHIP CHAIRS HONORED

The highly successful membership campaign for FY 2003 ended on June 30, 2003. Just prior to that time, a number of State Membership Chairs were recognized at the Society's Annual Meeting on June 2. By that date, 30 State Chairs had completed their goals. Under the able leadership of National Chair Ralph Lancaster, these individuals worked hard to bolster the ranks of members throughout the country. Their service was particularly meaningful as they all performed this essential and time-consuming work without compensation.

Chairs recognized the evening of the Annual Meeting included: **David L. Brown**, Iowa; **James Falk, Jr.**, Washington, DC; **Douglass Farnsley**, Kentucky; **Frank G. Jones**, Houston, Texas; **Michael Mone**, Massachusetts; **James F. Stapleton**, Connecticut; **John Tucker**, Oklahoma; **John Wester**, North Carolina; **Benjamin White, III**, Rhode Island; and **James Wyrsh**, West Missouri. **Wayne J. Mark**, Nebraska, and **Scott McGeary**, Virginia, were present on June 2<sup>nd</sup>, but both had been awarded special recognition at the January 30 dinner.

In addition, a large number of chairs had achieved goals as of June 2 but were unable to be present to receive an award.



State Chairs honored on June 2 included (left column, top) Frank G. Jones of Houston, Texas, and (below) John Tucker of Oklahoma. Justice Scalia also presented awards to (above top) Douglass Farnsley of Kentucky and (below) Michael Mone of Massachusetts.



These chairs are: **John K. Aurell**, North Florida; **Edmund Burke**, Hawaii; **Jordan B. Cherrick**, East Missouri; **William L. Edlund**, Northern California; **Paul T. Fortino**, Oregon; **Barbara M. Mayden**, Central Tennessee; **Hector Reichard, Jr.**, Puerto Rico; **Herschel E. Richard, Jr.**, Louisiana; **Jeffrey A. Sadowski**, Michigan; **John R. Schaibley**, Indiana; **Elliot H. Scherker**, South Florida; **Richard (Doc) Schneider**, Georgia; **John S. Siffert**, down state New York; **Barry Sullivan**, Illinois; **Charles M. Thompson**, South Dakota; **Howard H. Vogel**, East Tennessee; **Darrel L. Warta**, Kansas; and **Richard Watts**, Arkansas.

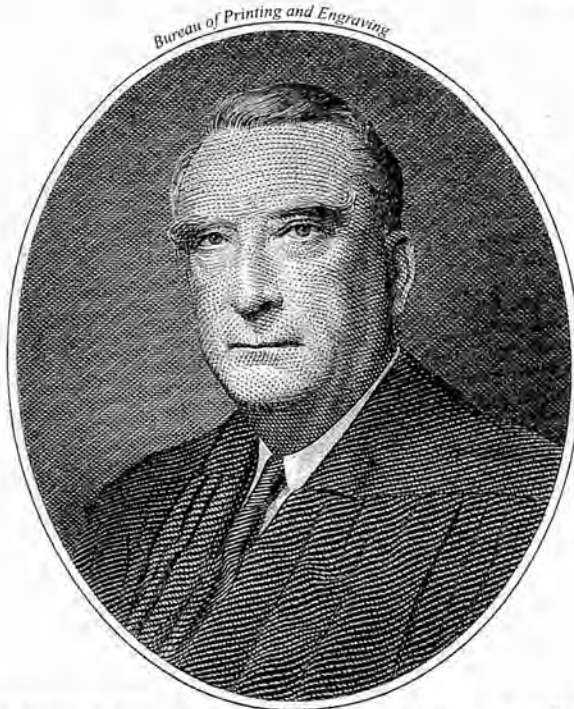
Justice Scalia presented each successful State Chair with a marble award bearing the seal of the Court. The marble base is composed of marble previously used in the Supreme Court Building itself, giving a special significance to the piece.

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## AVAILABLE VINSON

Diane Fisher Johnson\*



Fred M. Vinson was an accomplished public servant, but his modern reputation has languished. As a college student, however, he was credited with an ability to memorize textbooks and add columns of six-digit figures in his head with complete accuracy.

*Almost in the moment in which I speak, the mere appointment of Fred Vinson to the chief justiceship has already given the whole country, in a troubled hour, a wave of comfort.*

*This is significant of the weight of a profound reputation, the reputation that Fred Vinson built up as a congressman, as a judge, and as a government administrator and Cabinet official.*

*In a disturbed instant when the tempers of men had been worn raw, the appointment by President Truman of Fred Vinson acted like the balm of Gilead. This is the gift from Kentucky to the people of America. That is why I say this is a gratifying hour in the history of this State.*

*Few men have risen to the Supreme Court amid anything like the universal paen of praise that met the announcement of the Vinson appointment. And back of Fred Vinson is a learned line of other Kentucky jurists who sat on the bench over which he presides.*

Attorney General Tom C. Clark June 27, 1946

Tom Clark made these remarks at a meeting of the Kentucky Bar Association shortly after Vinson's appointment to the Bench. From the tone it is clear that Vinson enjoyed an enviable reputation in his own time. Clark was serving as Attorney General of the United States at the time the remarks were given in Louisville. He would himself join Vinson on the bench in August 1949, where they would serve together until Vinson's unexpected and premature death in 1953.

*It is somewhat difficult to reconcile this glowing tribute*

*given by Clark with Vinson's reputation in recent years. What then accounts for the difference in the perception of his merit? Perhaps the brevity of his service on the Supreme Court is in some way responsible for the seeming anomaly, and perhaps the vicissitudes of politics and times account for some of it. Ms. Johnson's review of a new book-length biography of Vinson discusses some of the important accomplishments of this now less-celebrated life.*

Time has not been especially kind to Fred M. Vinson. At his alma mater, Centre College, he is remembered as a stellar student (highest marks in his class) and ace athlete (captain of the baseball Colonels.) The Phi Delta Theta tradition of carrying his portrait—affectionately known as “dead Fred”—to athletic and other events ensures that he remains well-known and well-respected almost 50 years after his death. But the wider world has largely forgotten this great public servant.

A new book by two Indiana University Southeast professors aims to set the record straight and bring his life into sharper focus. In *Chief Justice Fred M. Vinson of Kentucky: A Political Biography*, authors James St. Clair and Linda Gugin provide a sympathetic, easily read portrait of a small-town lawyer who rose to the top levels in all three branches of federal government.

Vinson spent a dozen years in Congress. As one biographer wrote, “his first five years in Congress were not distinguished for their legislative output. Finally, after outgrowing the comic role of country bumpkin, Vinson had eight years that were quietly spectacular. During this period he made the transition from country courthouse politician to national statesman.” Some of his congressional colleagues joked that “taxes on tobacco and domestic oil were the only taxes Fred Vinson ever voted against: both were important to his constituency.” Another author observed that he left “an enduring legislative legacy in the Social Security Act of 1935.”

In 1937 Roosevelt had appointed Vinson to serve as a Judge of the U.S. Court of Appeals for the District of Columbia Circuit. On that Court, his decisions generally favored the government, rather than the individual, perhaps the logical outcome of his service in Congress. As a former member of that body, he researched in detail the legislative background of cases coming before him, and his opinions were predicated on his interpretation of the intent of Congress in formulating the law or laws in question. He was also possessed of a phenomenal memory, aiding him greatly in decision-making processes. His opinions generally withstood the test of appeal to the Supreme Court.

Five years later, in 1942, Chief Justice Harlan Fiske Stone designated Vinson to take on an extra duty, asking him to serve as the Chief Justice of the U.S. Emergency Court of Appeals. This court had been created to deal with the backlog of war-related cases. Vinson served on both courts simultaneously until his resignation in May 1943. He resigned to take a post as Director of the Office of Economic Stabilization, his first post in the Executive Branch of the govern-

ment. There he was tasked with controlling inflation in the booming war economy. He was successful there, if unpopular with the public.

In the spring of 1945 Vinson was appointed Director of the Office of War Mobilization and Reconversion, a job that had been held by James F. Byrnes, who had resigned a seat on the Supreme Court bench to take the position. Vinson would not serve long in that capacity. Truman had become President upon the death of President Roosevelt, and in July, he called upon Vinson's skills as a fiscal manager, political organizer, and congressional liaison by asking him to serve as Secretary of the Treasury.

A little less than a year later, in July 1946, Truman named him Chief Justice of the United States, a position Vinson held until his death in 1953. The two men had become close personal friends and shared a view that Congress, not the Court, should write the laws.

Truman also hoped—in vain, as it turned out—that Vinson could unite the fractious Justices of a bitterly divided post-war Court. St. Clair and Gugin note that Vinson's Supreme Court legacy might have fared better with a more congenial Court. His pragmatic emphasis differed from his more intellectually minded colleagues. And certainly as a result of Vinson's death, Earl Warren wound up as Chief Justice behind the unanimous *Brown v. Board of Education* decision that declared racial segregation in schools unconstitutional.

But the notion that Vinson's greatest act of public service was a timely death is due more, say the authors, to the uncharitable comments of fellow Justice Felix Frankfurter than to Vinson's own record. Vinson's opinions in several racial discrimination cases helped set the judicial stage for *Brown*. He wrote the Court's unanimous opinion in *Shelley v. Kraemer* (1948), stating that racially restrictive covenants are unenforceable; in *McLaurin v. Oklahoma State Regents* (1950), where the Court held that a black student had the right to use all of the facilities of the university; and again in *Sweatt v.*



Vinson (left) was a trusted advisor to President Harry Truman. Truman appointed him to the Supreme Court in hopes that he could unify a divided Court.

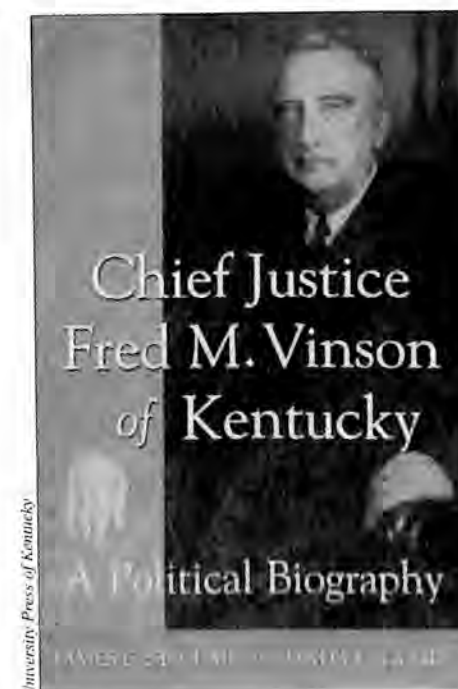
*Painter* (1950), where the Court ruled that a state could not deny a black student admission to a state supported law school even if a “black” law school was available as an alternative. While these opinions advanced the notion that “separate but equal” was a principle that would not long endure, the Court did not go so far as to overturn the doctrine completely. St. Clair and Gugin conclude that “[a]lthough his sense of fairness led him to believe segregation was wrong, his pragmatism led him to consider the consequences for the Court and the country of moving too quickly.”

Truman thought highly enough of Vinson that he encouraged him to seek the Presidential nomination of the Democratic Party in 1952. Vinson had no presidential aspirations, however, preferring to remain on the bench as Chief Justice of the United States. Given his extensive record of successful elective and other public service, and the close association with and support of two Presidents, the question remains why Vinson's reputation has diminished over time. The notion that Justice Frankfurter contributed to negative public perception is perhaps part of the answer. When asked to consider the question in a 1976 interview, his first law clerk, Willard Pedrick, founding Dean of the Arizona State University Law School, observed: “I don't think we can expect the man who was one of the greatest decathlon performers to also be the world's greatest pole vaulter. In terms of the public servant, this was a great man, a man devoted to his country, a many who gave everything he had to the country and who served with distinction in every branch of federal government.”

St. Clair and Gugin concur. “Experts can quibble about and debate the lasting value of the public side of the Vinson ledger,” they write, “but there can be little argument that the personal side is one that stands the test of time and one that offers sound guidance to those who choose to enter public service.”

\* Diane Fisher Johnson is the Editor of *Centrepiece*, the magazine published by Centre University.

Copies of this biography can be obtained from the Society's gift shop by accessing the website, [www.supremecourthistory.org](http://www.supremecourthistory.org), or by telephoning the toll-free number of the gift shop at 1-888-539-4438





## RECENT CONTRIBUTION TO MEMORABILIA COLLECTION

Catching the spirit of participation in the acquisition of items pertinent to the history of the Supreme Court and the families of individuals who have served thereon, Society President Frank C. Jones recently provided copies of photographs and newspaper articles dating from October 1952.

During that month, Gov. Earl Warren of California campaigned at several venues in Georgia, making a bid to woo voters characterized as "dyed-in-the-wool Democrats" to the Republican party's candidate for President, General Dwight D. Eisenhower. The Governor campaigned from the rear of a Savannah-to-Macon special train. His campaign marked the first time since the Reconstruction Era a person of such national prominence had attempted to win votes for the Republican party.

Accompanying the Governor on the trip was his daughter, Virginia Warren. An article published on October 24, 1952 in *The Macon Telegraph* observed that:

"Virginia Warren's a smart girl. Just as smart as she looks and she looked pretty smart yesterday in a trim, neat, fashionable deep gray winter cotton dress with no hat on her trim, neat, fashionable, short-

clipped blonde hair.

She was here yesterday with 'Daddy' who is Gov. Earl Warren of California. He does talk, at least when there's speech-making on the schedule. . . .

'No. Not ever. Not at all.' That's Virginia on the subject of saying anything on politics, publicly or privately. But even if its no she's saying, she says it with a warm smile and a glint of humor in her expressive eyes. She's not a member either of any political organization, partisan or non-partisan.

. . . According to Virginia, she's along as she often is with her father on such political trips, just to keep him company. . . And pleasant company she is too, for anybody, quite willing to answer questions as long as they stick to sports and hobbies and how's her family and yes, this is the first time she's ever had barbecue.

Of the barbecue, while she balanced a plate on one hand, perched high upon the shelves of the livestock arena at the fair, where her daddy spoke, she did say, 'It's very good. I like it.'

In fact, diplomatic as she's smart, Virginia smiles pleasantly and with warmth and likes everyone."

Frank C. Jones, a lawyer in Macon at the time, is shown seated next to Virginia at the barbecue. In what is perhaps a curious foreshadowing, the same Frank C. Jones and Virginia Warren Daly, are now officers of the Supreme Court Historical Society. Mrs. Daly has been the Secretary of the Society for approximately 20 years, while Mr. Jones has served as a Vice President, and is now the President of the Society.

It was Dwight D. Eisenhower who appointed Earl Warren Chief Justice of the United States in 1953. Warren had himself been a serious contender for the presidency in 1948 and 1952. While he failed to secure the nomination both times, he was the Republican candidate for vice president in 1948. As Eisenhower's appeal as the presidential candidate became apparent, Warren decided to throw his support to Eisenhower's 1952 bid for the presidency. He was nominated to succeed Chief Justice Fred Vinson, who died unexpectedly in September 1953. Warren joined the Court on the opening day of the 1953 term as an interim appointee, but was not confirmed by a vote of the Senate until March 1, 1954.

We are pleased to have these new photographs to add to the permanent collection of memorabilia and artifacts tracing the history of the Supreme Court and its members. We express thanks to President Jones and Secretary Daly for sharing these delightful images and memories.

## 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 top of page 17 for two more recent additions to the Society's collection.



Frank C. Jones (second from left) was an attorney in Macon when Virginia Warren (center) came to Georgia on the Eisenhower Campaign Trail.



Governor Earl Warren of California is shown here greeting the public at a stop in Macon, Georgia. Warren was campaigning on behalf of Dwight Eisenhower in the 1952 Presidential Election Campaign. Virginia Warren (with flowers) accompanied her father on the trip.



## **PORTRAIT OF FORMER CLERK MICHAEL RODAK PRESENTED TO THE SUPREME COURT**

On December 17, 2002, an oil portrait of former Clerk of the Court Michael Rodak was presented to the Supreme Court in a brief ceremony held in the West Conference Room. Mr. Rodak served as Clerk of the Court from 1972-1981. The costs associated with painting and framing the portrait were paid by the Supreme Court Historical Society.

The Clerk serves as the chief administrative officer of the Court, whose office is responsible for conducting almost all of the Court's routine business. The office was established by the first formal rule of the Court, dated February 1790. It is now authorized by §671 Title 28, U.S. Code. The duties of the office have grown as the Court has grown, and the staff attached to the Clerk is now the largest staff at the Court, although it is still quite small compared with other branches of the government.

The responsibilities include the administration of the docket and argument calendars; receipt and recording of motions, petitions, briefs and other documents; distribution of those documents to the Justices; the preparation of the Court's formal judgments and mandates; and no-

tification to counsel and lower courts of all formal actions of the Court.

To date, nineteen individuals have filled this position. Portraits of thirteen previous Clerks have been on display in the Supreme Court Building, and the addition of Mr. Rodak's portrait brings that total number to fourteen.



Mr. Michael Rodak stands by his completed portrait. Mr. Rodak served as Clerk of the Court from 1972-1981.

Mr. Rodak's portrait was painted by well-known Washington area artist Annette Polan. She has painted portraits of many other notable individuals, including Justice Sandra Day O'Connor. Justices Stevens and Ginsburg were present at the portrait presentation, as were former colleagues and current officers of the Court and members of Mr. Rodak's family.

The Society is pleased to be able to provide this service to the Court and looks forward to commissioning portraits of the remaining five individuals who have served, or in the case of General William Suter, currently serve as Clerk of the Court.

A portrait of Al Stevas is already in progress and should be completed within six months. It too is by Annette Polan.



Four Clerks of the Court were present for the ceremony. From left to right: William K. Suter, current Clerk; Al Stevas, who succeeded Mr. Rodak as Clerk; Michael Rodak; and Joseph Spaniol.

## **2004-2005 THE SUPREME COURT FELLOWS PROGRAM**

The Supreme Court Fellows Commission invites applications for the 2004-2005 term. In explaining the importance of this program, Chief Justice Rehnquist observed that "[t]he Supreme Court Fellows Program is entering its 31<sup>st</sup> year in 2004. Since its inception, the Fellows Program has offered a unique opportunity for exceptional individuals to contribute to the administration of justice at the national level.

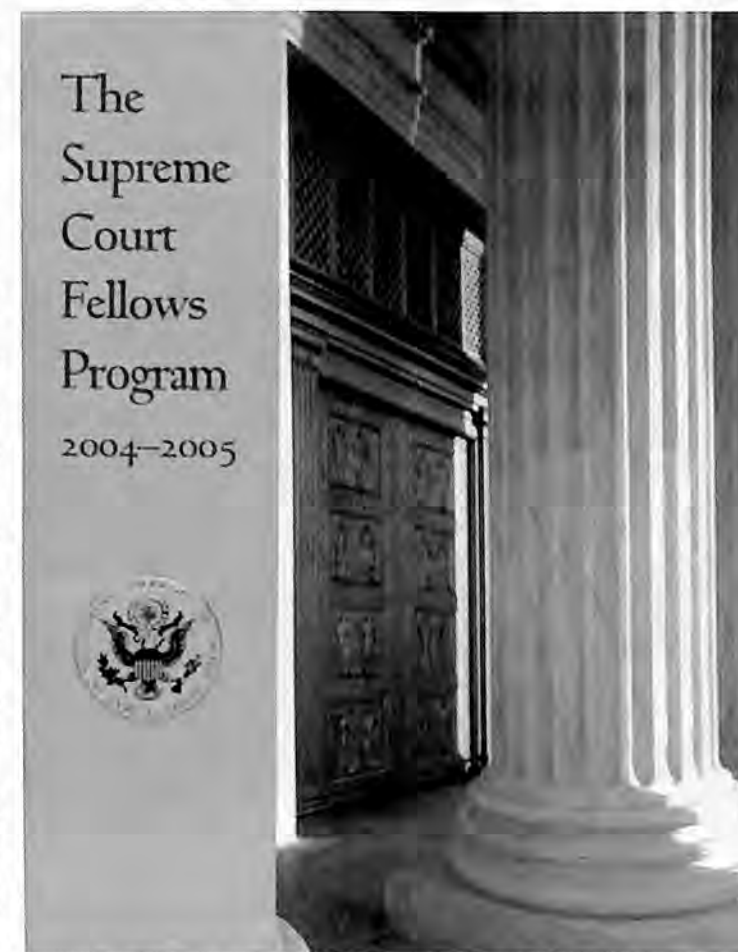
"The Supreme Court, Federal Judicial Center, Administrative Office of the United States Courts and United States Sentencing Commission are all looking for motivated candidates with proven records of accomplishment. Our Fellows have a tradition of bringing creativity and fresh insights to projects that have had a lasting impact on the federal courts."

Up to four Fellows will be chosen to spend a calendar year, beginning in late August or early September 2004, in Washington, D.C., at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission. The Fellowships are a one-year appointment, beginning in August or September. Fellows become employees of the federal court system, receive salaries equivalent to GS 15, step 3, presently \$102,386, and are eligible for federal employees' health and life insurance programs.

One fellow is based at the Supreme Court of the United States in the Office of the Administrative Assistant to the Chief Justice. The administrative assistant aids the Chief Justice in his planning and leadership duties as head of the third branch of government. The administrative assistant's responsibilities include serving as a liaison for the Chief Justice to the legislative and executive branches and other non-judicial entities.

A variety of opportunities enhance the fellowship experience. Fellows have access to educational resources and programs offered by the federal judiciary. They also attend luncheon seminars sponsored by the administrative assistant to the Chief Justice, a Supreme Court Historical Society lecture series, and special activities with the White House Fellows.

Candidates for these fellowships must have: at least one post-graduate degree; two or more years of successful professional experience with a record of high achievement; multi-disciplinary training and experience, including familiarity with



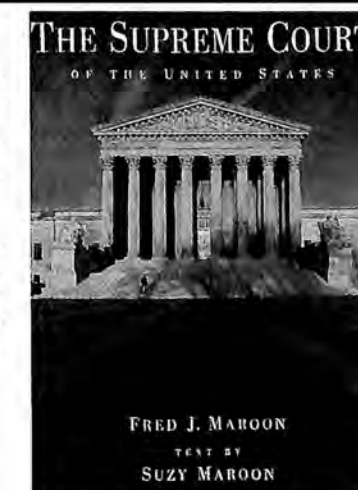
the judicial process; original and flexible thinking, accompanied by a high degree of motivation; excellent speaking and writing abilities; trustworthiness and a commitment to serving the federal judiciary.

Interested parties can call (202) 479-3415 or visit [www.fellows.supremecourtus.gov](http://www.fellows.supremecourtus.gov) to obtain additional program information and application materials. Applications can be submitted by mail or online. Mail applications must be postmarked by the November 7, 2003, deadline. Online applications must be received by the November 7, 2003 deadline.

*State Chairs continued from page 7*

By year-end at June 30, 2003, an additional four individuals had achieved their membership goals. These individuals were: **Anthony Murray**, Southern California; **Mark Rubin**, Arizona; **R. Bruce Shaw**, South Carolina; and **John Trigg**, Colorado.

Special thanks are due to all the State Chairs who assisted in the program for Fiscal Year 2003, without whose assistance the Society could not be successful. A special debt of gratitude goes to Mr. Lancaster for assembling and organizing this group of energetic and dedicated individuals.



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## ANSWERS TO TRIVIA QUESTIONS

(Questions on Page 3)

1. Robert H. Jackson, (left) shown here shaking hands with Senator Henry Ashurst at his confirmation hearing, was the only Justice who was both Attorney General and Solicitor General.



2. William Howard Taft was appointed Solicitor General in 1890 by President Benjamin Harrison. In 1908, Taft was himself elected President. He was also, of course, Chief Justice from 1921 until shortly before his death in 1930.



3. John W. Davis was the Democratic candidate for President in 1924, but lost to Calvin Coolidge. He is shown here with Alfred E. Smith, who was himself an unsuccessful candidate for President in 1928.



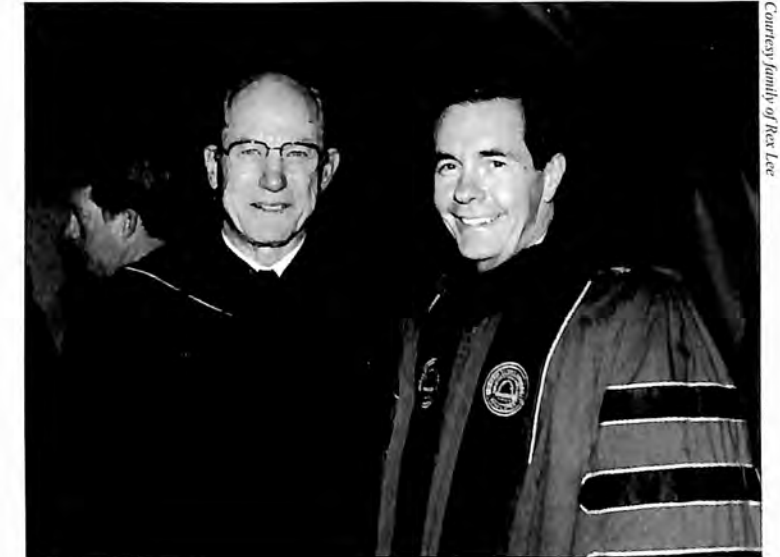
4. Three generations of the Hughes family were photographed at a family graduation. Charles Evans Hughes, Jr., (right) resigned as Solicitor General when his father was appointed Chief Justice by President Hoover in 1930.



5. The two were Stanley Reed (top) and Thurgood Marshall shown in the photograph below with President Lyndon Johnson.



6. Rex Lee was invested as President of Brigham Young University in 1989. He is pictured here with Justice Byron White (left) for whom he clerked. Lee was Solicitor General from 1981 to 1985.



7. Erwin Griswold was Solicitor General under both Democrat Lyndon Johnson and Republican Richard Nixon. He is shown here at the White House when he was sworn in as Solicitor General. Left to Right: Chief Justice Earl Warren shaking hands with President Johnson, Harriet and Erwin Griswold.







8. Archibald Cox (with bowtie) was the first Watergate Prosecutor. He had earlier served as Solicitor General under Kennedy and Johnson (right) from 1961 to 1965.



9. Kenneth W. Starr was Solicitor General from 1989 to 1993. This picture shows him as he delivered the Society's Annual Lecture in 1986 in the Restored Supreme Court Chamber in the Capitol Building.



10. The first Solicitor General of the United States was Benjamin H. Bristow, appointed by President Grant. When younger, he was a law partner of Justice John Marshall Harlan I.

**Eleventh National Heritage Lecture and Reception  
November 12, 2003 • Lecture, six-thirty o'clock  
"Remembering the Kennedys",  
A conversation with Arthur M. Schlesinger, Jr.  
and Hugh S. Sidey  
Reception follows the Lecture  
U.S. Navy Memorial Foundation and  
Naval Heritage Center  
Arleigh and Roberta Burke Theatre  
Washington, DC**

Arthur M. Schlesinger Jr. was appointed special assistant to President John F. Kennedy in 1961 and served in the White House throughout his administration. Later he became Albert Schweitzer Professor in the Humanities at the Graduate School of the City University of New York, retiring in 1996. He also taught at Harvard University. He is a frequent contributor to newspapers and magazines and the author of two Pulitzer Prize winning books, *The Age of Jackson*, and *A Thousand Days: John F. Kennedy and His Times*.

Hugh S. Sidey has written about the American presidency for more than 40 years. He began covering Dwight Eisenhower for *Life* magazine in 1957, later becoming *Time* magazine's political and White House correspondent. He served as *Time* bureau chief and has authored the column "The Presidency" since 1966. He is currently a *Time* magazine contributor in Washington. His latest book is *Profiles of the Presidents*.

For information about tickets please contact the White House Historical Association directly at (202) 789-0440, or call the SCHS staff at (202) 543-0400.

**MORE NEW ACQUISITIONS**



Attorney General William Mitchell (center) watches as Charles Evans Hughes, Jr. (right) is sworn in as the 20<sup>th</sup> Solicitor General of the United States by appointment clerk Charles Sorenberger on May 27, 1929. He would resign in less than a year after his father became Chief Justice in February 1930, but they overlapped in their respective positions for several weeks. Hughes' biographer Merlo Pusey noted with amusement that one evening, after greeting his son for dinner, the new Chief Justice said with "... his whiskers parting in a broad smile, 'I suppose this is the first time the Chief Justice ever kissed the Solicitor General, and certainly it is the first time the Chief Justice ever kissed the Solicitor General's wife.'"



The new Chief Justice takes a morning stroll down Connecticut Avenue with his wife Antoinette in early April 1930. Charles Evans Hughes walked a mile for exercise right after breakfast, and often walked the 3 miles from his home at 2223 R Street, NW, to the U.S. Capitol, where the Supreme Court was located until the move in 1935 to its only permanent home.

**New Memberships April 1, 2003 through June 30, 2003**

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Suzanne Bailey, Huntsville  
Cynthia Erickson, Summerdale

**ALASKA**

Eileen Foley, Anchorage

**ARIZONA**

Christopher Browning, Tucson  
Nancy Jarvis, Gilbert  
Patricia Klauer, Phoenix  
Richard H. Ward, Phoenix

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Deborah S. Denton, Little Rock  
David M. Donovan, Little Rock  
Tim Fox, Little Rock  
Brad Hendricks, Little Rock  
Marion Humphrey, Little Rock  
Jay Moody, Little Rock  
Richard Moore, Little Rock  
Michael A. Mosley, Little Rock  
Brenda Patton, Bentonville  
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Jim Robertson, North Little Rock  
Barry Sims, Little Rock  
Vann Smith, Little Rock  
James W. Tilley, Little Rock  
Alice Watts, Little Rock  
Diane L. Abraham, Sonoma  
Alex P. Aghajanian, Pasadena  
John Alcala, Delano  
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Kenneth Benbassat, Los Angeles  
James R. Birnberg, Los Angeles  
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Robert Melvin Cane, Delano  
John Francis Carroll, San Pedro  
Annetta Casey, Redlands  
Esther Chang, Cerritos  
Edward M. Chen, San Francisco  
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*Continued on page 18*



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