THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XXIV NUMBER 4, 2003

CHIEF JUSTICE DEDICATES THE ROBERT H. JACKSON CENTER

Chief Justice William H. Rehnquist, who served as a law clerk to Justice Jackson during the 1952-53 Term, traveled to Chatauqua County, New York to dedicate the Robert H. Jackson Center. Held on May 16, 2003, in front of an 1806 mansion on Fourth Street in Jamestown that has become the Jackson Center, the event featured remarks by the Chief Justice and other speakers, including Jackson's granddaughter Melissa C. Jackson, and Jackson scholar John Q. Barrett.

As the guest of honor and principal speaker, the Chief Justice delivered the following remarks:

Thank you Professor Barrett for the kind introduction. I am pleased to be here for the dedication of the Robert H. Jackson Center. I served as one of his law clerks for a year and a half — from February 1952 until June 1953. It was one of the most rewarding experiences of my life. Justice Jackson served as an Associate Justice of the Supreme Court from 1941 until his death in 1954. During these thirteen years he made significant contributions to the Court's jurisprudence. But unlike any of his colleagues before or since, he was a principal architect of the Nuremberg War Crimes Trials held immediately after World War II. He described this effort as the "supremely interesting and important work" of his life. So a good portion of my remarks will be devoted to that aspect of his career.

Robert H. Jackson was born in 1892, and grew up here in the Jamestown area. He was admitted to the New York Bar without having a law degree and developed a very successful law practice here. He was also active in the state Democratic party, and as a result became a friend of Franklin D. Roosevelt. After Roosevelt became President in 1933, he brought Jackson to Washington as General Counsel to what was then the Bureau of Internal Revenue. Jackson rose rapidly in the executive hierarchy, serving as Assistant Attorney General in the Antitrust Division of the Justice Department, Solicitor General, and finally Attorney General. Justice Louis D. Brandeis expressed the view that Jackson should be Solicitor General "for life," a high compliment from one who did not bestow compliments casually. When Roosevelt elevated Harlan Stone to the Chief Justiceship in 1941, he appointed Jackson as an Associate Justice.

Collection of the Supreme Court of the United States

Justice Robert Houghwout Jackson served on the Supreme Court of the United States from 1941-1954.

Franklin Roosevelt died at Warm Springs, Georgia, on April 12, 1945. He was succeeded by his Vice President, Harry S Truman. The allies in Europe were sweeping to victory — "VE" Day was less than a month away. In late April, Truman asked Justice Jackson to take on the job of Chief U.S. Prosecutor before an international tribunal to try high German officials accused of war crimes. Within days, Jackson wrote to the President accepting the position and by an executive order dated May 2nd, Truman appointed Jackson as Chief Prosecutor.

In accepting the job, Jackson took on an enormous responsibility, not just as an advocate before the tribunal, but also as a *de facto* ambassador and as administrator. Justice Jackson later said that it was

Continued on page 4

A Letter from the President

I am pleased to report that it appears that our goal to secure passage of a John Marshall Commemorative Coin Bill is about to be realized, thanks in great measure to the hard work and perseverance of a large number of Trustees, members and friends of the Society.

Just before the end of its Fall session the Senate version of the bill, S. 1531, was passed by unanimous consent with the support of 76 Senate co-sponsors. Shortly after Congress came back into session, the Society surpassed the requirement of securing two-thirds of the House of Representatives to co-sponsor its version of the bill, H.R. 2768, which is now expected to be reported out of the House Financial Services Committee in early March.

As a result, sometime this Spring Congress will probably pass and send to the President for signature a John Marshall Commemorative Coin Act, providing for the minting of up to 400,000 John Marshall silver dollars in 2005. The Bureau of the Mint will, by law, attach a surcharge to the sale of these coins that will devolve to the Society and those revenues will be placed in an endowment to further some of the Society's many worthwhile endeavors.

The amount that will accrue to the Society's endowment will depend upon how well the coins sell, but the likely range is between $2.5 and $4 million and—in that these funds will be used by the Society to collect and preserve the history of the Court—it is a particularly fitting legacy to the Great Chief Justice.

The Society has many people to thank for making this possible. Ralph Lancaster has provided superb leadership as chair of the Society's ad hoc Commemorative Coin Advisory Committee. Ralph put together and managed a highly effective committee organized by judicial circuit-that included: Michael Mone (1st), Michael Cooper and Philip Allen Lacovara (2nd), Louis Fryman (3rd), James Morris (4th), Harry Reasoner (5th), Lively Wilson (6th), Jerold Solovy (7th), Frank Gundlach (8th), Foster Wollen (9th), Stuart Shanor (10th), William Norwood (11th) and Theodore Hester (DC). Each of them is to be commended for keeping this legislative effort alive and for their respective roles in securing 302 sponsors in the House of Representatives and 76 co-sponsors in the Senate.

In addition, several of the Society's friends played important roles in securing critical support for the bill. Prior to his retirement from the United Parcel Service, Society Trustee Joe Moderow persuaded UPS to place its formidable staff of government affairs professionals behind the Society's efforts. Similarly, Society Trustee Jay Sekulow of the American Council on Law and Justice encouraged his organization's key government affairs officers to help shepherd the bill through both Houses. Society Chairman Leon Silverman worked hard on the bill, as has always been his wont with matters relating to the Society. Society Treasurer Sheldon Cohen and Executive Committee member Mrs. Thurgood Marshall also lent their influence to the legislative drive. The Society is also grateful to Vance Opperman, Judge Griffin Bell, Martha Barnett and Society Trustees Peter Angelos, Barbara Black, James Ellis, Dorothy Tapper Goldman, Judith Richards Hope, Gene Lafitte, Jerome Libin, Warren Lightfoot, Maureen Mahoney, Dwight Opperman, Barrett Prettyman, Cathy Douglas Stone and Agnes Williams for their substantial contributions to the drive to recruit co-sponsors. Bill Shepherd, the Society's State Chair for South Florida also lent meaningful assistance in his state.

Try as I might, I will undoubtedly fail to mention some of those who deserve credit for their support, but as friends of the Society, I hope they may forgive any unintentional oversight on my part. My limited space in this column compels me to turn now to some of the officials without whose support the John Marshall Coin would never become a reality.

First among these is the Chief Justice of the United States and his eight colleagues whose strong support at the outset of this effort helped the Society win the attention of the congressional leadership. The Society also wishes to thank Senators Orrin Hatch of Utah and Patrick Leahy of Vermont f introducing and shepherding the bill through the Senate and Congressman Spencer Bachus of Alabama for spearheadin the effort in the House. We are also deeply grateful to Repre sentative Tom Allen and Senator Susan Collins of Maine and Representative Luis Gutierrez of Illinois for their strong support throughout the campaign. The Society is also indebted to the Chief Justice's Administrative Assistant Sally Rider for her effective efforts in fostering a cooperative atmosphere between the judicial and legislative branches. Similarly on the legislative side, Joe Pinder of the House Financial Services Committee's staff provided meaningful and timely counsel on the legislative process concerning coin bills. This enabled the Society to approach the task with a firm understanding of the relevant hurdles and to develop a strategy for surmounting them. The Society is in his debt as well.

In the months ahead, I will report further on the progress f the John Marshall Commemorative Coin bill as it proceeds forward in Congress. Although the matter is not concluded ntil the President signs the bill into law, it seems quite likely at this point that the Society can look forward to that outcome sometime in the next few months. In the interim I want to express my deep appreciation to all of those mentioned above and any others I may have overlooked for helping bring this about. This degree of membership involvement in the affairs of the Society is what makes this a strong and effective organization.

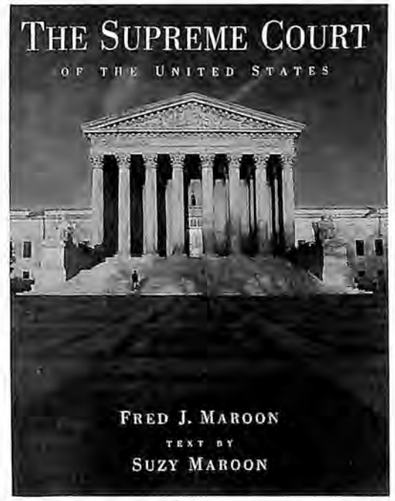
Frank Jones

The Supreme Court Historical Society

Quarterly

Published four times yearly in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 224 E. Capitol Street, N.E., Washington, D.C. 20003. Tel. (202) 543–0400, www.supremecourthistory.org. Distributed to members of the Society, law libraries, interested individuals, and professional associations.

Managing Editor Kathleen Shurtleff
Assistant Editor James B. O'Hara



This remarkable book of photographs by the late Fred Maroon captures the symbolism and beauty of this neoclassical building, while the text provides a behind-the-scenes look at the Supreme Court. $42.95 Hardcover

Members receive a 20% discount on all purchases. A limited number of copies signed by Suzy Maroon are available for sale.

Order through the website, or by telephoning (888) 539-4438.

2004 SILVERMAN LECTURE SERIES SCHEDULE

The Leon Silverman Lecture Series for fiscal year 2004 will commence in February 2004. This year's series focuses on advocacy before the Supreme Court. It will explore the role that advocates play in Supreme Court cases as well as the way oral arguments and advocacy have changed over the course of the Court's more than two hundred-year history. A schedule of dates, topics and speakers appears below. All programs will take place in the Supreme Court Chamber of the Supreme Court of the United States in Washington, DC.

Supreme Court Advocacy in the Early Nineteenth Century
Thursday, February 19, 2004 6:00 PM
Speaker: David C. Frederick, Esquire

Ex-Justice Campbell and Creative Advocacy
Thursday, February 26, 2004 6:00 PM
Speaker: Professor Jonathan Lurie

Louis D. Brandeis: Advocate Before and On the Bench
Wednesday, March 31, 2004 6:00 PM
Speaker: Professor Melvin Urofsky

Women as Advocates Before the Court
Wednesday, April 21, 2004 6:00 PM
Speaker: Professor Mary Clark

The Solicitors' General Office: A Discussion
Thursday, April 29, 2004 6:00 PM
Moderator: Professor Lincoln Caplan
Participants: The Honorable Walter Dellinger, The Honorable Kenneth W. Starr, and the Honorable Seth P. Waxman

The price for individual lecture programs is $25 per person, or $100 for the series. The ticket price includes admission to the lecture, as well as admission to a reception held immediately following each program.

All reservations will be confirmed in writing to participants. For further information contact the Society's office at (202) 543-0400.

Continued from page 1

President Franklin D. Roosevelt first brought Jackson to Washington to serve as general counsel to the Bureau of Internal Revenue. Jackson subsequently moved to the Department of Justice, becoming a close friend and personal adviser to FDR.

"the first case I have ever tried when I had first to persuade others that a court should be established, help negotiate its establishment, and when that was done, not only prepare my case but find myself a courtroom in which to try it."

There had never been such a tribunal before. The United States would prosecute — and judge — along with its wartime allies Great Britain, Russia, and France. Agreement as to which country would do what, and when, had to be negotiated. A sizable and highly competent staff had to be assembled on short notice, to depart for war-torn Europe for an indefinite period of time.

Jackson made his first of several trips to Europe in late May 1945 to discuss preliminary matters. This was before the age of jet propulsion, and travel was by propeller plane. These planes could not cross the Atlantic Ocean without refueling. Thus a flight from Washington or New York to Paris, like Jackson's, would stop first at Stephenville, Newfoundland, and then at Santa Maria in the Azores, before the final leg to its destination. Agreements were duly negotiated among the allies over the summer. Nuremberg, Germany, was designated as the place for the trials to be held.

Not only was the job of Chief Prosecutor a once-in-a-lifetime opportunity, but Jackson also had very strong feelings about the importance of establishing a thorough record of the atrocities committed by the Nazis. In a June 1945 report to the President, Jackson explained:

". . . The groundwork of our case must be factually authentic and constitute a well-documented history of what we are convinced was a grand, concerted pattern to incite and commit the aggressions and barbarities which have shocked the world. We must not forget that when the Nazi plans were boldly proclaimed they were so extravagant that the world refused to take them seriously. Unless we write the record of this movement with clarity and precision, we cannot blame the future if in days of peace it finds incredible the accusatory generalities uttered during the war. We must establish incredible events by credible evidence."

The trials began in late November, 1945, and Jackson was the first to make an opening statement to the tribunal. In beautiful prose, Jackson spoke of the importance of making sure that each of the defendants, no matter how heinous the charges against them, received a fair trial:

"The former high station of these defendants, the notoriety of their acts, and the adaptability of their conduct to provoke retaliation make it hard to distinguish between the demand for a just and measured retribution, and the unthinking cry for vengeance which arises from the anguish of war. It is our task, so far as humanly possible, to draw the line between the two. We must never forget that the record on which we judge these defendants today is the record on which history will judge us tomorrow. To pass these defendants a poisoned chalice is to put it to our own lips as well. We must summon such detachment and intellectual integrity to our task that this trial will commend itself to posterity as fulfilling humanity's aspirations to do justice."

He spoke for an entire day, and won high praise from the American reporters covering the event. Several months later, he undertook the principal cross-examination of Herman Goering, the highest ranking German official on trial. Press reviews of this effort were mixed. After all of the evidence was in, in late July, Jackson also made the first of the closing speeches for the prosecution. On August 31st, the tribunal recessed to consider the cases against the defendants. Its judgment was handed down a month later: of the twenty-two defendants, twelve were sentenced to hang, three to life imprisonment, four to terms ranging from ten to twenty years, and three were acquitted.

Jackson understandably regarded his participation in the Nuremberg Trials as the crowning achievement of his career. Telford Taylor, one of the other U.S. prosecutors at Nuremberg, believed that Jackson played a "unique and vital role" in the Nuremberg trials. Taylor concluded that, "More than any other man of that period, Jackson worked and wrote with deep passion and spoke in winged words. There was no one else who could have done that half as well as he."

But despite the praise for Justice Jackson's contributions to the success of the Nuremberg Trials, there was a great deal of criticism of the trials themselves. The criticism focused on two issues. The first was whether a Justice of the Supreme Court should participate as a prosecutor in such a trial.

The second issue was whether or not this sort of trial — not only the prosecutors, but also the judges — coming from the victors, would be in fact if not in form a "kangaroo court." But this criticism softened as the Court amassed evidence of the evil intentions and deeds of many of the defendants, and also because three of the defendants were acquitted. Legal scholars also questioned whether the whole idea of such a trial where there was no existing body of law did not violate the principle embodied in the *ex-post facto* prohibition in the United States Constitution. That provision requires that before criminal liability may attach to a person for a particular act, a law making the conduct criminal must have been on the books before he committed the act.

Some of Jackson's own colleagues joined in the criticism. Justice William O. Douglas (between Jackson and whom no love was lost) opined in memoirs published many years later:

"[Jackson] was gone a whole year, and in his absence we sat as an eight-man Court. I thought at the time he accepted the job that it was a gross violation of separation of powers to put a Justice in charge of an executive function. I thought, and I think Stone and Black agreed, that if Bob did that, he should resign. Moreover, some of us — particularly Stone, Black, Murphy and I — thought that the Nuremberg Trials were unconstitutional *by American standards.*"

Whatever the merit of these objections, the Nuremberg Trials were surely superior to the summary court martial proceedings favored by some members of the administration and the summary executions initially favored by the British.

Chief Justice Stone wrote privately in November 1945 that it would not disturb him greatly if the power of the Allied victors was "openly and frankly used to punish the German leaders for being a bad lot, but it disturbs me some to have it dressed up in the habiliments of the common law and the Constitutional safeguards to those charged with crime." Justice Jackson's response to this criticism says a great deal about how he viewed the Nuremberg Trials:

"When did it become a crime to be one of a 'bad lot'? What was the specific badness for which they should be openly and frankly punished? And how did he know what individuals were included in the bad lot?

. . . . If it would have been right to punish the vanquished out-of-hand for being a bad lot, what made it wrong to have first a safeguarded hearing to make sure who was bad, and how bad, and of what his badness consisted?"

Stone's biographer, Alpheus T. Mason, sums up Stone's views of Jackson's service this way:

"For Stone, Justice Jackson's participation in the Nuremberg Trials combined three major sources of irritation: disapproval in principle of non-judicial work, strong objection to the trials on legal and political grounds, the inconvenience and increased burden of work entailed. Even if the Chief Justice had wholly approved the trials themselves, he would have disapproved Jackson's role in them. If he had felt differently about the task in which Jackson was engaged, he might have been somewhat less annoyed by his colleague's absence."

Stone's concern for the effect Jackson's absence had on the Court is surely understandable. Jackson had been gone for one entire term of the Court, and his colleagues had to take up the slack by dividing up what would have been his share of the opinions during the term. In any case in which the eight Justices were equally divided, the Court had two alternatives, neither of which was attractive. They could simply hand down a one-sentence order announcing that the decision of the lower court was affirmed by an equally divided vote, an order which by custom says nothing about the governing law. The same issue, which pre-

Library of Congress

Jackson served effectively in the offices of Solicitor General and Attorney General before his appointment to the Supreme Court in 1941. Unlike most of his colleagues on the Court, Jackson had no formal education after his graduation from high school apart from one year of law school.

Continued on page 14

28TH ANNUAL MEETING HELD JUNE 2, 2003

Collection of the Supreme Court of the United States

Justice Kennedy's Lecture focused on the Court-packing incident of 1937. Behind him are photographs of the Justices who served on the Court at the time of the incident.

Monday, June 2, 2003 marked the 28th Annual Meeting of the Society. Following the tradition of previous years, the first event of the day was the Annual Lecture. The speaker for the program was the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States.

In introducing Justice Kennedy, Mr. Jones observed that apart from his judicial duties, the Justice is a visiting instructor of the McGeorge School of Law. In addition to formal teaching, the Justice has been actively involved in an educational program sponsored by the American Bar Association, designed to improve public school teaching. He has also taken an active role in assisting the Society's Summer Institute for Teachers, hosting receptions and addressing participants.

Justice Kennedy's presentation reflected not only his considerable judicial expertise, but also his vast experience as a teacher, as he provided an engaging and memorable discussion of President Roosevelt's 1937 Court-packing plan. Speaking to an attentive audience, and without benefit of written script, the Justice recounted the complicated and intriguing events surrounding this singular episode in American history.

At the conclusion of the lecture, those guests who were interested were treated to a tour of the Court given by staff members from the Office of the Curator of the Court. This occasion to see the building was a wonderful benefit for many first-time visitors to the Court.

The evening events commenced with the annual business meeting of the General Membership. In brief reports from President Frank C. Jones and Treasurer Sheldon Cohen, Society members were updated on the status of Society programs, activities and projects, as well as the financial position of the Society. Mr. Jones advised all present of the Society's forthcoming attempt to obtain legislation authorizing a coin that would both benefit the Society and honor the judicial branch and the Great Chief Justice John Marshall. After describing the proposed campaign to secure such a bill, Mr. Jones observed that attaining such a goal would require active assistance from all Society members. He called for participtionby the general membership and requested an active commitment to the goal.

Reporting as Chair of the Nominating Committee, Secretary Virginia Daly read a list of nominations to the Board of Trustees. Following a voice vote, these individuals were elected by unanimous consent to serve an initial three-year term on the Board of Trustees: **Vincent C. Burke, III, The Honorable Walter Dellinger, Frank Gundlach, Dr. LaSalle Leffall, Warren Lightfoot, Michael Mone, Jay Sekulow,** and **Donald Wright.**

In addition, the following individuals were nominated and elected to serve an additional three-year term on the Board of Trustees: **Peter Angelos; Herman Belz; Hugo L. Black, Jr.; Frank Boardman; Sheldon Cohen; George Didden, III; James Ellis; Miguel Estrada; Dorothy Goldman; Jerome Libin; Maureen Mahoney; Thurgood Marshall, Jr.; James Morris, III; James B. O'Hara; William Bradford Reynolds; Jonathan Rose;** and **Foster Wollen.**

The Committee further nominated three individuals to serve in the newly created office of Trustee Emeritus. This position was introduced to recognize long and dedicated service to the Society. **William T. Coleman, Jr.; James J. Kilpatrick; and Howard T. Markey,** were unanimously elected as Trustees Emeritus.

At the conclusion of the meeting of the General Membership, the Annual Meeting of the Board of Trustees was convened by Chair Leon Silverman. Mr. Silverman gave a brief report on the status of the Society after which he called upon Mrs. Daly to deliver a slate of nominees of candidates to serve as officers of the Board Trustees and At-Large positions on the Executive Committee. Following a voice vote the following individuals were elected to serve in the positions outlined: **Vincent C. Burke, Jr.,** three-year appointment as Vice President; **Vera Brown, Ralph Lancaster, Jerome Libin, Mrs. Thurgood Marshall, John Nannes, Leon Polsky** and **Seth Waxman,** to an additional one-year appointment as At-Large members of the Executive Committee; **Maureen Mahoney** and **Joseph Moderow** to an initial one-year appointment as members of the Executive Committee.

Justice Scalia presented an award to Society Trustee James Goldman (right) in recognition of Mr. Goldman's support of the Society.

Justice Ginsburg visits with Society Trustee Seth Waxman during the reception portion of the Annual Meeting.

Professor Robert Clinton received the Hughes Gossett Literary Prize for his article *The Supreme Court before John Marshall.* Justice Scalia presented the award to him during the Annual Meeting of the Board of Trustees.

Following the election of officers, Mr. Silverman announced the presentation of awards to recognize significant contributions to the work of the Society. **Justice Antonin Scalia** was present to confer awards to the following individuals in recognition of their support of the Society: **Michael Cooper of Sullivan & Cromwell; Dorothy Tapper Goldman; James Goldman; Robert Juceam of Fried Frank Harris Shriver & Jacobson; Gregory Michael; Dwight D. Opperman; Brad Reynolds of Howrey Simon Arnold & White; Jay Sekulow of the American Center on Law & Justice; Foster Wollen of Bechtel Corporation;** and **Donald Wright.** Mr. Silverman noted that many of the individuals recognized made personal contributions in addition to working to secure donations from the companies or firms with which they are associated.

The Hughes Gossett literary prizes were also awarded the evening of June 2. These prizes recognize excellence in articles focusing on the history of the Supreme Court. Traditionally, two prizes are given; the first recognizes the most outstanding article published in the Society's *Journal of Supreme Court History* written by an adult scholar and carries a cash award of $1500. The second awards a cash prize of $500 to the most outstanding original article published in the *Journal* authored by a student author. For the year 2003, Dr. Robert Lowry Clinton, a professor at Southern Illinois University at Carbondale, was awarded the academic prize for his article, "The Supreme Court Before John Marshall." Scott Lemieux, a doctoral candidate in political science at the University of Washington, received the student prize for his article, "The Exception that Defines the Rule: Marshall's Marbury Strategy and the Development of Supreme Court Doctrine." Both articles are particularly pertinent to the Society's goal to obtain legislation authorizing a commemorative coin honoring John Marshall. The awards were presented to each of the prizewinners by Justice Scalia.

At the conclusion of the business meetings, guests moved to the East and West Conference Rooms of the Court to enjoy a reception. Music was provided by string quartets from the U.S. Army Band. Dinner was served in the Great Hall of the Court. After brief welcoming remarks by President Jones and

Society Trustee Donald Wright also received an award from Justice Scalia in recognition of his contributions to the work of the Society.

Scott Lemieux received the student Hughes Gossett Literary Prize for the article he wrote concerning John Marshall's strategy in the *Marbury* case.

Continued on Page 13

CONSCIENTIOUS CONSERVATIVE: BENJAMIN ROBBINS CURTIS AND THE STRUGGLE AGAINST SLAVERY

*By Harry Downs**

Because of length, this article has been divided into two parts. The second half of this article will appear in the next issue of the Quarterly.

Introduction

Benjamin Robbins Curtis, elder son of Benjamin Curtis, a merchant seaman, and Lois Robbins Curtis, was born in Watertown, Massachusetts November 4, 1809. The family were longtime Boston residents, descended from William and Sarah Curtis, who had emigrated from Essex, England, September 16, 1632. Benjamin was not wealthy, however, and when he died abroad his widow had limited resources to rear her two young sons.

Collection of the Supreme Court of the United States

Benjamin Robbins Curtis qualified for admission to Harvard at the age of fifteen, graduating in 1829 with highest honors.

Mrs. Curtis nevertheless managed to send Benjamin to Harvard, where he graduated second in his class in 1829. He then went on to Harvard Law School, where Supreme Court Justice Joseph Story had just been appointed Dane Professor of Law, but Curtis left in 1831 after having completed only about half the usual course of study. He associated with John Nevers, Esq., who practiced law in Franklin County; returned to Harvard for the spring and summer terms of 1832 to study equitable pleading and civil law; and was admitted to the bar in August, 1832. The following May he married his cousin Eliza Maria Woodward, daughter of his father's eldest sister and William H. Woodward, defendant in error in the celebrated *Dartmouth College* case.[1]

In 1834 Curtis joined his cousin Charles in the practice of law in Boston. Fifteen years later he was elected to the Massachusetts State Legislature for the District of Boston where, as chairman of a committee to reform state judicial procedures, he secured adoption of the Massachusetts Practice Act of 1851.

On November 26, 1850, at a Constitutional Meeting held in Faneuil Hall, Curtis urged compromise between the free and slave states. He argued that in ratifying the Constitution, and accepting the obligation to deliver fugitive slaves to their masters on demand, the people of the Commonwealth had bound themselves to deny fugitive slaves entry into the Commonwealth, and that fulfilling that commitment was as vit a virtue as supporting freedom. He also argued that the blessings of union were as important as the blessings of liberty and that the slaveholding states would not remain within th union if free state citizens, in violation of the Constitution and the law, resisted slaveholders' recapture of fugitive slaves. The abolitionist argument therefore was not superior morally and could not succeed practically.[2]

Justice Woodbury of New Hampshire, who had succeeded Justice Story on the Supreme Court, died September 4, 1851. Under the circuit system then in effect that circuit was composed of Maine, Massachusetts, New Hampshire and Rhode Island, and traditionally had been filled by a New Englander. President Millard Fillmore and his Secretary of State Daniel Webster, agree that Curtis should be named to the seat. A the Senate was then in recess the President commissioned Curtis a Justice on September 22 so he could begin sitting on circuit in October. His nomination was submitted to the Senate December 11 and confirmed December 20, whereupon a new commission was issued.[3]

Justice Curtis resigned from the Court September 30, 1857. His stated reason was the inadequacy of the salary.[4] Following his resignation he appeared before the Court as an advocate in more than forty cases, including the first *Legal Tender* case. He also served as counsel for President Andrew Johnson in his impeachment trial before the United States Senate. He died September 15, 1874.

Curtis and Slavery

The crafting of a Federal Constitution for the thirteen United States required a delicate balancing of conflicting interests in three areas: determining and defining the powers to be vested in the national government, structuring that government and apportioning representation in its legislative bodies, and accommodating within that structure both slave and free states. In the Articles of Confederation those thirteen states had established a "union between" and "firm league of friendship" of sovereign states, but not a national government. In the Constitution, however, "We, the people of the United States" undertook to "form a more perfect Union" by establishing a new national government (as President Lincoln later said) "of, by and for" those people.

Slavery touched all the issues the Framers faced. Should the commerce power include power to regulate the slave trade? Should slaves be counted as part of the populace for purposes of determining representation in the national legislature? Should slaves be valued as property for purposes of apportioning taxes?

Ultimately those issues were compromised. Apportionment was resolved by the so-called three-fifths clause, which provided that both delegates to the House of Representatives and direct taxes would be allocated among the states "by adding to the whole number of free persons, including those bound to service for a term of years, . . . three-fifths of all other persons."[5] Congress was granted the power to regulate interstate and foreign commerce,[6] but denied the power to prohibit "The migration or importation of such persons, as any of the states, now existing, shall think proper to admit . . . prior to the year one thousand eight hundred and eight."[7]

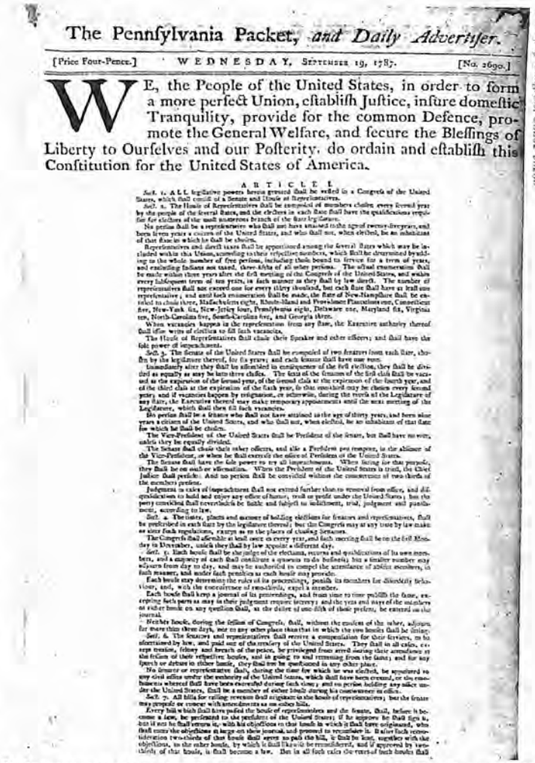
Late in the convention Pierce Butler of South Carolina secured the adoption of a third clause, which came to be known as the fugitive slave clause. That clause provided that:

"No Person held to Service or Labor in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labor, but shall be delivered up on Claim of the Party to whom such Service or Labor may be due."[8]

The wording of the clause was substantially similar to that of the fugitive slave provision of the Northwest Ordinance, which the Confederation Congress had adopted July 13, 1787.[9] Article Six of the Ordinance, which prohibited "slavery or involuntary servitude" throughout the territory, also provided that: ". . . any person escaping into the same, from whom labor or service is lawfully claimed in any one of the **original** States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid."[10]

The fugitive slave clause of the Constitution differed from both the slave trade protection clause and the Northwest Ordinance in that its operation was not limited to the thirteen original states. New free states equally were bound by the prohibition against discharging a fugitive's bonds, and the prohibition extended equally to fugitives from new slave states. The provision was limited to the states, however, and thus arguably did not extend, and perhaps could not be extended, to the territories.

The clause spoke in terms of comity. A slave who, in reach of his state's slave code had escaped his master's service, was to be treated the same as any other fugitive.[11] How



Library of Congress, USZ62-38266

The Pennsylvania Packet, *and Daily Advertiser.*

[Price Four-Pence.] WEDNESDAY, SEPTEMBER 19, 1787. [No. 2690.]

WE, the People of the United States, in order to form a more perfect Union, eſtabliſh Juſtice, inſure domeſtic Tranquility, provide for the common Defence, promote the General Welfare, and ſecure the Bleſſings of Liberty to Ourſelves and our Poſterity, do ordain and eſtabliſh this Conſtitution for the United States of America.

ARTICLE I.

Sect. 1. ALL legislative powers herein granted ſhall be veſted in a Congreſs of the United States, which ſhall conſiſt of a Senate and Houſe of Repreſentatives.

Sect. 2. The Houſe of Repreſentatives ſhall be compoſed of members choſen every ſecond year by the people of the ſeveral States, and the electors in each State ſhall have the qualifications requiſite for electors of the moſt numerous branch of the State legiſlature.

No perſon ſhall be a repreſentative who ſhall not have attained to the age of twenty-five years, and been ſeven years a citizen of the United States, and who ſhall not, when elected, be an inhabitant of that State in which he ſhall be choſen.

Repreſentatives and direct taxes ſhall be apportioned among the ſeveral States which may be included within this Union, according to their reſpective numbers, which ſhall be determined by adding to the whole number of free perſons, including thoſe bound to ſervice for a term of years, and excluding Indians not taxed, three-fifths of all other perſons. The actual enumeration ſhall be made within three years after the firſt meeting of the Congreſs of the United States, and within every ſubſequent term of ten years, in ſuch manner as they ſhall by law direct. The number of repreſentatives ſhall not exceed one for every thirty thouſand, but each State ſhall have at leaſt one repreſentative; and until ſuch enumeration ſhall be made, the ſtate of New-Hampſhire ſhall be entitled to chuſe three, Maſſachuſetts eight, Rhode-Iſland and Providence Plantations one, Connecticut five, New-York ſix, New-Jerſey four, Pennſylvania eight, Delaware one, Maryland ſix, Virginia ten, North-Carolina five, South-Carolina five, and Georgia three.

When vacancies happen in the repreſentation from any State, the Executive authority thereof ſhall iſſue writs of election to fill ſuch vacancies.

The Houſe of Repreſentatives ſhall chuſe their Speaker and other officers; and ſhall have the ſole power of impeachment.

Sect. 3. The Senate of the United States ſhall be compoſed of two Senators from each State, choſen by the legiſlature thereof, for ſix years; and each Senator ſhall have one vote.

Immediately after they ſhall be aſſembled in conſequence of the firſt election, they ſhall be divided as equally as may be into three claſſes. The ſeats of the Senators of the firſt claſs ſhall be vacated at the expiration of the ſecond year, of the ſecond claſs at the expiration of the fourth year, and of the third claſs at the expiration of the ſixth year, ſo that one-third may be choſen every ſecond year; and if vacancies happen by reſignation, or otherwiſe, during the receſs of the Legiſlature of any State, the Executive thereof may make temporary appointments until the next meeting of the Legiſlature, which ſhall then fill ſuch vacancies.

No perſon ſhall be a Senator who ſhall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who ſhall not, when elected, be an inhabitant of that State for which he ſhall be choſen.

The Vice-Preſident of the United States ſhall be Preſident of the Senate, but ſhall have no vote, unleſs they be equally divided.

The Senate ſhall chuſe their other officers, and alſo a Preſident pro tempore, in the abſence of the Vice-Preſident, or when he ſhall exerciſe the office of Preſident of the United States.

The Senate ſhall have the ſole power to try all impeachments. When ſitting for that purpoſe, they ſhall be on oath or affirmation. When the Preſident of the United States is tried, the Chief Juſtice ſhall preſide. And no perſon ſhall be convicted without the concurrence of two thirds of the members preſent.

Judgment in caſes of impeachment ſhall not extend further than to removal from office, and diſqualification to hold and enjoy any office of honour, truſt or profit under the United States: but the party convicted ſhall nevertheleſs be liable and ſubject to indictment, trial, judgment and puniſhment, according to law.

Sect. 4. The times, places and manner of holding elections for Senators and Repreſentatives, ſhall be prescribed in each State by the legiſlature thereof; but the Congreſs may at any time by law make or alter ſuch regulations, except as to the places of chuſing Senators.

The Congreſs ſhall aſſemble at leaſt once in every year, and ſuch meeting ſhall be on the firſt Monday in December, unleſs they ſhall by law appoint a different day.

Sect. 5. Each houſe ſhall be the judge of the elections, returns and qualifications of its own members, and a majority of each ſhall conſtitute a quorum to do buſineſs; but a ſmaller number may adjourn from day to day, and may be authoriſed to compel the attendance of abſent members, in ſuch manner, and under ſuch penalties as each houſe may provide.

Each houſe may determine the rules of its proceedings, puniſh its members for diſorderly behaviour, and, with the concurrence of two thirds, expel a member.

Each houſe ſhall keep a journal of its proceedings, and from time to time publiſh the ſame, excepting ſuch parts as may in their judgment require ſecrecy; and the yeas and nays of the members of either houſe on any queſtion ſhall, at the deſire of one fifth of thoſe preſent, be entered on the journal.

Neither houſe, during the ſeſſion of Congreſs, ſhall, without the conſent of the other, adjourn for more than three days, nor to any other place than that in which the two houſes ſhall be ſitting.

Sect. 6. The Senators and repreſentatives ſhall receive a compenſation for their ſervices, to be aſcertained by law, and paid out of the treaſury of the United States. They ſhall in all caſes except treaſon, felony and breach of the peace, be privileged from arreſt during their attendance at the ſeſſion of their reſpective houſes, and in going to and returning from the ſame; and for any ſpeech or debate in either houſe, they ſhall not be queſtioned in any other place.

No ſenator or repreſentative ſhall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which ſhall have been created, or the emoluments whereof ſhall have been encreaſed during ſuch time; and no perſon holding any office under the United States, ſhall be a member of either houſe during his continuance in office.

Sect. 7. All bills for raiſing revenue ſhall originate in the houſe of repreſentatives; but the ſenate may propoſe or concur with amendments as on other bills.

Every bill which ſhall have paſſed the houſe of repreſentatives and the ſenate, ſhall, before it become a law, be preſented to the preſident of the United States; if he approve he ſhall ſign it, but if not he ſhall return it, with his objections to that houſe in which it ſhall have originated, who ſhall enter the objections at large on their journal, and proceed to reconſider it. If after ſuch reconſideration two-thirds of that houſe ſhall agree to paſs the bill, it ſhall be ſent, together with the objections, to the other houſe, by which it ſhall likewiſe be reconſidered, and if approved by two-thirds of that houſe, it ſhall become a law. But in all ſuch caſes the votes of both houſes ſhall

A document of genius but compromise as well, the Constitution of the United States had to address the thorny issue of slavery. Above is a contemporary report of the adoption of the Constitution from *The Pennsylvania Packet and Daily Advertiser, September 1787.*

and by whom he was to be delivered up, and on what evidence of his master's right to claim his service, however, were not stated. In particular the clause did not specify how judicial and law enforcement authorities would enforce the provisions of the clause, nor did it expressly authorize federal authorities to assume any enforcement role.

The Second Congress opted for federal enforcement.[12] The Supreme Court subsequently emphasized the federal character of the responsibility in *Prigg v. Pennsylvania*.[13] Writing for the Court, Justice Joseph Story held that the power to regulate the delivering up of fugitive slaves was exclusively within the prerogative of Congress.[14] A Pennsylvania statute requiring a separate state certificate of removal as a condition precedent to a slave catcher's carrying a fugitive slave out of the state therefore was unenforceable. He further ruled that, despite the provision in the Act requiring the claimant to take an alleged fugitive slave before some judicial authority, a "right of self help" existed pursuant to which masters might remove fugitive slaves without judicial superintendence, so long as such removal was done without violence or breach of the peace. State officials could not be required to help enforce the Act, but they likewise could not in

Continued on page 10

Continued from page 9

any way interfere with the exercise of the constitutionally grounded federal right. The question remained, however, who was a "fugitive slave" and what made him "fugitive"?

State courts meanwhile had struggled with the question how to reconcile slave law and freedom. One of the principal cases, *Commonwealth v. Aves*,[15] was decided by Lemuel Shaw, the leading state court jurist of his era. Benjamin Curtis, then a newly-minted member of the Massachusetts bar, appeared as co-counsel in the case.

In 1836 Mrs. Mary Aves Slater of New Orleans traveled to Boston to visit her father, Thomas Aves, and brought with her a six-year-old slave girl named Med as companion for her own six-year-old daughter. The Boston Female Antislavery Society learned of Med's presence and caused a writ of *habeas corpus* to be served on Mr. Aves, alleging that he was restraining Med against her will. Aves responded that Med was the slave of Mr. Samuel Slater of New Orleans and that he held Med under Slater's authority. Aves retained the Curtis firm to defend him in the matter.

Curtis argued that Med and her mistress both were Louisiana domiciliaries, that they were only temporarily visiting Massachusetts and did not intend to become permanent residents, and that Med's status therefore was to be determined under Louisiana law. That law recognized that Med was Slater's slave. Massachusetts, as a matter of comity, should recognize Louisiana state law and permit Med to be returned to Louisiana with her mistress.[16]

Curtis acknowledged that slavery depended on positive law and that Massachusetts had no slave code, but argued that since Massachusetts had abolished slavery by court decision rather than by statute, the Court could look to Louisiana law to supply the requisite provisions.[17] He acknowledged that the Court need not accord comity to a body of law that offended Massachusetts public policy, but argued that the Commonwealth, by accepting the Fugitive Slave Clause of the Constitution, had signified that some slave relationships would be recognized.[18]

Chief Justice Shaw rejected Curtis' argument. He ruled that the Fugitive Slave Clause and Act obliged Massachusetts only to recognize a slave owner's right to recover and remove from the Commonwealth a fugitive, or escaped slave, and did not include the right voluntarily to bring a slave into the Commonwealth and hold him there in servitude in defiance of Massachusetts law and policy. Since Massachusetts law did not recognize slavery, and the prohibition against state manumission was limited to fugitive slaves, any slave who entered the Commonwealth other than as a fugitive became free upon entry.[19]

Library of Congress LC-USZ62-1820

A career officer in the Army prior to his election, President Zachary Taylor came to office during the tempestuous years of the Missouri Compromise. New territories threatened to tip the precarious balance of power in Congress. This cartoon shows Taylor confronting the issue in a dish of "Black Turtle."

Library of Congress LC-USZ62-1843

This cartoon depicts the indignities and suffering of a free African, mistaken for a runaway. As a Justice, Curtis had to uphold the Fugitive Slave Act of 1850 and was dubbed by the press as "the slave-catcher judge."

The Dred Scott Case

Dred Scott v. Sandford[20] came before the Supreme Court in the December 1854 Term on Writ of Error from the Circuit Court of the United States for the District of Missouri. The litigation actually commenced, however, in the Missouri state courts.

In April of 1846 – eleven years prior to the Supreme Court's infamous decision in the matter – Dred Scott and his wife Harriet each sued for freedom in Missouri state court. A long line of Missouri precedents held that a master who took his slave to reside in free territory thereby emancipated him. Dred and Harriet alleged that in 1836 their master, army surgeon John Emerson, had taken them to live for two years at Fort Snelling, in territory declared free under the Missouri Compromise of 1820.

A St. Louis Circuit Court jury returned verdicts declaring Dred and Harriet to be free persons, but on appeal a sharply divided Missouri Supreme Court reversed that verdict and rejected the body of precedent on which it rested. The Scotts thereupon initiated a new action in Missouri federal court, based on diversity of citizenship between Dred, who claimed Missouri citizenship, and their new owner, John Sanford, a New York citizen.

Sanford responded with a plea in abatement that Scott was not a Missouri citizen "because he is a negro of African descent (whose) ancestors were of pure African blood, and were brought to this country and sold as negro slaves." District Judge Wells sustained Scott's demurrer to this plea; Sanford plead in bar that Scott was his slave; and Scott's slave status thus became the issue in the case.

The parties went to trial in May, 1854, on an agreed statement of facts that recited, among other things, Dred's and Harriet's residence in free territory and in the free state of Illinois, and their marriage in free territory with Dr. Emerson's consent. Judge Wells instructed the jury that, whatever claims to manumission Scott might have been entitled to assert while in free territory, his slave status reattached upon his return to Missouri. The jury therefore found that Scott and his family all were Sanford's slaves.

Scott excepted and filed a statement of error with the Supreme Court on December 30, 1854. The Court heard argument for four days from February 11 to 14, 1856; ordered reargument May 12 on two points: whether Sanford's plea in bar precluded the Supreme Court from considering whether the Circuit Court had jurisdiction in the matter and whether Scott was a Missouri citizen for purposes of claiming federal diversity jurisdiction; heard reargument an additional four days from December 15 to 18, following the election of James Buchanan as President; and announced its decision March 6, 1857, immediately following Buchanan's inauguration.

A majority of the Justices initially favored affirming the trial court on the strength of *Strader v. Graham*[21] and avoiding the territorial question, and the opinion was assigned to Justice Samuel Nelson.[22] Sometime between February 14 and 19, 1857, however, the majority decided instead to address all the issues argued by the parties, including the power of Congress to exclude slavery from the territories, and determined that the Chief Justice would prepare the opinion of the Court[23].

[This article will be concluded in the next issue of the *Quarterly*.]

**Mr. Downs is a recently retired attorney who practiced at Holland & Knight in Atlanta, Georgia.*

The author would like to acknowledge the assistance in the preparation of this article of Professors Paul Finkelman and Randall Kennedy who provided assistance by reviewing and critiquing the article prior to publication.

[1]Curtis, B.R., Jr., *A Memoir of Benjamin Robbins Curtis*, Boston: Little, Brown (1897), Republished New York, Da Capo Press (1970) (hereafter cited as Curtis, *Memoir*). Curtis was thrice married and twice widowed and sired twelve children, only six of whom survived him. His second wife, Miss Anna Roe Curtis, whom he married January 5, 1846, was the eldest daughter of his cousin Charles P. Curtis and Mrs. Anna Roe Scollay Curtis. His third wife was Miss Maria Malleville Allen of Pittsfield. They were married August 29, 1861.

[2]Curtis, *Memoir*, Vol. I, pp. 123-136.

[3]Curtis, *Memoir*, Vol. I, pp. 154-55.

[4]Salary probably constituted a major, but not the entire, explanation for Curtis' decision. An Associate Justice's salary – $4500 when he joined the Court, increased to $6000 in 1855 – was far less than his earnings at the bar, and from the outset he had complained of the financial sacrifice service on the Court entailed. The catalyzing event, however, probably was the bitter division within the Court engendered by the *Dred Scott* decision and his personal dispute with Chief Justice Taney over the timing of the release of their respective opinions to the press. Leach, Richard H., *Benjamin Robbins Curtis, Judicial Misfit*, 25 New England Quarterly 507-523 (1952); Curtis, *Memoir*.

[5]U.S. Constitution, Art. I, Sec. 2, cl. 3. The Framers used the phrases "other persons" and "persons held to service or labor" and avoided any direct reference to slaves or slavery. Section 9, clause 4 repeated this formula in respect of any "capitation, or other direct tax." This ratio had first been proposed in the Confederation Congress in 1783 as part of an overall program for raising revenues from the states. That congress initially rejected and subsequently resurrected the proposal and submitted it to the states as an amendment to the Articles, but the amendment failed to secure the requisite unanimous consent. Finkelman, Paul, *Slavery and the Founders: Race and Liberty in the Age of Jefferson*, M.E. Sharpe, Inc., Armonk, New York (1996) (hereafter cited as Finkelman, *Slavery and the Founders*), p. 10.

[6]U.S. Constitution, Art. I, Sec. 8, cl. 3.

[7]U.S. Constitution, Art. I, Sec. 9, cl. 1. Article V, Section 1, affirmed this restriction on the power of Congress to prohibit the slave trade, or to vary the apportionment requirement in respect of capitation or other direct taxes, by expressly prohibiting the amendment of either clause prior to 1808.

[8]U.S. Constitution, Art. IV, Sec. 2, cl. 3.

[9]The Northwest Ordinance provided for the governance of the Northwest Territory pending the organization of that territory into states. The Territory was a vast tract of land lying north of the Ohio River, east of the Mississippi, west of the Allegheny Mountains and south of Canada. Ultimately five states and part of a sixth were formed from the Territory: Illinois, Indiana, Michigan, Ohio, Wisconsin and eastern Minnesota. The Ordinance clearly exceeded the authority of the Confederation Congress, but the delegates evidently believed that the efforts of the Philadelphia convention would prove fruitful. This issue became moot when the First Congress, exercising its constitutional power to "make all needful rules and regulations respecting the territory . . . belonging to the United States", reenacted the ordinance as "An Act to provide for the government of the Territory northwest of the River Ohio".

[10]Northwest Ordinance, Article Six (Emphasis on "original" added).

[11]As originally proposed the clause would have amended the section on interstate flight from justice. As finally enacted, it became a separate clause of article IV, Section 2, and was placed immediately after the interstate flight clause. Fehrenbacher, D.E., *The Dred Scott Case: Its Significance in American Law and Politics*, Oxford University Press, New York (1978) (hereafter cited as Fehrenbacher, *Dred Scott*), p. 25. A fugitive criminal was to be "delivered up" "on demand of the executive authority of the state from which he fled"; a fugitive slave "on claim of the party to whom such service or labor may be due."

[12]Fugitive Slave Act, 1 Stats. 302, Ch. 7 (February 12, 1793); Fehrenbacher, *Dred Scott*, pp. 40-41. In converting the passive prohibition of the Fugitive Slave Clause into an active program for federally-authorized slave recovery, Congress expanded national power at the expense of the reserved power of the states. The irony is that the Act resulted from an effort by Pennsylvania to prosecute three Virginians for kidnapping a free Negro in Pennsylvania and re-enslaving him in Virginia. Finkelman, *Slavery and the Founders*, pp. 80-92.

[13]41 U.S. (16 Pet.) 539 (1842).

[14]Story has been sharply criticized for not taking into account how significantly the statute exceeded the Constitution. The Constitution merely prohibited free states from manumitting fugitive slaves. It nowhere authorized or empowered federal agents to engage in or support slave-catching. Finkelman, Paul, *Prigg v. Pennsylvania: Understanding Justice Story's Proslavery Nationalism*, Journal of Supreme Court History (1997), Vol. I, pp. 51-64.

[15]35 Mass. (18 Pick.) 193 (1836).

[16]Curtis, *Memoir*, Vol. II, p. 89.

[17]Curtis' brief does not cite the case which abolished slavery within the Commonwealth. Probably he did not know of it. A generation of Massachusetts lawyers and judges accepted that the courts of the Commonwealth had abolished slavery without knowing either the name of the case or the rationale of the decision.

The case actually was a series of cases culminating in *Commonwealth v. Jennison*, a criminal prosecution for assault brought against Nathaniel Jennison for beating and confining Quark Walker. Jennison's defense was that Walker was his slave. William Cushing, then Chief Justice of the Massachusetts Superior Court of Judicature, and from 1789 to 1810 a United States Supreme Court Associate Justice, charged the jurors that the institution of slavery was repugnant to the declaration of rights of the Massachusetts Constitution of 1780 and therefore was "as effectually abolished as it can be by the granting of rights and privileges wholly incompatible and repugnant to its existence." The case arose during the latter days of the Revolutionary War, and apparently never was officially reported.

[18]Curtis, *Memoir*. Justice Curtis' handling of the case is discussed in Volume I by his younger brother, George Ticknor Curtis, also a lawyer and author of that volume. Curtis' brief is printed in its entirety in Volume II.

[19]See Finkelman, Paul, *The Dred Scott Case: Slavery and the Politics of Law*, 20 Hamline Law Review 1 (1996) (hereafter cited as Finkelman, *Slavery and Politics*), for an extended discussion of cases from other jurisdictions dealing with this issue.

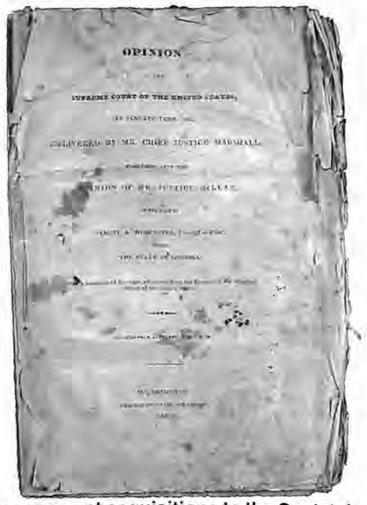
[20]60 U.S. (19 How.) 393 (1857). The defendant in the action was one John Sanford, but Supreme Court Reporter Benjamin Howard misspelled his name and added an extra "d".

[21]51 U.S. (10 How.) 82 (1850). In *Strader* a Kentucky master permitted several of his slaves to travel in Ohio as minstrel musicians. They returned to Kentucky and then escaped, and he brought suit in Kentucky state court against the steamboat operator on whose vessel they had effected their escape. That court awarded damages, rejecting the defense that the owner, by permitting his slaves to reside in free territory, had freed them. The Supreme Court affirmed, ruling that

Continued on page 19

RECENT CONTRIBUTIONS TO MEMORABILIA COLLECTION

*by Matthew Hofstedt**



One of the most recent acquisitions to the Society's collection, this is a printed copy of the opinion in *Worcester v. Georgia* (1832). In one of the cases collectively referred to as the "Cherokee Cases," the Court found that Georgia law was invalid in Cherokee territory, ruling it a separate political entity.

Earlier this year, the Supreme Court Historical Society and the Office of the Curator accepted two donations of historic newspapers from Jane and Fred Bentley, Sr. Mr. Bentley is a new member of the Society's Acquisition Committee. The following objects have been catalogued into the archival collections managed by the Curator's Office:

- A first edition of *The Common Law* written by Oliver Wendell Holmes, Jr., and published by Little, Brown, and Company in 1881. A compilation of twelve lectures Holmes presented at the Lowell Institute in Boston in 1880, it covers many legal topics and is still considered a classic text in American law almost 125 years after its initial printing.
- A printed copy of the Court's opinion in *Worcester* v. *Georgia* (1832). Along with *Cherokee Nation* v. *Georgia* (1831), this decision makes up what are collectively referred to as the "Cherokee Cases." In *Worcester*, the Court concluded in a 5-1 decision that the Georgia law Worcester was accused of violating was void in the Cherokee territory because the Cherokee Nation was a separate political entity. Despite these rulings, the State of Georgia forcibly removed the Cherokee from their lands (in what has become known as the "Trail of Tears") and President Andrew Jackson did not intervene to enforce the Court's ruling.
- The October 3, 1789, issue of the *Massachusetts Centinel* announcing the first government appointments made by President George Washington. The appointments include those of the first six nominees to the "Judiciary Department": John Jay as Chief Justice, John Rutledge, James Wilson, William Cushing, Robert H. Harrison, and John Blair as Associate Justices. Although appointed and confirmed, Harrison declined the position and in his place Washington appointed James Iredell of North Carolina.
- The March 21, 1792, issue of the *Columbian Centinel* newspaper reporting the "Ratifications of the Amendment[s] to the Constitution of the United States."
- The March 26, 1803, issue of the *New-York Herald* newspaper publishing the full text of the Court's opinion in *Marbury* v. *Madison* (1803). The *Herald* was edited by William Coleman, but was really a voice for Alexander Hamilton who had provided $1,000 to start the Federalist publication in 1801. In response to the *Marbury* decision, an editorial under the heading **"Constitution violated by the President"** included the following attack on President Thomas Jefferson, "And this, fellow-citizens, is that meek and humble man, who has no desire for power! This is he, of whom his sycophants in Washington, in an address to the people, after the rising of the last Congress, said 'At the head presides a man, who, for the promotion of the public good, and the preservation of civil liberty, *solicits the limitation of his own powers, the reduction of his own privileges, and the exercise of every constitutional check to limit the executive will.*' What falsehood? What mockery? What insolence? But utterly incompetent is language to give vent to the indignant feelings of the heart. Behold a subtle and smooth-faced hypocrisy concealing an ambition the most criminal, the most enormous, the most unprincipled. He solicits the limitation of his rightful powers, yet the first act of his administration is to stretch his powers beyond their limits, and from motives the most unworthy, to commit an act of direct violence on the most sacred right of private property!"

On page 3, the paper lists appointments made by Jefferson and a future Supreme Court Justice is among them: "Joseph Story, of Massachusetts, to be naval officer for the district of Salem and Beverly, vice W. Pickman removed." Story would decline the appointment, but nine years later, in 1812, he would join the Supreme Court.

- The April 17, 1801, issue of *The National Intelligencer, and Washington Advertiser* with an article titled "History of the Last Session of Congress." The report describes the passage of a bill in the House of Representatives considering the organization of the courts, known today as the Judiciary Act of 1801. The paper also contains the President John Adams list of appointments including "John Jay, Chief Justice of the U. States" (Date of Commission, 19th Dec. 1800) and "John Marshall, Chief Justice of the Supreme Court of the U. S." (Date of Commission, 31st Jan. 1801). Jay had been nominated and confirmed, but declined the position. President Adams, therefore, turned to his Secretary of State, Marshall.
- A page from *The Sioux City Daily Journal* of December 12, 1873, with a first column headline reading, "By Telegraph Washington The Chief Justiceship — Report of the Judiciary Committee." This short article captures the moment in time when President Ulysses S. Grant's nominee for Chief Justice, Attorney General George H. Williams, was being considered for confirmation by the Senate. Williams' nomination had been greeted in the Senate and the press with a lukewarm reaction at best. Although Williams had some early support, the full Senate proceedings dragged on as more information, much of it unfavorable, was brought forward about Williams. After several weeks, Williams asked the President to withdraw his nomination and eventually Grant nominated Morrison R. Waite.
- The *New York Tribune* from January 29, 1916, with front page headline reading, "Brandeis, Named for Supreme Court, Faces Bitter Fight". In the middle of the front page is a photograph of Louis D. Brandeis accompanying an article titled, "Wilson Choice Gives Capital Big Surprise President Startles Senate by Nominating Boston Man. First Jew to Get this Honor Progressives Favorable and Tribune Poll Indicates Confirmation." After several months of debate in the press and the Senate, Brandeis was confirmed on June 1, 1916, by a 47-22 vote, joining the Court on June 15, 1916.

**Matthew Hofstedt has worked in the Curator's Office at the Supreme Court since 1996, the last two years as the Associate Curator. When not tracking down lost pieces of Supreme Court memorabilia, he oversees the exhibit and collections management programs.*


New York Tribune

Brandeis, Named for Supreme Court, Faces Bitter Fight

LEGISLATORS RESIGN MAYOR TO SAVE CITY

WILSON CHOICE GIVES CAPITAL BIG SURPRISE

LANSING URGES SEA WAR CODE ON ALL POWERS

BRASTIC MOVE WILL FOLLOW GERMAN DELAY

The *New York Tribune* of January 29, 1916 bore the headline on the front page, "Brandeis, Named for Supreme Court, Faces Bitter Fight." This original paper is another recent gift from Society members Mr. and Mrs. Fred Bentley, Sr.

Annual Meeting concluded from page 7

an opening toast proposed by the Chief Justice, the meal was served. A choral program consisting of patriotic music and show tunes was provided by the U. S. Army Chorus under the direction of Captain Jim Keene. This chorus was formed in 1956 as a vocal counterpart of the United States Army Band, "Pershing's Own." Along with performances for Presidents, visiting dignitaries and heads of State, the Chorus has appeared in our Nation's most prominent concert halls. Following the concert, Annual Meeting Chair Brad Reynolds thanked the Chorus for the outstanding performance, and the meeting was adjourned.

Members of the U.S. Army Chorus under the direction of Captain Jim Keene performed a choral program at the conclusion of the Annual Meeting. Their outstanding performance provided a wonderful close to the evening.

Supreme Court Marshal Pamela Talkin (from left) joined Trudi and Harvey Rishikof, and Society members Harold and Harvey Kennedy with their guest Nicola Shaw for a photograph during the Annual Dinner on June 2.

29th Annual Meeting Date Set

The next Annual Meeting has been set for Monday, June 7, 2004. The Annual Lecture will be given at 2 PM by The Honorable John G. Roberts, Jr. An experienced Supreme Court advocate, Roberts was appointed to the U.S. Court of Appeals for the District of Columbia Circuit in 2003. The evening events include meetings of the General Membership and the Board of Trustees at 6 PM, followed by a black tie reception and dinner starting at 7 PM. Seating is limited at all functions and all reservations will be confirmed in writing. The reception and dinner are paid events, but all other events are held without charge, subject to space availability. Invitations will be mailed to all active members approximately 45 days prior to the event.

Jackson Center continued from page 5

sumably the Court thought important enough to review, would have to await decision until another case in which all nine members of the Court were present. The other alternative was to simply set the case down for reargument when the ninth Justice returned.

One of Stone's complaints was that he first learned of Jackson's acceptance of the role of prosecutor when it was announced by President Truman. One would think that Jackson would have at least consulted Stone before accepting the job; not that Stone had any authority to forbid his taking it, but that advance notice would have made it more palatable to Stone even though he still disagreed.

It is difficult not to sympathize with either Jackson's or Stone's views, but for Jackson, this was a once-in-a-lifetime opportunity — the high point of his professional life. His stature as a jurist undoubtedly contributed to the success of the Nuremberg Trials; but over and above that this role was "right up his alley" — the use of the spoken and written word — in a way that it would not have been for his colleagues or most other judges. It was an advocate's dream! Speaking to the New York State Bar Association in 1947, Jackson said that his Nuremberg role "was the supremely interesting and important work of my life and an experience which would be unique in the life of any lawyer."

Jackson returned to the Court for the Term that began in October 1946 and served until his death in October 1954. He would have eight more productive years on the Court, and would write more than his share of important opinions. But what strikes me most about his Court work was his masterful use of the English language. What makes this mastery truly impressive is the fact that Justice Jackson had no formal education beyond high school except a year at Albany Law School. And certainly law schools are not places known for their teaching of great English prose style.

He wrote the opinion in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624 (1943) in which the Court decided that even the need to stimulate war time patriotism did not trump the First Amendment rights of school children to refuse to salute the American flag because of their religious beliefs. In his opinion for the Court he wrote:

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein... The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life,

Collection of the Supreme Court of the United States

Jackson took leave from the Court to serve in Nuremberg, leaving the Court with only eight members. This cartoon shows Chief Justice Stone (left) complaining to Truman about the frustrations and difficulties created by his absence from the bench.

liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

The Steel Seizure Case, which ran its brief course from beginning to end during my first months as a law clerk, was one which was intensively covered by the media in the spring of 1952. It was during the Korean War, and President Truman had seized the steel mills to prevent a strike which would shut down production needed for the military. All of the nine Justices who heard the case had been appointed by Democratic presidents — five by Roosevelt and four by Truman — and yet by a vote of six to three they ruled against Truman's authority to seize the mills. The Court worked on a tightly compressed schedule late in its term — review was granted early in May, the case was argued orally only a week later, and the decision was handed down by the middle of June. Justice Black wrote the opinion for the Court, but each of the other five who agreed with his result wrote a separate opinion. It is Jackson's, I believe, which has best stood the test of time. Presidential power, he said, was of three kinds. The first was where the President acted pursuant to a congressional delegation of authority, and here presidential power was at its apex. The President had not only the power of the Executive, but the power of the Legislature, behind him, and only if the act was beyond the authority of the federal government itself would a presidential act be struck down. The second case was where the President acts in the absence of any congressional expression on the subject one way or the other; there he has the power of the Executive, but not that of Congress behind him. The third is presidential power at its nadir: where the President takes measures to deal with a situation in a particular way, whereas Congress has said it should be dealt with in a different way. This, in Jackson's view, was the situation in the *Steel Seizure Case,* and that was why he joined in ruling the seizure unconstitutional. Although no one else on the Court joined Jackson's opinion at the time, the Court since then has cited it as governing law.

In a poll of legal academics conducted thirty-some years ago, Justice Jackson was rated as "a near great" among the one hundred Justices who had then served. It is worth noting that all but one of the twelve Justices rated as "great" had either served considerably longer on the Court than Jackson, or had held the office of Chief Justice. Surely Jamestown and Chautauqua County can be proud of the career of their native son on both the national and international scene.

During his presentation the Chief Justice departed from his prepared remarks, briefly making several candid comments. He observed that while serving his clerkship, he had been curious about Justice Jackson's service as chief prosecutor in the Nuremberg War Trials. However, "I refrained from asking Justice Jackson questions about the trials." "Many had criticized Jackson for participating as a prosecutor without resigning his position as a Justice. But a friend of mine visiting my office one day asked Justice Jackson, 'How do you justify the Nuremberg trials?' To my surprise and relief, my boss gave a 10 or 15 minute response in a tone and manner indicating his willingness to discuss the topic."

Melissa C. Jackson of the Brooklyn District Attorney's Office, the granddaughter of Robert Jackson, spoke later in the program. She related some of the Jackson family history and remembrances of her grandfather. Due to his death at the relatively young age of 62, she does not have many personal recollections, but her father, William, the only son of Robert Jackson, had recounted many stories for her, including those concerning his own experiences in Germany. A recent graduate of law school at the time, William traveled with his father to and from Germany for the Nuremberg Trials, thus observing firsthand the experience Jackson considered to be the crowning accomplishment of his career. Melissa commented, "I have been a prosecutor for 22 years, and not a day goes by that I haven't looked to my grandfather for guidance. When he was asked the definition of a good prosecutor, my grandfather noted that 'a good prosecutor is elusive and impossible to define. . .and those who need to be told wouldn't understand anyway".

Jackson scholar Robert Q. Barrett introduced the Chief Justice, and also provided some historical background about Jackson and Rehnquist. Barrett is the editor of a book written by Robert H. Jackson titled *That Man.* In this work, Jackson related his experiences and impressions while serving in the administration of President Franklin D. Roosevelt. At the time of Jackson's untimely death in 1954, the nearly completed manuscript passed to the possession of his son William, and hence into storage. Upon William's death in 1999, the manuscript was rediscovered, and family members sought the assistance of Barrett in completing and publishing the work.

The Robert H. Jackson Center is the site of lectures and other programs that explore the history of the Supreme Court, especially as it relates to Justice Jackson. In October 2003 several law clerks to Jackson participated in a roundtable discussion of the Justice and his contributions to the jurisprudence of the Court. Society Vice President E. Barrett Prettyman, Jr. was among the panelists.

A brief commentary on the new book, *That Man: An Insider's Portrait of Franklin D. Roosevelt*, appears on page 20 of the *Quarterly*. Professor Barrett is presently completing a biography of Justice Jackson and discovered the heretofore-unpublished manuscript written by the Justice while conducting research for the Jackson biography.

Courtesy of Solomon Bogard

Justice Jackson is pictured here with two officers during the Nuremburg War Crimes trial. The photograph was donated to the Society's collection by Solomon Bogard, a member of the Society and a member of the U.S. Commission on military history.

New Memberships July 1, 2003 through December 31, 2003

ALABAMA
Nolan Awbrey, Birmingham
Beverly P. Baker, Birmingham
Joseph L. Boohaker, Birmingham
Mike Brock, Montgomery
Ralph D. Cook, Birmingham
Morris Dees, Montgomery
Michael L. Edwards, Birmingham
Michael D. Ermert, Birmingham
F. A. Flowers III, Birmingham
Sandra Payne Hagood, Birmingham
John W. Haley, Birmingham
G. Douglas Jones, Birmingham
Forrest S. Latta, Mobile
Bruce J. McKee, Birmingham
Don McKenna, Birmingham
Matt Minner, Birmingham
James R. Moncus III, Birmingham
Mac M. Moorer, Birmingham
Wayne Morse Jr., Birmingham
Scott A. Powell, Birmingham
James R. Pratt III, Birmingham
Caryl Privett, Birmingham
Ed Ramsey, Birmingham
James E. Simpson, Birmingham
James J. Thompson Jr., Birmingham
Marion F. Walker, Birmingham
J. Mark White, Birmingham
Terrell Wynn, Birmingham

ALASKA
Barbara Hood, Anchorage

ARIZONA
John J. Bouma, Phoenix
S. Thomas Chandler, Tucson
Rob Charles, Tucson
Thomas Curti, Tucson
Robert Fleming, Tucson
Scott Gibson, Tucson
Gerald Hirsch, Tucson
Paul D. Julien, Phoenix
Michael Liburdi, Chandler
Gerald Maltz, Tucson
James Mather, Tucson
Stephen Montoya, Phoenix
Matthew Muehlebach, Tucson
Lane Oden, Tucson
Howard Roberts, Tucson
Jim Sakrison, Tucson
Jim Whitehill, Tucson
Walter Wood, Tucson

ARKANSAS
Robert M. Cearley Jr., Little Rock
Jonann Coniglio, Little Rock
John C. Everett, Fayetteville
James "Jim" Jackson, Bryant
Charles R. Ledbetter, Fort Smith
Debbie McCaghren, Mayflower

CALIFORNIA
Karen Ackerson-Brazille, Los Angeles
Clayton Anderson, La Mesa
Susan L. Avery, Los Angeles
Jeff Bleich, San Francisco
Dave W. Brown, San Pedro
Erwin Chemerinsky, Los Angeles
Raymond Coates, Redwood City
Courtney Ann Coyle, La Jolla
Stanley A. Cross, Sacramento
Patricia Daehnke, Los Angeles
Anthony P. David, San Francisco
Sharon Clyde Dutton, Oakland
Dan Eaton, San Diego
Bruce A. Ericson, San Francisco
Bill Fazio, San Francisco
J. Barry Feinberg, Long Beach
Lewis L. Fenton, Monterey
Tod L. Gamlen, Palo Alto
John Garcia, Whittier
John D. Gibson, Bakersfield
Mark E. Haddad, Los Angeles
Kathleen Harrington, Moraga
Charles L. Harrington, Moraga
Shane Hauschild, Walnut Creek
Louis Helmuth, San Diego
Chyong-Yao Ho, Pasadena
Janet Houst, San Diego
C. Robert Jameson, Costa Mesa
Gerald M. Kennedy, Sacramento
Judith Kerrins, Chico
Abraham Klein, Oakland
Allan N. Littman, San Francisco
Jan L. Luymes, Los Angeles
Charles G. Miller, San Francisco
M. Laurence Popofsky, San Francisco
Paul Richards, Santa Monica
Phillip Schott, Sacramento
Brett M. Schuman, San Francisco
Lawrence E. Scott, El Cajon
Anissa Seymour, Los Angeles
Robert Shahin, Los Angeles
John R. Shiner, Los Angeles
James L. Shorter, Long Beach
Selma Moidel Smith, Encino
Mark L. Smith, Encino
Martha G. Soria, W. Covina
Christopher D. Sullivan, San Francisco
M. Ryder Thomas, San Francisco
Diana Wheatly, Pacific Palisades
Robert C. Wright, San Diego
J. S. Zil, Sacramento

CANADA
Stephanie Chipeur, Alberta
Marian McKenna, Calgary, Alberta

COLORADO
Michael D. Alper, Denver
Nancy E. Berman, Denver
Mark T. Clouatre, Denver
Melissa C. Collins, Denver
Katherine Ebert-Flynn, Frisco
Andrew C. S. Efaw, Denver
Carolyn J. Fairless, Denver
Darcy Goddard, Denver
Adam J. Goldstein, Denver
Paul F. Hodapp, Denver
Ericka Houck, Denver
Craig R. May, Denver
Andy J. Mihalick, Denver
Stephanie L. Scoville, Denver
Heather J. Shull, Denver
Kimberly A. Smiley, Denver
Holly E. Sprenkle, Denver
Carey Taylor, Denver
Joe Valentine, Denver
Julie M. Walker, Denver
Michael T. Williams, Denver

CONNECTICUT
William Darcy, Ashford
Randall Guynn, New Cannaan

DELAWARE
S. Bernard Ableman, Wilmington
Ian Connor Bifferato, Wilmington
Cawley Family Foundation, Wilmington
Charles J. Durante, Wilmington
Charles M. Elson, Newark
David J. Garrett, Wilmington
Robert D. Goldberg, Wilmington
Joseph A. Hurley, Wilmington
Regina Mullen, Wilmington
Joseph J. Rhoades, Wilmington
Harold Schmittinger, Dover
John F. Schmutz, Wilmington
Carl Schnee, Wilmington
John A. Sergovic Jr., Georgetown
David Staats, Wilmington
Bruce M. Stargatt, Wilmington
Robert J. Stearn Jr., Wilmington
Leland Ware, Newark
Dale E. Wolf, Wilmington
Edgar S. Woolard Jr., Wilmington
Stuart B. Young, Wilmington
Robert B. Young, Dover

DISTRICT OF COLUMBIA
John A. Beck
Beth S. Brinkmann
Megan L. Brown
John C. Brown
Patrick J. Browne Jr.
Arthur D. Burger
Brian Capra
David H. Cox
Timothy R. Dingilian
Stephanie Duncan-Peters
Milton Eisenberg
Lorry M. Fenner
Mark W. Foste
Joshua Glick
Terril Graham
Holly Hagen
S. Steven Karalexas
Jacqueline Renee Koch
Kevin M. Maloney
Monique Mansoura
Robert L. McCloskey
Nicholas S. McConnell
R. Timothy McCrum
M. Elizabeth Medaglia
Heather F. Newton
Joyce Saltalamachia
David B. Tatge
William W. Taylor
Marc B. Tucker
Mark H. Tuohey III
Ellen H. Woodbury

FLORIDA
Geddes D. Anderson, Jacksonville
R. Scott Costantino, Jacksonville
Miguel M. De la O, Miami
Colleen A. Donahue, Hollywood
Rey Dorta, Coral Gables
William Lee Durden, Jacksonville
Joyce C. Fuller, Winter Park
R. Kyle Gavin, Jacksonville
Robert B. George, Jacksonville
Elizabeth Jenkins, Tampa
Kelly Overstreet Johnson, Tallahassee
Katie Lee, Jacksonville
Alexander Lian, West Palm Beach
Browyn C. Miller, Miami
Joseph P. Milton, Jacksonville
Edward A. Moss, Miami
Niels M. Murphy, Jacksonville
Omar Ortega, Coral Gables
Gerald F. Richman, West Palm Beach
Richard W. Slawson, Palm Beach Gardens
Janette M. Smith, Davie
Donald Smyrk, Merritt Island
Robert F. Spohrer, Jacksonville
Deborah A. Terzian, Miami

GEORGIA
Kelly Jean Beard, Marietta
Elizabeth W. Boswell, Atlanta
Loretta A. Cecil, Alpharetta
Dara Dehaven, Atlanta
Beryl Bergquist Farris, Atlanta
Stephanie L. Friese, Atlanta
Gregory L. Fullerton, Albany
Craig A. Gillen, Atlanta
Harvey Gray, Atlanta
Broadnax Edward Hansell, Roswell
William R. Harp, Atlanta
Garrett K. Hawks, Atlanta
Eugenia Jones Henderson, Macon
Ramsey Henderson, Macon
Richard B. Herzog Jr., Atlanta
Warren R. Hinds, Roswell
Cary Ichter, Atlanta
David V. Johnson, Atlanta
Daniel J. King, Atlanta
Allegra J. Lawrence, Atlanta
Kelly Amanda Lee, Atlanta
H. Fielder Martin, Atlanta
Robert O. McCloud Jr., Atlanta
Christopher J. McFadden, Decatur
Daniel W. Mitnick, Alphretta
Michael T. Nations, Atlanta
Alan Shane Nichols, Atlanta
Melody Z. Richardson, Atlanta
Rosalind A. Rubens, Atlanta
F. Valerie Rusk, Atlanta
Avery T. Salter Jr., Jonesboro
Donnie R. Sloan, Duluth
Pamela L. Tremayne, Atlanta
Darryl R. Vandeford, Lawrenceville
Richard W. Wolfe, Stone Mountain

HAWAII
Brian Baker, Kamuela
Gail Cosgrove, Honolulu
Robert P. Marx, Hilo

IDAHO
Ford Elsaesser, Sandpoint
W. Anthony Park, Boise
J. Walter Sinclair, Boise

ILLINOIS
Leo C. Backs Jr., Chicago
Gregory E. Barrett, Rockford
George E. Bates, Rockford
Anthony A. Iosco, Elk Grove Village
William Lane, Chicago
Joe McGraw, Rockford
Donald Ramsell, Wheaton
Charles A. Scholz, Quincy
Edward J. Zulkey, Chicago

INDIANA
Robert R. Altice Jr., Indianapolis
Craig Bradley, Bloomington
Debra L. Burns, Batesville
Andrew B. Buroker, Indianapolis
Daniel O. Conkle, Bloomington
Leonard E. Eilbacher, Fort Wayne
Tom Froehle, Indianapolis
John F. Hanley, Indianapolis
R. Ray Hawkins, Carmel
Robert M. Johnstone, Richmond
Donald P. Kommers, Notre Dame
Paul Kriese, Richmond
John K. McBride, La Fayette
Scott McClelland, Bloomington
Lee B. McTurnan, Carmel
Carl Pebworth, Indianapolis
John R. Troll, Indianapolis
Georgia Wralstad Ulmschneider, Fort Wayne

IOWA
Iulia Albul, Iowa City
Michael W. Ellwanger, Sioux City
John M. French, Council Bluffs
Max E. Kirk, Waterloo
Diane Kutzko, Cedar Rapids
Karen A. Lorenzen, Iowa City
Clinton J. McCord, Iowa City
Laura Pattermann, Council Bluffs
Leon F. Spies, Iowa City
Robert Waterman Jr., Davenport

KANSAS
James L. Eisenbrandt, Prairie Village
Thomas A. Hamill, Overland Park
Kathleen A. Harvey, Overland Park
Jeff D. Morris, Prairie Village
Robert B. Rogers, Prairie Village
Fred Spigarelli, Pittsburg

KENTUCKY
Jeff Aperson, Louisville
Matthew Breetz, Louisville
Linda Ewald, Louisville
John M. Famularo, Lexington
Sheldon Haden, Louisville
Michael J. Larmour, Lexington
Norvi L. Lay, Louisville
Cynthia K. Maynard, Radcliff
Jamie Neal, Louisville
W. R. Patterson Jr., Louisville
Julie Payne, Louisville
John E. Selent, Louisville

LOUISIANA
Joseph A. Barreca, New Orleans
Charles F. Gay Jr., New Orleans
Elizabeth Hustedt, New Orleans

MAINE
Jewell & Boutin, P. A., Portland
Derek P. Langhauser, South Portland

MARYLAND
James K. Archibald, Cockeysville
Rignal W. Baldwin, Annapolis
Paul D. Bekman, Baltimore
Albert D. Brault, Rockville
William W. Cahill Jr., Timonium
Anthony M. Carey, Baltimore
Martha Carr, Silver Spring
James Robert Catlette, Chevy Chase
Stephen Crystal, Bethesda
Tom Dawson, Temple Hills
Beverly A. Dougherty, Potomac
Jamellah Ellis, Baltimore
Paul H. Ethridge, Rockville
Jonathan N. Fox, Bethesda
Judith Jamison, Germantown
M. Dean Jenkins, Ocean City
Robert B. Kershaw, Baltimore
Stan Klinefelter, Baltimore
Juarez R. Lee-Shelton, Randallstown
Walter J. Leonard, Chevy Chase
Gary E. O'Connor, Silver Spring
James M. Perry, Hagerstown
Alec Rogers, Bethesda
John E. Sandbower III, Towson
Jan Schultz, Beallsville
James L. Shea, Baltimore
Katherine Shovlin, Annapolis
Cathleen Subin, Gaithersburg
Maureen Epps Webb, Upper Marlboro
Peter Wellington, Chevy Chase
James S. Wilson, Rockville

MASSACHUSETTS
Bryan R. Diederich, Boston
John D. Keeton Jr., Shrewsbury
Nick Littlefield, Boston

MICHIGAN
Jessica R. Cooper, Southfield
Michael R. Dorfman, Southfield
George A. Googasian, Bloomfield Hills
Paulette H. Loe, Novi
Ronald M. Sangster Jr., Sterling Heights
Jerome Dallas Winegarden Jr., Flint

MINNESOTA
David M. Aafedt, Minneapolis
Jeffrey R. Ansel, Minneapolis
Jonathan Armour, Minneapolis
Stephen R. Baird, Minneapolis
Dan Beck, Minneapolis
Tiffany Blofield, Minneapolis
Donald J. Brown, Minneapolis
Chris Camardello, Minneapolis
Aimee Dayhoff, Minneapolis
Mark DiPietro, Saint Paul
Gary Dooner, Brooklyn Park
Hart Kuller, Minneapolis
Philip R. Mahowald, Minneapolis

Donald R. McNeil, Minneapolis
Michael E. Obermueller, Minneapolis
Steven M. Phillips, Minneapolis
Karl Robinson, Minneapolis
Charles (C. J.) Schoenwetter, Minneapolis
Stephen J. Snyder, Minneapolis
Matthew Spohn, Minneapolis
Eric F. Swanson, Minneapolis
Sherman Winthrop, Minneapolis

MISSISSIPPI
Roger Clark, Gulfport
Joseph H. Montgomery, Poplarville
William E. Ready, Meridian
Richard P. Salloum, Gulfport
Landman Teller Jr., Vicksburg

MISSOURI
Richard F. Adams, Kansas City
Patrick J. Berrigan, Kansas City
Ann K. Covington, St. Louis
Heather Garretson, Kansas City
Gregory S. Gerstner, Kansas City
Keith J. Grady, St. Louis
Daniel J. Gralike, Columbia
Christopher Harlan, Kansas City
Milt Harper, Columbia
David B. B. Helfrey, St. Louis
Peter W. Herzog III, St. Louis
Lynn Hursh, Kansas City
Jennifer Kyner, Kansas City
Mario Mandina, Independence
Lee Marshall, St. Louis
Jill Morris, St. Louis
John L. Oliver Jr., Cape Girardeau
Daniel K. O'Toole, St. Louis
Joseph S. Passanise, Springfield
Theodore W. Ruger, St. Louis
James L. Rutter, Columbia
Lance D. Sandage, Independence
Edward R. Spalty, Kansas City
Thomas W. Van Dyke, Kansas City
Thomas C. Walsh, St. Louis
David W. Welch, St. Louis

MONTANA
Charlotte Beatty, Missoula

NEVADA
Peter M. Angulo, Las Vegas
Peter C. Bernhard, Las Vegas
Tisha R. Black, Las Vegas
Kurt Bonds, Las Vegas
Joe W. Brown, Las Vegas
Bonnie A. Bulla, Las Vegas
William Burby, Las Vegas
Jeffrey L. Burr, Las Vegas
Donald J. Campbell, Las Vegas
Walter R. Cannon, Las Vegas
Diane Carr-Roth, Las Vegas
V. Andrew Cass, Las Vegas
Jack C. Cherry, Las Vegas
Frank J. Cremen, Las Vegas
Steven Day, Las Vegas
Ralph L. Denton, Las Vegas
Kerry L. Earley, Las Vegas
Marie Ellerton, Las Vegas
Frank A. Ellis III, Las Vegas
Robert D. Faiss, Las Vegas
Keith E. Galliher Jr., Las Vegas
Gerald Gillock, Las Vegas
Gary R. Goodheart, Las Vegas
John G. Gubler, Las Vegas
Edward Hanigan, Henderson
Norman Ty Hilbrecht, Las Vegas
Mark A. Hutchison, Las Vegas
Christopher L. Kaempfer, Las Vegas
Stephen S. Kent, Reno
Joseph S. Kistler, Las Vegas
Thomas F. Kummer, Las Vegas
Peggy Leen, Las Vegas
Alan J. Lefebvre, Las Vegas
Mark A. LoBello, Las Vegas
Aaron Lovaas, Las Vegas
Albert G. Marquis, Las Vegas
Richard G. McCracken, Las Vegas
Richard McKnight, Las Vegas
Dana E. Morris, Las Vegas
David J. Mortensen, Las Vegas
John H. Mowbray, Las Vegas
Erven T. Nelson, Las Vegas
Nancy Oesterle, Las Vegas
James R. Olson, Las Vegas
John F. O'Reilly, Las Vegas
Niels Pearson, Las Vegas
Monica Pierce, Las Vegas
Thomas F. Pitaro, Las Vegas
Edward J. Quirk, Las Vegas
LeAnn Sanders, Las Vegas
Jay Earl Smith, Las Vegas
John T. Steffen, Las Vegas
Eric K. Taylor, Las Vegas
Mark G. Tratos, Las Vegas
William P. Volk, Las Vegas
John P. Wanderer, Las Vegas
Mace J. Yampolsky, Las Vegas

NEW HAMPSHIRE
William H. M. Beckett, Durham
Scott Harris, Manchester
Jennifer L. Parent, Manchester
James Richardson, Peterborough
William A. Riley, Francestown
Mark C. Rouvalis, Manchester
Martha Van Oot, Concord

NEW JERSEY
Edward J. Fanning, Newark
Douglas Fasciale, Westfield
John Jorgensen, Colonia
Kenneth F. Kunzman, Roseland
Michael J. Marone, Morristown
Ira Brad Matetsky, Secaucus
Nancy McDonald, Morristown
Clyde A. Szuch, Maplewood
Paul B. Thompson, Chester
Walter F. Timpone, Morristown
Kathleen Van Every, Mt. Laurel
Wylene Branton Wood, Mendham
Joshua Zielinski, Morristown

NEW YORK
Elkan Abramowitz, New York
Irma Ascher, New York
Dennis J. Block, Manhasset
Solomon Bogard, Bronx
Barry A. Bohrer, New York
Keith Carlisle, New York
Pamela Rogers Chepiga, New York
Ernest J. Collazo, New York
Patricia A. Crawford, Brooklyn
Evan A. Davis, New York
Roberta L. Dunlop, Glen Cove
Terry Eder-Kaufman, New York
Burton L. Fradin, New York
Samuel E. Friedman, Great Neck
Alan Arthur Funk, Westbury
Alan S. Futerfas, New York
Carl A. Green, Buffalo
Richard F. Griffin, Buffalo
Kenneth V. Handal, New York
Tyresse Horne, New York
Robert J. Jossen, New York
David Karp, New York
Stephen E. Kaufman, New York
William Klein, Riverdale
Steven Kobre, New York
Jonathan J. Lerner, New York
Alan Levine, New York
Lewis J. Liman, New York
Leah Marks, New York
Robert B. Mazur, New York
Joseph T. McCann, Binghamton
Joseph V. McCarthy, Buffalo
George F. Meierhofer, New York
Frederick M. Molod, New York
David E. Nachman, New York
Lesley Oelsner, New York
Peter R. Paden, New York
Richard N. Papper, New York
David C. Patterson, New York
Yasuhiro Saito, New York
Samira Shah, New York
Barry Slotnick, New York
Martin H. Sokol, Great Neck
Robert Stern, Great Neck
Richard A. Wilson, New Hartford
Michael R. Wolford, Rochester
Paul B. Zuydhoek, Buffalo

NORTH CAROLINA
James G. Exum Jr., Greensboro
Gerald P. Hurst, Charlotte
Donald B. McCracken, Charlotte

OHIO
Stacy D. Ballin, Cleveland
John M. Brendel, Cleveland
Daniel L. Brockett, Cleveland
J. Van Carson, Cleveland
Robert R. Cupp, Lima
Lisbeth A. Cupp, Lima
Michael D. Eagen, Cinncinnati
Lori Urogdy Eiler, Moreland Hills
Ralph K. Frasier, Columbus
Steven A. Friedman, Cleveland
W. Roger Fry, Cincinnati
Frances Floriano Goins, Cleveland
Richard Gurbst, Cleveland
Susan C. Hastings, Cleveland
M. Gabrielle Hils, Cincinnati
Laura K. Hong, Cleveland
Thomas S. Kilbane, Cleveland
John M. Kunst Jr., Cincinnati
Damond R. Mace, Cleveland
William Memmer, Lakewood
Kenneth C. Moore, Cleveland
Frederick R. Nance, Cleveland
[illegible]oward J. C. Nicols, Cleveland
[illegible]Bradley Ockene, Cleveland
James L. O'Connell, Cincinnati
[illegible]l G. Okun, Cleveland
[illegible]omas Ratcliff, Powell
Walter J. Rekstis, Cleveland
Mark J. Ruehlmann, Cincinnati
Harris A. Senturia, Cleveland
Charna E. Sherman, Cleveland
James D. Thomas, Cleveland
Mark A. Vander Laan, Cincinnati
George M. von Mehren, Cleveland
Robin G. Weaver, Cleveland
Roger A. Weber, Cincinnati
David C. Weiner, Cleveland
Joseph C. Weinstein, Cleveland
Frank C. Woodside III, Cinncinnati
David J. Young, Columbus

OKLAHOMA
J. C. Joyce, Tulsa

PENNSYLVANIA
Ebiho Ahonkhai, Philadelphia
Andrew A. Chirls, Philadelphia
Alan B. Davis, Philadelphia
Joseph V. Del Raso, Philadelphia
Thomas K. Gilhool, Philadelphia
Harry G. Haskell Jr., Chadds Ford
Peter Hearn, Philadelphia
[illegible]aul C. Heintz, Haverford
[illegible]lbur L. Kipnes, Philadelphia
John A. Krol, West Chester
[illegible]olly Peckman, Philadelphia
[illegible]dley Perkins, Philadelphia
Christine Pontiff, Pittsburgh
Samuel N. Rabinowitz, Philadelphia
David Richman, Philadelphia
Andrew Rogoff, Philadelphia
Philip L. Rothbart, Kennett Square
Laurence Z. Shiekman, Philadelphia
Kathleen A. Stephenson, Philadelphia
David Sweet, Harrisburg
Anthony Vale, Philadelphia
James V. Wilkinson Jr., Ben Salem

SOUTH CAROLINA
Jean H. Toal, Columbia

TENNESSEE
Leesa Hinson, Nashville
Linda Carver Whitlow Knight, Nashville
Jeffrey Mobley, Nashville
N. Sue Van Sant Palmer, Nashville
Steven C. Rose, Kingsport
Susan W. Sowards, Nashville
Denise Terry Stapleton, Morristown
Ronald D. Wells, Chattanooga
Julia C. West, Kingsport
M. Lacy West, Kingsport
John W. Wheeler, Knoxville
Avon Williams, Brentwood
Christopher S. Yoo, Nashville

TEXAS
Ted Martin Akin, Dallas
Raymond P. Albrecht, Houston
S. Arif Ali, Houston
W. H. Baber Jr., Hallettsville
Jenifer L. Balch, Dallas
Charles Bell, Dallas
Frank L. Branson, Dallas
Robert Burton, Austin
Corey Cheek, Dallas
Michael Choyke, Houston
Lydia Clay-Jackson, Conroe
William R. Cole, Dallas
Lindsey Cummings, Dallas
John K. Dunlap, Dallas
Jennifer Elmer, Dallas
Paul R. Genender, Dallas
Stephen W. Gwinn, Dallas
Robert Allen Gwinn Jr., Dallas
James Harrison, Dallas
R. Chris Harvey, Dallas
Kelly C. Heallen, Houston
Gary D. Lykins, Dallas
Jeff Mahon, Dallas
Stephen F. Malouf, Dallas
Edward McDouough, Houston
John W. McDowell, Universal City
Pat McDowell, Dallas
John McElhaney, Dallas
Scott M. McElhaney, Dallas
W. Troy McKinney, Houston
Kenneth J. Mighell, Dallas
David T. Moran, Dallas
Steve Nagle, Dallas
Mary Susan Roshto, Dallas
Mark A. Shank, Dallas
J. Todd Shields, Houston
Sidney Stahl, Dallas
Kerri L. Stampes, Dallas
Todd M. Tippett, Dallas
Rosalyn Tippett, Dallas
Paul B. Van Ness, Dallas
Wesley R. Ward, Houston
George W. Webb III, Houston
Roger Williams, Amarillo
Susan Zinn, San Antonio

UTAH
Carl E. Malouf, Logan
Stephen W. Owens, Salt Lake City
Robert G. Wright, Salt Lake City

VERMONT
Paul L. Reiber, Rutland

VIRGINIA
Charles B. Arrington, Richmond
Gerald L. Baliles, Richmond
Thomas O. Bondurant Jr., Richmond
Thomas C. Brown Jr., Alexandria
Robert S. Cockerham, Fairfax
Lynn Eccleston, Alexandria
Rob Esworthy, Alexandria
James E. Farnham, Richomnd
Jeanne F. Franklin, Alexandria
Richard French, Fairfax
Jonathan Fry, Alexandria
Robert E. Gordon, Arlington
Richard N. Griffin, Alexandria
Gail Gronlund, Fairfax
Lawrence B. Hagel, Fairfax
Paul W. Jacobs II, Richmond
F. Claiborne Johnston Jr., Richmond
Brent Jostad, Fairfax
Miriam M. Lam, Clifton
David Craig Landin, Richmond
Paul D. Mahoney, McLean
John P. McGeehan, Fairfax
Diana Moore, Arlington
Kevin J. Robert, Arlington
Ronald D. Rotunda, Arlington
James Tompkins, Hillsville

WASHINGTON
Mark L. Toole, Fort Lewis

TAIWAN
Martin Chen, Taipei

Continued from page 11

the status of the slaves, following their return to Kentucky, "depended altogether upon the laws of that State and could not be influenced by the laws of Ohio."

[22]Justice Nelson's opinion, which became his concurring opinion, thus declines to discuss the jurisdictional issue and concludes that, under *Strader*, "the question involved is one depending solely upon the law of Missouri, and that a federal court sitting in the state . . . was bound to follow it." *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) at 465.

[23]On February 2, 1857, President-elect Buchanan wrote his old friend Justice Catron to inquire whether the Court would hand down its decision before Inauguration Day, Wednesday, March 4. Catron replied on February 10 that the [illegible]e would be decided in conference on Saturday, the 14th, and that the Court probably would not rule on the power of Congress to prohibit slavery in the territories. But on February 19 Catron wrote a second letter, stating that the Court would decide the constitutionality of the Missouri Compromise restriction and suggesting that in his Inaugural Address Buchanan leave the entire matter to the "appropriate tribunal" and decline to "express any opinion on the subject." Catron also enlisted Buchanan's help in persuading Justice Grier of Pennsylvania to concur in that judgment. Buchanan promptly wrote Grier; Grier conferred with Taney and Wayne; and on February 23 Grier wrote Buchanan that not only had he agreed to concur with Taney's opinion but also that he and Justice Wayne would try to get Justices Daniel, Campbell and Catron "to do the same." (Fehrenbacher, *Dred Scott*, pp. 306-10). Buchanan apparently had not disclosed to Justice Grier his prior correspondence with Justice Catron.

THAT MAN, **AN INSIDER'S PORTRAIT OF FRANKLIN D. ROOSEVELT**

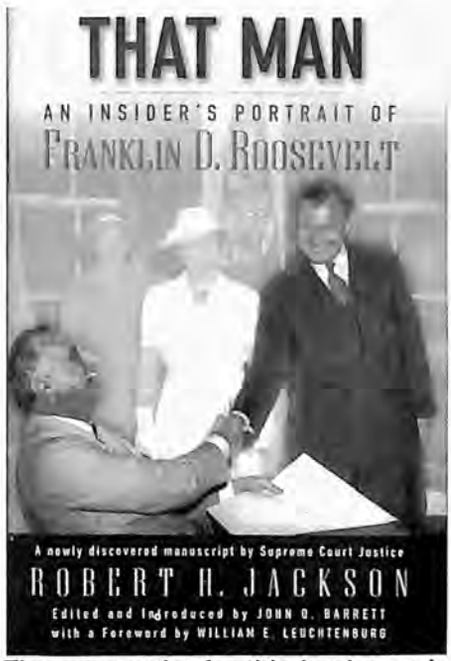
By Robert H. Jackson

Edited and Introduced by John Q. Barrett

Robert H. Jackson was one of the giants of the Roosevelt era; an Attorney General, a still revered Supreme Court Justice and, not least important, one of Franklin Delano Roosevelt's close friends and advisers. His intimate memoir of FDR, written in the early 1950s before Jackson's untimely death, has remained unpublished for fifty years. Here is that newly discovered memoir. Written with skill and grace, this is truly a unique account of FDR. Jackson simply but eloquently provides an insider's view of Roosevelt's presidency, including such crucial events as FDR's Court-packing plan, his battles with corporate America, his decision to seek a third term, and his bold move to aid Britain in 1940 with American destroyers. The book also offers an intimate personal portrait of Roosevelt as seen through the eyes of a contemporary and friend.

Copies of the book autographed by Professor Barrett are available for sale through the Gift Shop. To order a copy, please check the Society's website, supremecourthistory.org and place an order through the gift shop component of the site, or telephone the shop directly at (888) 539-4438.

$30 Hardcover. Members receive a 20% discount on all purchases.



The manuscript for this book was in storage for fifty years.

Supreme Court Historical Society
224 East Capitol Street, N.E.
Washington, D.C. 20003
www.supremecourthistory.org

NON PROFIT ORG
US POSTAGE
PAID
WASHINGTON, DC
Permit No. 8232

Ms Kathleen Shurtleff
1101 Delf Dr
McLean VA 22101-2031