



THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

VOLUME XXV

NUMBER 2, 2004

RESCHEDULED DINNER HONORS STATE CHAIRS AND DONORS



Justice Breyer was photographed with Hugo L. Black, Jr., a Trustee and long-time supporter of the Society.

For the first time in the Society's history, bad weather in January required that a function be postponed. Though April is sometimes referred to poetically as the "cruellest month," it proved kind to the Society, and a dinner honoring State Chairs and Donors was held on April 22, 2004. Justice Stephen Breyer hosted the event, joined by his wife, Dr. Joanna Breyer, and their son, Michael.

As President Jones observed, the event is designed to honor "those volunteers whose untiring labors ensure the Society's capacity to fulfill its long-term mission." Others honored that evening were there to be thanked for their "generous financial support of the Society's many endeavors." For the first time in the history of the event, a third group of supporters was honored. This was the erstwhile and devoted Ad Hoc Commemorative Coin Advisory Committee. All of those honored have exhibited unselfish service to the Court and the Society.

In a brief after-dinner speech, Mr. Jones outlined facets of the Society's principal program efforts, emphasizing acquisitions, publications, the Documentary History Project, lectures and historical research projects, as well as the Summer Institute for Teachers. He then introduced Justice Breyer. Mr. Jones observed that the Justice was a loyal ally of the

JOHN MARSHALL COIN BILL SIGNED INTO LAW

On August 6, 2004, President George W. Bush signed HR 2768, the John Marshall Commemorative Coin Act, into law. This marked the culmination of a 16-month campaign by the Society to honor the "Great Chief Justice."

Society members and Trustees worked tirelessly for the passage of the Act, led by Ralph Lancaster and his Ad-Hoc Coin Committee. Organized regionally by Circuit, the Coin Committee helped secure co-sponsorship of 305 Representatives and 75 Senators, exceeding the 2/3rds requirement imposed by Congress for the passage of commemorative coins. Rep. Spencer Baucus (AL) and Senators Orrin Hatch (UT) and Patrick Leahy (VT) introduced the Act in the House and Senate and worked to secure additional co-sponsors. Chief Justice William H. Rehnquist, conveying the support of all the Justices, testified on behalf of the Act before the House Financial Services Committee.

The Act provides for the United States Mint to mint up to 400,000 silver dollar commemorative coins in honor of John Marshall's 250th birthday in 2005. The Mint anticipates the coin will be available in March 2005. A \$10 surcharge from the sale of each coin will be placed in a permanent endowment to fund acquisitions and educational programs to further the Society's mission to educate the public about the Supreme Court, the Constitution and the judiciary. Information about ordering coins will be available in the near future.

A Letter from the President



A portrait of William Marbury; a miniature of Justice Brockholst Livingston painted on ivory; photographs of Justice Tom Clark and his colleagues; original photographs, correspondence and other materials written to or by Architect Cass Gilbert relating to the construction of

the Supreme Court Building; a regulation NFL football autographed by Justice "Whizzer" White—what do these items have in common? All are part of the Society's collection of artifacts and memorabilia relating to the history of the Supreme Court. Some were purchased from the general operating fund; some were donated by public-minded family members, organizations and collectors; while others were purchased with funds donated to the Society specifically for that purpose.

Acquisition and preservation of artifacts was one of the primary objectives of the Society upon its organization in November 1974. As Chief Justice Burger noted at that time, too many precious and meaningful objects associated with the Justices and the Court were slipping into obscurity and could be permanently lost to future students of Supreme Court history. Indeed, many of the efforts of the nascent organization were devoted to obtaining portraits of past Justices of the Court, as well as furnishings for use in the Supreme Court Building. A large portion of the furnishings gracing the room referred to as "The Justices' Dining Room" were obtained through the efforts of the Society.

While membership on the Acquisitions Committee has changed over the years, much can be attributed directly to the efforts of two great women: Patricia Dwinell Butler and Dorothy Tapper Goldman.

A founding member of the Society, Patricia Butler served for many years as Chair of the Committee. A pioneer in her career as well, Butler was one of the first women lawyers in the Department of Justice, and during her career worked closely with many of the great figures of the legal community. In 1949, Pat successfully argued the case of *Johnson v. Shaughnessy* before the Supreme Court while she was serving in the Office of the Solicitor General. Indeed, she may have been the first woman from that office to argue before the Court. A significant participant in the history of the Court and the judicial system, Pat has a deep interest in, and commitment to, the work of her committee.

Her experience made her very aware not only of the availability of items of great importance to the history of the

Court, but also of the limitations on funds available to make purchases. Knowing that only a limited number of artifacts would be obtained through donation and conscious of the growing budgetary demands on the Society associated with the implementation of educational programs, she boldly suggested the creation of an Acquisitions Fund. Making an impassioned plea for her cause at an Executive Committee meeting, she moved the creation of the fund, and then provided the seed money to establish it. Typical of her long-term concern for and interest in the Society and its programs, she has continued to make donations to the fund in the ensuing years and to maintain a keen interest in the work of the Society, particularly this program. Indeed, Pat recently pledged an additional generous gift to the Acquisitions Fund.

Dorothy Tapper Goldman is another great patron of the Society, and its Acquisitions program. Dorothy became involved with the Society through her late husband, Howard S. Goldman. Howard had a deep love of manuscripts and autograph material, particularly those relating to the Justices of the Supreme Court. A knowledgeable and avid collector, he became a patron of the Society's collection through donations of oil portraits, drawings, letters, etchings, as well as cash donations to fund purchases of artifacts. Two of his most significant gifts are matching portraits of Justice Peter Daniel and his wife, painted by Thomas Sully. Dorothy shared these collecting interests with Howard, and her expertise is every bit as finely honed as was his. Together they have been gracious and generous contributors to the Society's collection. Indeed, the Goldman name is associated with essentially every major project the Society has embarked upon in the last decade.

Since Howard's death, Dorothy has continued this legacy of giving time and resources to support the work, and recently became Chair of the Acquisitions Committee, succeeding Pat. Working closely with the Curator of the Court, Catherine Fitts, and members of the Curator's staff, Ms. Goldman seeks to identify items of meaning and relevance for the collection, and then undertakes to obtain them. This occasionally requires fast-paced action, as the world of internet auctions has greatly expanded the audience and shortened the timetable for sales. In some cases, Dorothy has stepped in and donated funds to make possible the purchase of an important item. This was

the case when a hitherto unknown card table that had belonged to William Marbury, the famous litigant in *Marbury vs. Madison*, suddenly appeared on the market. Time was of the essence in purchasing this treasure, and once again Dorothy saw a need and met it. Calling upon family support, Dorothy enlisted the assistance of her stepson, James Goldman, himself a generous benefactor of the Society, to fund the purchase of the table. This beautiful table now graces the anteroom of the Justices' Dining Room beneath the portrait of its previous owner.

It should be noted that James Goldman made a very significant contribution to the Society several years ago when he donated a document written in the hand of the Great Chief Justice John Marshall. An excellent example of his legal training and business dealings, this was presumably intended to be a boundary dispute agreement between Marshall and John Adams (not the John Adams who became President of the United States). The document is in Marshall's hand and signed by him. Mr. Goldman had the document framed in such a way that both sides can be read by the viewer.

Always an ambassador for the Society, Dorothy Goldman has involved not only James Goldman, but others as well. A few years ago, she enlisted the involvement of Fred Bentley, Sr., an attorney from Marietta, Georgia. Mr. Bentley is also an avid collector, and the Society's collection has grown through many generous gifts made by him in recent years. These include the autographed football mentioned in the first paragraph of my letter, as well as original newspaper articles from 1792 concerning the ratification of the Constitution, and from 1803 reporting Marshall's opinion in *Marbury v. Madison*. In some instances, he and Dorothy have worked together to obtain items of great meaning to the history of the Court. This was the case when they provided funds recently for the purchase of two important autograph letters, one by Chief Justice John Marshall, the second by Chief Justice Roger B. Taney.

On a personal note, I might add that it has been my pleasure to be associated with Fred for a period of years. We were first classmates together in law school, and have remained friend over the ensuing years. While I knew of his interest in historical documents, Dorothy's enthusiasm and expertise drew him into the work of the Acquisitions Committee.

There are many other donors to the Society's collection, and space (and your patience) does not allow me to enumerate them individually. Collectively, they have provided a great body of important artifacts that helps give breadth and

meaning to the history of this unique and important institution, the Supreme Court of the United States. We are enormously grateful for each piece of this collection, and for the generosity of members who have read about the collection and been motivated to donate their own appropriate artifacts, or in some cases, to purchase and then donate items of relevance. In each issue of the *Quarterly* at least one piece of the collection will be highlighted—a story about the miniature of Justice Brockholst Livingston appears on page 13 of this issue. In this way you can be made aware, at least a little, of the richness and diversity of the items encompassed within the collection.

Items from the collection grace the rooms and hallways of the Supreme Court Building, both in public space and in private areas. Many pieces are displayed in educational exhibits prepared by the Office of the Curator of the Court. These exhibits are available to all members of the public who enter the building and provide a visual interpretation of the history of the august institution that often reveals things on a more human scale.

Of course, Dorothy and Pat would both encourage me to remind you that the Society does have an active Acquisitions Fund, and gifts to this special fund are welcomed from any and all members of the Society. The principal is invested and serves as a continuing endowment, and the interest earned is available to finance the purchase of new pieces for the collection. As is the case with other gifts to the Society, any contribution you make to this fund will be a tax-deductible donation.

With the thirtieth anniversary of the incorporation of the Society occurring in November 2004, we have come a long way, but there are still so many possibilities and opportunities. Working together, we can see that the next thirty years bring even greater achievements. The successful passage of the John Marshall Coin Bill legislation (see page one) provides a unique opportunity for the Society to create a tangible reminder of the importance of this institution for all Americans. The money derived from the sale of the coins will also provide greater economic stability for the future and the means to increase our educational programs and publications. So it is with renewed enthusiasm and dedication that we move past the milestone of our first 30 years, and into the future.

Frank L. 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.

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A PHOTOGRAPHIC REVIEW OF THE 1961 TERM

By Peter D. Ehrenhaft*

Launching a legal career from a clerkship at the U.S. Supreme Court is probably an aspiration of every American law student. What can be more exciting and promising than a quick lift from the drudgery of Socratic questioning in class and the mind-numbing memorization of useless detail for a bar exam than entering the Supreme Court of the United States as a law clerk? There, the clerk is immediately at the pinnacle of the judicial system of the United States. He or she will have direct and personal contact with the Justices who comprise what is arguably the world's most important court. There is nothing "moot" about the work of this Court; every working minute is spent on problems that make headline news and affect countless causes and cases in the future. It is heady stuff and an experience like no other.

Law clerks to the Justices of the Supreme Court are not an ancient tradition. The practice became firmly established only in the 20th Century. In the beginning, each Justice was assisted by one recent law graduate, who was unencumbered by ties to any party or cause likely to come before the Court yet was still steeped in the thorough research methods learned at one of a few select law schools. By the time I arrived in 1961, each Justice had two clerks (other than the Chief Justice who had three, and Justice Douglas, who preferred a second secretary rather than a second clerk). Since my time, the number of law clerks has increased to four per Justice; and there is a greater reliance on computer technology. Women clerks are now quite common, and graduates from many law schools are considered and selected. This reminiscence will not reveal startling insights into the deliberations of the Court during the time I was privileged to serve as Chief Justice Warren's Senior Clerk. It is, rather, intended to be an informal commentary, illustrated by candid photographs that I was able to take while serving as a clerk. They illustrate the appearance of the Court and the Justices during the 1961 Term, notable primarily for two decisions: *Baker v. Carr*, opening the federal courts to challenges of state legislative apportionment, and *Engle v. Vitale*, holding mandatory prayer in public schools unconstitutional.

Before coming to the Court, I had been an avid amateur photographer. My father, hoping to become an architect in Vienna where he lived after World War I, was unable to finance formal instruction in that field and became an investment banker. But he indulged his artistic interests and talents by becoming a marvelous photographer and, in later life, a more than adequate amateur painter. From the earliest days of my memory, he used a Leica as his camera, and was dismayed when, during World War II, as a refugee in the United States, his camera was confiscated for the duration of the War. It was returned to him after VJ Day and I then learned photography from him. After graduating from college in 1954, some fraternity brothers and I took a trip through Western Europe and, while there, I bought for my Dad one of the first post-War Leicas produced in West Germany by the former employees of that firm who had fled the factory now in a part

of East Germany. Four years later, my father succumbed to cancer and the camera passed into my hands. Each of the photos accompanying this piece was taken with that equipment, supported with only a hand held flash. The depth field, the minute detail and the marvelous colors of these photos attest to the excellence of the equipment I used, the high quality of Kodachrome film (and its stability for nearly 50 years) and the superb photo processing capabilities of the Chrome Lab in Washington that brought these snapshots to current life. Even in black and white they are vivid images.

Most of the photos were taken in February 1962, the midpoint of my year at the Court. Let me introduce the tour with a view of the West Portico of the Supreme Court Building in the bright sun and snow of February. "Authority of Law,"



The "Authority of Law" is an allegorical male figure, holding a tablet of laws and a sheathed sword.

the seated figure, is seen on the right; its counterpart "Contemplation of Justice"—no less important—is just out of view.

As we enter the Court, the courtroom in 1962 looks fa-



In 1962, the Supreme Court Bench (above) was straight across the width of the room. It was modified to a curved shape during Chief Justice Burger's tenure.



The Justices' Conference Room as arranged in 1962.

miliar to us today, but for one significant difference. At that time, the bench was straight across the width of the room. One of the important reforms introduced by Chief Justice Burger was the curved bench that has significantly improved communication among the Justices during arguments and, even more, altered the style in which advocates address the Court. Before a long straight bench, the speaker "orated" and was required to swing his gaze as though he was at a tennis match. Today's curved bench has converted the oral argument to a conversation between counsel and Court, making the exercise more personal and generally more interactive.

While the public was, of course, able to observe the Court in action and saw the courtroom with ease, the next print shows the elegant Justices' Conference Room as configured in 1962. The table around which the Justices met each Friday was oriented north/south along the principal axis of a room that is as wide as the courtroom. The picture does not adequately suggest how relatively small the conference table is compared to the dimensions of the room. In 1962 this room was rarely used for any purpose other than the conferences of the Justices. When Chief Justice Burger succeeded Warren, he moved the conference table so that its axis is along the north wall, and a ceremonial desk was added in the space near the South wall, for receiving important visitors.

Considerably less impressive than the Courtroom or Justices' Conference Room was the office in which I worked. Located on the second floor (rather than within the Chambers of the Chief Justice) can be seen behind my desk an electromechanical calculating machine and a large hand-powered typewriter. This equipment reflects one of the principal reasons the Chief Justice had three clerks. His clerks were required to process the entire *in forma pauperis* docket of the Court. All *ifp* cert petitions were sent to the Chief's clerks, and we then prepared what were called "flimsies" to be circulated to the Chambers of all of the Justices. The "flimsies" derived their name from the onion skin paper on which our memos were written and typed in ten copies on one of the few electric typewriters in the Court building. No photocopying or similar reproduction materials existed. Fortunately, our secretary was a superb typist who minimized the time-consuming but familiar ordeal of making corrections on an original and nine carbon copies.



The author, Peter Ehrenhaft, appears above at his desk in Chambers during his service as a law clerk to Chief Justice Warren.

In addition to our work for the Court as a whole, on the *ifp* docket which, at that time, numbered 1,500 petitions per Term, we prepared a memorandum addressed solely to the Chief with our recommendations concerning the disposition of all currently filed certiorari petitions, appeals and original jurisdiction claims. Then, as now, cert petitions were by far the most numerous new matters. With regard to each of these requests to be heard, we could suggest "grant" — almost never suggested; "discuss" — more liberally suggested by us than acted upon by him; or "X-deny" — suggesting that the Chief not even include the case on a list he circulated to the Court weekly of petitions to be discussed at the Justices' next conference. Of course, any Justice could request a full discussion of any such petition; not even the Chief's recommendations were dispositive. Nevertheless, our routing of the cert petitions to the "X-deny" list was probably the most significant (and virtually unreviewed) aspect of our work at the Court.

We also wrote memoranda to the Chief with respect to motions made to him acting as a single Justice. For most cases to be argued, we prepared a "bench memo" highlighting issues raised by the parties (or overlooked by them), and suggesting questions the Chief might ask of counsel.

After a case had been decided in which the Chief opted to write an opinion, he would generally prepare an outline of his major thoughts and we would work from that. He was not keen to prepare footnotes. However, there is no doubt that the Chief took total responsibility for the opinions published in his name, including whatever footnotes were included. His overarching approach to his task as the Chief Justice of the nation's highest court was to assure that the outcome of each case was "fair." Fairness was the linchpin of his legal philosophy and he never allowed us to forget it.

The next photograph is of the Chief sitting at his desk, demonstrating that warm and engaging smile for which he was justly famous. The desk is uncluttered, as that is the way the Chief worked; one project at a time. A picture of one of his daughters is prominently displayed behind him as evidence of the family man he always remained. As most of his



Chief Justice Warren's warmth and outgoing personality are reflected in this photograph.



Justice Potter Stewart conferring with his clerk, Bob Hudec. Stewart was appointed to the Court at the age of forty-three, making him the second youngest Justice since the Civil War.

children lived outside of Washington, D.C., his law clerks became a surrogate family. On Saturdays, we frequently had a light lunch with the Chief in a secluded nook of a Capitol Hill restaurant or spent the afternoon watching college football at his apartment at the Wardman Park Hotel.

The next picture shows Justice Stewart with his law clerk, Bob Hudec. This, like the other pictures, shows the men wearing suit jackets. While we occasionally worked in shirtsleeves, there was, nevertheless, a decorum that at least required a clerk to don a jacket when entering the office of a Justice. However, by 1962, it was no longer necessary for us to wear hats in public — as was still the vogue when I graduated from law school in 1957! A forgotten aspect of Justice Stewart's work that year is his lone dissent in the "school prayer" case. The vote was 8 to 1.

The following picture shows a number of the law clerks in the dining room set aside for our daily lunches. Some are holding cigars, not because cigars were the usual after-lunch treat, but to commemorate the birth of my wife's and my first child! The room was the venue for lunches we hosted virtually every other week for persons important in public life and willing to spend an hour or two with the law clerks. Our guests included the Secretary of State, Dean Rusk, the Air Force Chief of Staff, Curtis LeMay, Professor Paul Freund



A group of clerks were photographed at a celebration of the birth of Ehrenhaft's first child.



Many of the 1961 Term's clerks were photographed with President Harry Truman on the occasion of his visit to the Court.

from the Harvard Law School, Judge David Bazelon of the D.C. Circuit Court of Appeals, Judge Luther Youngdahl from the D.C. District Court, and Congressman Emanuel Celler. On one occasion we were invited, as a group, to have lunch with Attorney General Robert Kennedy and we all left the building to convene in his cavernous office at the Department of Justice. The AG was clearly unhappy about questions he was asked by some of the clerks and thereafter wrote an article complaining about the "arrogant cry babies" who worked for Supreme Court Justices. Chief Justice Warren summoned me to his office as the organizer of these events and reminded me that each clerk worked only for the Justice who employed him; that our little organization was informal and had no official function or standing; and that we were not to leave the building as a group again without his prior consent. Needless to say, we never again accepted a group invitation outside our lunchroom.

One particularly enjoyable lunch was with former President Harry Truman. My principal memory of the event is that it lasted three hours. The President could have filled the afternoon with his political war stories.

In that same period, I found the time (and received the permission of the Chief Justice) to roam the halls of the Court building and drop into the Chambers of the other Justices. Each graciously allowed me to take a candid 60-second portrait. I never remember Justice Black smiling, and his stern appearance in this photograph is characteristic. My principal recollection of Justice Black turns on a case heard during our Term involving the zoning regulations in the town of Hempstead, New York. The operator of a gravel pit claimed that the regulations effectively expropriated his property and,

therefore, was "unconstitutional." During oral argument in the case, Justice Black had asked counsel to identify the provision of the Constitution on which he rested his claim. He had replied with some consternation "Why? The entire Constitution." While later we both stood in line to buy lunch in the Court cafeteria, I overheard the lawyer tell a companion, "Can you imagine that? After all of his years on the Court, Justice Black was asking me on what provision of the Constitution we relied!"

Justice Douglas was at his relaxed best when I took his photo. Not only did he not work on only one project at a time; his energies were always directed to multiple activities in and out of the Court. That his tie hung out of his suit was



Hugo L. Black carried a copy of the Constitution in his pocket throughout his service on the Supreme Court.



J. Bruce Alverson was recognized for his outstanding service as state chair for Nevada.

Society, and that the Society "is honored to count him among its friends and supporters."

The Justice made extemporaneous remarks about the importance of a sense of history and an awareness of a greater fabric when individual efforts are woven to create the heritage of the American judicial system. He referred to the portraits and other artifacts surrounding the guests and spoke of the institutional importance that these and other tangible objects conveyed. Educational efforts that seek to draw teachers and students into the past and present of the Court are another reason he gave for his enthusiasm about the Society's programs.

At the conclusion of these remarks, Mr. Jones called upon Frank Gundlach, 2004 National Membership Chair, to assist him in making awards. Mr. Gundlach has made remarkable efforts to encourage membership through the network of state chairs. Building on the enormous success of Ralph Lancaster, the National Chair for 2003, he has inspired the chairs to achieve a membership level rapidly approaching 5700 members.



John Siffert was recognized for his work as state chair for New York for two years in a row. Both years Mr. Siffert met or surpassed his goals.

With the assistance of Justice Breyer, Mr. Gundlach called forward the state chairs who had successfully achieved their membership goals for the year as of April 22. Those so honored were: **J. Bruce Alverson of Nevada; Thomas Boyd of Minnesota; Robert Gwinn of Texas, Dallas area; Thomas S. Kilbane of Ohio, North area; Scott Powell of Alabama; and John Siffert, New York City.** Mr. Siffert was recognized for achieving his membership goals for both fiscal years 2003 and 2004. Four additional state chairs had accomplished goals as of April 22 but were unable to be present that evening. They were: **Victor Battaglia of Delaware; James P. Hayes of Iowa; John R. Schaibley of Indiana; and James Wyrsh of Missouri-West.** In addition, Mr. Gundlach recognized the efforts of **James Eisenbrandt of Kansas and Michael Mone, Massachusetts and National Committee Vice Chair,** who were working to achieve their goals.

In addition to those honored for efforts in the state chair program, two new life members were honored. The first, **Anne Folan,** worked for the Society several years ago and has retained close bonds. The second, **Joseph Moderow,** has labored throughout the year in fund-raising and coin bill ef-



Scott Powell served as state chair of Alabama and received an award for his very successful efforts.



Thomas S. Kilbane also achieved his goal as a state chair. He is from Cleveland, Ohio.



Dwight D. Opperman, Honorary Chairman of the Board, received an award for his extraordinary support of the Society.

forts. **Mr. Moderow,** in cooperation with UPS Foundation, has devoted many hours to developing a video about the Society to be presented to corporate general counsel and managing partners of major law firms. This new program is called "Amicus Curiae" and was launched in the summer. The results of this program will be reported in the future, and will hopefully provide a reason to issue other awards.

A special presentation was made to the Society's Honorary Chairman of the Board, **Dwight D. Opperman.** An unflagging proponent of the Society and its various programs and activities, Mr. Opperman recently made an extraordinary gift to provide an endowment for the maintenance of the headquarters building. Mr. Opperman was recognized at the dinner and received an award from Justice Breyer.

Jerome Libin, Chair of the Development Committee, joined Mr. Jones at the podium to make awards to those who have donated funds to "sustain the quality and quantity of programs that have made this organization a valuable asset to the Court and to the American people." Justice Breyer assisted in recognizing the contributions of these individuals. Those honored were: **Hugo L. Black, Jr.; Vincent C. Burke, III, of the Clark-Winchcole Foundation; Brenna Clanton of Lexis/Nexis; Michael Cooper of Sullivan & Cromwell; James Goldman; Ted Hester of King & Spalding; Allen Hill of the UPS Foundation; Bernard Nussbaum of Wachtell Lipton; and Jonathan Rose of Jones Day.** Also honored for his hard work, and for his assistance as a representative of **Sutherland Asbill and Brennan,** was **Jerome Libin.**

Also receiving special recognition on April 22, were the members of the John Marshall Commemorative Coin Committee. This Committee was chaired by **Ralph Lancaster,** who at the time of his appointment to that job was just concluding service as the National Membership Chair. The members of this Committee have been dedicated to obtaining the passage of a bill to authorize the minting of a commemorative coin honoring the Great Chief Justice, John Marshall, and the Supreme Court of the United States. This was a long and onerous task to which each individual committed enormous time and effort in an attempt to better secure the Society's long-term future. As only two commemorative coins are authorized in any year, the competition is fierce with the successful bill requiring co-sponsorship of 290 Congressmen and 67 Senators; representing two-thirds of both Houses. (See page 1.)

Mr. Jones called upon the members of the Committee who were present to receive a token of the Society's admiration and respect for their efforts. They were: **Michael Cooper, Louis Fryman, Frank Gundlach, Ted Hester, Michael Mone, James Morris, and Bill Norwood.** Two other individuals who are not members of the Committee but were very helpful to the Society throughout this process were also honored. The first was **Nick Lewis, of the UPS Foundation.** The second was **Joe Pinder,** a key staff member on the House Financial Services Committee who performed his duties as a public servant in a manner that provided the Society's staff with a critical and timely education about the legislative process.

The Society expresses thanks again to all who have labored to assist in the vital work of the organization.



Vincent C. Burke, III received an award in appreciation of his assistance and that of the Clark-Winchcole Foundation.

Continued on page 16



William O. Douglas preferred fewer law clerks and more secretaries for his work.

of no concern. Professor Roy Schotland of Georgetown, a law clerk to Justice Brennan during the 1961 Term, mentioned in tributes we each wrote in memory of Bob Hudec, who recently died, that he observed Justice Douglas encountering President Truman on the day the latter visited the clerks. As they walked down a corridor of the Court and greeted one another "boomingly," Roy could not help wonder what each of them was thinking, recalling that in 1944 Douglas seemed the front-runner for the Vice Presidency, but FDR selected Truman. Roy wrote, "Was each thinking of what the other might have been?"

Mr. Justice Frankfurter had a special tie to me since both of us were born in Vienna. During my year at the Court, his book *Felix Frankfurter Reminiscences* was published and he kindly inscribed it, "For Peter Ehrenhaft, a transplanted



Felix Frankfurter in what may have been the last picture before the stroke that required his resignation.

Wienerkind, with good wishes from another. Felix Frankfurter." It is dated March 20, 1962, days before the publication of his valedictory opinion in *Baker v. Carr* and the stroke from which he never recovered. A favorite memory of Justice Frankfurter concerns the lunch he attended with the law clerks on the day a prominent New York lawyer had argued — endlessly — an important antitrust case. Justice Frankfurter remarked that although the Supreme Court building was a marvelous monument, it lacked a facility common to opera houses everywhere, namely, a trap door that, when opened, enabled Don Giovanni quickly to disappear into Hell. The Justice thought a similar device would be useful when counsel arguing to the Court became tiresome. The Justices could push a button to open a door to swallow the senior partner arguing the case and ask his bag-carrying associate to step forward and enlighten the Court on what the case was really all about.

Mr. Justice Clark was photographed in his Chambers wearing a bow tie. The wearing of bow ties had become his trademark. I have often wondered why so few lawyers wear bow ties, since they adequately serve the decorative function but do not attract soup stains (among other virtues). The Justice was an easy-going and friendly man and the Chief enjoyed walking down the corridor to drop in at Clark's office.

Compare the casual Mr. Justice Clark to the quintessential "Wall Street lawyer" exemplified by Mr. Justice Harlan.



Tom C. Clark preferred an informal abbreviation of his name and enjoyed an informal camaraderie with the Chief.

The latter is wearing a three-piece suit with a gold watch chain, holding a pipe and standing before the elaborate mantel in his Chamber exuding confidence, success and breeding. The pictures of children and grandchildren on the wall behind him do illustrate the important humanity that he felt, and he was always proud that it was his grandfather, the first Justice Harlan, who dissented in *Plessy v. Ferguson*.

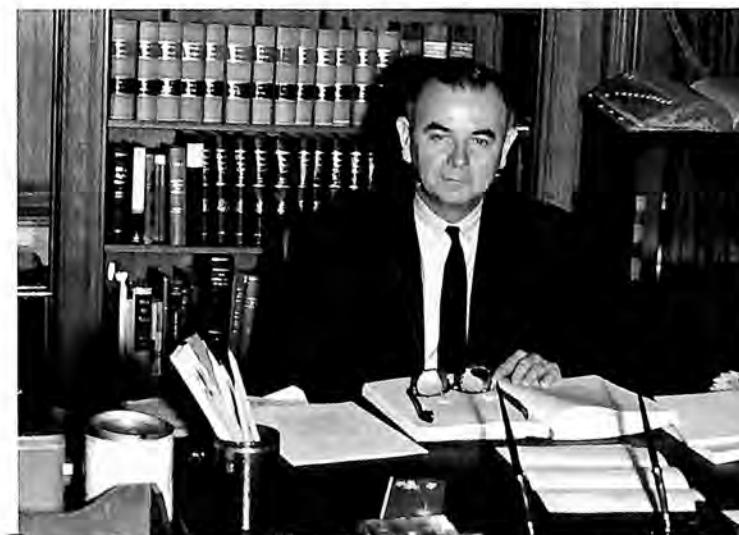
The Justice with whom Chief Justice Warren had the closest professional (and probably personal) relationship was William Brennan, here pictured at his desk. The Chief admired Brennan's commitment to causes they shared and, even,



John Marshall Harlan was a Rhodes Scholar before joining a law firm on Wall Street and brought an air of New York to the Court.

more, his ability to articulate forcefully the principles that supported their jointly-held views. Although Warren regarded *Baker v. Carr* as the "most important" decision of his tenure on the Supreme Court, he also thought it prudent and appropriate to ask Justice Brennan to prepare the Court's majority opinion. He trusted that Brennan would be able to bring to the Court's judgment the intellectual firepower to answer the extensive and scholarly dissent that all knew Justice Frankfurter was spending virtually the entire Term preparing.

Justice Whittaker was photographed in his Chambers not long before he resigned from the Supreme Court. He was of the view that at least one Justice ought to read the entire record of an important case before the Court. This task was formidable and time consuming; as a result, Whittaker wrote relatively few decisions of the Court.



William J. Brennan, Jr. enjoyed a close personal relationship and shared values with Chief Justice Warren.

Justice Byron White was appointed to replace Justice Whittaker. The new Justice was young, an intimate of President Kennedy and had been an athlete of some renown in his college and professional football days. He had earlier been a law clerk at the Supreme Court himself, and was the first former law clerk to be appointed to the Supreme Court, an inspiration to all of the law clerks then and since.

The remaining pictures are of Justices appointed following my entry into private practice. Justice Goldberg kindly agreed to let me take his picture in 1965; perhaps typically, he did not stop talking throughout the entire visit.

Justice Abe Fortas was appointed when President Johnson asked Goldberg to leave the Court to represent the United States at the United Nations. My picture of Fortas was taken shortly after his appointment at his law office in Washington.

Finally, Chief Justice Warren Burger posed for me in the West Conference Room following his appointment in 1972.



Throughout his career, Justice Charles E. Whittaker was described as earnest, thorough, attentive and hardworking; but was that work ethic sufficient for the Supreme Court Bench?

I had been a law clerk at the D.C. Circuit during Burger's second year as a U.S. Circuit Judge. Immediately following his appointment by President Nixon, the new Chief Justice called me and asked what suggestions I had for improving the Court building since he knew of my interest in architecture and devotion to details. I recommended that, first of all, modern photocopying machines be acquired and installed to end the use of "flimsies." I lamented the inadequacy of the lighting fixtures in most of the rooms of the Court; they dated from the 1930s and had not kept up with current expectations for brighter light in workspace. We also discussed the possible modification of the Court's bench to its curved form.

The new Chief Justice also appointed me to a committee organized under the auspices of the Federal Judicial Center to study the workload of the Supreme Court. Our group was



Byron R. White was the first former law clerk to be appointed to the Supreme Court.



Even before his own appointment to the Bench, Abe Fortas argued frequently before the Supreme Court.

chaired by Professor Paul Freund of the Harvard Law School and included the President of the ABA and Professors Charles Wright of Texas and Alex Bickell of Yale. Our unanimous report made a number of recommendations, most of which have not been implemented. One idea that we rejected was nevertheless adopted, namely, the creation of a "subject-matter specialized" Court of Appeals such as the U.S. Court of Appeals for the Federal Circuit has become. My appointment to and service on this Committee was regarded by Chief Justice Warren with great dismay and was, I believe, based on misunderstandings. But his vocal opposition to the Commission's suggestions assured their demise. But the last

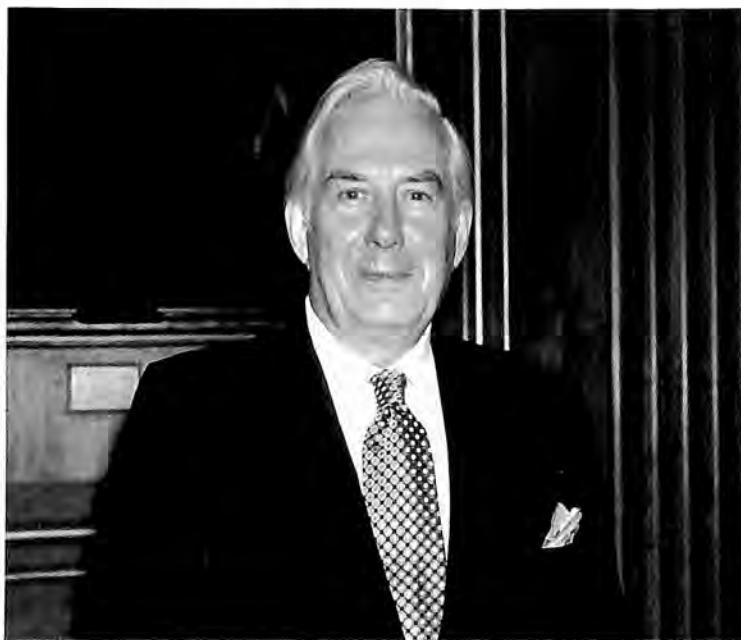
chapter cannot blemish the memory of one of the most treasured experiences of my career.

To have been a Supreme Court law clerk, particularly for Earl Warren, is a life-shaping experience. It resonates in my life as a lawyer to this day.

** Peter D. Ehrenhaft served as the senior law clerk to Chief Justice Warren, after serving as a clerk at the D.C. Circuit. In private practice, he specialized in international trade law and transnational transactions. He is now Of Counsel to Miller & Chevalier. His avocation is photography.*



Arthur J. Goldberg served as Secretary of Labor prior to his service on the Court.



In an effort to improve sightlines, and enhance communications between Court and counsel during argument, Chief Justice Warren directed that the Bench be changed to its current shape.

Portrait Miniature of Associate Justice Brockholst Livingston

By Matthew Hofstedt, Associate Curator*



A very fine portrait miniature of Justice Brockholst Livingston, who served on the Supreme Court from 1807 to 1823, was acquired for the Supreme Court's portrait collection with funds provided by the Supreme Court Historical Society. Painted by an unknown but trained artist sometime between 1805 and 1820, the miniature was purchased from Elle Shushan, a dealer in Philadelphia. The miniature is a welcome addition to the collection as Justice Livingston was one of the Justices for whom the Court did not have a period portrait. The miniature is now the third owned by the Court, joining those of Justices James Wilson and Alfred Moore.

The miniature is true to Justice Joseph Story's description of Livingston as possessing "a fine Roman face; an aquiline nose, high forehead, bald head, and projecting chin, [that] indicate deep research, strength, and quickness of mind. I have no hesitation in pronouncing him a very able and independent Judge. He evidently thinks with great solidity and seizes on the strong points of argument. He is luminous, decisive, earnest and impressive on the bench. In private society he is accessible and easy, and enjoys with great good humor the vivacities, if I may coin a word, of the wit and moralist."

Portrait miniatures were very common in the United States in the pre-photographic era. Hundreds of artists traveled the country setting up shop in cities and towns for a few weeks or months at a time. Much less expensive than a full size oil portrait, the miniatures were often worn by women as a remembrance on a necklace or bracelet and were important keepsakes. Unfortunately, the Livingston miniature was separated from its original case sometime in the past and is now housed in an appropriate reproduction case.

Born in 1757, Brockholst Livingston officially dropped his given first name, Henry, to avoid confusion with other relatives who shared his name. In 1779, he traveled to Spain on a diplomatic mission as a secretary to his brother-in-law, the future Chief Justice John Jay. After a falling out, Livingston returned to New York and started his legal practice. During this period, he allied himself with the growing anti-Federalist movement and bitterly attacked his brother-in-law's gubernatorial campaign.

As reward for his anti-Federalist stance, Livingston was appointed to the New York Supreme Court in 1802. Four years later, he was nominated by President Thomas Jefferson to fill Justice William Paterson's seat on the Supreme Court of the United States. He took his seat on February 2, 1807. Jefferson hoped that Livingston would challenge the strong Federalism of the Court under Chief Justice John Marshall. For the most part, however, Livingston joined the majority opinions of the Marshall Court during his sixteen years on the Bench. Jefferson would later declare Livingston one of the "silent" Justices who failed to issue his own opinion in dissent.

**Matthew Hofstedt has worked at the Court since 1996 and oversees the Court's Exhibit and Collections Management programs.*

WANTED

In the interest of preserving the valuable history of the highest court, The Supreme Court Historical Society would like to locate persons who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature and any other materials related to the history of the Court and its members. These items are often used in exhibits by the Court Curator's Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society's headquarters, 224 East Capitol Street, N.E., Washington, D.C. 20003 or call (202) 543-0400. Donations to the Acquisitions fund would be welcomed. You may also reach the Society through its website at www.supremecourthistory.org.

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Rescheduled Dinner— continued from page 9

Since the Society relies upon the good will and efforts of volunteers for the performance of many of its most essential functions, April 22 provided an opportunity to express a small measure of the gratitude reserved for those who give so freely of their time and resources to preserve the legacy and history of the Supreme Court of the United States.



Anne Folan receives an award from Justice Breyer for her personal support.



(Above) Tom Boyd received an award for his assistance as the state chair for Minnesota. (Below) Ted Hester was an important advocate for the John Marshall Coin Bill, and he was recognized for that work on April 22.



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