



SENATOR CHRISTOPHER DODD: PROSECUTING THE PEACE OF THE WORLD THE EXPERIENCES OF THOMAS J. DODD AT NUREMBERG

On February 15, 2005, the Supreme Court Chamber was the scene for an evening with Senator Christopher Dodd who discussed the experiences of his father at the Nuremberg War Trials. The Robert H. Jackson Center of Jamestown, New York, co-sponsored the event, planned to coincide with the anniversary of Justice Jackson's birthday. The Senator was the keynote speaker on the program, which also included remarks by Society Vice President E. Barrett Prettyman, Jr., a former clerk to Justice Jackson; Greg Peterson, President of the Jackson Center; and Professor John Barrett. Professor Barrett discussed the important historical context that provided a general background for the Senator's more personal reminiscences. Professor Barrett's remarks appear below:



Courtesy the Robert H. Jackson Center

Wearing headphones for translation purposes, Justice Jackson presented argument in the Courtroom at Nuremberg. In this photograph, Thomas J. Dodd, is seated immediately behind him (on the left side of the image).

I am delighted to be part of this occasion that brings the Supreme Court Historical Society, the Robert H. Jackson Center and all of you together in this very special place for this very special and timely program.

My role is to provide an introductory framework for Senator Dodd's lecture on his father's work as a prosecutor at Nuremberg.¹ I thus will discuss a few pieces of the "before" phase of the 1945-46 Nuremberg international trial of Nazi war criminals and touch on one aspect of the "after" phase that followed that project, but I will leave details of the central events of the Nuremberg trial itself for Senator Dodd to address.

My particular focus will be the two principals among the United States prosecutors at Nuremberg: Supreme Court Justice Robert H. Jackson, the United States Chief of Counsel,

and his Executive Trial Counsel—and his trusted colleague and deeply respected friend and peer—Thomas J. Dodd.

The "Nuremberg" idea has many beginnings. As the rule of law, it has roots, in a general sense, in the United States Constitution, in our Declaration of Independence, and in English law and history, including the Magna Carta. As a specific undertaking of the World War II Allies, "Nuremberg"

began during the wartime meetings and in the public statements of Roosevelt, Churchill and Stalin. As a commitment to justice, "Nuremberg" has all of those origins plus more fundamental roots in human belief and morality.

Regarding those most fundamental roots of Nuremberg, it seems appropriate here, in the presence of Senators Dodd and

Lieberman, and as we remember Senator Thomas Dodd, to invoke another United States Senator from Connecticut. In May 1945, just two weeks into his assignment to prosecute Nazi war criminals, Justice Jackson attended a private dinner here in Washington with a group that included eight U.S. Senators. They of course discussed Jackson's new, very high profile presidential appointment. One of those luminaries, Senator J. William Fulbright of Arkansas, argued very persistently that evening that there was no law on which to try Nazi war criminals—and so we should just execute them forthwith. A Connecticut voice, that of the dinner's host, was less legally troubled: "I am satisfied," said Senator Brien McMahon, "to rest on the Ten Commandments."

The Nuremberg assignment—Robert Jackson's Nuremberg assignment—came from President Truman, but

A Letter from the President



Continuing with the theme of recent letters written to the membership, I would like to turn now to the work of two additional Committees of the Society: The Library Committee, and the Facilities Committee. The work performed by each of these Committees pro-

vides important support for the efforts of the Society to fulfill both our educational mission, and commitment to our members. Further, they are inextricably intertwined as one is housed within the confines of the other. Although both of these committees perform essential work, the fruits of their labors are less visible to members than are those of the Acquisitions, Publications and Program Committees. Therefore, I want to provide you with some detail about their work and publicly recognize those who have labored to ensure that both the Library within the Opperman House, and the building itself, are of the highest quality possible.

The Library Committee has been chaired to date most effectively and ably by Professor James B. O'Hara, with Danny Moody and Frank Boardman as committee members. For several years now, Professor O'Hara has had the unique opportunity to be both the creator and perpetuator of the Library. Sometime during his career as both a professor and an administrator at Loyola College in Baltimore, Maryland, Jim developed a keen interest in reading and collecting biographies of Supreme Court Justices. The interest deepened and his collection extended beyond Supreme Court biography to other volumes relating to the history of the Court. Over the course of his academic career he acquired numerous biographies, works about historic homes and buildings associated with Justices and the Court, volumes treating the legacy of Supreme Court Justices, and books focusing on specific periods of Supreme Court history. Eventually, the volumes began to exceed the available space in his office on campus.

Faced with the dual challenge of inadequate space and imminent retirement, Professor O'Hara began to look for an appropriate place to house the collection. Fortunately, just as he began his search, the Society purchased the building now known as Opperman House. Planning focused on renovating the property to provide office space to house the daily operations of the staff, as well as facilities for use by members. However, the building was large enough to include space on the ground floor for a large library. As plans for renovation work proceeded, Professor O'Hara determined to

donate the appropriate works from his personal library to form the nucleus of a library for the Society.

The acquisition of the collection and the design of the library were treated in an article in this magazine in 1999, so I will not go into much greater depth here about the actual library space except to note that the collection has continued to grow since the opening of the building. The Committee has endeavored to make it a comprehensive collection of biographies of Supreme Court Justices and other individuals closely involved in the work of the federal judiciary. It is likely that this collection of Supreme Court biographies is as comprehensive as any other collection in the country, in either public or private hands. In an effort to include materials on all Justices, even those about whom little has been published, the library contains not only standard book-length works, but also several unpublished Masters Theses treating the lives of lesser-known Justices.

In addition to biographies of individuals, the collection includes titles written by Supreme Court Justices. This category includes books by Joseph Story, Samuel F. Miller, Oliver Wendell Holmes, Jr., William O. Douglas, William H. Rehnquist and Sandra Day O'Connor, to name a few. Among these are *Constitution of the United States* by Samuel F. Miller, a first edition of *The Common Law* by Oliver Wendell Holmes, and *Centennial Crisis*, by William H. Rehnquist. There is even a history of the beginnings and development of the University of Tennessee by Justice Sanford. Autobiographical works included are Douglas's autobiography of his early years, *Go East, Young Man*, and O'Connor's recent book *The Lazy B*. One of the more unusual autobiographies is *Glimpses of Colonial Society and the Life at Princeton College 1766-1773 By One of the Class of 1763*. Copyrighted in 1903, this volume contains a series of letters and poems written by Justice William Paterson. The introduction notes that these writings comprise "almost a complete record of his life from youth to old age." Included in the volume are: "Essays prepared at the College of New Jersey in 1760; poems written on portions of old law-briefs . . . his earliest and last love-epistles to . . . the fair Jersey girl who became his wife;" and "packets of letters from a host of faithful friends. . ."

Extending the scope beyond Supreme Court Justices, the Committee determined to add biographies of Presidents,

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Attorneys General and Solicitors General of the United States. For some individual Presidents, the challenge became not to find titles, but to identify and limit purchases to what are considered to be standard works. Conversely, there is little available for some of the Attorneys and Solicitors General. Notwithstanding the more circumscribed material, Professor O'Hara has acquired a number of volumes in this area of the collection as well.

Other efforts by members of the Committee have focused on developing a comprehensive catalog of the contents of the library. Danny Moody spent some time on this project, but his work is not yet complete. Last summer the Society hired an intern, Josh Jones, who prepared Xerox copies of the title pages of all the works. He then started the work of data entry. Unfortunately, the summer was too short, and the index remains incomplete, but when funding and staff become available, it is a project worthy of completion. For now, scholars and members of the Society can contact the staff of the Society to make inquiries about availability and to make arrangements to use the collection. Professor O'Hara has an amazing familiarity with the contents of the library, and is happy to answer questions about various volumes in the collection.

I would like to turn now to the Facilities Committee very capably chaired by Frank Gilbert, with assistance from architect James McCrery. Frank has served as a Trustee of the Society for many years and as a Committee Chair for most of that time. Not only does he have a long-time connection with the Court and the Society, but also a personal one, as he is the grandson of Justice Louis Brandeis. In addition to his familial qualifications, he is a lawyer for the National Trust for Historic Preservation in his professional life. His experience at the Trust affords him a singularly appropriate background to oversee the physical maintenance and wellbeing of an historic building such as Opperman House. James McCrery brings a wealth of professional experience to the Committee as well. He was involved in the architectural plans for the renovation of the building from the original drawings, to the final product, and we are extremely grateful that he is willing to continue to monitor its maintenance.

Originally built in the 1880s, the building was renovated extensively prior to the Society's occupation of the space. Frank's familiarity with the vagaries and challenges of similar projects enabled him to assist in this process in an informed way that was of great help to the staff. The continuing participation of its architect assures that the building is monitored by an individual not only familiar with the aesthetic aspects, but also with knowledge of the physical requirements as well. These gentlemen continue to monitor the physical condition of the building with regular inspections and have devised a schedule for improvements and routine maintenance to keep the building in top condition.

Of course, I cannot speak about Opperman House without mentioning those whose contributions enabled the purchase and renovation of the building. First and foremost, of course, is Dwight Opperman, our Chairman Emeritus, for whom the

building is named. Dwight has been an enthusiastic and faithful supporter of every aspect of the Society's work for many years. With his characteristic willingness to assist in any important project, he donated generously to enable the purchase of the building. Not content with those gifts, he made a sizeable donation last year to create an endowment fund for the maintenance of the building.

Other Trustees and friends of the Society also stepped up to provide funds for the project. The late Howard Goldman and his wife Dorothy Tapper Goldman, donated generously to ensure that the library space was of the highest quality. The transom of the door to the library commemorates their generosity. An anonymous Washington foundation also contributed funds for the renovation project, and gifts from Trustees Ruth Insel and Agnes Williams made it possible to purchase furnishings of a caliber appropriate to the physical appearance of the building. Dorothy and Agnes provided expert guidance in locating lighting specialists and in selecting furnishings and decorative pieces for the building. Anyone visiting the building will see the results of "the Committee of Two", as they were dubbed.

While Opperman House provides much-needed office space for members of the staff, it also contains a beautiful office for use by the President and the Chairman of the Board of the Society. Apart from the library, the largest floor space in the building is devoted to the use of members of the Society. Members are invited to use the large room on the third floor when they are in town. The space is large enough to be used as a classroom, and sessions of the Street Law programs have been held there for many years. In addition, special educational groups such as ElderHostel and professional law librarians have used the space for meetings. Use of the space by a group requires advance planning, but it can be made available if there are no prior conflicts. Small groups coming to the Court for admission to the Supreme Court Bar, and others touring the Supreme Court building by special reservation could utilize the space as a meeting room, or as an area to relax and regroup between meetings and appointments. Individual members may find the area useful between meetings and appointments on Capitol Hill.

We are extremely grateful for the contributions of time and money that have enabled the purchase, renovation and maintenance of this remarkable building and library. I hope that you will make it a point to visit the building whenever your schedule allows and should it be appropriate, that you will contact a member of the staff about the use of the library or the members lounge. Every member of the Society should take great pride in Opperman House and the outstanding library contained on its ground floor, and I hope that any of you that have not yet visited the building, will do so at your convenience. It is a tangible reminder of the growth and accomplishments of the Society and a valuable asset in our work.

Frank L. Jones

**PRESIDENT THOMAS JEFFERSON, CHIEF JUSTICE JOHN MARSHALL,
THE SUPREME COURT AND THE CONSTITUTION**

The year 2005 marks the 250th anniversary of the birth of John Marshall. With Marshall as the focal point, speakers in the 2005 Leon Silverman Lecture Series sought to put the Great Chief Justice into a broader historical context by focusing on his interaction with President Jefferson and with their differing interpretations of the Constitution and the role of the Supreme Court.

Although they were cousins, Jefferson and Marshall were not friends. They differed dramatically in their political viewpoints and disliked and mistrusted one another on a personal level as well. While both men were intimately involved in the formation of the new nation, including the development of the Constitution and its ratification, each held almost diametrically opposed views on how the government should go about the business of governing the new democracy. As the possible topics for inclusion in such a study were extensive, five specific areas were identified as providing a meaningful way to consider them and their contributions to the history of the Supreme Court.

The first lecture considered Jefferson's trio of appointments to the Supreme Court. Noted scholar Dr. Henry Abraham, James Hart Professor of Government Emeritus, University of Virginia, presented this address. Professor Abraham is the author of numerous books, including *Justices, Presidents, and Senators: A History of the U. S. Supreme Court Appointments from Washington to Clinton*. Professor Stephen Bragaw, Director of the Law and Society Program and an Associate Professor of Government at Sweet Briar College, discussed Jefferson and his administration's dealings with Native American Sovereignty and the Court. His address grew out of research he performed for a forthcoming book, *The Court of the Conqueror: The Constitution, the Supreme Court, and the American Indian Nations*.

Professor Barbara A. Perry, Executive Director, Virginia Law Related Education Center and Carter Glass Professor of Government at Sweet Briar, spoke on the subject



Professor Stephen Bragaw discussed Jefferson, the Court, and native sovereignty. Justice O'Connor introduced his speech.

of Jefferson's Legacy to the Court: Freedom of Religion. Among her many notable accomplishments, Professor Perry has acted as an instructor and facilitator for the Summer Institute for Teachers for more than ten years. Titles she has published include *Freedom and the Court: Civil Rights and Liberties in the United States*, which she co-authored with Professor Abraham.

The fourth program considered the topic of Jefferson and the Rise of Supreme Court Power. This lecture was delivered by R. Kent Newmyer, Professor of Law and History, University of Connecticut School of Law. Also the author of several important books, he has written two that focus specifically on the Marshall Court: *John Marshall and the Heroic Age of the Supreme Court* and *Supreme Court Justice Joseph Story: Statesman of the Old Republic*.

The concluding program focused on the relationship between President Jefferson and Chief Justice Marshall. Professor Melvin I. Urofsky, Professor Emeritus at Virginia



At the fourth program, Justice David H. Souter introduced Professor R. Kent Newmyer (right).



Professor Barbara Perry's talk explored Jefferson's interaction with the Court in matters of freedom of religion.



Melvin Urofsky (left) was introduced by Justice Breyer. Urofsky gave the concluding talk in the series, discussing the personal relationship between Jefferson and Marshall.

Commonwealth University and chairman of the Society's Board of Editors of the *Journal of Supreme Court History*, discussed the relationship between these two legendary Americans.

Following customary practice, the complete text of each



Professor Henry Abraham (left) gave the first speech in the series. At the reception, he visited with Clerk William Suter (center) (Clerk of the Supreme Court of the United States), and Jan Horbaly, Clerk of the Court of Appeals for the Federal Circuit.

of these lectures will be included in a forthcoming issue of the *Journal*, and all members will receive a copy of this volume as a benefit of membership..

**SUPREME COURT FELLOWS PROGRAM
Now Accepting Applications for 2006-2007**

The Supreme Court Fellows Program is now actively soliciting applications from qualified candidates. Chief Justice Rehnquist has commented that the program "offers a unique opportunity for exceptional individuals to learn about and contribute to the administration of justice at the national level. The Supreme Court, Federal Judicial Center, Administrative Office of the United States Courts, and United States Sentencing Commission are all looking for creative and energetic candidates with proven records of accomplishment."

The Supreme Court fellowship is a one-year appointment, beginning in August or September. A commission oversees the selection of candidates, and they seek outstanding individuals from diverse professions and academic backgrounds, including law, the social and behavioral sciences, public and business administration, communications, and the humanities.

A variety of educational and social opportunities broaden the fellowship experience. In recent years, Supreme Court fellows have participated in events with

individual justices; members of Congress; law professors; leading attorneys, and executive branch officials. The program also shares some social and guest speaker activities with the White House Fellows, providing a broader range of experience.

The commissioners will choose approximately eight finalists, who will visit Washington as guests of the program in mid-January 2006 for an orientation session, reception, and individual interviews. Immediately thereafter, the commission will select the fellows for the upcoming fellowship year.

To obtain further information about the program and to apply online please go to www.fellows.supremecourtus.gov. Alternatively, a printed application may be submitted. Online and mailed applications must be received by November 10, 2005. For further information (including an application form) please contact: Vanessa Yarnall, Administrative Director, Supreme Court Fellows Program, Room 6, Supreme Court of the United States, Washington DC 20543.



President Roosevelt looked on while Attorney General Reed administered the oath of office to newly appointed Solicitor General of the United States, Robert H. Jackson. Jackson's service in that capacity led FDR to consider him the ideal person to prosecute Nazi War crimes.

the idea that Jackson should be the one to prosecute war criminals was President Franklin Roosevelt's. FDR had come to know, over seven plus years of close contact with Jackson before appointing him to the Supreme Court in 1941, that Jackson was an effective prosecutor, government advocate and legal thinker, as a general matter and specifically on the war-related and international issues that had defined his time as Attorney General during 1940 and 1941. (The criminal who was foremost in FDR's mind during the War, and the person he envisioned his trusted assistant Jackson prosecuting after the War, was Adolf Hitler.)

Following his Yalta meetings sixty years ago this month, President Roosevelt dispatched his counsel and trusted adviser Judge Samuel I. Rosenman to London. He was working there with senior British counterparts in March and early April 1945 on the specific plan for post-War prosecution when the news came of FDR's death. Rosenman rushed back to the U.S. for the funeral, and then he stayed here to advise the new President.

Through Rosenman, Jackson's Nuremberg assignment actually began in this Supreme Court building. At 5:00 p.m. on Thursday, April 26, 1945, Sam Rosenman came from a White House meeting with President Truman to meet with his friend Bob Jackson in his Court chambers. Rosenman told Jackson that the U.S. plan to prosecute Nazi war criminals was still on, and that the lead job was still his if he wanted it. A series of Jackson-Rosenman conversations rolled into a series of Jackson-Truman meetings, and on May 2, 1945, the President announced publicly—surprising at least some of Jackson's fellow Justices—that he would be the U.S. Chief of Counsel.

During the next two months, Jackson juggled his end-of-the-Term Supreme Court work with this new assignment. As he began to work with a preexisting War Department/Army Judge Advocate General team, Jackson learned that he had been sold quite a bill of goods. No cases against war criminals

were ready to go to trial. In fact, very little evidence against individuals had been gathered and assembled. And notwithstanding the "Big Three" talks, Rosenman's work in London, and the United Nations preparatory conference process that was underway at Dumbarton Oaks and continued in San Francisco, there was no Allied agreement on how to proceed to try war criminals. This would not be, as Jackson had hoped and maybe even briefly believed, a summer task from which he would return to the Court well before Monday, October 1, 1945.

Jackson immediately added to his inherited team a few senior lawyers, his Supreme Court secretaries, a close former colleague from his Department of Justice days, and his own son as his executive assistant. In June 1945, they decamped to London. Over the next two months, Jackson negotiated hard and reached agreement with our British, Soviet and French allies on a charter—the London Agreement and Charter of August 8, 1945—that defined the legal process, out of four varied legal traditions, by which military trials of war criminals could go forward. The London Agreement created an International Military Tribunal independent of the prosecution, defined that court's jurisdiction over specified crimes (aggressive war, war crimes, crimes against humanity, and conspiracy to commit each of those crimes), and provided rules for public trial, for autonomous and funded defense counsel, for liberal discovery, for a presumption of defendant innocence, and for the burden on prosecutors of proof beyond a reasonable doubt, among many other core concepts that we know well, and revere, as "due process of law."

Alongside this tremendous diplomatic task and law-making achievement, Justice Jackson also was beginning to conduct the work of a prosecutor. Remnants of U.S. Army and Office of Strategic Services (OSS) operations, and also Allied military forces that now occupied Europe, were capturing prospective defendants, gathering enormous amounts of potential evidence, including voluminous, remorselessly precise Nazi records, and beginning to conduct interrogations.

Jackson had, on his day-one staff, literally one experienced criminal prosecutor. He needed, in that area particularly, additional personnel, and a tremendous infusion of talent.

* * *

Thomas Joseph Dodd, Jr., born in Norwich, Connecticut in 1907, graduated from Providence College in 1930 and then, in 1933, from Yale Law School. He became a FBI Special Agent and cut his investigative teeth on such matters as John Dillinger, his gangster physician "Doc" May, and "Baby Face" Nelson. In 1935, Dodd joined the New Deal—he became Connecticut State Director of the National Youth Administration. From there, in 1938, he was recruited to Washington to become special assistant to U.S. Attorney General Homer S. Cummings—he of Connecticut, and Yale, and a mentor who had encouraged Dodd's FBI and NYA stints. Over the next seven years, Tom Dodd was a special assistant to five Attorneys General: Cummings, then Frank Murphy (who later became Justice Murphy), later Francis Biddle and

finally Tom Clark (who later became Justice Clark)—and in the middle of that run, to Attorney General Robert H. Jackson.

"Special assistant" can be a most misleading title. In Dodd's day it meant, and he was, a real, trial-level federal prosecutor. Dodd worked first in the Criminal Division under the previously-mentioned Brien McMahon of Connecticut, who was the Division's assistant attorney general from 1935 until 1939. Dodd became part of the Criminal Division's new civil liberties unit. He prosecuted cases involving conspiracies to violate the National Labor Relations Act by thwarting labor unionization, including the famous cases against Harlan County, Kentucky coal companies, executives and law enforcement officials. Dodd also prosecuted, in the 1930s and in the South, civil rights cases against Ku Klux Klan members and others.

In early 1942, in the first months after Congress's declaration that the United States was at war with Japan and Germany, the Justice Department sent Tom Dodd to Hartford to prosecute a major spy ring case. Five defendants were accused of violating the Espionage Act of 1917 by conspiring throughout 1941 to gather and deliver to Germany or Japan information about the U.S. Army, Navy and defense industries. Four of five defendants—Otto Willumeit, head of the German-American Bund division in Chicago; Anastase A. Vonsiastsky, world leader of the anti-Soviet White Russian party; Dr. Wolfgang Ebell, a Texas physician; and Gerhard Wilhelm Kunze, the U.S.-born national leader of the German-American Bund (the *Bundesfuhrer*)—decided, one at a time, to plead guilty. Dodd and his team then tried and won the conviction of the fifth defendant, the Reverend Kurt Emil Bruno Molzahn, pastor of Philadelphia's Old Zion Lutheran Church.² At later points in the War years, Dodd handled other major federal prosecutions, including the Anaconda Wire Company "million dollar war fraud" case,³ alien enemy cases, selective service cases⁴ and sabotage cases, in addition to more routine cases.⁵ By summer 1945, Tom Dodd had been the government's lead trial counsel in 285 cases in various parts of the country.

Robert Jackson knew directly that Thomas Dodd was an excellent prosecutor and "skilled courtroom lawyer." So did many of the colleagues and friends they shared, including



This photograph shows the Judges on the bench from the attorneys' point of view during the trials in Nuremberg.

Homer Cummings, Brien McMahon, Tom Clark and FBI director J. Edgar Hoover. In July 1945, Jackson's war crimes prosecution staff situation improved considerably when Tom Dodd was recruited to join the team.

I will now bridge, in summary form, over Nuremberg itself. Tom Dodd was briefly in London, but he soon went to the European continent and began to interrogate prisoners and build potential cases.

In September 1945, the prosecution relocated from London to Nuremberg. In October, Jackson named Dodd to his senior Trial Board, where he was at the center of drafting the indictments against 22 individuals and selected Nazi organizations.

The trial began in late November with Jackson's historic, masterful opening statement. U.S. prosecutors then began to present evidence. Dodd personally presented evidence on the Nazi economic preparations for aggressive war, evidence on the slave labor program, and evidence, including horrific captured films, on the concentration camps.

In January 1946, Jackson named Tom Dodd his Executive Trial Counsel. That made Dodd his number two, which involved him in all aspects—including prosecutor and evidence supervision, planning to respond to defense cases, meeting with Allied counterparts, personal daily presence in court, and administrative responsibilities—of the massive job that was, at the point position, Jackson's.

Dodd also continued personally to prosecute. During spring 1946, he cross-examined defendants Wilhelm Keitel, who had been Field Marshal of the German Army; Alfred Rosenberg, the former Nazi minister for the eastern occupied territories; Hans Frank, the former governor general of occupied Poland; Walter Funk, who had been president of the Reichsbank; Baldur von Schirach, who had led the Hitler Youth and later was governor of Vienna; Ernst Sauckel, the former head of Germany's conscript labor organization; and Arthur Seyss-Inquart, who had been Nazi commissioner of occupied Holland.

On August 2, 1946, following his summation and the close of the cases against individual defendants, Justice Jackson returned to Washington. Before leaving Nuremberg, he had appointed Tom Dodd acting Chief of Counsel. During the next month, Dodd supervised presentation of the cases against the indicted Nazi organizations. This final trial phase concluded with Dodd's own summation of the evidence.

In late September, both Jackson and Dodd were present when the Tribunal returned its judgments. Many were convicted, but the acquittals of three individual defendants may be the most powerful proof of the fairness, the real justice, of the Nuremberg that Jackson and Dodd, and many others, created.

In October 1946, Robert Jackson and Thomas Dodd each returned to the U.S. and his distinguished future. In addition to the Nuremberg trial model and international law precedent, what they left to history in the trial record, comprised largely of captured, admitted documents, is the irrefutable record of Nazi criminality, including the Holocaust.

And now the "after." Jackson had, in Nuremberg in July

Senator Dodd continued from page 7

1946, awarded Dodd through military auspices the Medal of Freedom. Back in the U.S. later that fall, Jackson nominated Dodd for, and President Truman awarded to Thomas Dodd, the Certificate of Merit for his Nuremberg work.

On a Friday night in September 1947, Justice Jackson traveled to Hartford, Connecticut to award that Certificate personally to Tom Dodd at a large dinner event at the Hotel Bond. Jackson's efforts to present this award personally demonstrate his appreciation for Dodd's work, of course, and also his deep personal affection for this colleague.

But even more interesting is what they did the next morning. Dodd, with others, picked Jackson up at the Hotel Bond in Hartford and drove him west to Litchfield, Connecticut. Jackson was interested in that colonial town because he was, the Senators may be pleased to know, himself a Connecticut descendant—Jackson's great-grandfather Elijah Jackson had been born in Litchfield in 1772, and his father Uri Jackson had served in the Connecticut militia during the Revolutionary War.

And so Jackson and Dodd together viewed that interesting landscape. They also spent part of that morning visiting Litchfield's distinction in United States law: the Tapping Reeve House and Law School, the first law school in the United States.⁶

As they viewed that birthplace of law and legal learning in a land that was once wilderness, I am sure that Bob Jackson and Tom Dodd thought back, modestly, to the night before, and to their work during the previous two years. There was, in that pioneer law school in Litchfield, a real parallel to what Jackson and Dodd had accomplished as principal architects of Nuremberg. They had brought law to a place—to the world, and to the wilderness, wreckage and criminality of war—that needed it, and still needs it, so deeply.

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¹ Senator Dodd's complete lecture is available at www.senate.gov/~dodd/press/Speeches/109_05/0215.htm.

² See *United States v. Molzahn*, 135 F.2d 92 (2d Cir.) (affirming judgment of conviction), *cert. denied*, 319 U.S. 774 (1943).

³ See *United States ex rel. Sherr v. Anaconda Wire & Cable Co.*, 57 F. Supp. 106, 107 (S.D.N.Y. 1944) (describing, in this private relator's *qui tam* action, the concurrent federal criminal investigations), *aff'd*, 149 F.2d 680 (2d Cir.) (*per curiam*), *cert. denied*, 326 U.S. 762 (1945).

⁴ See, e.g., *United States v. Flakowicz*, 146 F.2d 874 (2d Cir.) (*per curiam*), *cert. denied*, 325 U.S. 851 (1945).

⁵ See, e.g., *United States v. Hall*, 52 F. Supp. 796 & 52 F. Supp. 798 (D. Conn. 1943).

⁶ See www.litchfieldhistoricalsociety.org/lawschool.html.

Following the Professor's presentation, Senator Dodd assumed the podium to discuss the experiences of his father, one of Justice Jackson's most important deputy prosecutors. Senator Christopher Dodd is the Senior US Senator from Connecticut. He is serving his fifth term in the Senate and is a member of the Senate Foreign Relations, Banking, and



During the Nuremberg Trials, Thomas Dodd holds gruesome evidence of the Nazi atrocities committed at Dachau.

Housing and Urban Affairs Committees. Excerpts from his speech appear below.

We gather here this evening two days after the 113th anniversary of Justice Jackson's birth, and just a few months after the 50th anniversary of his passing on October 9, 1954.

It's fitting, as well, that we assemble here two weeks after the 60th anniversary of the liberation of Auschwitz.

More than any other events, the liberation of Auschwitz and the Nuremberg trials were the two events that laid before the entire world the horrors committed by the Nazi regime. At liberation, the Western world saw for the very first time the gas chambers, the cattle cars, and the crematoria. They saw gruesome piles of corpses, and the emaciated few who had survived the largest and deadliest of Hitler's death camps. At Nuremberg, the war and the Final Solution were painstakingly and meticulously documented and recorded so the existence of these horrific events would never, ever be in doubt. . . .

If Nuremberg was the most profound experience of my father's life, there were few individuals whose words and ideas carried greater weight with my father than those of Robert H. Jackson.

Justice Jackson was truly an extraordinary man whose life's journey took him from a farmhouse in upstate New York to the U.S. Department of Justice, where he served as Solicitor General and Attorney General, to the Supreme Court, to a courtroom in Nuremberg, Germany. Following Nuremberg, he returned to this very chamber where, less than five months before he passed away, he and his eight colleagues voted to end racial segregation in schools across our land.

Robert Jackson graduated from neither college nor law school. Prior to his appointment to the Supreme Court, he had never served as a judge. Yet he became one of the most respected jurists of his time, one known for his thoughtfulness, his fairness, his courage, and his eloquently-written opinions.



Christopher Dodd observed that his father considered his experiences in Nuremberg with Justice Jackson as the most profound of his life.

He was an ardent defender of the freedoms articulated in our nation's Bill of Rights.

. . . During his fifteen months at Nuremberg, my father wrote daily letters to my mother. These beautifully written letters always began with the words 'Grace, my dearest one.' They fill up this volume—and a second volume of equal length.

I had no idea these letters existed until the early 1990s. Before reading these letters, I arranged them in chronological order. I finally completed this long process in the summer of 1995. Without any prior awareness, you can imagine my shock when on the evening of July 28, 1995, I sat down to begin reading the letters and realized that the first letter to my mother was written on July 28, 1945—50 years earlier, to the day.

My father arrived in Europe on that day with mixed feelings. He knew that he had an opportunity to be part of an historic occasion. But he was reluctant to leave my mother and their children. I was only a year old at the time—and a very active child according to my mother. . . .

Ultimately, the decision was made to see the job through. As he explained it: 'Sometimes a man knows his duty, his responsibility so clearly, so surely, he cannot hesitate—he dare not refuse it. Even great pain and other sacrifices seem unimportant in such a situation. The pain is no less for this knowledge—but the pain has a purpose at least.'

He threw himself into a job he expected would last only a few months. In July 1945, this 38-year-old attorney had no idea that he would be promoted from staff counsel to trial counsel, then to senior trial counsel, and then to Executive Trial Counsel—the deputy prosecutor for the United States.

The Nuremberg trials themselves were an absolutely massive undertaking, with many questions that had to be answered: Who would be the judges? Who would be the lawyers? Would the defendants be tried together or separately?

Would the trials be conducted under American or European legal customs? . . . And perhaps the most pressing practical question: Where would the trials be held?

My father, like many, expressed reservations about holding the trial in Nuremberg. The city, he said, was 'probably the worst in Germany' in terms of destruction. He suggested that Heidelberg, which had survived the war essentially intact, would have been a better alternative.

But for reasons of principle—if not practicality—he knew that Nuremberg was the right choice. It was, after all, Nuremberg where the Nazis met on September 10, 1935 to codify into law their regime of oppression, terror, and hatred. And so, it was totally fitting that in Nuremberg, these Nazis were brought to justice.

My father's ambivalent outlook towards his participation in the trial changed dramatically on August 14th, 1945. On that day, he and his fellow prosecutors began interrogating prisoners. He described it as 'a day that I shall never forget,' and the day that follows as 'the most fascinating day of my life.'

From August through November 1945, my father spent much of his time face to face with some of the most vital cogs in Hitler's murderous Nazi machine. William Keitel, Hans Frank, Rudolph Hess, Hermann Goering. One by one, each of them would do his best to deflect blame and to deny. My father remarked that '[I]t would be relieving to hear one of them admit some blame for something. They blame everything on the dead or missing.'

Throughout the course of the investigation and trial, my father became one of Justice Jackson's closest associates—and one of his closest friends, as well. There's no question that my father viewed Justice Jackson as much more than professional colleague. 'I am proud of my association with him,' he wrote, 'and even more proud of his friendship.'

My father admired Jackson greatly for his keen intellect, his quiet dignity, and for his steadfast dedication to seeing the trial through to the end. In a letter he wrote to Justice Jackson's son on the occasion of the Justice's passing in 1954, my father called him 'one of a very few great men whom I have been privileged to meet in my lifetime.'

. . . My father, for his part, presented several aspects of the prosecution's case, including those on concentration camps, on economic oppression, and on slave labor. He cross-examined numerous witnesses, including six of the defendants. Four of those defendants were ultimately sentenced to death. The other two served lengthy terms in prison.

For my father, though, Nuremberg was about much more than the defendants, the evidence, and the sentences. It was about the opportunity, as he put it, 'to write a record that will mark a new point in man's relation with man.' [He] returned from Nuremberg with a deep commitment to the rule of law and its role in upholding the basic human rights and human dignity of every man, woman, and child."

At the conclusion of the Senator's talk, a reception was held in the East and West Conference Rooms. While United

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To commemorate the rare occasion of a Senator lecturing in the Supreme Court Chamber, (from left) Mrs. Hadassah Lieberman and Senator Lieberman were photographed with Justice David H. Souter, Senator Dodd and E. Barrett Prettyman, Jr.

States Senators have argued cases before the Supreme Court on many occasions dating back to Daniel Webster and before, Senator Dodd is apparently the first Senator to lecture in the Courtroom. The audience included Senator Lieberman and

his wife, and Justice Souter. The event was an historic and memorable occasion, and the Society expresses great appreciation to Senator Dodd.

September 24, 2005 the John Marshall Foundation will mark the 250th anniversary of the birth of John Marshall by hosting a Gala Celebration in Richmond, Virginia. The first event of the day will take place at the John Marshall House, from 1-4 PM and will include tours of the home, activities, music and refreshments. That evening the Honorable Anthony M. Kennedy, Associate Justice of the Supreme Court of the United States will be the keynote speaker at a Gala Reception and Dinner. The event will be held at the Richmond Marriott Hotel. The party will include period music and historical interpreters. To purchase a ticket, or to obtain additional information, please call (804) 775-0861.

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TRIVIA QUIZ "FIRSTS"

By James B. O'Hara

Supreme Court Justices have come from a remarkable variety of backgrounds. Pair up the "firsts" with the Justices.

1. Who was the first Justice to serve in a Presidential Cabinet?
2. Who was the first Justice to serve in the U.S. Senate?
3. Who was the first President to become a Justice?
4. Who was the first Justice from the West Coast?
5. Who was the first Justice from a State west of the Mississippi?
6. Who was the first Justice to resign from the Court?
7. Who was the first Justice from a State which entered the Union after the original 13 States?
8. Who was the first Justice to die in office?
9. Who was the first Justice to be named as Time Magazine's Man of the Year?
10. Who was the first Justice to serve as a General in active service during hostilities?

Answers appear on Page 14

ANSWERS TO TRIVIA QUIZ "FIRSTS"

1. John Marshall was Secretary of State under John Adams.
2. Justice William Paterson of New Jersey was elected to the very first Senate ever organized after the Constitution was ratified. He served only briefly in the Senate. In 1790 he became Governor, and in 1793 an Associate Justice. Chief Justice Oliver Ellsworth also served in that first Senate, representing Connecticut until 1796, when he was appointed Chief Justice.
3. This is an easy one: William Howard Taft, elected President in 1908, became Chief Justice in 1921.
4. Stephen Field of California was appointed to the Court by President Lincoln in 1863.



Collection of the Supreme Court of the United States

Samuel F. Miller practiced medicine before he turned to law, obtaining his medical degree in 1838 at the age of twenty-one.

5. Justice Samuel Miller of Iowa was named to the Court by Lincoln in 1862.
6. Justice John Rutledge resigned in 1791, to become Chief Justice of the South Carolina Court of Common Pleas. He returned to the Court briefly as Chief Justice in 1795.
7. Justice Thomas Todd of Kentucky was appointed by Thomas Jefferson in 1807.
8. James Wilson, one of Washington's original appointees, died in 1798.
9. Justice James Byrnes was named "Man of the Year" in 1946 while he was serving as Secretary of State.
10. Justice William B. Woods was a Major General during the Civil War.



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William J. Paterson embarked upon his studies at Princeton College at the age of fourteen.



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In 1807 Congress amended the Judiciary Act of 1789, and created a seventh federal judicial district, thus creating a seventh seat on the Supreme Court of the United States. Todd was appointed by Jefferson to fill that seat on the Court.

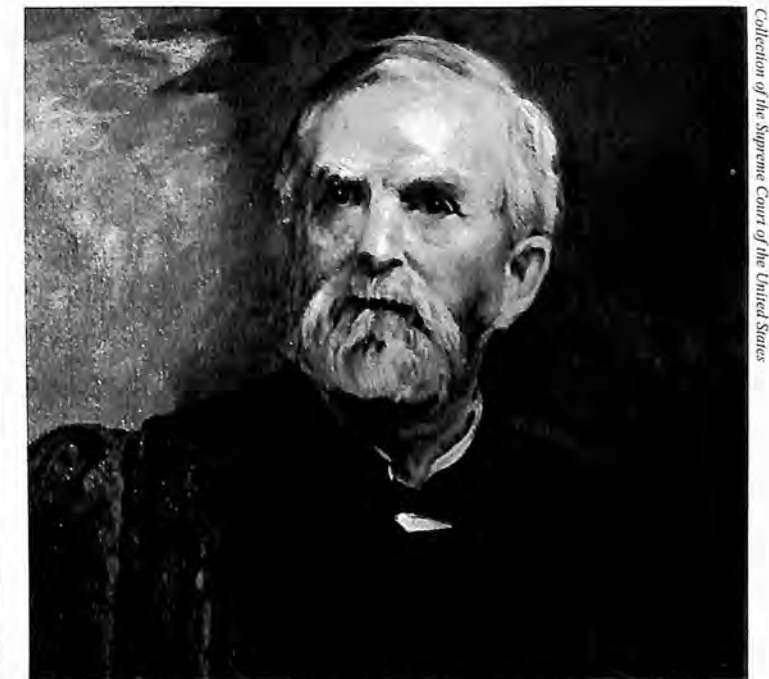
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In the interest of preserving the valuable history of the highest court, The Supreme Court Historical Society would like to locate persons who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, 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 welcome. You may also reach the Society through its website at www.supremecourthistory.org.



Collection of the Supreme Court of the United States

Senator James Byrnes was nominated by President Roosevelt to serve on the Supreme Court in June 12, 1941. As a Senatorial courtesy, the Senate waived confirmation hearings and approved his nomination by a voice vote that same day.



Collection of the Supreme Court of the United States

Entering the Union army as a lieutenant colonel, William B. Woods fought in the battles of Shiloh and Vicksburg and marched with General William T. Sherman through Georgia. By the conclusion of the war, he was promoted to major general.

**A SUPREME HONOR
2005 CHIEF JUSTICE JOHN MARSHALL SILVER DOLLAR**



The 2005 commemorative silver dollar honoring Chief Justice John Marshall is available for sale through the U.S. Mint. This coin commemorates the 250th anniversary of the birth of John Marshall and is the first coin ever issued to honor a Supreme Court Justice.

A special Chief Justice John Marshall Coin and Chronicles Set was created for the coin. This limited-edition set includes a Chief Justice John Marshall Uncirculated Silver Dollar, a Bureau of Engraving & Printing intaglio print of William Wetmore Story's 1864 sculpture depicting the Chief Justice, and a booklet on the life of the Chief Justice prepared by the Society. This product is limited to 25,000 units and can be purchased by visiting www.USMint.gov, or through the Society's site, www.supremecourthistory.org

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