



THE SUPREME COURT  
HISTORICAL SOCIETY

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## SAMUEL ANTHONY ALITO, JR.: THE 110<sup>TH</sup> JUSTICE OF THE SUPREME COURT

*Editors' Note: Andrea Comer assisted with the research and preparation of this article.*

On October 31, 2005, President George W. Bush nominated Samuel Anthony Alito, Jr., to serve as an Associate Justice of the Supreme Court of the United States. At the time of his nomination, Alito was a judge of the United States Court of Appeals for the Third Circuit where he had served since 1990. Alito's nomination and subsequent confirmation filled the seat vacated by the retirement of Associate Justice Sandra Day O'Connor. The Senate confirmed Alito on January 31, 2006 by a vote of 58-42.

Samuel Anthony Alito, Jr., was born on April 1, 1950 in Trenton, New Jersey, to Italian-American parents. In 1914, while still a child, Alito's father, Samuel Alito, Sr., emigrated

to the United States. He worked as a teacher for much of his career, but later became the first Director of the New Jersey Office of Legislative Services. Alito commented that his father "overcame many difficulties and made many sacrifices so that my sister and I would have opportunities that he did not enjoy." The Justice's father is now deceased. His mother, Rose Fradusco Alito, now 89 years old, has been described by her son as a "very dedicated public school teacher who inspired my sister and me with a love of learning." Both the Justice and his sister Rosemary completed undergraduate and graduate degrees and chose to pursue careers in the law. Rosemary is a successful and well-known employment lawyer in New Jersey.

Alito graduated from Steinert High School in Hamilton



Chief Justice Roberts administered the oaths of service to Samuel A. Alito, Jr., at a White House Ceremony. Left to right, President Bush, Justice Alito, Mrs. Alito, Philip and Laura Alito and Chief Justice Robert's.

*Continued on page 4*



## A Letter from the President



Four times a year, generally in the third or fourth week of January, April, July and October, the Society's Executive Committee meets to conduct the business of the Society. At these meetings Committee Chairs deliver status reports on such matters as are within their purview, and bring

before the Executive Committee any such new items of business as may require approval.

Typically the agenda for the July meeting is the most crowded, as in addition to its usual business, the Executive Committee has to approve the annual budget and such new initiatives as may be contemplated therein. The July 25<sup>th</sup> meeting was no exception, and because I think it will offer members some considerable insights as to what their Society will be doing in the coming year, I thought to share some of the highlights of the meeting with you here.

Among the more notable financial matters reported by Treasurer Sheldon Cohen was that the Society finished FY 2006 with an increase of about \$2.6 million in net assets, due primarily to the proceeds from the sale of John Marshall coins. Sheldon also observed that the Society posted a modest surplus of \$63,000 on its overall operations prior to market value changes in its investment portfolio.

The Program Committee, chaired by Charles Cooper, reported that this year's Summer Institute for Teachers and the D.C. Area Schools Initiatives—two programs aimed at improving secondary school education about the Court and the Constitution—were successfully concluded in the preceding quarter and recommended continued funding for both in the coming year. It also reported on the successful conclusion of the 2006 Leon Silverman Lecture Series and recommended that the 2007 series should focus upon notable 19<sup>th</sup> century Associate Justices. It is hoped that at least two of the five or six part series will be scheduled for later this fall.

The Publications Committee, chaired by Professor James O'Hara, reported that the *Journal of Supreme Court History* continued to be published on schedule, three times annually and that the next issue would be mailed in December. Publications Director Clare Cushman also noted that progress

was well underway in developing a new special publication tentatively entitled "*Court-watching: Eyewitness Anecdotes in Supreme Court History*," that is expected to take approximately two years to prepare.

Our very fortunately named Membership Chair, Frank C. Jones of Texas lived up to his promise to make this past year a banner year in membership, and his Committee of State Chairs drove the Society's rolls up to 5,798—just a hair's breadth from our all-time record. Dennis Suplee is succeeding Frank as Membership Chair for FY 2007.

Acquisitions Chair Dorothy Goldman reported on several new acquisitions for the Society's collections at the Court, including the purchase of Justice Joseph Story's judicial robes. She also successfully lobbied the Executive Committee for an increase in the Society's financial commitment to acquisitions from \$25,000 to \$37,500 annually.

Gift Shop Committee Chair Vincent Burke III, reported a record year in gross sales at the Society's Gift Shop of nearly \$1.4 million. Vince also noted that his Committee expects to begin construction on a new shop in the Court during the coming Fiscal Year. The Society is undertaking the whole of this cost at an estimated \$775,000.

Investment Committee Chair George Adams reported that while his committee was somewhat disappointed that the downturn in the stock market in the final quarter of the Fiscal Year had offset some prior gains, overall performance over the past five years has been strong. Accordingly, his committee recommended continuing its current investment strategy.

Frank Gilbert, the long-time Facilities Committee Chair, was pleased to report that the Society's headquarters at Opperman House is in excellent condition and continues to serve the Society in good stead. Frank indicated that, thanks to a very generous endowment made by Society Chairman Emeritus Dwight Opperman, the Society will be able to stay on top of maintenance issues at the headquarters for the foreseeable future.

Upon conclusion of the various committee reports and discussions thereof, the Executive Committee considered a budget for FY 2007 for approximately \$3.3 million that contemplates a modest surplus of just under one percent of revenues over expenses. As I said in the meeting, raising this sum will be a challenge during the coming year, but one I am confident the Society's members and Board will meet if not exceed. This past year was a very productive year in terms of programs and activities, as well as economic growth. If we work together, I think we can expect to continue to build upon these successes.

I will at all times welcome your suggestions as to how the Society can best perform its mission.

*Frank Jones*

## SPECIAL EXHIBITION OF CHIEF JUSTICE JOHN MARSHALL

by Matthew Hofstedt

Associate Curator of the Supreme Court

Because of work associated with the Supreme Court Building's modernization, all of the portraits of the Chief Justices that usually hang in the East and West Conference Rooms have been moved for the summer. The most prominent of these portraits, Chief Justice John Marshall by Rembrandt Peale, painted around 1834, has been placed on public view in the Court's ground floor exhibition hall. The monumental portrait in its late federal style frame is over eight feet high and portrays Marshall within an oval surround often referred to as a "porthole." The portrait was painted by Peale in the same style as his famous *Patriae Pater* (Father of his country) portrait of George Washington that hangs in the Old Senate Chamber in the U.S. Capitol. Peale tried to sell the Marshall portrait to the Capitol for the Court's chamber, but was unsuccessful. Eventually, members of the Bar of the City of New York purchased the portrait from Peale's widow and presented it to Chief Justice Salmon P. Chase, who in turn bequeathed it to the "United States, for the use of the Supreme Court" in 1873. The recently restored portrait will be returned to its traditional location over the fireplace in the

East Conference Room by the start of the next Term, so please visit soon for the opportunity to see it up close.



### SAVE THE DATE

November 13, 2006

### Brandeis Sesquicentennial Event

Louis D. Brandeis was born on November 13, 1856, in Louisville, Kentucky. His earliest memories were of his mother serving food to Union soldiers in his front yard. He left Louisville and later graduated from Harvard Law School, had a brilliant career as a practicing lawyer and advocate on behalf of numerous public causes, and became an Associate Justice of the Supreme Court in 1916, at age 60. He resigned from the Court in 1939, and died in 1941. He chose the University of Louisville School of Law as the final resting place for his remains. Although he never returned to Louisville to live, family members and their descendants have remained, and Louis D. Brandeis remained connected to his family, to Louisville, to the University of Louisville, and to the Law School.

With one of the most remarkable records of accomplishment of any American, Justice Brandeis is known for his attention to an enormous number of important issues. November 13, 2006, will mark the 150<sup>th</sup> anniversary of his birth. The University of Louisville Louis D. Brandeis School of Law will recognize the occasion with a full day program focusing on some of the most significant areas to which he devoted attention. The preliminary program of speakers for the occasion follows:

*Brandeis Sesquicentennial Program*

November 13, 2006

*Brandeis as Lawyer and as a Supreme Court Justice*  
*Melvin I. Urofsky—Virginia Commonwealth University*

*Brandeis as Progressive Reformer*

*David W. Levy—University of Oklahoma*

*Brandeis and Free Speech and Free Press Issues*

*Philippa Strum—Woodrow Wilson International Center for Scholars*

*Brandeis on Privacy*

*Erwin Chemerinsky—Duke University School of Law*

*Roundtable Moderator*

*Bob Edwards—XM Satellite Radio*

For more information on the program, contact Laura Rothstein, Program Coordinator, Professor of Law, University of Louisville at [laura.rothstein@louisville.edu](mailto:laura.rothstein@louisville.edu).

### The Supreme Court Historical Society

## Quarterly

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Township, New Jersey, and then enrolled in Princeton University's Woodrow Wilson School of Public and International Affairs. In 1970, he joined the university's Army ROTC program. Even as a college student, Alito had high career aspirations. In a personal statement on his college yearbook page, Alito said in jest that he intended "to go to law school and eventually to warm a seat on the Supreme Court."

Following graduation from Princeton with a bachelor's degree, Alito enrolled in Yale Law School where he served as an editor for the *Yale Law Journal* and earned a *Juris Doctor* degree in 1975.

At graduation, he was commissioned as a Second Lieutenant in the U.S. Army Signal Corps and was assigned to the United States Army Reserve, one of nine in his class to receive a commission in the Reserve. After he completed law school, Alito served on active duty from September to December 1975 while attending the Officer Base Course for Signal Corps officers at Fort Gordon, Georgia. The remainder of his time in the Army was spent on inactive status. He was honorably discharged in 1980 with the rank of Captain.

The first step in his legal career was his one-year appointment from 1976-77 as a clerk to Leonard I. Garth of the U. S. Court of Appeals for the Third Circuit. Fourteen years later, Alito was appointed to serve with Judge Garth on that same court.

In his confirmation hearing before the Senate, Alito described his experience with Judge Garth:

**I had the good fortune to begin my legal career as a law clerk for a judge who really epitomized open-mindedness and fairness. He read the record in detail in every single case that came before me; he insisted on scrupulously following precedents, both the precedents of the Supreme Court and the decisions of his own court, the 3<sup>rd</sup> Circuit.**

**He taught all of his law clerks that every case has to be decided on an individual basis. And he really didn't have much use for any grand theories.**

At the conclusion of his clerkship for Judge Garth, he

embarked on a decade of public service. As Alito himself characterized it, "After my clerkship finished, I worked for more than a decade as an attorney in the Department of Justice. He served first as an Assistant U. S. Attorney for the District of New Jersey in the appellate division. During that time, he argued regularly before the circuit court for which he had clerked and on which he would later serve. He described his

memory of his first experience arguing before the court: "I remember the day, as an assistant U.S. attorney, when I stood up in court for the first time and I proudly said, 'My name is Samuel Alito and I represent the United States in this court.' It was a great honor for me to have the United States as my client during all those years."

Following his service in New Jersey, he adjusted his sights to the national level. Alito joined the Department of Justice in Washington where he was appointed an Assistant to the Solicitor General of the United States, Rex E. Lee. He served in that capacity from 1981-1985. During his tenure in the Department of Justice, he argued 12 cases before the Supreme Court of the United States. In comments at the White House in October 2005 Alito said "I argued my first case before the Supreme Court in 1982, and I still vividly recall that day. I

remember the sense of awe that I felt when I stepped up to the lectern. And I also remember the relief that I felt when Justice O'Connor—sensing, I think, that I was a rookie—made sure that the first question that I was asked was a kind one."

After leaving the staff of the Solicitor General in 1985, Alito was appointed to the Office of Legal Counsel as Deputy Assistant Attorney General. In that capacity he provided constitutional advice for the Executive Branch.

From 1987-1989, Alito was the U. S. Attorney for the District of New Jersey. He won unanimous approval from the Senate for the appointment. His cases there included the prosecution of white collar and environmental crimes, as well as drug trafficking and organized crime.

On February 20, 1990, President George H. Bush nominated Alito to the United States Court of Appeals for the Third Circuit. Rated "Well-Qualified" by the American Bar Association, Alito was confirmed by unanimous consent in the



Photo by Steve Petteway, Collection of the Supreme Court of the United States

**The nomination of Samuel Anthony Alito, Jr. to serve as an Associate Justice of the Supreme Court was confirmed by the Senate on January 31, 2006. He took the oaths of office on February 1, 2006.**

Senate on April 27, 1990. Of his appointment to the Court, the *New Jersey Law Journal* wrote: "Mr. Alito is one of our profession's best. His commitment to public service is deep and his qualifications for his new office exemplary." While serving on that Court, he participated in thousands of appeals and wrote hundreds of opinions. Alito remained on this bench until nominated to the Supreme Court in late 2005.

Speaking of his experience as a Judge on the Circuit Court, Alito has said, "... I've learned a lot during my years on the 3<sup>rd</sup> Circuit, particularly, I think about the way in which a judge should go about the work of judging. I've learned by doing, by sitting on all of these cases. And I think I've also learned from the examples of some really remarkable colleagues."

Despite his busy judicial schedule, Alito found time to teach as an adjunct professor at Seton Hall University School of Law, where he taught classes in Constitutional law. In 1995, he was honored with the law school's Saint Thomas More medal "in recognition of his outstanding contributions to the field of law."

Aside from his judicial and academic involvement, Alito has been active in several professional associations: the American Bar Association, the New Jersey State Bar Association, and the Federalist Society.

On November 10, 2005, President Bush officially submitted Alito's nomination to the Senate. On January 31,

2006, the nomination was confirmed. In an informal ceremony, he was sworn in that same day to enable him to attend later that evening the State of the Union address as a member of the Court. On the following morning, February 1, 2006, Chief Justice Roberts repeated the oaths of office to him at a formal ceremony at the White House.

He has been described by friends and colleagues as "quiet and self-effacing with a wry sense of humor." An avid reader, he particularly enjoys reading biographies and history. Others have commented on his manifest intelligence and integrity, characterizing him also as "mild mannered and generous and family oriented."

Alito married Martha-Ann Bomgardner in 1985. At the time they met, she was a law librarian. The Justice and Mrs. Alito have two children, Philip and Laura. During a ceremony at the White House at the time of the announcement of his nomination to the Court, the Justice expressed warm appreciation to his family. He then observed that "[m]y children, Philip and Laura, are the pride of my life and they have made sure that being a judge has never gone to my head—they do that very well on a, pretty much, daily basis."

During his confirmation hearings before the Senate, Alito discussed his heritage.

**My father was brought to this country as an infant. He lost his mother as a teenager. He grew up in poverty. Although he graduated at the top of**



Photo by Steve Petteway, Collection of the Supreme Court of the United States

**The members of the Supreme Court as of February 1, 2006: (front row, left to right) Associate Justices Anthony M. Kennedy, John Paul Stevens, Chief Justice John G. Roberts, Jr. and Associate Justices Antonin Scalia and David H. Souter; (back row, left to right) Associate Justices Stephen G. Breyer, Clarence Thomas, Ruth Bader Ginsburg and Samuel A. Alito, Jr.**



his high school class, he had no money for college. And he was set to work in a factory but, at the last minute, a kind person in the Trenton area arranged for him to receive a \$50 scholarship and that was enough in those days for him to pay the tuition at a local college and buy one used suit. And that made the difference between his working in a factory and going to college.

After he graduated in 1935, in the midst of the Depression, he found that teaching jobs for Italian-Americans were not easy to come by and he had to find other work for a while.

But eventually he became a teacher and he served in the Pacific during World War II. . . .

His story is a story that is typical of a lot of Americans both back in his day and today. And it is a story, as far as I can see it, about the opportunities that our country offers, and also about the need for fairness and about hard work and perseverance and the power of a small good deed.

My mother is a first generation American. Her father worked in the Roebling Steel Mill in Trenton, New Jersey. Her mother came from a culture in which women generally didn't even leave the house alone, and yet my mother became the first person in her family to get a college degree.

She worked for more than a decade before marrying. She went to New York City to get a master's degree. And she continued to work as a teacher and a principal until she was forced to retire.

Justice Alito and his family have lived in West Caldwell, New Jersey during his years of service on the 3<sup>rd</sup> Circuit Court. The family will relocate to Washington, D.C. in the near future. Since assuming his seat on the Supreme Court Bench, the Justice has been engaged fully in the work of the Court, voting in his first case on February 1, 2006. He delivered his first written opinion for the Court on May 1, 2006, in the case *Holmes v. South Carolina*.

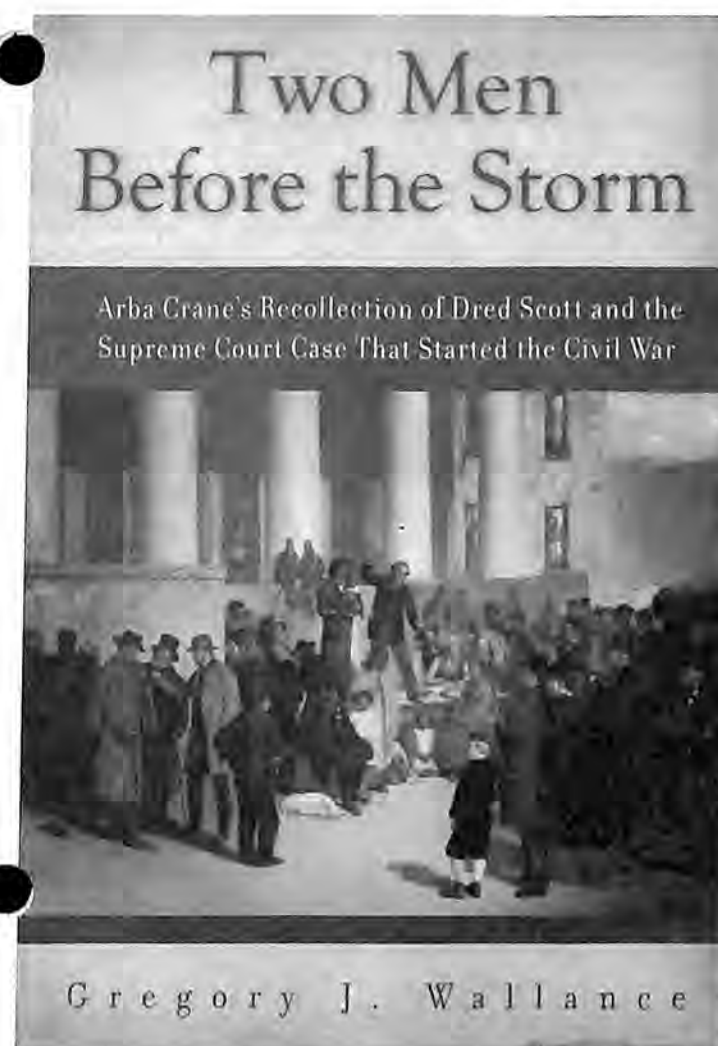
## WANTED

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 at Opperman House, 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](http://www.supremecourthistory.org).

## TWO MEN BEFORE THE STORM

A Book Review by Professor Geoffrey C. Hazard\*



**Two Men Before the Storm: Arba Crane's Recollections of Dred Scott and the Supreme Court case that started the Civil War**

By Gregory J. Wallance  
Austin, TX; Greenleaf Book Group Press, 2006

This is a fiction-fact story of the relationship between a lawyer and a client in the period immediately before the Civil War. The client is Dred Scott, the real principal in the notorious case that culminated in the Supreme Court decision in *Scott v. Sanford*. The lawyer portrayed is a true-to-life invention of the author, who is a practicing lawyer specializing in litigation. The invented character and the relationship between client and lawyer are drawn from Mr. Wallance's experience as a lawyer and from extensive research in archives in St. Louis, where the case arose, and in Washington, where it was authoritatively resolved.

The story includes broad background about the political economy of the country at the time, particularly politics in the Border States. It focuses on the relationships between

the white and black communities, then as now a complex and sensitive subject. It then concentrates on the character and personality of the principal figures: Dred Scott the client and "Arba Crane," the lawyer. The fictional character Arba Crane is that of a lawyer who could well have handled such a case. The form of the narrative is Crane's recollection of the case as he experienced it.

"Two Men Before the Storm" takes us back to the social and legal ambience of our country just before the Civil War. In that setting it leads us to recognize that all cases involve individual personalities and circumstances of client and lawyer; that a matter for both client and lawyer involves much more than the immediate legal dispute; and, if the case has deep dimensions in these respects, that both client and lawyer will emerge as changed people. The author's writing is clear and lively, and readily accessible to nonlawyers. It is a good illustration of what lawyers used to do in their work, and which many still do.

The fictional aspect of "Two Men" is entirely plausible, reflecting the author's experience in life as well as in law practice. The story captures the drama of the case, the technical intricacies involved, and as well the familiar silence and boredom in intervals between stages of litigation. The verisimilitude reminds us that law cases can be important not only to the profession but also to society at large.

Taken together these strands of the book may remind us, however, that decisions of the courts, even in a case as important as *Dred Scott*, are not the ultimate voice of public authority. James Buchanan, at the time President of the United States, was an able and conscientious lawyer by training and career. He thought and hoped that the Supreme Court decision in *Dred Scott* would put an end to sectional strife by resolving the issue of slavery in favor of a divided system protected by law. Indeed, Buchanan intervened with individual Justices, seeking to assure that the decision could have this effect. Abraham Lincoln, also an able and conscientious lawyer, thought otherwise. He was elected on a platform that our House Divided could not stand, and then presided over the storm that followed.

Mr. Wallance's book is an illuminating study of the legal calm that came before.

\*Professor Geoffrey C. Hazard is the Distinguished Professor of Law at the University of Pennsylvania Law School and at University of California Hastings College of Law. Previously, he was a Professor of Law at Yale University, the University of Chicago and the University of California, Berkeley. The author of numerous publications and articles, he is a leading expert in legal ethics.



## VINCENT C. BURKE JR. AND CELINE BURKE RECEPTION ROOM DEDICATION CEREMONY

Photos by Steve Petteway



Justice Souter talked with Vincent C. Burke, Jr. prior to the ceremony. Justice Stephen Breyer is visible to the extreme left of the photo.

The Burke Family and the Supreme Court Historical Society were honored on February 1, 2006, when Chief Justice Roberts, and Associate Justices Breyer, Ginsburg, Scalia, Souter and Thomas joined Officers and Trustees of the Society and members of the Burke family at Opperman House. The occasion was a ceremony to dedicate the Vincent C. Burke, Jr. and Celine Burke Reception room.

President Jones observed in opening remarks that the room was named to "pay tribute to two of Washington's icons, Vincent C. Burke, Jr. and his late wife, Celine Burke." Guests present for the occasion included more than a dozen members of the extended Burke family.

The designation of this room honors the many contributions made to the Society over a thirty-year period. Together, the Burkes supported and promoted the work in many ways,



Following the ceremony, Justice Clarence Thomas and Vincent C. Burke, III visit with Dorothy Goldman in the Howard S. and Dorothy Tapper Goldman Library of the headquarters.

including sponsorship and participation in numerous programs and activities. Their support was vital to the development of the nascent organization. In his remarks, Mr. Jones described the Burke style of leadership as being one centering on "nurturing people, building careers, and cultivating friendships to last a lifetime. Vince, Jr. continues that tradition to this day, as did Celine throughout her lifetime. Together they did much to transform a town often described as transient into a community of people working together to make a better life for everyone living there."

As he continued his remarks, Mr. Jones observed that "Vince has often been described as a friend and counselor to Presidents, Senators, Justices, Mayors, Cardinals, Judges, and the leading businessmen and women of the city. He enjoyed warm friendship with both Chief Justices Burger and Rehnquist. Indeed, when Chief Justice Burger began to



Justices Antonin Scalia and Ruth Bader Ginsburg congratulated Mr. Burke prior to the dedication ceremony. The Society's Executive Director, David Pride, is visible behind Justice Ginsburg.

formulate plans for founding an historical society in 1974, Vincent Burke, Jr., was among his initial advisors. His assistance was essential in establishing the Society. In 1975, he first became affiliated with the Society's investment and financial team, serving first as Assistant Treasurer, and then as Treasurer. He has served continuously on the Board of Trustees since 1975, and has fulfilled that responsibility with great distinction. Just last year his long and distinguished service was recognized in the Annual Meeting, at which time he was elected to the position of Trustee Emeritus. He graciously recommended participation in the Society to his son Vincent Burke III, who has succeeded him as a Vice President."

Vincent Burke, Jr., grew up in Washington, attending Gonzaga High School and then Georgetown University. He entered the US Navy and served there during World War II. After the war, he attended Georgetown Law School. Following graduation he worked as an assistant US attorney for the

District of Columbia. He then entered into a private practice where he practiced law briefly before joining Riggs National Bank as an Assistant Trust Officer in 1954.

He spent 30 years at Riggs rising through the ranks, capping his service by being named President in 1973, and Chairman and CEO in 1975. He has always been actively involved with many charities and has served on the board of many of the leading companies and institutions of Washington.

In his retirement, he serves as Chairman Emeritus of the Clark Winchcole Foundation, a foundation that supports over 200 local charities every year, including very generous grants to the Supreme Court Historical Society. Indeed, this association has enabled the Society to fund much of the cost associated with the relocation of the gift shop to its temporary location. The final and permanent relocation will also be underwritten in large measure, by grant money from the Foundation.

Celine Gallagher Burke, or Teeney, as she was affectionately



Justice Ginsburg, Mr. Burke, two members of the Burke family and President Jones during the dedication ceremony.

called by family members and close friends, married Vincent C. Burke Jr. in 1946. Only a few months after celebrating their 50th wedding anniversary, Teeney died unexpectedly in January, 1997. She left a legacy of service and commitment to family, friends, community and the Society. As a fourth generation Washingtonian, she was especially interested in preserving the rich history of the city she loved, and the work of the Society fitted well with those interests.

Together, the Burkes were instrumental in helping the Society become an organization that could accomplish the goals of preserving the history and heritage of the Supreme Court and its justices. They hosted functions supporting the fledgling



Chief Justice John G. Roberts, Jr. attended the dedication and is shown here with Leon Silverman, Chairman of the Board of Trustees of the Society.

organization, and provided information about the Society to other leading members of the community.

Typical of his personal modesty, Vincent C. Burke, Jr., initially was somewhat reluctant to accede to the Society's request to name the parlor in his honor. After some persuasion, however, he agreed when he was reminded of the history of the first thirty years of the Society, the Burke name came to the forefront over and over again. It is for these reasons, and many more, that the members of the Executive Committee determined to dedicate a portion of the permanent headquarters to Vincent and Celine Burke. The selection of that room seems particularly fitting because this is where the Society will carry on the Burke tradition of greeting and making guests welcome and endeavoring to afford them the same warm hospitality that have been the hallmarks of the Vince and Celine Burke family for half a century.



Centered around the patriarch, Vincent C. Burke, Jr., are members of the extended Burke family. Society Vice President Vincent C. Burke, III. and his wife, Kate, are on the extreme left side of the photograph.



## WOMEN AS SUPREME COURT ADVOCATES

\*By Professor Nina Pillard

*Editors' Note: On January 6, 2005, the National Association of Women Lawyers (NAWL) held a one-day conference, "Women and Oral Argument before the Supreme Court." The Society was a cosponsor for the event. Associate Justices Sandra Day O'Connor and Ruth Bader Ginsburg participated in the program, as did Society Trustee Maureen Mahoney and Society member Beth Brinkmann. Prof. Nina Pillard delivered the keynote address later in the day, speaking on the same subject. The second half of her speech appears in this issue of the magazine, and is printed here with her permission, and with the approval of NAWL. The first half of the speech appeared in the previous issue of the Quarterly.*

The second story I want to share with you is the story of Constance Baker Motley, the first black woman to argue in the Supreme Court. Motley had a string of ten civil rights cases in the Supreme Court in the early 1960s, and won nine of them. Even though she was an historic first at the Court, Supreme Court argument for Motley, as for Lockwood, was only one piece in a larger set of extraordinary accomplishments.

Constance Baker was born in 1921 in New Haven, Connecticut, one of twelve children of immigrants from the Caribbean island of Nevis. In the 1920s and '30s -- when blacks were unwelcome in better paying jobs even in manufacturing or construction -- her father worked seven days a week cooking in various restaurants and hotels, and at the Yale Society Skull and Bones. Unlike Lockwood, Motley did not have support from a strong mother, and her father was condescending and domineering toward women.

As Constance Baker was growing up, New Haven was only about 2% black. As his daughter recalls, Mr. Baker "did not want to be known as a black American"; he thought blacks "were generally lazy, no good, undisciplined, and lacking in middle class values." He socialized with whites and Caribbean-Americans while avoiding the city's small African American community. Constance resolved not to marry a man like her father.

She went to a good public high school and did very well. But for a working-class high school graduate in 1939, the Great Depression put college out of reach. Her mother thought Connie should become a hairdresser.

Instead, Baker started working for a National Youth Administration project and became a community activist, heading up the New Haven Negro Youth Council. The Council rented a storefront where young blacks congregated. Meanwhile, a wealthy white businessman named Clarence Blakeslee had built a nice community center in the city's poor black area, but was puzzled as to why blacks were not using it. Baker spoke up at a community meeting to explain that all the people on his center's board were from Yale, and black people had no input into what went on and so did not consider it their place. Blakeslee was impressed with her and inquired why she was not in college. When he discovered she wanted to go to college -- and law school -- but could not afford it,



During law school, Constance Baker Motley served as an intern for the NAACP Legal Defense Fund. After graduation, she became an essential member of the team spearheaded by Thurgood Marshall.

Blakeslee offered to pay. Musing that since his own son was at Harvard Law, he didn't know why Baker couldn't attend Columbia. (Harvard still didn't admit women).

In 1940, with Blakeslee's sponsorship, Motley set out toward that goal. She started at Fisk, a small black college in Nashville, Tennessee. Studying there satisfied what Motley describes as her "burning desire to join the larger black community." Going to the South also exposed her to the indignities of Jim Crow. On her very first trip down to Nashville, all the passengers were required to get off in Cincinnati, and a "colored" car was added to the train into which all the black passengers were loaded for the remainder of the trip south of the Mason-Dixon line. Two years later she transferred to NYU, where she debated the economy, the war, and Communism with white classmates.

Constance Baker started at Columbia Law School in 1943 -- not yet a wife and mother. She was surprised that more than twenty other women joined that incoming class. As men were being drafted to serve in WWII, she noted that "suddenly women who had done well in college were considered acceptable candidates for the vacant seats." During law school she started interning for Thurgood Marshall at the NAACP Legal Defense and Educational Fund, and continued there full-time after graduation. This was before Thurgood Marshall was much known outside of civil rights circles. It

was also a time when the legal profession remained virtually closed to women; we know that even several years later top law school graduates -- like Justice O'Connor (Stanford 1952) and Justice Ginsburg (Columbia 1959) -- found it difficult to obtain legal jobs because of their sex. Motley appreciated that, as she put it, "Marshall had a liberal view that women ought to have the same chance to become lawyers as men." "Had it not been for Thurgood Marshall," she says, "no one would ever have heard of Constance Baker Motley."

LDF had only four lawyers at that time, and Motley was soon accompanying Marshall on litigation throughout the South. As Jack Greenberg, Marshall's LDF successor, described Motley, she was "tougher than Grant at Vicksburg." Motley's appearances in southern courtrooms drew large crowds of gawkers who were amazed at the sheer spectacle of a black woman lawyer. She received lots of graphic hate mail, and newspapers derided her as "the Motley woman."

Motley's cases challenged racially restrictive real estate covenants and discriminatory teacher salary scales; she represented James Meredith desegregating the University of Mississippi, Charlayne Hunter Gault and Hamilton Houston desegregating the University of Georgia, and Harvey Gantt desegregating Clemson College in South Carolina. When Marshall left LDF for a Second Circuit judgeship in 1961, the civil rights movement was heating up against stiff resistance to the *Brown* decision, the freedom riders were crossing the South, and Dr. Martin Luther King Jr. was hitting his stride. It was in that environment that Motley got the chance to make her Supreme Court arguments.

Motley's first Supreme Court case successfully challenged a capital defendant's denial of right to counsel. She recalls that during the oral argument Justice Douglas appeared to be



Although Motley did not think Douglas had paid much attention to her during her first oral argument before the Supreme Court, he later wrote in his autobiography that the quality of her arguments "would place her in the top ten of any group of advocates at the appellate level in this country."

paying no attention -- writing letters and doing other work. But Douglas wrote the unanimous opinion in her favor, and noted in his autobiography that the quality of Motley's arguments "would place her in the top ten of any group of advocates at the appellate level in this country." Over the next three Supreme Court terms, Motley successfully argued five cases challenging convictions of students arrested during sit-ins, and two cases challenging segregation in public facilities. The only case she lost was her last, *Swain v. Alabama* in 1964, in which the Court held that race-based exclusion of black jurors was not unconstitutional without proof that the prosecution typically discriminated by race across all its cases.

In 1964, Motley became the first black woman elected to the New York State Senate. Within six weeks of that election, the Manhattan city council elected her to fill the vacant post of Manhattan Borough President. She was the first woman President of any of the boroughs, and was popularly reelected in 1965. She was not in electoral politics for long. Attorney General Ramsey Clark had seen her argue in the Supreme Court and recommended her to President Johnson, who nominated her to the federal district court in Manhattan in 1966. Motley was the first black woman federal judge in the nation, and I believe only the third female Article III judge. She was appointed at a time when women comprised only 3% of the legal profession.

Motley accomplished many things against the odds. Her high court triumphs are emblematic of her importance in our history as a woman who broke sex and race lines to advance equal rights.

You do not have to have a forceful ego or be a national figure like Lockwood or Motley, however, to make history in the Supreme Court. The last woman I want to mention offers a vivid contrast to the other two because she is little known outside of government, and hardly anything has been written about her. Beatrice Rosenberg -- who everyone called "Bea" -- still holds the women's record for most oral arguments in the Supreme Court for the 30 cases she argued in the 1950s and 60s. A high school classmate of Justice William Brennan, Rosenberg grew up in New Jersey where her father was a journalist and some-time publisher of a small Yiddish newspaper. As Rosenberg noted in an interview, her father "never thought women weren't supposed to be smart. He married a smart woman. My mother." Bea Rosenberg graduated from Wellesley College, and in the late 1920s she started her career (like Belva Lockwood before her), as a high school teacher. She eventually went to NYU Law School at night and graduated *summa cum laude* in 1936 -- that was ten years before Motley graduated from Columbia Law, and over twenty years before Justice Ginsburg did.

Rosenberg dedicated herself to public service. Like Motley, she benefited from the effects at home of WWII, as men were leaving to serve and women were being hired to take up the slack. Rosenberg started in 1943 in the Appellate Section in the Department of Justice's Criminal Division, and worked there for nearly thirty years, and then at the EEOC for another seven. An expert on search and seizure law, she was the Criminal Appellate Section Chief for almost twenty





A dedicated public servant and accomplished lawyer, Beatrice "Bea" Rosenberg, joined the Appellate Section in the Department of Justice's Criminal Division in 1943 and worked there for nearly thirty years.

years. She made her first Supreme Court oral argument in 1946. Apparently she was a quick study: as she later put it, "I didn't get very good at it, I don't think, until my second time out."

That may sound like a brag, but Bea was quite modest and shunned the limelight. She was a gifted advocate and brief writer, a beloved supervisor, and a generous mentor to scores of young lawyers – most of them men, given the demographics of the profession at the time. One young man who went to work under Bea Rosenberg as a new lawyer in the 1960s described her as "a middle-aged lady from New York City, of Jewish heritage, short and pleasantly plump.... a warm, earthy and sometimes caustic person and a fair, but demanding, taskmaster." Bea was also great at moot courts

This photograph of Solicitor General Erwin Griswold's (center front row) staff taken in 1972 indicates how few women were working in the legal field just thirty years ago. Indeed, Harriet Sturtevant Shapiro (second from left on back row) was the first woman attorney to work in the Office of the Solicitor General. In addition to Erwin Griswold who was a Trustee and Chairman of the Board of Trustees, two more of the Society's long-time Trustees and dedicated supporters also appear in this photo. William Bradford Reynolds is on Ms. Shapiro's left, and Philip Alan Lacovara is second from the left on the front row.



Courtesy of Harriet Shapiro

for her staff; "If you could survive a moot with Bea on the panel," an appellate section alumnus recalled, "you could survive any real circuit judge."

Julia Cooper Mack, later a judge on the D.C. Court of Appeals, worked for Bea for over a decade in the 1950s and 1960s. When Mack left the Justice Department to head the appellate section of the newly formed EEOC in 1968, she enticed Rosenberg to join her there, where they litigated some of the cutting edge Title VII cases of the day. Beatrice Rosenberg was apparently considered by President Nixon for appointment to the United States Supreme Court. I guess he chickened out, so we had to wait another decade before President Reagan gave us our first woman Supreme Court Justice. I can't help wondering about the mark a Justice Rosenberg might have made on the Court in that crucial decade for women's rights.

So, what do these three women's stories teach us about women in the Supreme Court, and what do they mean to us as lawyers and working women today? Our predecessors faced enormous pressures that we don't. Everything they did was judged as representative of their sex. As one of Lockwood's biographers put it, "If she should falter, those who sought these same privileges of equality would have to fight twice as hard for them." These women also had to buck sometimes tremendous opposition – from the society, the profession, and even their own families. They built their own support systems to accommodate their work and personal needs -- without the wide range of accepted models for doing so that we have today.

Thanks to them, we have it a heck of a lot easier now. When women of my generation are asked what it was like to be one of the few women to argue in the Court, we tend to respond that it was not any different from the experience of men. Virtually all the argument preparation our panel this morning described is gender-neutral (with the sometimes vexing exception of what to wear!). It is sheer hard work for any lawyer of any description, and we all benefit from one

another's generous professional collaboration in moot courts and the like.

Women oralists are hardly an oddity in the Supreme Court anymore. Over the past few decades, the proportion of Supreme Court advocates who are women has steadily crept up about by about 5 percentage points in each of the last four decades, from about 1 percent in the 1966 Term, to 5 percent in '76, 10 percent in '86, and 17 percent in 1999. The women who do appear are still clustered, more so than our male counterparts, in government and public interest. But some, including prominent law firm partners like Beth Brinkmann and Maureen Mahoney, are competitors for the best private Supreme Court business as well.

Women are now almost half the law students and will soon be half the lawyers in the country. But when will we be half the Supreme Court oralists? Or equally represented in other elite sectors of the bar? With our professional education, we lawyers have much greater opportunity and flexibility than most women – and most men. Yet male lawyers make on average \$20,000 more per year than female lawyers, and there are significant pay gaps even among men and women with equivalent positions and experience. Women are still only 17% of law partners, less than 17% of federal judges, under 15% of Fortune 500 General Counsels, 15% of law school deans, and 5% of managing partners at large firms.

When I look around at my law school peers, it is parenting that has reasserted a gender gap that was not evident among us when we were in school and just starting out. These shortfalls are not, in our generation, from women dropping out of the workforce once they have children. The vast majority of mothers in the U.S. – even mothers of very young children – now typically work outside the home, usually full time. Once we become parents, however, working women's income and upward mobility at work lag behind men's. Men, meanwhile,

typically miss out on much of the joy and burden of direct family care.

I have to emphasize that my generation has enjoyed so much more flexibility than even the generation that immediately precedes us. We women are enjoying professional engagement, and men of our generation are fulfilled by sharing family care, as never before. We have more freedom now than ever to strike balances that are healthier for all of us. But a defining issue for sex equality in our time will continue to be how we as a society – employers, government, individual families, and the broader culture – address the work-family balance.

Lockwood, Motley, and Rosenberg faced different challenges, and learning more about them heightens my appreciation that they paved my way to becoming a Supreme Court advocate. Their examples of resourcefulness, clarity of mind, and sheer bravery, have done so much to inspire me and, I hope, all of you as well. These women are part of the group that stands behind us today and urges us on – in the Supreme Court and everywhere we work for justice.

*\*Nina Pillard is a professor of Law at Georgetown University Law Center. She has worked as a law clerk for a U. S. District Court Judge, and with the NAACP Legal Defense and Education Fund. She served as Assistant to the Solicitor General of the United States, after which she joined the faculty at Georgetown. She returned to the Department of Justice as Deputy Assistant Attorney General, Office of Legal Counsel. Pillard has litigated numerous cases, and has argued eight cases before the Supreme Court of the United States. She thanks Marybeth McMahon for lending her wonderful ear and way with words to help prepare this speech.*



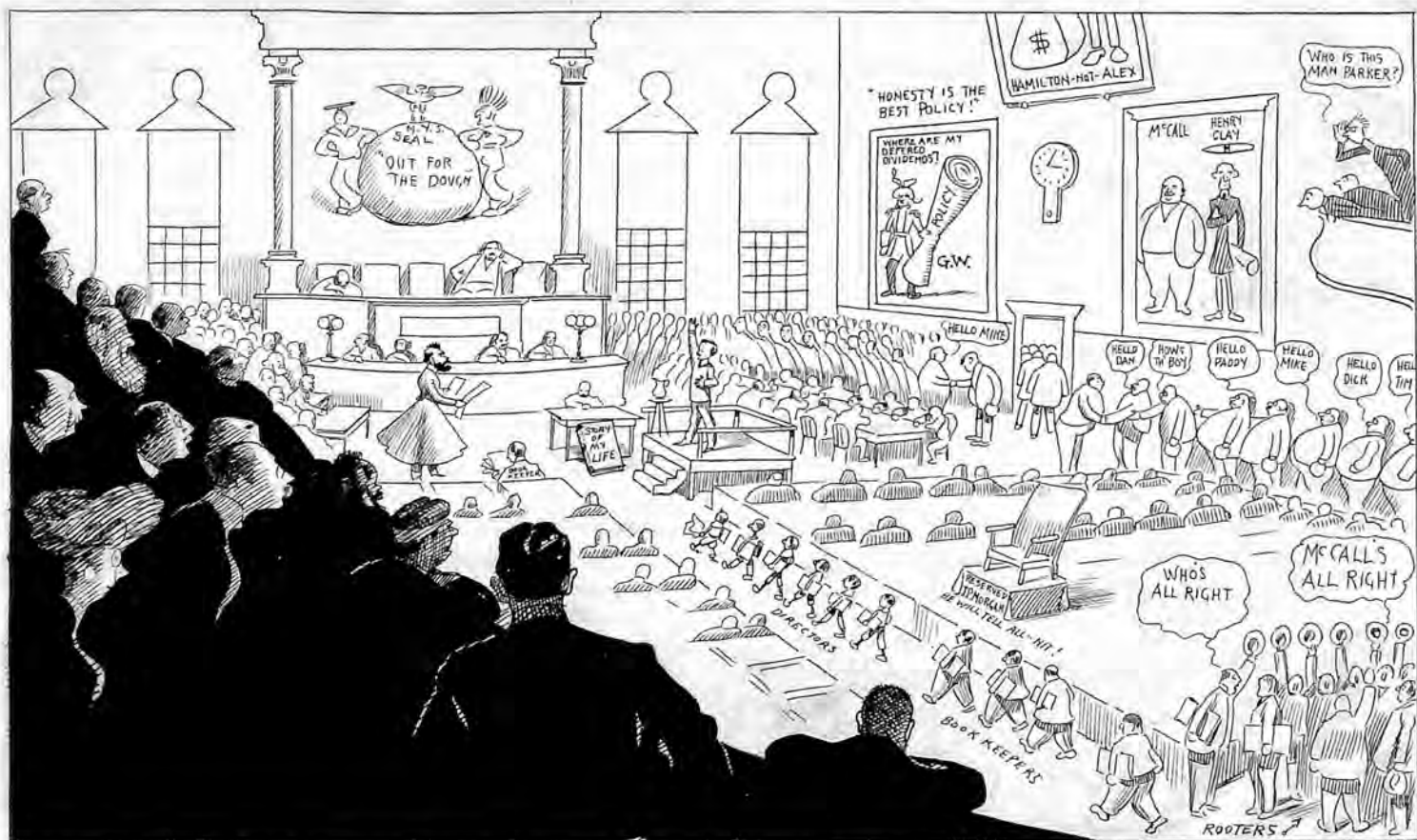
(Left to right) Associate Justices Ruth Bader Ginsburg and Sandra Day O'Connor participated in a panel discussion of women in the law during the one-day conference sponsored by the National Association of Women Lawyers.



*By Franz Jantzen\**

Among the reporters who covered these events was Thomas E. Powers (1870-1939), a cartoonist for the New

In his 1951 book review of Merlo Pusey's two-volume biography on Hughes, Justice Robert Jackson wrote about these events that Hughes' "...relentless, but scrupulously fair and accurate, exposure of the alliance between crooked

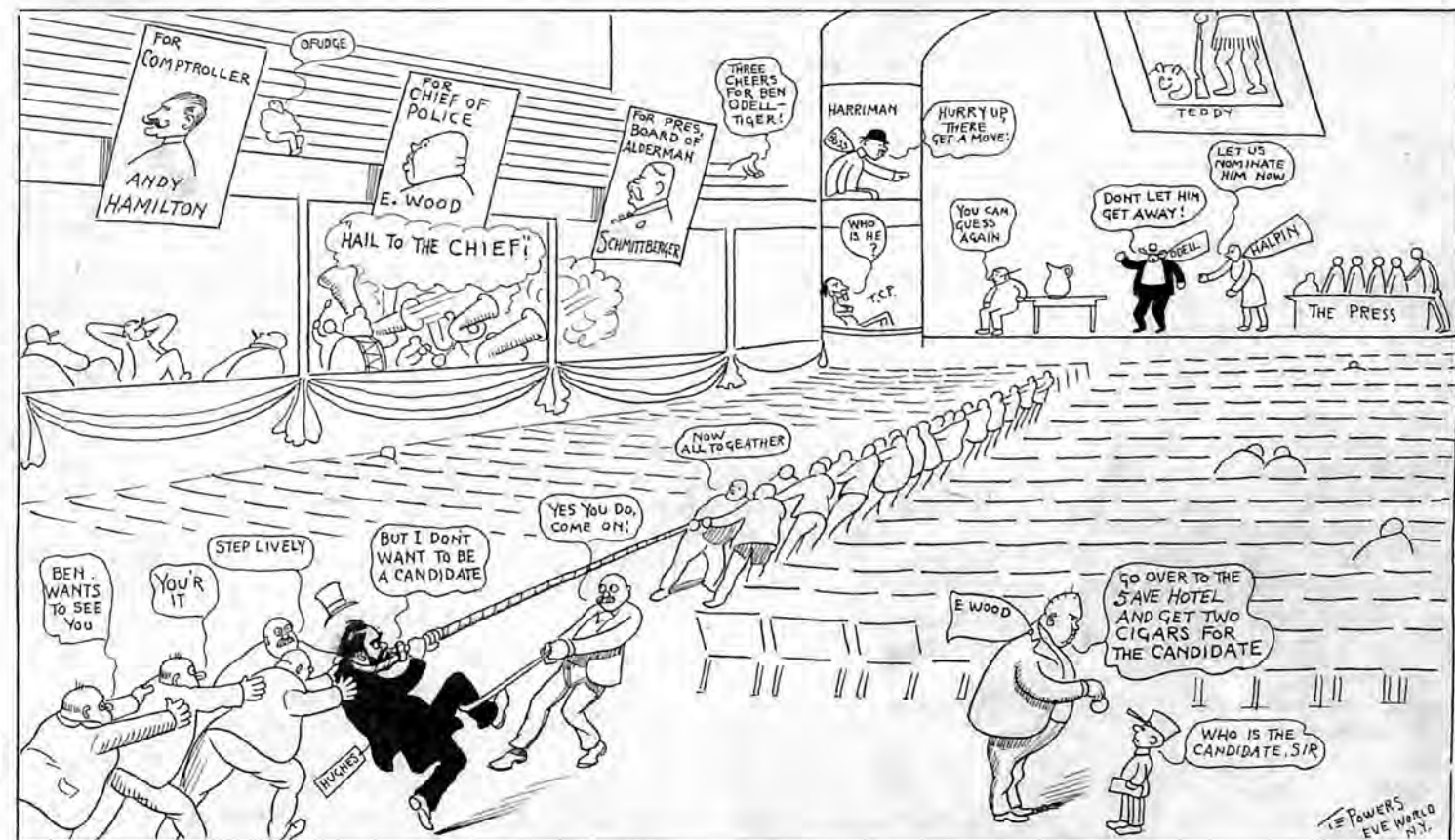


In Powers' highly detailed cartoon "At The Insurance

finance and corrupt politics discredited more than a few leaders of his own party....” With election day only weeks away, the local Republican bosses tried to derail Hughes’ investigation by nominating him as mayoral candidate for New York City. Powers’ cartoon, “But I Don’t Want to Be a Candidate!” depicts Hughes furiously resisting the efforts of the bosses as they attempt to drag him, by rope, to the platform at the convention.

Both original cartoons will be on display at the Supreme Court Building in late summer 2006.

*\*Mr. Jantzen manages the Court's collection of photographs.*



In this cartoon, state prosecutor Charles E. Hughes is forcibly nominated for mayor of New York City in the fall of 1905. Hughes is shown furiously resisting as he is dragged by rope to the stage of a large auditorium at a local Republican convention. Republican boss Benjamin Odell awaits him saying, "Don't let him get away!" A puppet named Halpin stands next to Odell saying, "Let us nominate him now!" Most everyone in the auditorium has left their seats in order to pull the rope, which is attached to Hughes' neck. Police Chief nominee E. Wood hands a quarter to a young boy and tells him to "Go over to the 5th Avenue hotel and get two cigars for the candidate" (to which the boy replies, "Who is the candidate, sir?"). Posters for nominees to other city offices hang above a band that flatters Hughes by playing "Hail To The Chief."

**By James B. O'Hara\***

This quiz is a little different from the previous quizzes published. There are some Justices whose life after leaving the Court mirrors what another Justice had done before joining it. Can you make the matches?

- |                          |                                       |
|--------------------------|---------------------------------------|
| 1. Governor of New York. | 4. Major Party Nominee for President. |
| 2. Law School Dean.      | 5. United States Senator.             |
| 3. Secretary of State.   | <b>Answers on pages 18 &amp; 19</b>   |

**Answers on pages 18 & 19**



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## Answers to Trivia Quiz: Before and After

By James B. O'Hara\*

Questions on Page 15

### ANSWERS

1. Charles Evans Hughes was Governor of New York from 1907 until his appointment as an Associate Justice in 1910. John Jay resigned as Chief Justice in 1795 to become Governor of New York.

2. Several Justices served as Law School Deans before joining the Court: Horace Lurton (Vanderbilt); Wiley Rutledge (Washington University in St. Louis and University of Iowa); Harlan Fiske Stone (Columbia); and William Howard Taft (University of Cincinnati). Justice Owen Roberts became Dean at the University of Pennsylvania after leaving the Court in 1948.

3. John Marshall and William Rufus Day were Secretaries of State prior to their service on the Supreme Court, and John Jay was Secretary of Foreign Affairs under the Articles of Confederation before the Court was

established. James Byrnes became Secretary of State under Truman after his brief tenure as a Justice. Charles Evans Hughes was Secretary of State after serving as an Associate Justice, but before his appointment as Chief Justice.

4. William Howard Taft was the Republican nominee in 1908. He was, of course, elected, defeating William Jennings Bryan. In 1912, he ran for reelection and was defeated by Woodrow Wilson. Taft was appointed Chief Justice in 1921. Charles Evans Hughes resigned from the Court after he was nominated in 1916 by the Republican Party as the Presidential candidate. Hughes was also defeated by Wilson. He rejoined the Court as Chief Justice in 1930.



William Rufus Day (first row, right) served briefly as Secretary of State in the cabinet of his friend, President William McKinley (front row, left).



James F. Byrnes, (second from right) served as Secretary of State under President Roosevelt, and was an important confidante of the President.

5. A dozen Justices had previously served in the United States Senate prior to their nomination to the Supreme Court: Hugo Black, Harold Burton, James Byrnes, Salmon P. Chase, Oliver Ellsworth, Howell Jackson, Lucius Q. Lamar, Stanley Matthews, William Paterson, George Sutherland, Edward White and Levi Woodbury. Only David W. Davis was elected to the Senate after his service on the Court.



Levi Woodbury served in the US Senate where he became a supporter of Andrew Jackson. Jackson later appointed him to his Cabinet as Secretary of the Navy.



Woodrow Wilson, shown shaking hands, defeated both William Howard Taft and Charles Evans Hughes in presidential elections.



President William Howard Taft (third from left seated figure) visited Governor Charles E. Hughes (seated next to Taft) in 1909. Taft had asked Hughes to be his running mate in the election, but Hughes declined and was reelected Governor of New York.

\*Professor James B. O'Hara was a professor and administrator at Loyola College of Maryland. He is currently Chairman of the Society's Publications Committee.





### **2006 Supreme Court Ornament**

The 2006 Supreme Court Marble "Building" Ornament represents the façade of the Supreme Court main entrance.

This ornament is made of cast resin, which includes particles of pulverized marble that was removed from the West Plaza for replacement. Great care was taken to include the eight (of the sixteen) visible columns, and the details of the figures in the frieze above the "Equal Justice Under Law" pediment.

This ornament is beautifully trimmed in 24kt gold plate, so that the doors and chandelier shimmer. It is boxed for gift giving or storage for many years of enjoyment.

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