



THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

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SOCIETY CELEBRATES 31ST ANNUAL MEETING JUNE 5, 2006

The traditional day-long annual meeting of the Society took place on Monday, June 5, 2006. All programs were held in the Supreme Court Building in Washington, DC, and presided over by Frank C. Jones, President of the Society, and Leon Silverman, Chairman of the Board of Trustees.

The activities began with the Annual Lecture held at 2 PM in the Supreme Court Chamber. This tradition was established with the first annual meeting of the Society, with early lectures being held in the historic Restored Supreme Court Chamber in the U. S. Capitol Building. Increased membership growth necessitated relocation of the event to a larger space, and for many years the lecture has been held in the Supreme Court Chamber. The relocation has not diminished the popularity of the program and it continues to be one of the cherished events of the day.

This year the Society was honored to have Justice Anthony M. Kennedy as the speaker. Confirmed by a unanimous vote of the Senate, Justice Kennedy assumed his seat on the Supreme Court bench in 1988, and has provided distinguished service on the Court since that time. Notwithstanding the demands of his responsibilities, he has continued his personal commitment to legal and constitutional education. He has worked with the University of the Pacific's McGeorge School of Law, teaching constitutional law in a summer program in Salzburg, Austria. Justice Kennedy also has participated in many programs for

the Society, introducing speakers during the Silverman lecture series, and hosting receptions or dinners. Of particular note are the lectures he has given for the Society. He was the inaugural speaker in 1991 in the National Heritage Lecture series, and presented a fascinating lecture in San Francisco before an audience of Society members who reside in California. In addition to these programs, the Justice also presented the Annual Lecture before a capacity crowd in 2003.

For the 31st Annual Meeting, Justice Kennedy chose the

topic of the Great Chief Justice, John Marshall. He gave an engaging and fascinating presentation, illustrated with visual images. During the presentation, he considered Marshall's role as Chief Justice, delving into the personal philosophy and performance of this great historic figure, as well as examining the interaction of those early colleagues on the Court.

Following the Lecture, members and their guests were able to tour the Supreme Court Building under the direction of the

Office of the Curator of the Court. Tour participants viewed some of the areas of the building not generally accessible to the public. The Society extends thanks to Curator Catherine Fitts and her staff for facilitating these tours and for assistance in providing tours to members of the Society at other times during the year.

Evening events commenced with the Annual Meeting of the General Membership of the Society. President Jones

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Justice Anthony M. Kennedy delivered the Annual Lecture speaking about the Great Chief Justice John Marshall.

A Letter from the President



Though it has been widely publicized, I am surprised by how many people are not aware of the unusual opportunity Congress has afforded potential charitable donors with the passage of the Pension Reform Act in 2006. Many of the Society's members, myself among them, have reached or exceeded the age of 70 1/2 and are required to begin taking minimum distributions from retirement accounts and realizing those distributions as taxable income. However, because of the Pension Reform Act's provisions, through the end of 2007 it is possible to satisfy these distribution requirements by donating funds to an eligible charity without recognizing those funds as income for federal tax purposes. It is among the most attractive inducements Congress has ever provided to encourage public support of charitable organizations—but it only remains in effect through the end of 2007.

Recognizing this for the opportunity it is, our own Judge Leon Polsky, a long-time member of the Board of Trustees was the first of the Society's loyalists to blaze the trail of making a Pension Act contribution—and a very sizeable one at that. He has since been followed by other Society stalwarts, but so far not in the numbers that I would expect given the tax benefits these types of contributions hold for donors.

Equally important to the tax benefits, of course, is the economic vitality contributions of this kind can provide for the Society's many worthwhile programs. Though I am no doubt preaching to the choir here, as if you are reading this Quarterly you are most likely already a member, I will remind you of just a few of the Society's endeavors that deserve your support.

Since its inception, the Society has devoted a great deal of its resources to education. The Society's Supreme Court Summer Institute for Teachers and its outgrowths are examples of those educational efforts. This program, which brings secondary school teachers to Washington to study the Court first-hand, has impacted thousands of students nation-wide. It is imbuing this next generation of our nation's leaders with a greater appreciation of the Constitution and the judiciary's role in maintaining it. Teachers who have attended the Summer Institute have reported that they have seen enormous changes in student participation and performance as a consequence of their improved skills in teaching these subjects, and you can read more about these programs in an article starting on page 12 of this issue of the Quarterly. We are proud of what has

been accomplished to date, and remain committed to continuing, and where possible, expanding, this activity.

Another areas of focus has been the creation of high quality publications. Next month, for example, it is anticipated that Columbia University Press will release the eighth and final Volume of the Documentary History of the Supreme Court of the United States, 1789-1800. Volume 8 represents the completion of a 29-year research effort and will join the seven other critically acclaimed books in the series.

In addition, much effort has been devoted to improving the quality and increasing the quantity of other Society publications. As I informed you in my last letter, research is currently underway for a new special publication, tentatively entitled "Court-Watching: Eyewitness Anecdotes in Supreme Court History." That book will be produced in addition to the now-traditional three issues of the *Journal of Supreme Court History*. As I frequently mention to members of the Membership Committee, I have found that our publications are wonderful ambassadors for the Society and encourage membership.

These, and the many other activities the Society undertakes, are made possible by the generous support of the Society's members. As President, I am especially grateful to you who have made gifts above and beyond your membership dues. Annual Fund giving by members has increased each year over the past five years, and the money raised through this program have helped us to meet program goals. I commend you for your generosity, and encourage you to continue this tradition.

I hope that you will also consider making the Society a beneficiary of any contributions you may elect to make under the Pension Reform Act. As I noted earlier, this is a unique opportunity to ensure the Society's economic vitality.

As always, I am grateful for your support of and participation in the Society. We have accomplished much, but there are so many things that we could do with greater support.

Frank Jones

The Supreme Court Historical Society Quarterly

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PENSION REFORM ACT 2006 UPDATE

The recently enacted Pension Protection Act of 2006 offers a unique opportunity to make tax beneficial gifts to charities. For this year and 2007, you can make charitable gifts directly from your traditional IRA without incurring income tax on the withdrawal.

Details:

- Donors must be 70 1/2 or older
- Maximum and aggregate amount qualifying is \$100,000 in any one year, to one or more charities
- Gifts must go directly from the IRA to qualified charities – contact your plan trustee for information on how to initiate the transfer and make sure that your plan trustee knows that for a deduction in 2006 you must have the transfer completed in 2006
- Gifts may not go to donor advised funds, private foundations, charitable lead trusts or life income gifts such as charitable remainder trusts, pooled income funds, or charitable gift annuities
- No charitable deduction may be associated with the gift but the amount normally taxable will not be taxed
- Charitable transfer will count toward minimum required distribution for the donor's IRA account

Who will benefit?

- Donors who are required to take mandatory minimum withdrawals, but do not need additional income
- Donors who are subject to the 2% rule that reduces their itemized deductions
- Donors who wish to give more than the deductibility limit (50% of adjusted gross income)
- Donors whose major assets reside in their IRAs wishing to make a charitable gift during their lifetime
- Donors who choose not to itemize deductions and want to exclude IRA withdrawals as reportable income.

Please speak with your IRA trustee or tax advisor to understand how this gift impacts any state or local income tax (there are variances among the states and local taxing authorities) as well as to ensure that this meets your federal tax planning as well as your personal and philanthropic goals.

To discuss a charitable gift to Supreme Court Historical Society, please contact David Pride or Jennifer Lowe at 202-543-0400.

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.



David Frederick (right) received the 2006 Hughes Gossett literary prize from Chief Justice John G. Roberts, Jr.

called the meeting to order at 6 PM in the Supreme Court Chamber. Recapping the highlights of the past year, Mr. Jones noted that the Society has continued to seek out significant artifacts and documents pertinent to the history of the Court. Of the many important items obtained during the year, none is more beautiful than the portrait of Chairman Emeritus Dwight D. Opperman. This handsome portrait was executed by noted portraitist Ray Kinstler and is now displayed over the fireplace in the Vincent and Celine Burke Reception Room at the Society's headquarters.

Program accomplishments for the year include the 2006 Leon Silverman Lecture series that focused on "Dissents and Dissenters." Additionally, this year the Society was the principal sponsor of the National Heritage Lecture. This took the form of a reenactment of the Aaron Burr Treason Trial, presided over by Justice Antonin Scalia. Featuring leading members of the Bar participating as counsel for the trial, as well as a fascinating historical overview, the program was enormously popular. Other events held during the year included the Erwin Griswold Prize Lecture, honoring an outstanding book in the field of Supreme Court and legal history. This year's prize recipient was George Martin, and the program was hosted by Justice Stephen G. Breyer.

Another accomplishment of great import was the completion of the first draft for the eighth and final volume in the *Documentary History of the Supreme Court: 1789-1800*. The focus of almost 30 years of work by project director Dr. Maeva Marcus and her staff, this volume marks the culmination of an extraordinary effort to present a comprehensive history of the Court's first decade. A celebration marking the release of the final volume will take place in early 2007.

The economic stability of the Society enables these pro-

grams and activities. Revenue for the year was boosted by income derived from sales of the John Marshall Commemorative Coin and accounted for approximately two million dollars in the growth of the Society's endowment fund. An additional payment of \$700,000 was received in fiscal year 2007.

Society funds have been carefully supervised and audited throughout the year. Augmented by prudent investment and tight control of expenses, the endowment fund is now close to ten million dollars, providing a sure foundation on which to build. Participation in the Annual Fund and other forms of giving by individual members and members of the Board of Trustees has risen steadily over the years and now constitutes an important portion of funds required to sustain programs. The Amicus Curiae program for corporate general counsel and managing partners of major law firms also provides vital support. Gifts and Grants from public-minded foundations also provide a significant source of funding for programs. Similarly, the annual membership campaign generates much-needed revenue and also draws into the Society a vital influx of talent, enthusiasm and new ideas.

At the conclusion of his overview, President Jones called upon Virginia Daly, Secretary of the Society and Chair of the Nominating Committee, to present a slate of candidates for election to the Board of Trustees. The Committee nominated the following to serve an additional three-year term as a member of the Board: **Peter Angelos, Herman Belz, Hugo Black, Jr., Vincent C. Burke III, Sheldon Cohen, George Didden III, James Ellis, Miguel Estrada, Dorothy Goldman, Frank Gundlach, Jerome Libin, Maureen Mahoney, Thurgood Marshall, Jr., Michael Mone, James Morris III, James B. O'Hara, Jonathan Rose, Jay Sekulow, Foster Wollen and Donald Wright.** All were elected unanimously.

On behalf of her Committee, Mrs. Daly nominated the following persons for election to an initial three-year term of service on the Board of Trustees: **Beth Brinkman, Harlan Crow, Kenneth S. Geller, Robert J. Gray, Jr., Timothy**



Society Trustees David Onorato (center) and Timothy Mayopolous (right) were recognized on behalf of Bank of America.



Joan Lukey was recognized for her work as state membership chair for Massachusetts.

Mayopolous, Sally Rider, Nicole Seligman, Dennis R. Suplee and W. Wayne Withers. Further, the Committee nominated **William Bradford Reynolds and Frank Boardman** as Trustees Emeriti in honor of their long and loyal service to the Society. All candidates were elected by unanimous vote.

Following the elections, President Jones concluded the meeting, and ceded the podium to Leon Silverman, Chairman of the Board of Trustees who convened the Annual Meeting of the Board of Trustees. Citing Mr. Jones' report on the status of the Society, Mr. Silverman made brief remarks and moved to elections and recognition of individuals who had made special contributions to the Society during the year.

The first order of business was the report of the Nominating Committee for the election of officers. Mr. Silverman called upon Virginia Daly, Secretary of the Society and Chair of the Nominating Committee to present that report. The following individuals were nominated for election to the positions as indicated: **Vincent C. Burke III, for a three-year term as Vice President; Jerome Libin, Mrs. Thurgood Marshall, James Morris, Theodore B. Olson, Leon Polsky, Teresa Wynn Roseborough, Larry Thompson, Seth P. Waxman and Agnes Williams** for a one-year term of service as an **At-Large member of the Executive Committee.** Mr. Silverman called for a vote and all candidates were elected by unanimous vote.



William Kayatta received an award recognizing his accomplishments as the 2006 state membership chair for Maine.

Following the election, Mr. Silverman asked Chief Justice John G. Roberts, Jr., to assist him by making presentations to the honorees of the evening. The first awards given were the annual Hughes-Gossett Literary Prizes for outstanding articles published in the *Journal* during the year. Winners are chosen by vote of the members of the Editorial Board of the *Journal of Supreme Court History*. The first of these prizes carries a \$500 cash award and honors the outstanding article authored by an individual who was a student at the time the article was written. Helen J. Knowles received the 2006 award for her article "May it Please the Court? The Solicitor General's Not So 'Special' Relationship—Archibald Cox and the 1963-64 Reapportionment Cases." Ms. Knowles is currently working on a Ph.D. and is a visiting professor in New York State University in Oswego. The second prize for the "senior division" carries a \$1500 cash award and was given to David G. Frederick for his article "Supreme Court Advocacy in the Early Twentieth Century". This article was the outgrowth of Mr. Frederick's presentation as part of the 2005 Silverman Lecture

series. Recently elected a Trustee of the Society, Mr. Frederick is a partner in a Washington area law firm and served as an Assistant to the Solicitor General from 1996-2001.

Mr. Silverman then announced presentations relating to the Membership Campaign for the year. Under the capable direction of **Frank G. Jones of Houston, Texas,** the campaign was highly successful. Mr. Silverman thanked Mr. Jones for his outstanding efforts, recognizing his co-Chair,



Martha Barnett of Holland and Knight was recognized during the Annual Meeting.

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Frank G. Jones of Houston, Texas was honored for his outstanding service as National Membership Chair for fiscal year 2006.

Dennis Suplee, who succeeded Frank G. Jones as National Membership Chair in July 2006.

State Chairs present on June 5th to receive personal recognition for accomplishing their membership goals for the fiscal year were: Robert Gwinn, Texas; William Kayatta, Maine, FY 2004; Philip Kessler, Michigan; Joan Lukey, Massachusetts; Joseph Milton, Northern Florida; Michael Mone, Massachusetts, FY 2005; Richard Schneider, Georgia; and James Wyrsh, Missouri-West.

Nine other State Chairs met or surpassed their annual goals for the campaign but were unable to be present on June 5. They are: Thomas S. Kilbane, Ohio North; Press Millen, North Carolina; William Murphy, Maryland, Baltimore; Rick Nydegger, Utah; Gordon Rather, Arkansas; John R. Schaibley III, Indiana; and Terry West, Oklahoma.

Special donors to the Society were recognized at the Annual Meeting. These included donors who made personal and/or foundation gifts or who are representatives of corporations and law firms supporting the Society as part of the Amicus Curiae program. Those honored on June 5th were: Martha Barnett, Holland & Knight LLP; Vincent C. Burke III, Clark Winchcole Foundation; Edmund Carpenter, personal gift and Good Samaritan, Inc.; Michael A Cooper, personal gift and Sullivan & Cromwell LLP; Lou Duffy, Lexis-Nexis; Dorothy T. Goldman, personal; Robert Gwinn, personal; Frank G. Jones, Fulbright & Jaworski LLP; David Onorato and Timothy Mayopolous, Bank of America;

Gregory Michael, personal and Morgan Stanley; Joseph Moderow, personal; Michael Mone, Esdaile Barrett & Esdaile; Charles Morgan, personal; Theodore B. Olson, Gibson Dunn & Crutcher LLP; Dwight D. Opperman, personal; Bernard Reese, personal; Richard Schneider, King & Spalding, LLP; Jay Sekulow, American Center for Law and Justice; Seth Waxman, Wilmer Cutler Pickering Hale & Dorr LLP; Agnes Williams, personal; Donald Wright, personal.

At the conclusion of the presentations, Mr. Silverman adjourned the meeting and invited all holding reservations to move to the East and West Conference Rooms for the reception preceding the Annual Dinner. Music was performed during the reception by string quartets of the US Air Force Band. The music added greatly to the enjoyment of the event.

Guests adjourned to the Great Hall of the Building where dinner was served. The hall was decorated with flags of all 50 states, with a large American flag suspended between the columns near the front entrance to the room. Following custom, the Chief Justice offered a toast to the President of the United States prior to dinner service.

Following dinner, Annual Meeting Chair Theodore Olson thanked the participants to that point, acknowledging with gratitude the sponsorship of Chief Justice Roberts and the assistance of Marshal Pamela Talkin and the members of her staff. After a gracious expression of thanks to the members of the Society's staff, he introduced the remainder of the program. This consisted of a choral concert provided by the Sea Chanters of the United States Navy Band. Organized in 1956 as an all-male chorus specializing in songs of the sea, the group was later expanded to include women and the repertoire of music performed was broadened accordingly. Currently, this 17-voice chorus performs a variety of music ranging from traditional choral music, including the sea chantey, to Broadway musicals.

At the conclusion of the concert, Mr. Olson thanked everyone for their participation, offering special thanks to the Military District of Washington for providing the musical performers for the evening. He then declared the meeting adjourned until June 2007.



The Sea Chanters under the direction of Chief Musician Keith D. Hinton performed an engaging concert for dinner guests at the 31st Annual Meeting.

RECENT ACQUISITIONS

In coordination with the Supreme Court's curatorial staff, the Society assisted with the following acquisitions for the Court's collection. While the Society encourages members and other interested parties to make donations to the collection, the curatorial staff also reviews upcoming sale and auction catalogs to locate artifacts that may enhance the existing collection. These acquisitions are made to add objects in areas that may be lacking, such as the two 19th-century photographs illustrated here, or help round out an area of the collection. Anyone considering a donation or who becomes aware of Supreme Court material that is available is encouraged to contact the Society or the Curator's office.



Photograph of Chief Justice and Mrs. Hughes Walking, 1945

According to the donor, Susan Rosenthal, her father, a local Washington photographer named Henry Gichner (1906-1994), saw the former Chief Justice and his wife, Antoinette, out for their daily walk. Gichner asked if they would agree to be photographed, to which the Hughes acquiesced. Soon thereafter, Mrs. Hughes became ill and died, and this became one of the last photographs taken of the couple together.

Mr. Gichner was a resident of Washington, DC and was the president of a family business, F. S. Gichner Iron Works, Inc. Photography was his hobby, and he took many pictures of famous Washingtonians during his lifetime and became quite an accomplished photographer. The ironworks company performed work for the White House and other important Washington landmarks, and reportedly created iron gates for the White House. Mr. Gichner was involved in the community as well, and served as the Chairman of the DC Recreation Board during the 1950s, when the playgrounds in Washington were desegregated.



Vintage Photographs of Nathan Clifford, c. 1860, and Rufus Peckham c. 1895

These two acquisitions add additional vintage prints of Justice Clifford and Justice Peckham who were under-represented in the Court's Graphic Arts collection. Equally important, the two images — a cabinet card and a carte-de-viste, respectively — were taken by two of the premier portrait photographers of the 19th century — Mathew Brady (c. 1823-1896) and Napoleon Sarony (1821-1896).

JUSTICE HENRY BILLINGS BROWN PART II

By Trevor Broad*

Editor's Note: This is the second half of the article on Justice Brown. The first half appears in the previous issue of the Quarterly.

On March 11, 1875, Federal District Court Judge John W. Longyear died, creating a judicial vacancy on the United States District Court for the Eastern District of Michigan. Brown, although remorseful upon hearing the news of Judge Longyear's death, "at once entered on an active canvass for the position of United States District Judge," for which there was little competition. Brown's close friend, Charles Kent recalled, "I do not remember that there were other candidates. The salary of a district judge was then but \$3500.00 per annum, an amount too small to attract competent lawyers, who were dependent on their earnings." Brown, who was well respected in the Detroit legal community, in short time received the appointment from President Ulysses Grant and was unanimously confirmed by the Senate. However, Kent noted, "I do not think that either [Brown] or his best friends thought him more deserving of judicial honours than some others. His great distinction was that he had a great ambition to be a judge and was able to accept the position with the small salary then paid."

Brown enjoyed his position on the district bench, as it was a better fit for his personality than was private practice. Part of the reason was that Brown did not thrive on competition. He writes, "I was glad to take refuge in the comparative response of the bench," even though doing so meant giving up two thirds of the income he had made working in private practice. As a judge, Brown believed he was enacting "justice," something he had not felt in private practice. In his *Memoir*, he explained, "I felt quite content to exchange a position where one's main ambition is to win, for one where one's



Brown and the distinguished Constitutional Scholar Judge Thomas Cooley (above) were colleagues at the University of Michigan Law School.

sole ambition is to do justice. The difference in the nervous strain involved gave me an incalculable relief." Accordingly, he asserted, "I know of none in the gift of government which contributes so much to making life worth living as a district judgeship of the United States."

Brown cherished his free time. Thus, one of the most appealing aspects of the district judgeship to him was the ability to handle a steady workload in a timely fashion. He stated, "I found that I could easily dispose of the business in nine months of the year, and that there was always an opportunity for a summer's outing." Brown valued his free time so much that he considered overworking a character flaw. For example, he criticized Judge Thomas Cooley, a leading legal scholar of the day and a colleague of Brown at the University of Michigan Law School for failing to appreciate his time away from work. After calling Cooley's works some of the best the country has ever seen, Brown observed that, "Judge Cooley was guilty of one grave mistake: He overworked his intellect grossly; gave himself no leisure or relaxation, and at our age his career was practically ended."

Judge Brown sat on the district bench for fifteen and a half years, which in his opinion were "characterized by no event of special importance, were full of pleasurable satisfaction and were not overburdened by work." During these fifteen and a half years, Detroit continued to be a major shipping hub. Accordingly, admiralty cases dominated Judge Brown's docket, and he became nationally recognized as an expert in admiralty jurisprudence. Additionally, in 1876 Brown published a treatise on admiralty law, titled *Brown's Admiralty Reports*, which was well received and highly respected among admiralty scholars. In fact, according to Kent, "The admiralty business greatly increased in Detroit after Justice

Brown went on the Bench... His Court not only had the business which naturally belonged in Detroit, but also absorbed considerable from other ports. Cases were frequently brought from other places by consent in order to have the trial before him." Judge Brown's impeccable reputation in admiralty law and his congenial and cordial personality were important traits that would help him earn a position on the Supreme Court of the United States.

Over his fifteen-year tenure, Brown wrote hundreds of decisions, of which only forty-four were appealed, and just five were actually overturned. "My relations with the Bar," Brown explained "were of the pleasantest description and were clouded by no event, and when the question of my promotion arose I seemed to have received practically the unanimous endorsement of the Bar and the Legislature." Even though he mostly dealt with admiralty cases, Brown was generally recognized as a competent judge in all areas of the law, and he often rode circuit to help other judges complete their workload. Riding circuit was enjoyable to Judge Brown, as he was a sociable man, and "was only too glad of the opportunity to become acquainted with the laws and lawyers of neighboring jurisdictions." His efforts to meet and greet lawyers and judges while on circuit paid off later for Judge Brown when he was nominated for the Supreme Court. Many of the judges and lawyers he had met while riding the circuit voluntarily wrote letters to the President on his behalf. In addition to riding circuit, Judge Brown gave admiralty lectures at the University of Michigan Law School, where he met other judges and scholars much like himself, such as Judge Thomas Cooley. Judge Brown also earned honorary LL.D. degrees from both the University of Michigan and Yale University.

Brown was a well-respected trial judge. He was known for listening carefully to both sides of an argument. His decisions were concise and his jury instructions were always clear. Overall, Brown was conservative and hesitated to overturn well-established precedent as a district court judge. Still, if he was convinced that he had erred in his reasoning, he was willing to reverse himself. However, "He had no ambition to attract attention by new or extravagant views." According to Charles Kent, "Perhaps his greatest fault was an ambition to understand a case and express his opinion too early in the argument."

Brown was appointed to the United States Supreme Court in 1890 by President Benjamin Harrison to replace Justice Samuel Miller, who had died on October 13, 1890. In his *Memoir*, Brown attributes his promotion to the Supreme Court to the support of the then circuit court judge, but later

Supreme Court Justice, Howell E. Jackson. Brown developed affable relations with Judge Jackson in Tennessee while riding the judicial circuit earlier in his career. They became close friends and in his *Memoir* Judge Brown fondly recalled Judge Jackson's visits to Detroit, and Judge Jackson's pleasant stays at his home. In terms of Judge Brown's promotion to the Supreme Court, Judge Jackson had developed a friendship with President Harrison while they were both serving in the United States Senate years earlier. Judge Jackson informed President Harrison of Judge Brown's well-respected reputation and his expertise in admiralty law. It is ironic, but perhaps fitting that it was Brown who later encouraged President Cleveland to appoint Justice Jackson to the Supreme Court of the United States.

However, "Justice Brown's appointment to the Supreme Bench was not obtained without considerable effort on his part... In seeking a position on the Supreme Bench, as in other matters, Justice Brown did not hesitate to use all honorable means to attain the object of his ambition." Before President Harrison announced the appointment, a great debate was waged over who ought to be appointed. An article in *The Washington Post* announcing Brown's nomination to the Supreme Court indicates that, "It was well-known that the President would have nominated Attorney General [William H. H.] Miller if he had followed his own personal wishes. The experiment of filling a vacancy on the Supreme Bench as a mere gratification of personal friendship would, however, have proved disastrous, and was wisely avoided." As a result, the only other leading candidate for the appointment besides Brown was Alfred Russell, the former United States District Attorney, for whom Brown had previously been an assistant.

It is unclear from personal correspondences exactly why President Harrison in the end chose Brown over Russell. *The Washington Post* suggested that Brown was "Appointed on his record only... Judge Brown's appointment was due almost solely to his excellent record as a judge." Charles Kent, on the other hand, argued, "one considerable ground for Justice Brown's appointment was his reputation as an admiralty judge and the lack in the Supreme Court of men specially familiar with this branch of the law." According to the court records of the United States District Court for the Eastern District of Michigan, the members of the Detroit Bar Association attributed the nomination to:

Judge Brown's long and practiced studies not only [in] common law but in the special department



Brown was President Benjamin Harrison's (above) second appointment to the Supreme Court Bench.



Associate Justice Henry Billings Brown



President Harrison's first appointment to the Supreme Court was David J. Brewer (shown here uncharacteristically with a beard.)

of admiralty covering as it does the vast tonnage of our western lakes and waters, and also in the more technical field of patent law, has given him such an experience and familiarity with the legal rules and principles governing these important branches of legal inquiry that they cannot fail hereafter to strengthen him in his work and in these respects to aid also his associated of the Supreme bench.

Brown's name had been given to President Harrison a year before Justice Miller's death to replace Justice Stanley Matthews, but President Harrison passed over Brown in favor of his Yale classmate, Justice David Brewer. Thus, when the opportunity arose to appoint another Supreme Court Justice, President Harrison already knew about Judge Brown and his expertise, making the choice of Judge Brown a logical one. Regardless of the President's reasons, the Senate unanimously confirmed Brown's nomination, and everyone familiar with Judge Brown, including the Detroit Bar Association, was content with the President's choice.

Justice Brown valued his time on the Supreme Court of the United States, but it was not without some remorse that he gave up his life and career as a district court judge. In his *Memoir* he wrote, "If the duties of the new office were not so congenial to my taste as those of district judge, it was a position of far more dignity, was better paid and was infinitely more gratifying to one's ambition." Moreover, he found solace in the pleasurable social scene that accompanied life in Washington, D.C. He explained, "[T]he social attraction of the capital of a great country cannot fail to be superior to those of a purely commercial city, however large and prosperous it may be." He added, "The constantly changing character of its population... and the increasing influx of new people... is sufficient of itself to make it the social, as it has been for more than a century the political, centre of the nation."

Brown sat on the Supreme Court of the United States until his seventieth birthday, at which point he retired, offering his

resignation to President Theodore Roosevelt, who appointed Justice William Moody to be his successor. Justice Brown's retirement was not unexpected. Upon his appointment to the federal bench in 1875 Brown had promised himself that he would retire on his seventieth birthday in order to take advantage of the opportunity to retire with a full salary and enjoy the rest of his life free from work. He explained, "I had always regarded the act of Congress permitting a retirement upon a full salary as a most beneficent piece of legislation, and have only wondered that more judges have not availed themselves of it." In explaining the choice to retire at age seventy Justice Brown wrote, "[W]hile many, if not most, judges made the age of seventy, very few who remain upon the bench survive another decade. During that decade the work of the Supreme Court tells heavily upon the physique of its members, and sometimes incapacitates them before they are aware of it themselves." Brown had always believed that the mental capacities of a man began to deteriorate after the age of seventy, and thus it was desirable for a judge to step down at that time because the country as a whole deserved judges who were in full possession of all of their senses.

Justice Brown was an avid traveler, making fourteen trips to Europe, ten of which were completed during the fifteen and half years he sat on the Supreme Court. His frequent trips to Europe helped him gain insight into American society, because he was able to develop a better understanding of the unique tensions and relationships in America by comparing American and European society. On his trips, Justice Brown "was interested in everything tourists usually wish to see, and especially in becoming acquainted with distinguished men." However, on a trip in 1901 his wife died. Justice Brown, in a letter, wrote, "Her death puts an end to nearly forty years of the most unalloyed marital bliss that was ever accorded to man... life will never be to me again what it has been in the past." Yet, Justice Brown found the strength to remarry, which he did in 1904 to his cousin's widow, Mrs. Josephine Tyler, who had lived with the Browns after her husband's early death. According to Kent, "They lived with the same harmony which had characterized Justice Brown's first marriage. After his marriage Mrs. Brown never separated from her husband... She waited assiduously on every want [and]... The portrait of the first Mrs. Brown was the most conspicuous object in the family parlour."

Upon his retirement from the Supreme Court in 1906, Justice Brown was given a public dinner in Washington, D.C., attended by President Theodore Roosevelt, Vice President Charles W. Fairbanks, Chief Justice Fuller, and the other seven Justices of the Supreme Court. Speaking at his retirement dinner, Justice Brown in his usual lighthearted manner announced,

While it involves a good deal of a wrench to break up the habits of thirty years, and turn my back upon the genial and accomplished gentlemen who for more than fifteen years have been my daily associates, and wander in the land of the lotus eater where it is always afternoon, I feel there is at least some compensation

awaiting me in the absolute freedom from all cares not voluntarily assumed. There is no one to say, and no inner conscience even to suggest, that it is your duty to be in Court at twelve o'clock; to keep your ears, if not your eyes, open, howevermuch [sic] you may prefer a stealthy nap, until four thirty; to listen to arguments for four hours, when in fact, you made up your mind in four minutes; and to be prepared at the next Saturday's Conference to give an opinion, which your Associates will probably overrule.

In his retirement, Justice Brown continued to travel, mostly in Europe. He writes, "I left Washington soon after my resignation and spent a year in foreign travel. I was received with great courtesy by our own representatives abroad, and accumulated a fund of information which has been a never failing source of pleasure." Starting in 1906, he went to Italy, Austria, Turkey, Greece, England, and France. Then again in 1910, he visited Italy, Germany, Holland, and England. Apart from traveling, Justice Brown often gave public addresses and lectures. In addition, he wrote several law review articles, which covered a host of topics ranging from women's suffrage, divorce, the distribution of property, to the deleterious effects of the automobile on the most noble of animals, the horse. Justice Brown enjoyed seven years of retirement until succumbing to a heart attack in 1913.

Justice Brown is buried in Elmwood Cemetery in Detroit next to his first wife. His obituary in *The New York Times* read, "Justice Brown gained a reputation for the strictest impartiality and the greatest patience in going into the merits of a case. He was courteous to counsel and was noted for his willingness to admit he had committed an error. He was remarkably free from pride of opinion." The obituary claimed, "His famous decisions include [the] constitutionality of income tax and control of [the] Philippines," and it labeled him an "Admiralty Law Authority." Fairness aside, the obituary pronouncements about Justice Brown's legacy are themselves thought-provoking, as it is his majority opinion in *Plessy v. Ferguson* that is remembered for the doctrine of "separate but equal," while Justice Brown, the man, remains obscure.

Throughout his life, Justice Brown was plagued by poor eyesight and bad health. Yet, he remained both undeterred in his ambition, and positive in his outlook. Justice Brown was constantly plagued by headaches and eventually lost his eyesight. Kent noted, "Trouble with his eyes began very early. Some years before he died, he lost the sight of one eye, and the vision of the other was greatly impaired. He began to have trouble with his heart in 1896, and thereafter many attacks of this disease, some of them very dangerous." In fact, Justice Brown suffered over fifty attacks during his life before



Courtesy of the Elmwood Cemetery, Detroit, Michigan

Justice Henry Billings Brown was interred at Elmwood Cemetery in his hometown of Detroit. Rosa Parks, the famous civil rights figure, is also interred in Elmwood. In the opening paragraph of the article, the author observed that her reputation far eclipses that of Justice Brown.

he finally passed away from one in 1913 in New York. Still, "Justice Brown counted himself a fortunate man." Despite the headaches, the poor eyesight, and the heart attacks, Justice Brown remained committed to his work; having his wife read briefs and helping him write opinions when his eyesight was too poor. Even in pain, Justice Brown remained "cheerful and reminiscent only on the cheerful things." As a man, [Justice Brown] had an ambition to do almost everything those about him were doing, and to do everything in the best possible way. He had a great love of distinction, an interest in all kinds of general knowledge, in history and in science. He was greatly interested in political life, and in public men. He was a Republican, yet without bigotry. His mind was very active, interested in everything not requiring expert knowledge. He had good abilities in any subject to which he applied himself, but perhaps no extraordinary capacity in any line. He was absolutely sincere in the expression of every thought, though sometimes hasty. A marked quality was his love of society.

Justice Brown remained unassuming and modest throughout his life, and always sang the praises of his comrades. He accomplished much during his life span. Charles Kent argues that Justice Brown's life "shows how a man without perhaps extraordinary abilities may attain and honour the highest judicial position by industry, by good character, pleasant manners and some aid from fortune."

*Trevor Broad was an intern in the office of the Administrative Assistant to the Chief Justice of the United States during the 2005–2006 term. He is currently attending law school in Michigan.

THREE EDUCATIONAL PROGRAMS BRING THE SUPREME COURT TO CLASSROOMS

By Meg Hanson*

Through three separate seminars this year, Street Law, Inc. and the Supreme Court Historical Society will train 105 teachers from across the country to better teach about the Supreme Court. The nation-wide Supreme Court Summer Institute has completed 12 successful years, and, through expansions over the past several years, robust programs are now also underway in the Washington, D.C., metropolitan area (in its eighth year) and in New York City (in its third year.) By building on the success of the national program and adding some specific modifications targeted at regional teachers, we are reaching more teachers and students than ever.

All three seminars accept secondary school law, government, and history teachers and teach about the history, operations, and significance of the Supreme Court. With the assistance of expert resource people (attorneys, judges, journalists, political commentators, and educators), the teachers learn about the *certiorari* process, key constitutional issues, and important cases from the current term. The seminars also focus on training the teachers in interactive and cooperative learning teaching strategies like moot courts.

This past June, the Summer Institute taught 60 teachers from 30 different states in two groups – June 15-20 and June 22-27. These teachers, guided by facilitators Lee Arbetman, of Street Law, Inc., Professor Diana Hess from the University of Wisconsin, and Professor Barbara Perry from Sweet Briar College, spent six days exploring the Court's workings and current term. They concluded their week with a visit to the Court to hear decisions announced, and a reception at the Court.

A popular new session this year focused on the impact that interest groups have on what cases the Court hears and how they decide those cases. Robin Conrad, Senior Vice President of the National Chamber Litigation Center (the public policy

law firm of the U.S. Chamber of Commerce) and Richard Katskee, Assistant Legal Director with Americans United for Separation of Church and State, served as the experts for this session. Robin and Richard were able to share their expertise about how interest groups operate, and provided the teachers with knowledgeable insight and first-hand experiences.

The metro Washington, DC, program began with a three-day seminar in July, but activities continue throughout the year. In July, 2006, the DC teachers covered many of the same cases and topics as the national group did. Led by Arbetman and Street Law Deputy Director Judy Zimmer, the teachers also explored *Marbury v. Madison* with the help of General William Suter, Clerk of the Supreme Court. The teachers visited to tour the Court and hear oral arguments on October 30, 2006. They will also continue to meet through a series of roundtables during the school year. The roundtables utilize best practices in professional development for educators by encouraging them to share ideas, build on their colleagues' work, and use each other as resources. The teachers discuss their experiences teaching about the Supreme Court and share their lessons on different topics covered in the Seminar. The experience concludes with a June 2007 reception at the Supreme Court.

The New York City Seminar, which takes place over two days in November and a third day in January, also includes an opportunity for the teachers to return to the classroom to use some of new teaching methods and case materials before the concluding day. The teachers then spend part of the day in January reflecting on their classroom experiences and sharing advice with each other. Thanks to the Supreme Court Historical Society, the New York teachers are also treated to exceptional expert resources, including Paul Engelmayer, a partner at Wilmer Hale and former clerk to Justice Thurgood Marshall, and SCHS trustee Phil Lacovara, senior counsel and retired partner at Mayer Brown Rowe and Maw.

To keep the growing community of Institute alumni (now numbering more than 700 teachers) connected, Street Law and the Historical Society developed an online community where they can share resources and ideas, ask questions, and access updated Institute materials and lesson plans. Community membership currently numbers 250, and more teachers join each year. Institute and seminar participants are introduced to the community during a popular session on online resources about the Supreme Court. Landmarkcases.org, another joint venture between Street Law and the Supreme Court Historical Society, is also a popular resource among the teachers. The site provides easy to use background information and teaching materials on 17 "landmark" Supreme Court cases, and receives approximately one million hits each year.



Professor Barbara Perry (left) facilitates a panel discussion on nominations to the Supreme Court. Panelists, from left: Cliff Sloan, general counsel of Washington Post Newsweek Interactive and former associate counsel to the President, Joe Joaquin, counsel to the Senate Judiciary Committee, and Aaron Epstein, retired reporter for Knight Ridder.



Nine teachers serve as Justices in a moot court during the 2006 Summer Institute. The moot court was held in the Georgetown University Supreme Court Institute Moot Courtroom.

The participants in the Supreme Court Summer Institute also reach out to other teachers to train them in the content and methodology they learned while in Washington, DC. Last year, the teachers trained 797 other teachers who will reach more combined total of more than 66,000 students across the country. Additionally, the Summer Institute continues to be extremely popular among social studies teachers, and demand for the available slots remains high. We typically have two applicants for every space we have in the Institute, and continue to hear from our teachers for years after their participation. Recently, a teacher from the 2005 Institute

wrote to say, "I can't thank Street Law and the Supreme Court Historical Society enough for the opportunity to participate in the Institute.... The experiences, knowledge, and insight I got there greatly enhanced my teaching this year and for all years to come."

*Meg Hanson is a Program Coordinator for U.S. Programs at Street Law Inc., and is responsible for coordinating the Supreme Court Summer Institute as well as the New York City Teacher Institute. In addition, she coordinates the Corporate Legal Diversity Pipeline Program for Street Law.



Participants in the 2005-06 Washington, DC, metro area Seminar pose with Chief Justice Roberts at the concluding reception.

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**2005 Commemorative
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In 2005, the United States honored Chief Justice John Marshall with a commemorative coin in celebration of the 250th anniversary of his birth. The Chief Justice John Marshall Silver Dollar not only pays tribute to the Supreme Court of the United States, but also recognizes the entire judicial branch of government. This is the first time a United States coin (regular issue or commemorative) has featured a Supreme Court Justice or the Supreme Court as an institution.

Designed by United States Mint sculptor/engraver John Mercanti, the obverse of the Chief Justice John Marshall Silver Dollar features a rendition of a portrait of John Marshall originally executed by French painter Charles-Balthazar-Julien Fevret de Saint-Memin in March of 1808. The reverse, by United States Mint sculptor/engraver Donna Weaver features a view of the Old Supreme Court Chamber, located inside the Capitol building, on the side that houses the United States Senate.

The Chief Justice John Marshall Silver Dollar is available in both proof and uncirculated condition. Each coin is placed in a protective capsule and is accompanied by its own official Certificate of Authenticity signed by the Director of the United States Mint. The proof coin is mounted in a handsome satin-lined velvet presentation case. The high quality uncirculated coin is packaged in a premium gift box with tray and sleeve.

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