

THE SUPREME COURT
HISTORICAL SOCIETY

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JUSTICE ELENA KAGAN JOINS THE SUPREME COURT

On August 7, 2010, Elena Kagan took the oaths of office necessary to assume her position as an Associate Justice of the Supreme Court of the United States. Immediately following the private ceremony held at the Supreme Court, she began her preparation for the Fall Term. A formal investiture ceremony was held on October 1, 2010, preceding the opening of the new Court Term.

Kagan was appointed to fill the vacancy created by the retirement of Justice John Paul Stevens. Shortly after his 90th birthday in April, Justice Stevens had notified the President of his plans to retire from the Supreme Court effective at the end of the Term. President Obama announced his intention to nominate Kagan to the Court one month later. At the time of her nomination on May 10, 2010, Kagan was serving as the Solicitor General of the United States. She had assumed that role in March 2009 after Senate confirmation. While not the first woman appointed to the Supreme Court, she was the first woman to serve as Solicitor General. She was also the first woman to serve as Dean of the Harvard Law School, a post she held from 2003-2009.

Justice Kagan's first experience working at the Court was in 1988 when she clerked for Justice Thurgood Marshall. That clerkship was preceded by a year clerking for Abner J. Mikva of the US Court of Appeals for the DC Circuit. After completion of her year with Justice Marshall, Kagan entered the practice of law with the firm of Williams & Connolly where she worked for three years. She

then joined the Executive Branch of the government, serving in important White House staff positions from 1995-1999.

Like many of her other colleagues on the Supreme Court, Justice Kagan has New York connections. She was born and raised in New York City. She is the middle of three

children, and her two brothers are public school teachers. Unlike the other present Justices, Justice Kagan has never before served as a judge. The recent history of appointments to the Supreme Court has stressed judicial experience, but earlier Justices were often appointed directly to the Court without having served as lower court judges. Chief Justice William H. Rehnquist and Lewis F. Powell, Jr., both appointed in 1971, came to the Court after extensive experience in the practice of law but without a judgeship on their resume. Some of the greatest figures of 20th century jurisprudence including Louis D. Brandeis, Felix Frankfurter, William O. Douglas, Earl Warren and Robert Jackson, had never been judges at the time of their appointment.

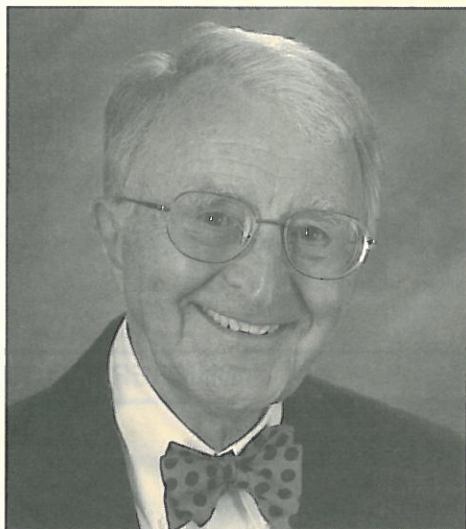
Justice Kagan is the 112th Justice, and the fourth woman to serve on the Court. She now joins Justices Ginsburg and Sotomayor on the Bench, and for the first time in the history of the Court, three women are serving concurrently. Retired Justice Sandra Day O'Connor, the first woman appointed to the Supreme Court, was the only woman on that Bench from 1981 until the appointment of Justice Ginsburg in 1993. At the age of 50, Justice Kagan is the youngest of the present Justices.



Justice Elena Kagan is the 112th Justice to serve on the Supreme Court.

Curator of the Supreme Court of the United States

A Letter from the President



I have previously interrupted my planned series on the history of the Society to address other topics and I now do so again. My Annual Report to the Members summarizes our activities and achievements for FY 2010, (see article on page 4) so this letter will be brief. While keeping a weather eye

on the economic challenges, we have been able to continue most of our most important activities. Through the generosity of the Hazen Polsky Foundation, the American College of Trial Lawyers and UPS, we will conduct a second session of the Summer Institute in June 2011. We are very grateful for this assistance that makes it possible to provide this wonderful teacher-training. We are still seeking funding and assistance

with an eye to conducting one or more regional sessions of the program and appeal to Members for ideas and suggestions for obtaining the necessary funding. Please contact me or a member of the Society's staff with your suggestions.

Recently we were fortunate to partner with the Mount Vernon Ladies Association (MVLA) to sponsor two programs. The first was a lecture and reception conducted at Mount Vernon. Retired Justice Sandra Day O'Connor spoke about the career and life of Associate Justice Bushrod Washington, nephew of George Washington and heir to Mount Vernon. MVLA also co-sponsored the 2010 Frank C. Jones Reenactment. This year the Washington-era *Ware v. Hylton* case was re-imagined with Justice Samuel A. Alito, Jr. acting as the Court and Trustees Richard (Doc) Schneider, and Philip Lacovara presenting oral arguments. These wonderful events provided a dynamic look at the history of the Court. The next issue of the *Quarterly* will report on them in more detail.

Plans for future events in FY 2011 include the Leon Silverman Lecture Series to be presented this Spring. This four-part series will discuss the people behind the Court's early religion cases. The eagerly-awaited revised edition of our popular title *The Supreme Court and Women's Rights* was just released, and is now on sale. Plans have been made to publish our newest publication, *Courtwatching*. This book,

Continued on page 16

THE 2010 LEON SILVERMAN LECTURE SERIES

The Supreme Court Historical Society's 2010 Leon Silverman Series focused on the Supreme Court and the Separation of Powers. There were four lectures, running from March 23, to May 11, 2010. Each lecture took place in the Court Room of the Supreme Court. The Leon Silverman Series is named for the Society's long-time Chairman and former President, who was instrumental in launching annual lectures in 1993.

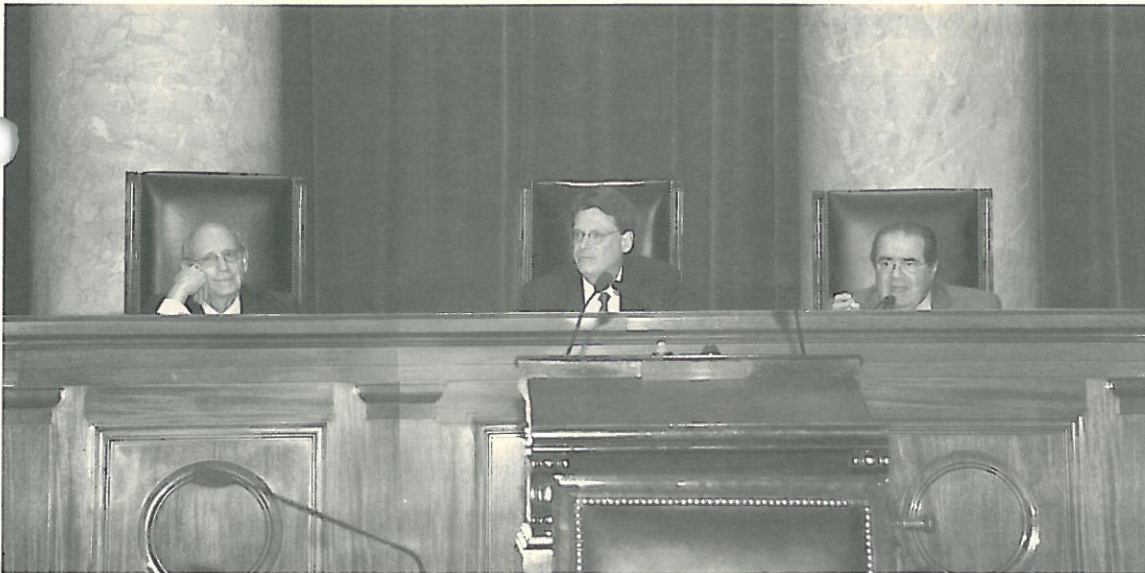
The first lecture on March 23rd featured a colloquy between Associate Justices Antonin Scalia and Stephen G. Breyer. Their discussion focused on modes of interpreting the meaning of the Constitution. Justice Scalia is well known for his view that the original intent of the framers and the language they used is the key to constitutional interpretation. Justice Breyer is associated with an alternative method of interpretation which takes other information into account and sees the constitution as a "living" instrument. The discussion was moderated by James Duff, Director of the Administrative Office of the Courts and former Administrative Assistant to Chief Justice Rehnquist from 1995 to 2000. The Courtroom was filled to capacity and the audience was mesmerized by the lively and wide ranging discussion. Justices Scalia and Breyer have conducted these conversations in other venues previously but never at the Supreme Court itself. The lecture was recorded by C-SPAN. A link to the broadcast can be found at the Society's website at www.supremecourthistory.org.

The second lecture on April 20th was delivered by Professor Barbara Perry, a professor of political science at Sweet Briar College and a former Supreme Court Fellow. She was introduced by Chief Justice John Roberts. The Chief Justice

noted that the timing of the lecture was particularly apt as Professor Perry's talk on the Supreme Court and the Nomination Process came on Justice John Paul Stevens' 90th Birthday and just days after he announced his intent to retire at the end of the October 2009 Term. Professor Perry reframed the usual discussion of nominations to the Supreme Court and focused on attempts by past Supreme Court Justices to influence and suggest possible nominees to the Court to the President of the United States. This lecture was also recorded by C-SPAN and



Chief Justice Roberts introduced Dr. Barbara Perry's lecture on April 20.



The colloquy on theories of Constitutional interpretation between Justices Stephen G. Breyer (left) and Antonin Scalia (right) was moderated by James Duff (center.)

a link to it can be found at the Society's website.

The third lecture took place on April 27th. Professor John V. Orth of the University of North Carolina School of Law spoke on the Supreme Court and the Eleventh Amendment. Professor Orth took the audience back to the time of the early 19th century, placing the Eleventh Amendment in historical context. He was introduced by Justice Clarence Thomas.

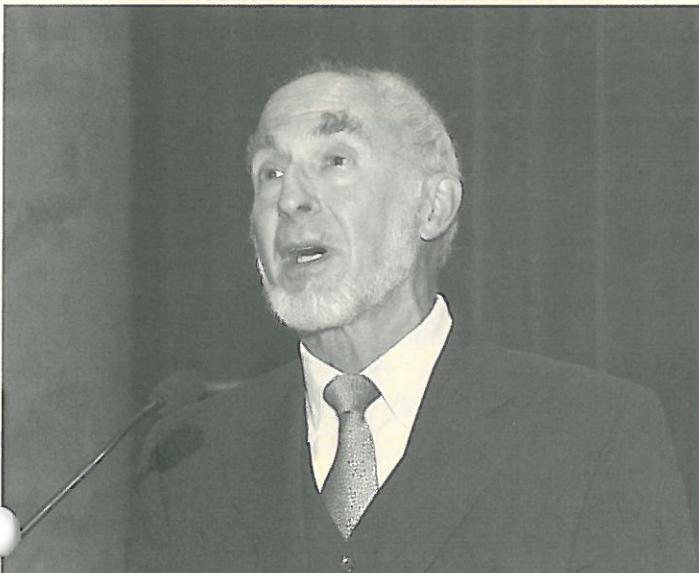
The fourth and final lecture of the series was given on May 11th by Dean Larry Kramer of Stanford University Law School. Dean Kramer addressed the landmark case of *Marbury v. Madison*. Taking something of a contrarian view, Dean Kramer indicated that the initial legal reaction to the case did not stress its importance as a precedent for judicial review. The Society was honored to have Justice Sonia Sotomayor introduce Dean Kramer, marking the first time she has participated in a Society program.

Each lecture will be published in a future issue of the *Journal of Supreme Court History*. Topics and speakers for

the 2011 Silverman Lecture series are currently in development and will be announced soon. Programs will take place in the first half of 2011. The central theme of the series will focus on the litigants and circumstances behind the Court's most significant religion cases.



Dean Larry Kramer of Stanford discussed his interpretation of the significance of *Marbury v. Madison*.



Professor John V. Orth discussed the 11th Amendment in the historical context of the 19th century.

The Supreme Court Historical Society

Quarterly

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35TH ANNUAL MEETING CELEBRATED ON JUNE 7, 2010



The Honorable Judith S. Kaye, Retired Chief Judge of the Courts of the State of New York, delivered the 2010 Annual Lecture.

On June 7, 2010, the Society marked its 35th Annual Meeting with the customary program of events. Society President Ralph I. Lancaster, Jr. presided over the day's activities which began with the Annual Lecture by Judith S. Kaye, former Chief Judge of the Courts of the State of New York. Mr. Lancaster gave a short biographical sketch of Judge Kaye's educational background and distinguished career. After receiving a B.A. from Barnard College, she first worked in the field of journalism. She later attended New York University School of Law, graduating *cum laude*. Following graduation she entered private practice with the firm of Sullivan and Cromwell. Subsequently she became the first woman partner at another of the city's prestigious firms, Olwine, Connelly, Chase, O'Donnell & Weyher.

Mr. Lancaster observed that this was the first time Judge Kaye had lectured to the Society, but was not the first time that she had participated in a Society program. Indeed, she was both a participant and a moving force in organizing a very successful lecture given by Prof. Jill Norgren in New York City. Titled *Ladies of Legend in the Law*, the talk explored the experiences of many women pioneers in the law through the prism of Belva Lockwood, the first woman admitted to the Supreme Court Bar. Chief Judge Kaye had co-hosted this event with Justice Ginsburg and their reminiscences as pioneers in various aspects of their own careers created a compelling and fitting introduction. This cooperative venture of the Supreme Court Historical Society and the Historical Society for the Courts of the State of New York was so successful that plans are now being developed for a future series of joint programs.

Judge Kaye's subject for the 35th Annual Lecture reflected her life-long interest in and commitment to improving justice for children. In her talk, "*The Supreme Court and Justice for Children*" she traced the evolving attitudes toward children's rights as reflected in Supreme Court jurisprudence. In a con-

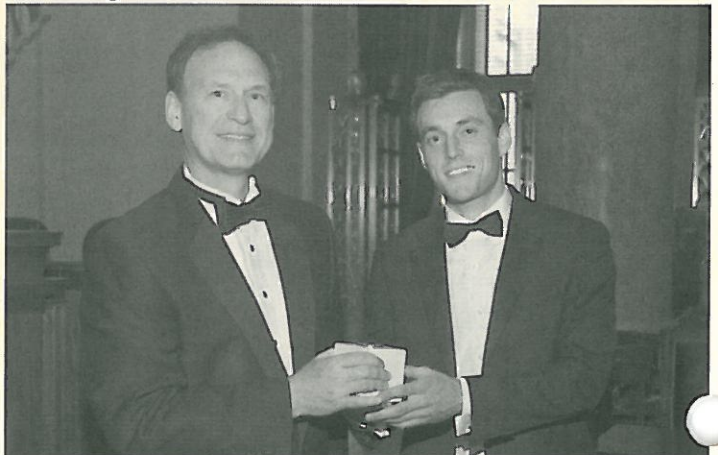
versation about her topic, she commented that in many ways the decisions of the Court toward children and youth paralleled the treatment of women in Supreme Court jurisprudence. These decisions changed in time from a custodial and paternalistic attitude to one that reflected equal standing before the Courts. The selection of this topic came after careful study of subjects covered in previous Annual Lectures, but reflected her passion for justice for children and young people. Judge Kaye has long chaired a Commission in New York dedicated to these goals. The complete text of her lecture will appear in a future issue of the *Journal of Supreme Court History*.

Following the lecture, members and guests toured the Supreme Court Building under the direction of guides provided by the Office of the Curator of the Court. Special thanks goes to Curator Catherine Fitts, and Tour Director Gwen Fernandez, for their efforts in providing this opportunity to travel "behind the scenes," to see spaces not open to the public, and to hear some of the history of the building.

Business meetings were convened at 6 PM that evening, commencing with the Annual Meeting of the General Membership of the Society. These meetings took place in the Supreme Court Chamber with Mr. Lancaster presiding. He gave a recap of some of the most significant accomplishments of fiscal year 2010.

The Executive Committee moved decisively to preserve the Society's financial equilibrium in response to the economic concerns. This was accomplished by looking to the Society's core constituency of members and Trustees for support. Gifts to the Annual Fund provided much needed funding. In addition, Jerry Solovy, Chair of the Development Committee, worked to recruit Trustees who would provide new leadership and financial support to the Society. Funding was requested from foundations and organizations to support important educational programming needs. Supplementing that work, Membership Committee Chair Philip Kessler labored to create a network of state chairs who worked to increase the membership base, thereby strengthening the financial underpinnings of the Society.

Program Committee members under the direction of



Justice Alito presented a Hughes Gossett Literary Prize to Connor Mullin (right) for his article about Edward Bennett Williams.

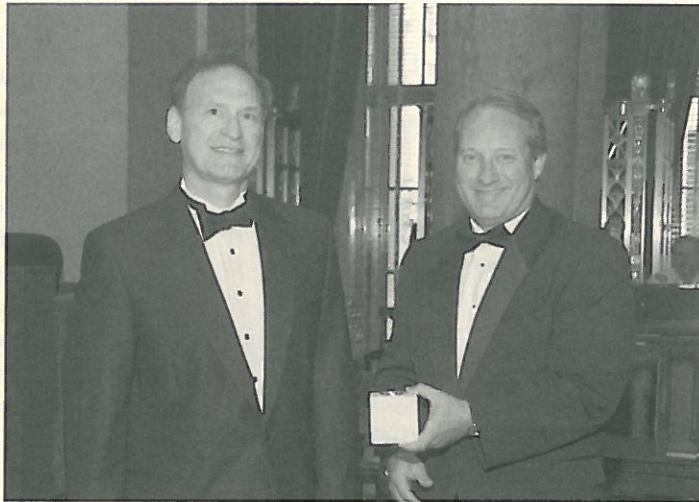


Hilarie Bass was recognized for her support of the Society.

Kenneth Geller developed stimulating and thought-provoking programs that contribute to the scholarship on the history of the Court. These programs included the seventeenth consecutive year of the highly respected Leon Silverman Lecture Series. The Frank C. Jones Reenactment is a newer but also very important service to members and students of the Court and has been highly successful. The Society also continues to sponsor the Erwin Griswold Prize Lecture and the National Heritage Lecture (NHL) produced in conjunction with the White House Historical Association and the US Capitol Historical Society. This year the Society hosted a panel discussion of the role of the Solicitor General. Chaired by Mr. Geller, with former Solicitors General Paul Clement, Drew S. Days and Kenneth Starr serving as panelists. It was taped by C-Span and has subsequently been viewed by a large audience.

Three issues of the *Journal of Supreme Court History* and four issues of the *Quarterly* magazine were produced. The manuscript for a new publication, *Courtwatching* was completed. Publication is planned for 2011 and this book is aimed at a more general audience than previous publications of the Society.

The Acquisitions Committee led by Dorothy Goldman identifies artifacts and memorabilia pertinent to the history of the Court. This year several items for the collection were acquired including a portrait bust of Salmon P. Chase. Negotiations are underway for the possible acquisition of a new and hitherto unknown portrait of Justice John McLean, hopefully to be acquired in FY 2011.



Kelly Shackelford was recognized by Justice Alito for his support of the Society.

The Society also provides assistance to the Court for occasional and special needs at the Court. This year the Society continued support of the Supreme Court Fellows Program. Most of the funds utilized are generated from interest earnings on the endowment fund derived from sales of the John Marshall Commemorative Coin. Additional services include the payment of stipends for Judicial Interns in the Office of the Legal Counsel to the Chief Justice, and support of the special program, "Music in the Supreme Court."

Much of the Society's most effective and most personal outreach is achieved through educational programs, particularly those designed to assist secondary school teachers. The traditional Summer Institute, cosponsored with Street Law, provides teachers unparalleled training in Washington. Teachers are instructed and mentored by legal professionals and other educators to develop innovative and creative methods for teaching about the constitution, the Supreme Court and constitutional issues. Participants engage in moot court sessions, create lesson plans, and are presented with suggestions for other methodologies to utilize the materials effectively.

Resource persons for the Institute included officers and other staff members of the Supreme Court, attorneys specializing in practice before the Court, and other legal professionals with experience specific to the Supreme Court. These "resource persons" provide their time and expertise *pro bono* and create an experience for participants that could not be duplicated elsewhere. Because of budget constraints, only one out-of-town teaching training seminar was held. It was conducted in Atlanta where teachers received similar instruction

and training without the burden of travel and the associated expense.



Noreen Prettyman accepted an award on behalf of her husband, E. Barrett Prettyman, Jr., recognizing his long and dedicated service to the Supreme Court Historical Society.



Dean Ziehl is shown here receiving an award from Justice Alito at the Annual Meeting.

Of course, the economic condition of the Society has a direct bearing on our ability to conduct programs and activities. Gifts to the Annual Fund and other forms of giving by individual members, members of the Board of Trustees, foundations and other organizations, were also affected adversely. Thankfully, many of the Society's long-time loyal supporters continued to support the Society, providing essential funding for program activities.

Special mention should be made of the completion of the Gift Shop under the direction of Vincent C. Burke III and his committee. This beautiful space was created not only to be functional in serving the needs of the hundreds of thousands of visitors to the building each year, but also to be a fitting architectural addition to the building. The shop complements the existing décor, and utilizes design elements and materials used throughout the building.

At the conclusion of his report, Mr. Lancaster introduced Gregory Joseph, Secretary of the Society and chair of the Nominating Committee to present candidates for election. The Nominating Committee was comprised of Mr. Joseph joined by Jerry Solovy and Philip Kessler. After consideration, the members of the Committee selected a slate of candidates. Mr. Joseph presented the names of those nominated to serve an additional three-year term as a member of the Board of Trustees: **J. Bruce Alverson, David Beck, Leonora Burger, Michael Cooper, James Goldman, Benjamin Heineman, A.E. Dick Howard, Philip A. Lacovara, Ralph I. Lancaster, Jr., Teri McClure, Thomas Monaghan, Lucas Morel, Charles Morgan, Brian O'Neill, Carter Phillips, Leon Polsky, Steven Shapiro, Mathew Staver, Mrs. Potter Stewart, Cathleen Douglas Stone, Mikel Stout, Larry Thompson, Seth P. Waxman and W. Foster Wollen.**

All were elected unanimously.

Following that election, Mr. Joseph presented nominations for election to an initial three-year term of service on the Board of Trustees of the Society. Those nominated were: **Hilarie Bass, Evan Chesler, Stephen Cozen, Brackett Denniston, Ted Mirvis, Steven Molo, Gary Naftalis, Ron Olson, Barry Ostrager, Stephen Susman, Anton R. Valukas, and Dean Ziehl.**

All candidates were elected by unanimous vote.

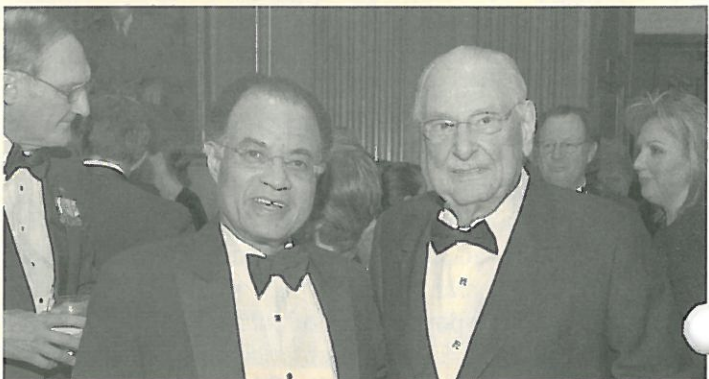
The Committee further nominated **George Adams** as Trustee Emeritus in honor of his long and loyal service to the Society. He was elected by unanimous vote.

President Lancaster concluded the Annual Meeting of the General Membership and yielded the podium to Leon Silverman, Chairman of the Board of Trustees who convened the Annual Meeting of the Board of Trustees. Referencing Mr. Lancaster's report on the status of the Society, Mr. Silverman said he would not reiterate the achievements of the year, but would instead move to the proposed revision of the By-Laws of the Society. Robert Juceam, our legal counsel, spent countless hours working with Messrs. Lancaster and Pride to update the By-Laws so as to conform with the requirements mandated by recent regulatory changes. This proposed revision has been reviewed and discussed at length at a meeting of the Executive Committee. That body voted unanimously to endorse the proposal with minor changes. Previously, members of the Board had been provided a copy of the proposed By-Laws for review with an opportunity to raise questions or make suggestions. No recommendations for changes were made. Mr. Silverman called for questions or discussion from the Trustees present at the meeting. None was brought forward. The motion to amend the By-Laws was carried unanimously.

The next order of business was the election of officers of the Society. Mr. Silverman asked Mr. Joseph to present that slate of candidates. The following individuals were nominated to fill positions as officers of the Society. Each was nominated to a three-year term as indicated: **Jerome Libin** to a three-year term as Vice President, and **E. Barrett Prettyman, Jr.** as Vice President Emeritus. Both were elected by unanimous consent.

In addition, nominations were made for a one-year At-Large Term on the Executive Committee: **Charles Cooper, Kenneth S. Geller, Philip Kessler, Maureen Mahoney, Teri McClure, James Morris, John Nannes, Theodore Olson, Leon Polsky, Richard Schneider, Nicole Seligman, Larry Thompson, and Seth P. Waxman.** All were elected by unanimous vote.

As the adoption of the amended By-Laws and the election of officers completed the work of the Board of Trustees, that meeting was adjourned. Mr. Lancaster returned to the podium to conduct an awards ceremony honoring those who have



Society Trustee Drew S. Days (left) visits with Dwight D. Opperman, Chairman Emeritus of the Board of Trustees during the reception.

made major contributions to the work of the Society. Chief Justice John G. Roberts assisted in making presentations to the honorees. The first awards presented were the annual Hughes-Gossett Literary Prizes for outstanding articles published in the *Journal* during the year. The first honors the outstanding article authored by an individual who was a student at the time the article was written. The 2010 Student Prize was awarded to Connor Mullin for his article titled "*Edward Bennett Williams for the Petitioner: Profile of a Supreme Court Advocate.*" The prize for the academic division was awarded to Professor Christopher Waldrep, the Jamie and Phyllis Pasker Professor of History at San Francisco State University for his article, "*Joseph P. Bradley's Journey: The Meaning of Privileges and Immunity.*" Unfortunately, Prof. Waldrep was unable to attend, but his achievement was recognized.

The next awards were for achievement in the national membership campaign under the direction of **Philip Kessler** of Michigan. For the past two years Mr. Kessler has been pushing to expand the Society's membership base during a period when few are willing to undertake new charitable causes. Despite these circumstances, he has proven himself able to motivate the State Chairs to achieve, and twenty-two have met or exceeded their recruiting goals with almost a full month remaining in the fiscal year. Mr. Kessler assumed the podium to introduce successful State Chairs for recognition. He noted that a number of successful chairs had been recognized in April, when Justice Scalia hosted a dinner and made presentations. Six additional chairs were present on June 7 to receive awards. He then asked the Chief Justice to help with those presentations. Those recognized were: **J. Bruce Alverson**, Nevada; **Robert Anello**, New York; **Lewis April**,



Ted Mirvis (right) received recognition for his support of the Society.

New Jersey; **Frank Daily**, Wisconsin; **Thomas Klitgaard**, California, and **Richard (Doc) Schneider** of Georgia. Mr. Kessler observed that several other chairs were well positioned to meet or exceed their goals by June 30, and thanked all of the chairs for their work on behalf of the Society.

Following those presentations, Mr. Lancaster resumed the podium to recognize some of the Society's most generous contributors. A number of these donors made personal and/or foundation gifts, while others represented corporations and law firms. The Chief Justice presented these awards. Those recognized were:



President Ralph I. Lancaster, Jr. welcomes guests to the Annual Dinner. Seated at the table are (left to right) Chief Judge Judith S. Kaye, Retired, Chief Justice Roberts and Mrs. Julie Opperman.

J. Bruce Alverson of Alverson, Taylor Mortensen; **Hilarie Bass** of Greenberg Traurig; **Vincent C. Burke III**—Clark-

Winchcole Foundation; **Greg Gallopoulos** of General Dynamics Corporation; **Dorothy Goldman**; **Frank C. Jones**, **Gregory Joseph** of Gregory P. Joseph Law Offices; **Robert Juceam** of Fried Frank Harris Shriver & Jacobson; **Robert Lonergan**; **Joan Lukey**; **Ted Mirvis** of Wachtell Lipton; **Michael Mone** of Esdaile Barrett & Esdaile; **Dwight D. Opperman**; **James Quinn**; **Kelly Shackelford**, Liberty Institute; **Leon Silverman**; **Mathew Staver** of Liberty University School of Law; **Anthony R. Valukas** of Jenner & Block; **Foster Wollen** and **Dean Ziehl** of Pachulski Stang Ziehl & Jones.

The concluding piece of business was the presentation of an award for an individual who has done great service since 1982 when he first joined the Board. E. Barrett Prettyman's history with the Court is extensive. He clerked for three Justices, Robert Jackson, Felix Frankfurter and John Marshall Harlan, II and has argued nineteen cases before the Court. Now, at the age of 85, he has chosen to be elevated to the status of Emeritus in recognition of that long and generous



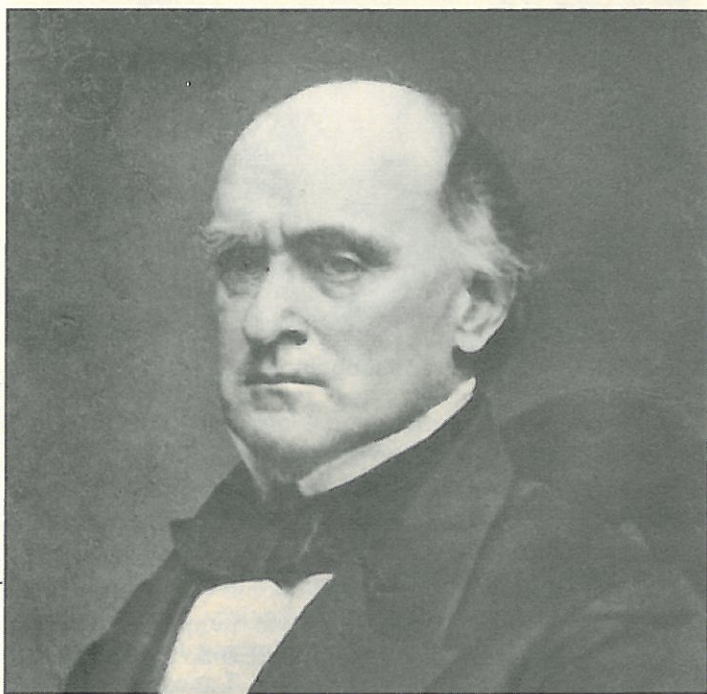
Trustee Gregory Gallopoulos was recognized by Justice Alito for his contributions to the Society.

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FIFTH CIRCUIT JUSTICE JOHN A. CAMPBELL TAKES ON THE "FILIBUSTERS" ON THE GULF COAST 150 YEARS AGO

By David A. Bagwell*

Curator of the Supreme Court of the United States



John Archibald Campbell was appointed to the Supreme Court in 1853 from his adopted state of Alabama. His Circuit duties brought him back to the area frequently.

Editors Note: A longer version of this article was originally published in the 5th Circuit Historical Society's magazine. The article will appear in two parts, and the second part will be printed in the next issue of the Quarterly magazine. Accompanying end notes will be posted on the Society's web site along with the pertinent copy.

Justice Clarence Thomas is the most recent of many native Southerners who have served as Circuit Justice for what is now the 5th Circuit. But back in the late 1850s, the Circuit Justice—Mobile's own John Archibald Campbell—came down from Washington, and in New Orleans and in his own city of Mobile, waded into the "Filibuster" movement and convened grand juries, set bonds and tried criminal jury cases. In an earlier day of Supreme Court history Justices regularly heard cases at the trial level within their own circuits. That practice faded out during the latter part of the 19th century and finally was ended by legislation right before the beginning of the 20th.

The word "Filibuster" sprang from foreign Dutch and Spanish roots into the English tongue so suddenly in about 1851 that magazines took special note of it. In the 1850s a "Filibuster" was either a private soldier of fortune—or his private army or its leader, or all of these things—who or which engaged in expeditions to take other small countries, mostly Hispanic countries in the Caribbean or in Central America. Only later, after the Civil War, did the word "Filibuster" jump into the legislative halls, where most of us probably think of Senators and Civil Rights bills. Filibustering was a romantic thing to the deep South, and part of the motivation was to

find some new slave states; the admission of California to the Union without a balancing slave state had really unnerved the Southerners.

But as we will see, Filibustering in its earlier meaning was and still is a Federal Crime, and no one was more active in trying to stamp out Filibusters than Mobile's own U.S. Supreme Court Justice John Archibald Campbell. An early "judicial activist" in the view of antebellum Mobilians, Campbell hounded the Filibusters with local grand jury investigations and indictments and "the peace bond", even driving Mississippi's Governor Quitman out of office as a result.

Campbell was Mobile's only U.S. Supreme Court Justice, serving between 1853-1861, when he resigned upon Alabama's secession, on the theory that he was no longer a U.S. citizen.

Campbell was born in 1811 and had been admitted to the Georgia bar at age 19 in 1830, but moved to Montgomery, Alabama where he married a well-connected Montgomery girl named Goldthwaite, who had two brothers on the Alabama Supreme Court. There in Montgomery, Campbell was elected to the legislature, and at the behest of a then-ill Governor Clement Clay, helped bring to a bloodless end a final Creek Indian "uprising" near Montgomery. He had a sterling political and legal career ahead of him. He was twice offered, but twice refused, a seat on the Alabama Supreme Court.

Campbell saw that there was more wealth and more legal work in Mobile than in Montgomery, because valuable lands had serious title problems resulting from the France-to-Britain-to-Spain to U.S. changes, piled on top of marriage and legitimacy uncertainties, and he moved to Mobile, commencing a legal career that made him a rich man. He was brilliant but boring; he read the Bible twice through every year, he talked to himself and gestured while walking down the street, evidently practicing his oral arguments, and he was never known to tell a joke. Campbell developed an extensive U.S. Supreme Court practice out of Mobile, arguing six cases there in the 1851-52 term alone [can you imagine that, in days without decent transportation?]. In some of his lawsuits over old land he invented and convinced the Supreme Court of the validity of "The Original Footing Doctrine."⁴ He built a summer house at Point Clear on Mobile Bay which is still there, not far below the Grand Hotel. His practice mostly involved disputes over the ownership of old land with French and Spanish Colonial roots, occasioned by irregular or non-existent marriages; let's just say a kind of a domestic relations practice in the U.S. Supreme Court. He argued⁵ the validity of the civil non-priestly marriage of Joseph Collins⁶ under Spanish law notwithstanding the Council of Trent's insistence marriages be performed by priests [still considered an important U.S. landmark on religious freedom]. He argued the remarkable claim of Myra Clark Gaines⁷ to almost all of what is currently downtown New Orleans, based on her claim that she was the child of a secret marriage between a beautiful Creole woman

and the most powerful man in New Orleans, who had mysterious ties to Aaron Burr. Campbell's arguments over several days in the *Gaines* case were so good—five of the Justices said they were the best they had ever heard—that when Justice McKinley died in 1852, all the other Justices together called on President Franklin Pierce to ask him to appoint Campbell to the Supreme Court. Pierce did that in 1853.

Serious antebellum Filibusters started with three efforts by the Cuban exile Narciso Lopez and a mixed group of Americans and Cubans who used Round Island in the Mississippi Sound as a staging ground for his first Filibuster. Lopez' Filibuster efforts out of Round Island, and others in 1850 and 1851, captured the imagination of Southerners until he was executed in Cuba along with some of his well-connected American supporters. Cubans still remember his Filibusters, and oddly, Lopez' Filibuster flag is still the flag of Castro's Cuba today.

Although many antebellum Southerners came to love their Filibusters, Filibustering was a federal crime. Almost from the beginning our country has had some version of "The Neutrality Act", which forbids private citizens from making private war upon countries with which our government is at peace. The national government repeatedly tried to stamp out Filibusters, with some limited success.

Indeed, The Neutrality Act had a noble lineage. Chief Justice Melville Fuller wrote in 1897⁸ that the original Neutrality Act of 1794 had a strong provenance, in that it "was a remarkable advance in the development of international law, was recommended to Congress by President Washington in his annual address on December 3, 1793; was drawn up by Hamilton; and passed the Senate by the vote of Vice President Adams".⁹ The statute had been amended in 1817 and 1818 to strengthen it, but not between 1818 and the Civil War. The Neutrality Act provided as follows:

Every person who, within the limits of the United States, fits out and arms, or attempts



Campbell argued the landmark case of Myra Clark Gaines (above), earning high praise from the Justices for his performance.

to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out or arming, of any vessel with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district or people, to cruise or commit hostilities against the subjects, citizens or property of any foreign prince or state, or of any colony, district or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, her tackle, apparel and furniture, together with all materials, arms, ammunition and stores, which may have been procured for the building and equipment thereof, shall be forfeited; one half to the use of the informer, and the other half to the use of the United States.

The major Filibuster of all time was William Walker, the so-called "Gray-Eyed Man of Destiny", subject of the 1987 film "Walker". Walker was a Nashville native who received a medical degree from the University of Pennsylvania. Then to his parents' understandable horror, added a law degree, then edited a New Orleans paper one of whose writers was Walt Whitman, then practiced law and edited a newspaper in Northern California, then led a failed effort to take Baja California. During the late 1850s Walker led three Filibustering expeditions in which amazingly he was elected president of Nicaragua where he made English the official language and re-instituted slavery. Those two mistakes—English and slaves—weren't as fatal to him as siding with Commodore Vanderbilt's business partners in cheating the Commodore out of his trans-isthmian railroad business, causing the Commodore to write his now-legendary letter saying forthrightly: "Gentlemen: You have cheated me. I will not sue you, for the courts are too slow. Instead, I will ruin you".¹⁰ Ruin them the Commodore did, and ruined Walker in passing.¹¹

Commodore Vanderbilt's private Army turned Walker over to the U.S. Navy, which brought him to the Department of State in Washington. Subsequently, President Buchanan issued a proclamation stating that this was not the Executive Branch's problem, but rather a problem for the Judicial branch.

The Judicial branch? Justice John A. Campbell was ready to do his duty as he saw it. Justice Campbell went to New Orleans—then in the Fifth Circuit with Alabama, and sitting as Circuit Justice, convened the Federal Grand Jury of the United States Circuit Court for the Eastern District of Louisiana, sitting in New Orleans, presiding himself. The Grand Jury indicted Walker for violation of The Neutrality Act of 1818, and Justice Campbell presided over his trial, a trial oddly shown in the movie *Walker*. The main defenses were that these countries were not countries at all, but instead

what today we would call “failed states”, and that it was not a military expedition. The handwritten jury charge of Justice Campbell in that case is in the National Archives in Austin, Texas¹². Although the local papers said Campbell had gone off the deep end in the jury charge, Campbell’s charge was generally in the mainstream of the law, as shown by Supreme Court decisions during the period, under which the Courts deferred entirely to the Executive Branch on the question whether the nation involved actually existed or not,¹³ and most of the charge dealt with the intent of the defendants and the nature of a military expedition.¹⁴

The jury acquitted Walker, but Justice Campbell was convinced that Walker was guilty, and Campbell—after the acquittal—put Walker under a substantial peace bond, which to the South seemed quite unfair in light of the acquittal. This action made Campbell even more unpopular in the South.

The most colorful of the Filibusters, almost forgotten now, was Campbell’s fellow Mobilian and nemesis, Harry Maury. The two were the yin and the yang of antebellum Mobile, and today we might say they made up a critical mass.

A tall and handsome lifelong bachelor and ladies’ man from a renowned Virginia and Tennessee family, Harry was in the Navy at age twenty at the amphibious landing at Vera Cruz. In the late 1840s and early 1850s Maury captained a small merchant ship out of Mobile. He passed the bar in 1852, but quickly became bored with law practice. With the collapse of the Whig Party in the 1850s, “the Country Club Republicans” had no party of their own, and drifted into “the American Party” or “the Know-Nothings”, an exotic party with secrecy and mystic grips and slogans like a Secret Society. The Know-Nothings made a clean sweep in Mobile city and county politics in 1854 and 1855 under Mayor Jones Withers, and Maury became Chief of Police or “Marshal”. The Know Nothings are thought of today as nativist and anti-Catholic but the Democrats accused them of being insufficiently pro-slavery, and as slavery trumped other issues, the Know-Nothings collapsed under the attack of the Democrats. Without a party or an office, Harry Maury, threw in with the

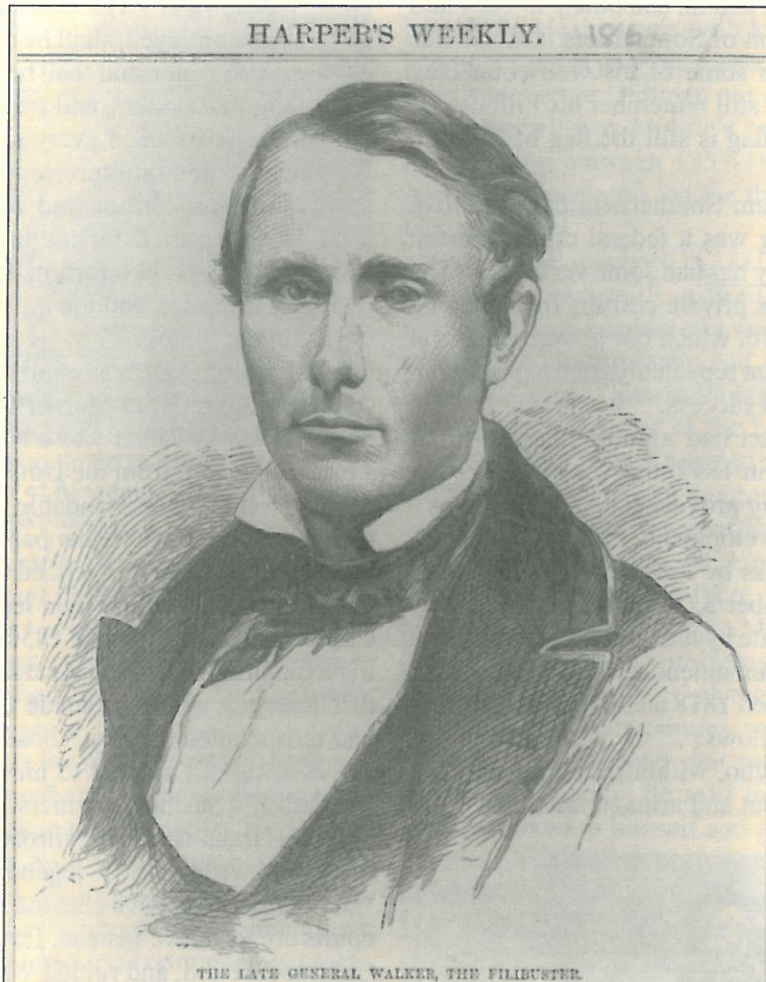
Filibusters.

Unfortunately for Justice Campbell, Maury had become the most popular man in Mobile in 1858 because of a famous duel¹⁵ he fought with a Frenchman, Baron Henri Guillaume Marie Arnous-Riviere. Mobile was too small for the egos of both Harry Maury and The Baron. Maury goaded the Baron—legend says supposedly calling him “Count No-Count and Barren of Intellect”—until in a local Coffee House Riviere challenged Maury to duel. As the recipient of the challenge, under what was called “The Code Duello,” Maury got to choose the weapons, and he picked the 1851 Colt Navy

Revolver with which he was expert, instead of the customary and gentlemanly smoothbore single-shot dueling pistols then in convention and which Riviere preferred. Maury’s kinsman Gen. Dabney Maury, C.S.A., later wrote that all of the men in Mobile wanted to “go see Harry shoot the Frenchman”. They went on a steamboat to Mississippi to duel in order to thwart the local Mobile authorities under whose laws dueling was a crime. The duel’s doctor—all duels had at least one doctor—was the nationally famous Dr. Josiah Nott, Tulane professor of Medicine¹⁶, famous nationally for his writings and speeches that Negroes and whites were descended from separate ancestors rather than a common ancestor, based on extensive cranial measurement of all races.

In the duel both Harry and “the Frenchman” got off a shot. The Baron

missed but Harry’s shot hit the chest of Riviere, apparently hitting a \$20 gold piece in his vest pocket, prompting a charge that the Baron wore “a chain mail shirt”. It was customary in such cases of missed shots that the duelists considered the wrong to be avenged with no need for blood, and quit the field, but both Harry and the Frenchman wanted another chance. In the second round Harry got off his shot first and hit the Baron in the jaw. Riviere did not die and was taken to the home of Mobile lawyer Frederick Blount and his wife Emily James Blount and their young daughter Emily. During recuperation apparently both mother and daughter fell for the Frenchman and shortly both decamped with him to New



Filibuster William Walker invaded Nicaragua, and was eventually elected President of the country.

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Orleans and then Havana, there to tranship for New York and on to Paris for nuptials, with one or the other or both of the women, with papa lawyer Frederick Blount always one ship behind, a day late and a Baronetcy short. During the summer of 1858 *The New York Times* often included a story about the lawyer father's attempt to recover his wife and daughter from De Riviere.

**David Bagwell lives in Point Clear, Alabama on Mobile Bay and is a solo practitioner in Fairhope, AL. specializing in antitrust law.*

The conclusion of this article will appear in the next issue of the Quarterly

CAPTAIN DE RIVIERE.—Captain DE RIVIERE remained yesterday at the Hotel Napoleon, in Hoboken—not once showing himself outside its door. Mrs. Blount remains there, also ; but both she and the proprietor of the house deny that Miss Blount is there.

Mrs. Blount yesterday morning said to a visitor, "Do you think that I would have left friends to whom I am dearly attached, and taken the step that I have, were it not for the advancement of my daughter, to make her a noble lady of France?"—a remark pretty clearly indicating the vein of her mental malady.

This extract from an article published in *The New York Times* during the summer of 1858 reports on the status in the De Riviere/Blount family saga.

ROBERT JUCEAM HONORED FOR LIFETIME ACHIEVEMENT



Robert Juceam, Society Trustee and Legal Counsel to the Society, was honored in September as a 2010 Lifetime Achiever by the *American Lawyer* for his "extraordinary commitment to meet the legal needs of the less fortunate in dire circumstances." He was one of eight lawyers chosen by the magazine for recognition in 2010. The award recognizes his accomplishments in "exemplary public service and outstanding professional success."

Colleagues laud Juceam not only for his professional competence, but also for his engaging and warm personality. He has been described by associates as "a treasure," "a sensational human being" and "a force of nature." Juceam started practicing law at Fried Frank Shriver Harris & Jacobson in 1966. Although his practice has centered on commercial

litigation, he has devoted a great deal of time and effort to immigration law—almost always, on a *pro bono* basis. In the mid 1980's, he challenged the US government's efforts to intercept Haitian refugees at sea to keep them out of the country. He worked with the American Bar Association to recruit lawyers for roughly 2,000 Haitians detained by the government at Guantanamo and other remote locations. It was then one of the largest single projects ever undertaken by the ABA.

He has been recognized for his outstanding service before, receiving three important awards in 1992: the ABA Pro Bono Publica Award, the Center for Human Rights and Constitutional Law Lifetime Achievement Award, and the American Immigration Lawyers Association's Pro Bono Award. Although immigration law has claimed a great deal of his time and attention, he has participated in other areas of pro bono work including the area of Mental Health, serving on boards of organizations dedicated to improving legal access for mental patients, as well as representing individual patients.

Of course, his service to the Society ranks paramount to its members. He has served as legal counsel to the Society for more than fifteen years. In that role he reviews and finalizes all contracts and agreements, and is responsible for regular reviews of insurance coverage. But his assistance has been utilized in many other matters as circumstances have required. For example, he recently completed an extensive and comprehensive revision of the Society's By-Laws. We express gratitude to him for his tremendous dedication and support over the years.

Although he is technically "retired" from practice, he has not shown any signs of slowing down significantly, and thankfully has continued to assist the Society with our legal needs. We commend and salute Mr. Juceam for this well-deserved recognition.

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 Robert H. Watson Jr., Knoxville
 Robert F. Worthington Jr., Knoxville

TEXAS

Anna C. Armstrong, San Antonio
 Charles L. Babcock, Houston
 David H. Berg, Houston
 Adam David Bernhard, Houston
 Robert Binstock, Houston
 Elizabeth Nicolle Boydston, Dallas
 Scott William Brown, Houston
 Robert Bernard Bruner, Houston
 Brandon Thomas Byrne, Dallas
 Andrew Francis Carter, Dallas
 Rueben Casarez, Houston
 Thomas Christopher Cecil, Dallas
 Alexander Nicholas Clark, Dallas
 Edwin Cook, Waco
 Anuj Dilip Dhar, Austin

Paul Francis, Arlington
 Elizabeth Ann Franco, Dallas
 Bryan A. Garner, Dallas
 R. James George Jr., Austin
 Julie Hershenberg, Carrollton
 Vincent R. Johnson, San Antonio
 Sheila Christine Kadura, Austin
 Sumera Ismail Khan, Houston
 Travis Paul King, Houston
 David Kohtz, Austin
 Lynne Liberato, Houston
 William Andres Liddell, Austin
 Tyler Hancock Lipp, Dallas
 Cristina Codini Longoria, Austin
 Roger L. Mandel, Dallas
 Steven lee Moglovkin, Dallas
 Vynessa Mari Nemunaitis, Dallas
 Alex Michael Niebruegge, Houston
 Brandy S. Nolan, Dallas
 Shelley Ann Pickering, Houston
 Joshua Pleitz, Dallas
 Daniel A. Prati, Austin
 Kevin Michael Richardson, Houston
 Kadian Roberts, Houston
 Rebecca Lynn Stout, Houston
 Derek Taylor, Dallas
 Brian Patrick Teaff, Houston
 Peter Tipps, Houston
 Damaso Torres, San Antonio
 Carey Reinhardt Troell, San Antonio
 Janine Turner, Colleyville
 Christopher Mark Weimer, Austin
 Rachel Louise Williams, Dallas
 Zhusong Yang, Houston

UTAH

James C. Bradshaw, Salt Lake City
 Carolyn Morris, Cedar Hills

VERMONT

Matthew J. Neckers, Eden

VIRGIN ISLANDS

Raymond L. Finch, St. Croix

VIRGINIA

Joanne Alexander, Vienna
 Pamela Barron, Fairfax Station
 Steven Beckham, McLean
 Jared Birkholtz, Chesapeake
 Jonathan T. Blank, Charlottesville
 Paulette Burton, Fredericksburg
 Miranda Dunning, Virginia Beach
 Bob Feidler, Alexandria
 George Clemon Freeman Jr., Richmond
 Lisa Gibson, Portsmouth
 Kenneth Gideon, McLean
 John Jasik, Alexandria
 Sara K. McGregor, Alexandria
 Philip B. Morris, Richmond
 Karen A. Neumeister, Charlottesville
 David Plaza, Fairfax
 Frances Way Schafer, Alexandria

Cynthia Shoberg, Burke
 Anthony Yang, Arlington

WASHINGTON

Michael J. Adams, Firecrest
 Julie Antifave, Spokane
 John H. Colgren, Prosser
 Gordon Crandall, Seattle
 Carolyn Elsey, Tacoma
 Ana Gutierrez, Spokane
 Wes Scott Larsen, Spokane Valley
 Brad J. Moore, Seattle
 Pam Peters, Spokane
 Jim Peterson, Vancouver
 Katie Sinclair, Spokane
 Leonid Tsiprin, Bellevue
 Robert D. Welden, Seattle

WEST VIRGINIA

Shannon M. Bland, Charleston
 Mark W. Browning, Charleston
 Harry Deitzler, Charleston
 James F. Humphreys, Charleston
 Mimi Imbrogno, Charleston
 Anthony Majestro, Charleston
 Deborah L. McHenry, Charleston
 Lincoln Spears, Charleston
 Timothy Spears, Charleston

WISCONSIN

Briana Barron, Milwaukee
 Josh Cannon, Oak Creek
 Lora Chupita, Milwaukee
 William O. Daily, Madison
 Nathan Frank, Wauwatosa
 Brad Grell, Milwaukee
 Richard Hammes, Oshkosh
 Michael Rhett Holland, Wauwatosa
 Joseph Gordon Hylton, Milwaukee
 Gabe Johnson-Karp, Milwaukee
 Russell J. A. Jones, Wauwatosa
 Colette Kolstad, Green Bay
 Allison Luczak, Milwaukee
 Patricia D. McMahon, Wauwatosa
 Nancy Meiller, Baraboo
 Theresa Movroydis, Milwaukee
 Dotun Obadina, Milwaukee
 Ryan Parsons, Brookfield
 Stacie Ringelstetter, Waukesha
 Paul Shirk, Waukesha
 Donald Tripp Stroud, Milwaukee
 Matt Westphal, Milwaukee

WYOMING

Jeffrey C. Brinkerhoff, Casper
 David Park, Casper

INTERNATIONAL

CANADA

Paul S. Miller, Toronto, Ontario

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edited by Clare Cushman, utilizes letters, journals, diaries and anecdotal materials to provide first-hand accounts of persons closely associated with the Supreme Court and its history. It will be published by Littlefield and Roman Publishers, which has a large and respected Supreme Court catalogue. The target date for publication is the first Monday in October 2011, to correlate with the opening of the Court's new term. The book marks our first entry into a more commercial aspect of the publishing market and we think it will be well received.

While there is much to be optimistic about, we are also realistic about the economic challenges still facing the country, and have been anxiously engaged in working to identify new sources of funding from corporations and foundations whose interests parallel those of the Society. In addition, we have attempted to increase our outreach by partnering with other historical organizations, such as the Mount Vernon Ladies Association, to present programs in different venues and to include an expanded audience.

But we still need your help. As the end of the calendar year approaches, I hope you will consider making a contribution to the Annual Fund to support our efforts. Your tax-deductible contribution in any amount will help move the work forward. I am grateful to each of you for your support and enthusiasm and solicit your ideas and suggestions. Our members are among our greatest assets.

Ralph Lancaster

Annual Meeting—continued from page 7

service to the Society and the Court. Illness prevented him from attending that evening to accept the award in person, so his wife, Noreen Prettyman, accepted the award for him.

At the conclusion of the awards presentation, the meeting was adjourned and guests gathered in the East and West Conference Rooms for the reception. Dinner followed in the Great Hall of the Court. Mr. Lancaster welcomed those present and called upon the Chief Justice who offered a toast to the President of the United States, prior to dinner service.

Following dinner, Annual Meeting Chair Maureen Mahoney thanked the participants, acknowledging with gratitude the sponsorship of Chief Justice Roberts and the assistance of Marshal Pamela Talkin and the members of her staff. She then introduced a choral concert provided by the Sons of Liberty conducted by Kerry Wilkerson. This chorus is comprised of past and present members of the nation's military choruses. They have performed for functions at the Department of State, the Supreme Court and for corporate events and community concerts. They have established and maintained a reputation for excellence in the performance of male choral literature. Beyond the traditional patriotic numbers, their repertoire covers a broad spectrum, including pop, Broadway, folk and classical music.

At the conclusion of the performance, Ms Mahoney offered thanks to all who had participated and assisted in making the evening a success, offering a special thanks to the Sons of Liberty for the wonderful musical program. She then declared the meeting adjourned until June 2011.