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2011 Leon Silverman Lectures

The Leon Silverman Lecture Series for 2011 had as its theme: “The People Behind the Supreme Court’s Religion Cases.” As most members may know, these annual lectures are named in honor of the Society’s present Chairman. Mr. Silverman was president when the first lectures began in 1993 and the series was subsequently named for him in recognition of his service to the Society. Distinguished academic scholars are invited from universities across the United States to address the audience.

Earlier presentations had focused on a variety of unifying themes: individual Justices from the past, major cases, recurring issues, or eras of particular importance.

This year’s lectures approached four major cases involving religion from an unusual point of view—the litigants themselves. There was a special poignancy to be found in the fact that three of these four cases had been argued in the very room where the scholars now spoke.

On March 16, 2011 Associate Justice Samuel Alito introduced Shawn Francis Peters of the University of Wisconsin-Madison. Professor Peters told the story of Jonas Yoder, an Amish father whose refusal to send his children to high school violated Wisconsin’s compulsory school attendance law. When the state brought charges against Yoder, he argued that attendance would violate his religious beliefs. In 1972 the Court agreed with Yoder in a 6-1 vote. Chief Justice Warren Burger, writing for the Court, argued that the special circumstances of the Amish community, on balance, did not violate the purposes of the Wisconsin law. Professor Peters brought a special insight into the case since he has specialized in religious jurisprudence and has authored a

book on the Yoder case.

The second lecture was given April 28th by Sarah Barringer Gordon of the University of Pennsylvania Law School. Justice Ruth Bader Ginsburg introduced Professor Gordon. The subject was George Reynolds, chief litigant

in an 1878 case arising out of the efforts of the federal government to curb the then-prevalent practice of polygamy in the Mormon community. Reynolds, a secretary to Brigham Young, was chosen by the Church’s leadership to test the validity and constitutionality of anti-Mormon legislation. Chief Justice Morrison R. Waite spoke for a unanimous Court in finding for the constitutionality of the federal legislation. Waite’s opinion held that the protections of the First Amendment

did not extend to practices considered to be contrary to the public interest.

Chief Justice John G. Roberts, Jr. introduced Richard Garnett, Associate Dean and Professor of Law, University of Notre Dame Law School, on May 5th. Professor Garnett told the story of John Kedroff, a Russian Orthodox Bishop, the appellant in *Kedroff vs. Saint Nicholas Cathedral*. This 1952 case involved complex issues of church ownership of property and other issues of religious discipline. Legislation by the state of New York was in apparent contradiction of the settled canon law of the Church. In a 6-1 opinion, Justice Stanley Reed held that the New York statute violated the First Amendment and that in issues of church polity, church law prevails.

Finally, on May 10th, Justice Anthony M. Kennedy introduced Douglas Laycock of the University of Virginia

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Shawn Francis Peters (left) gave the opening lecture in the series “The People Behind the Religion Cases.” He was introduced by Justice Samuel A. Alito, Jr.

Photos by Steve Petteway

A Letter from the President



Gregory P. Joseph

As the Society enters its 38th year, it is a vibrant institution, due to the solicitude of the Justices; the generosity of the Society's members and donors; and the prodigious efforts of its Trustees, Committees and leadership. Foremost among the last is my predecessor, Ralph I. Lancaster, Jr., to whom the Society owes a great debt for his tireless and impressive work as President. Ralph assumed the Presidency in June 2008 and guided the Society over the next three years through the most turbulent economic times that the country has experienced in more than a half century. Throughout it all, he maintained all of the Society's programs and publications intact; protected the extraordinary staff from layoffs; and oversaw construction of a handsome Gift Shop in the Supreme Court Building that fits seamlessly within the grand architecture of the building. Ralph is well known as a practitioner of the highest caliber. The respect in which he is held is evidenced by the fact that he has been appointed as a Special Master by the Supreme Court on three occasions—that is a signal honor. While we welcome Ralph as President Emeritus, we regret his departure as President.

The mission of the Society is to collect, preserve and disseminate the history of the Supreme Court of the United States. The Society accomplishes its mission primarily through educational programs, supporting historical research, publications, and by collecting antiques and artifacts related to the Court's history. Through the devoted efforts of the Society's members, supporters and staff, it is constantly focused on advancing these worthy goals.

Programs. In June 2011, the Society sponsored two Summer Institutes for Secondary School Teachers at the Court, together with co-sponsors Street Law and Georgetown University Law Center. Each Institute brought a group of high school teachers to Washington to study the Court first-hand. Chief Justice Roberts, who was one of the earliest presenters in the Institutes years before he joined the Court, hosted a closing reception for the first wave of teachers, and Justice Sotomayor hosted the closing reception for the second group of teachers. In the autumn, Justice Scalia will preside over the Society's Frank C. Jones Reenactment of *Texas v. White*, a claim by the Reconstruction government of Texas that United States bonds owned by Texas since 1850 were illegally sold by the Confederate state legislature during

the Civil War. Patricia Millett and David Beck, two prominent practitioners, will argue the case. The Program Committee, chaired by Ken Geller, has also selected the topic for the 2012 Leon Silverman Lecture Series — The Supreme Court and Property Rights — which will be delivered next spring. There will also be a program next spring celebrating the 30th Anniversary of Justice O'Connor's first term, and it will include on the panel every woman Justice ever to serve on the United States Supreme Court — Justice O'Connor, Justice Ginsburg, Justice Sotomayor and Justice Kagan.

Publications. The Publications Committee, chaired by Jim O'Hara, is active on several fronts in addition to overseeing the *Journal of Supreme Court History* and publication of this *Quarterly*. An interesting new book, *Courtwatchers: Eyewitness Accounts in Supreme Court History*, will be published this fall. Next spring, an updated edition of the popular *The Supreme Court Justices: Illustrated Biographies* will come off the presses. The Society has also agreed to work with the Federal Judicial Center on a history of the federal judiciary, a one-volume, narrative history of the federal judiciary, which will be the first of its kind and written for a general audience.

Acquisitions. The Acquisitions Committee, chaired by Dorothy Goldman, works closely with the Curator of the Supreme Court, Catherine Fitts, to identify and obtain items to enhance the Court's existing collection. This is an active Committee with a continuing acquisition program, recently culminating, for example, in the acquisition of a portrait of Justice John McLean that captures him during his 32-year tenure on the Court (1829-1861), filling a gap in the Court's collection. A distinguished portrait of Justice Anthony Kennedy, funded by the generous donations of his law clerks to the Society, was recently completed to uniform acclaim.

It is daunting, and humbling, to become President of the Society, and to follow in the footsteps of the the most recent presidents, all of whom were legendary figures at the bar, Leon Silverman, Frank C. Jones and Ralph I. Lancaster, Jr. While settling into this new role, I am constantly reminded of the incredible contributions that they and the other members have made. The Society has been the beneficiary not only of this leadership but perhaps more importantly of

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James B. O'Hara

the attentiveness of the Justices and outstanding service from Supreme Court advocates, scholars, and members who have given unstintingly of their time and talents to make meaningful and valuable contributions to the history of the Court.

While the primary purpose in this letter is informational, I cannot resist the opportunity to entreat you to continue your support of the Society. Without your participation, it is not possible for the Society to conduct its numerous activities and programs. We are cognizant that these are not the best of times for many. I encourage you to make con-

tributions in whatever amount and whenever your situation allows. Stop by the Gift Shop, in person or on line. Please forward any comments and suggestions you might have, so that we can ensure that the Society provides cogent programs and publications. As Ralph noted previously, the members are the life-blood of this organization. Thank you for your past support and your continuing participation.



Leon Silverman Lecture Series Continued from Page 1

School of Law. Professor Laycock told the fascinating story of Edward Schempp, defendant in the 1962 case: *Abingdon School District v. Schempp*. This was the famous “school prayer” case, and the Court voted 8-1 to forbid the long established public school practice of sponsoring Bible readings and the recitation of the Lord’s Prayer. The opinion of the Court was written by Justice Tom C. Clark. The Schempps—as a family, and at considerable financial and psychological

cost—had decided to challenge the custom, and now they felt vindicated. Despite great controversy at the time, the ruling later gained wide acceptance. Edward Schempp in later life became a teacher, and ironically, was voted into the Abingdon High School Hall of Fame, not for his part in the litigation, but for his scientific achievements.

Each lecture will be published in a future issue of the *Journal of Supreme Court History*. The topic for the 2012 series will be The Supreme Court and Property Rights.



Justice Ruth Bader Ginsburg hosted Sarah B. Gordon’s lecture on *Reynolds v. the United States*. Shown here following the program are, Justice Ginsburg, Professor Gordon and Ralph I. Lancaster.



Justice Anthony M. Kennedy introduced Professor Douglas Laycock (left) who discussed Edward Schempp in the closing lecture of 2011 Silverman Lecture Series.



Chief Justice Roberts introduced Professor Richard Garnett’s (left) talk about John Kedroff, litigant in *Kedroff v. Saint Nicholas Cathedral*.

Society Hosts the State Chairs and Donors Annual Dinner

Since 1985, the Society has hosted an annual dinner to honor State Chairs and Donors whose contributions to the Society are so important to the success of the organization. The 2011 dinner was hosted by Justice Clarence Thomas on April 27th. This event provides a way to honor the contributions of time, talent and resources so essential to our success. Society President Ralph I. Lancaster welcomed the guests and expressed thanks to Justice Thomas for hosting the evening. Justice Thomas has regularly sponsored Society programs and Mr. Lancaster thanked him for his warm support.

At the conclusion of dinner, Mr. Lancaster summarized the Society's programs: acquisitions reflected in the furnishings and exhibits in the Supreme Court Building itself; extensive and highly regarded publications, including the volume *Supreme Court Justices: Illustrated Biographies*

To assist him in making presentations to State Chairs, Mr. Lancaster called upon Philip Kessler, our Na-



President Lancaster presided over the awards ceremony held to recognize state chairs and donors to the Society.

tional Membership Chair, who served three years in that capacity.

The membership chairman recruits and manages a network of more than 60 state chairs throughout the nation. Individual state chairs have the responsibility to attract membership to the Society on a regional basis throughout the country, and to provide leadership and encouragement for them throughout the year. For the past two years this already difficult chore has been made more arduous because of the economy. The membership committee and individual state chairs have attempted to keep membership levels high despite the challenges.

Mr. Kessler reported that at the time of the dinner membership stood at 5,051 and he expressed the hope that continuing efforts would increase that number before the end of the fiscal year on June 30th. Justice Thomas then presented the awards to each recipient as their names were called.



Shown at the dinner are: Manton Grier, state chair for South Carolina; Society Trustee Gus Klein; Mrs. Klein; and John Houlihan, State Chair for Connecticut.

which will appear in its third edition later in the calendar year; the Summer Institute which provides training and supplemental web site support for secondary school teachers throughout the nation; the annual Silverman Lecture Series; and the Frank Jones Reenactment of significant Supreme Court cases. This year there was an additional Society involvement in the construction of a \$1.6 million Gift Shop at the Court which serves hundreds of thousands of visitors annually and contributes handsomely to the building's rich architectural fabric. Mr. Lancaster added that later in the calendar year, the Society will publish *Courtwatchers*, an anecdotal history of the Court created for general audiences.

Following dinner, at the awards ceremony itself, two groups were singled out for recognition: state membership chairs who had met their annual goals, and major donors whose generous financial support provides critical funding for the most meaningful educational and cultural endeavors of the Society.



Awards to successful State chairs were presented by Philip Kessler (left), National Membership Chair for the Society, and Justice Thomas.



Zachary Greene of Tennessee was recognized for his work as a state chair in FY 2010.

The awards are paperweights hewn from marble once used in the Supreme Court Building.

Mr. Kessler said that ten state chairs had met or surpassed their goals by the time of the dinner, but that only four were there to accept them that evening. The State Chairs present to be recognized on April 27th were: **Francis Devine, Pennsylvania-East; Manton Grier, South Carolina; John Houlihan, Connecticut; and Greg Williams, Delaware.** He then asked **Zachary Greene**, last year's state chair for Tennessee to come forward to receive the award he earned for his efforts in FY 2010. The six individuals who had met their goals as of April 27th but were unable to attend the dinner were: **Richie Berger, Vermont; John Chan, Georgia; Frank Daily, Wisconsin; Christy D. Jones, Mississippi; Thomas Kilbane, Ohio-North; and Ted Sherwood, Oklahoma.**

Following the presentation of the state chair awards, Mr. Lancaster noted with regret that the Society Development Chair, Jerry Solovy, had passed away unexpectedly during the year, so in his place Mr. Lancaster himself presented the names for Justice Thomas. Some of those honored were singled out for personal efforts and others were representatives of foundations. Fundraising has been particularly challenging in the last few years because of the economic prob-



Michael Francesconi represented the UPS Foundation at the dinner.



Prior to the presentation of awards, Mary Lou Lancaster and Justice Thomas share conversation during the dinner.

lems but fortunately the gifts to the Society have continued to be very generous.

Those present to be recognized were: **Drew Days of Morrison Foerster; Michael Francesconi of the UPS Foundation; James Gauch of Jones Day; James Goldman; Robert Juceam of Fried Frank; Philip Kessler; August Klein; Jordan Sekulow of The American Center for Law and Justice; and Don Wright.**

One last recipient was singled out for special mention, Gregory Joseph. Mr. Lancaster noted that on the following day the Nominating Committee would recommend Mr. Joseph for election as President of the Society at the June Annual Meeting. Mr. Lancaster then summarized Mr. Joseph's significant work for the Society. In addition to serving as the Society's present Secretary, he also led a significant fund-raising campaign despite his active legal practice and his service as the current President of the American College of Trial Lawyers.

Following the awards ceremony, Mr. Lancaster thanked Justice Thomas again for his participation that evening. He then expressed gratitude to all present for their contributions to the success of the Society.



James Gauch of Jones Day receives an award from Justice Thomas.

Judah P. Benjamin: Part I: "THAT LITTLE JEW FROM NEW ORLEANS"

By Judah Best*

He was born in 1811 in the Virgin Islands and laid claim to both United States and (later) English citizenship. He died in 1884 and was buried at Père-Lachaise cemetery in Paris by his wife of some 50 years, who had been unfaithful to him throughout the marriage with the regularity of a metronome. In so doing (burying him, that is) she consigned him to obscurity by placing his body in the burial grounds of his beloved daughter's in-laws and availing herself of only part of his proper name (and Gallicizing it at that as Philippe). The result was much as if you were to bury General Robert E. Lee with a gravestone memorializing "Edward Lee." And so "Philippe" rested unrecognized for over fifty years. It would take the Daughters of the Confederacy until 1938 to find him, place his correct full name on the grave, and list his accomplishments. He had, after all, been a United States Senator from Louisiana, and had gone on to become, in this order, Attorney General, Secretary of War, and finally, Secretary of State of the Confederate States of America. As the Daughters also noted, he had been an astonishingly able and successful Queen's Counsel in England. His full name is Judah Philip Benjamin, he was an active practicing member of the Supreme Court bar, and this is his story.

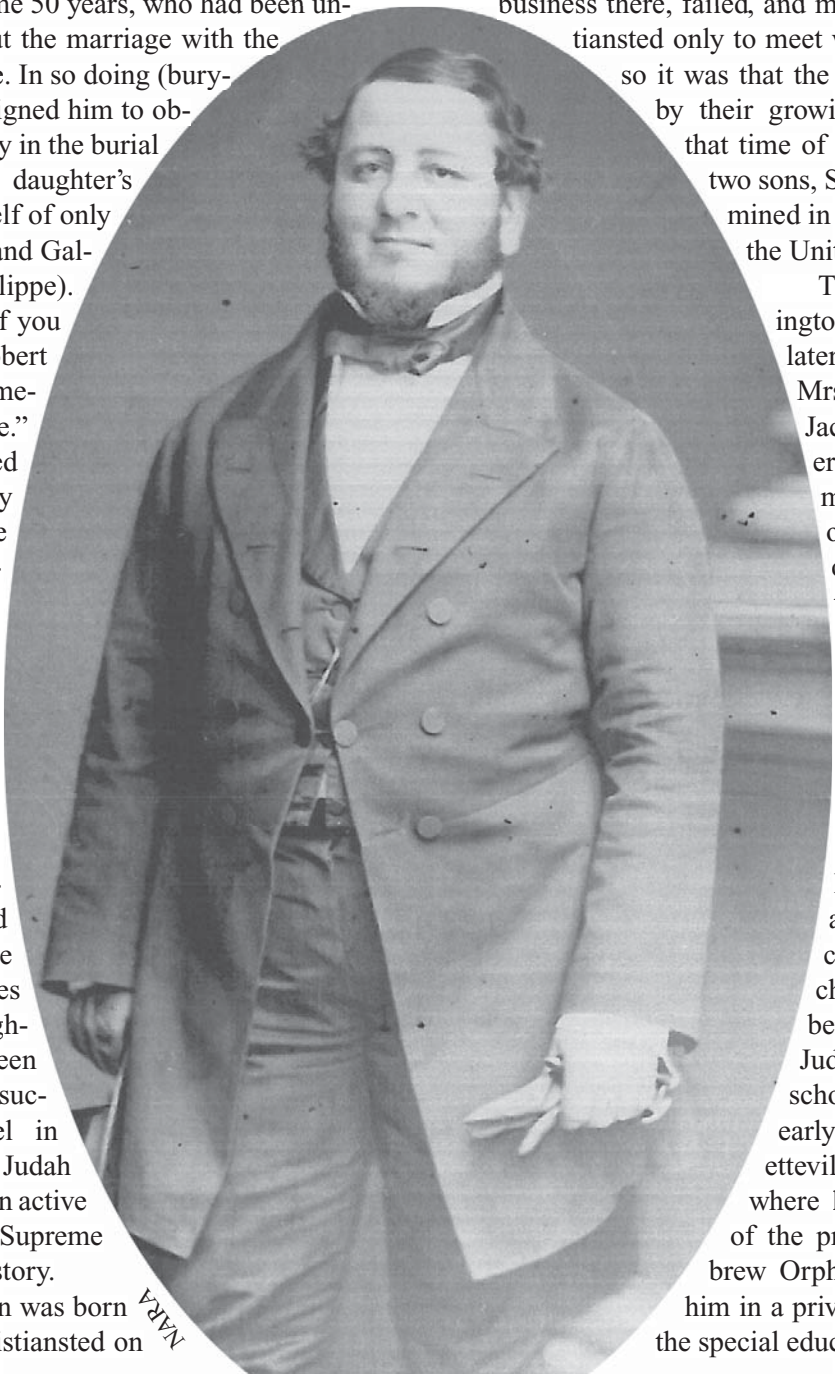
Judah P. Benjamin was born on 6 August 1811 in Christiansted on the island of Saint Croix, the second largest of the Virgin Islands. At that time the Virgin Islands were governed by the British as part of the continuing struggles of the Napoleonic Wars. His mother (maiden name: Rebecca de Mendes) had been born in Holland, and had grown up in England. Judah's father, Philip Benjamin, was born in the West Indies. Both were of Sephardic stock: that is, they were Spanish Jews, and as such, were descendants of Jewish

refugees expelled from Spain by Ferdinand of Aragon and Isabella of Castille some three hundred-odd years earlier. They were married in England, made an attempt to run a business there, failed, and moved the family to Christiansted only to meet with the same result. And so it was that the Benjamins, accompanied by their growing family (composed at that time of a daughter, Rebecca, and two sons, Solomon and Judah) determined in 1813 to seek a new life in the United States.

They journeyed to Wilmington, North Carolina, and later Fayetteville, to be with Mrs. Benjamin's uncle, Mr. Jacob Levy, who was a moderately successful business man. However, as a result of the business failure of Jacob Levy in the aftermath of the panic of 1819, the Benjamins left Fayetteville and moved to Charleston, South Carolina. There, in a city which had the largest Jewish population of any city in the United States, Philip Benjamin scratched out a bare living for a family composed of his wife and children, now six in number.

Judah Benjamin was an apt scholar, and received a sound early education, both in Fayetteville and in Charleston, where he attracted the attention of the president of the local Hebrew Orphans Society, who placed him in a private academy and paid for the special education. In 1825, at the age of 14, Judah was sent to Yale University. He was

the youngest boy in his class. He had passed Yale's entrance exam in Cicero's Select Orations, Clark's Introduction to the Making of Latin, Virgil, Sallust, the Greek testament, Dalzel's Graeca Minora, Adam's Latin Grammar, Latin Prosody, and Arithmetic. In his first year Judah studied Livy, Adam's Roman Antiquities, and English Grammar and Arithmetic, and began Day's Algebra. Then, in the same year, he had X-



Judah P. Benjamin

nophon, Herodotus, Thucydides, Lysias, Isocrates, Morse's Geography, finished Day's Algebra and studied five books of Euclid. Judah continued his education, with high marks, until he left Yale suddenly at 16 in the middle of his junior year.

There is a mystery surrounding his departure which is exacerbated by two venal letters sent to Northern newspapers some 34 years later when he had become part of the government of the Southern Confederacy: those letters accused him of having stolen from other students while at Yale. It is a matter of fact that he was a brilliant student at Yale. It is a matter of fact that Judah's father was behind in paying tuition and that other sources of revenue previously available for that purpose seem to have dried up. It is also true that Judah Benjamin, as a mature man, retained Northern counsel to file suit when those letters were published, only to be told that it was inadvisable to do so, probably because the poisonous climate in the North toward the newly formed Southern Confederacy would prevent a fair trial. At all events, what is clear is that he returned home to Charleston, visited his parents, and in 1828, at the age of seventeen, decided to pursue his destiny in the bustling city of New Orleans, Louisiana. It is said that when he arrived in New Orleans, he had five dollars in his pocket.

After a series of temporary jobs, he went to work for a notary public, and thus entered into the world of formal commercial documents. This job had the additional benefit of introducing him to potential future clients. While he worked, he studied for admission to the bar. In December of 1832, he was admitted to the bar. Judah

had tutored local residents in English during his studies: it was his way of learning French while making some small additional income. In this role, he met Natalie St. Martin, the 16-year-old daughter of a wealthy Creole (French) family. They were married in February 1833 three months after he was admitted to the bar: he was twenty-one, she was five years younger. The young married couple lived with the bride's family in New Orleans while Judah grew his practice. It would be an understatement to say that it was not a happy, successful marriage. He was well-educated: she had little education. He was devoted to his law practice: she was

bored (the only child to grow past infancy, Ninette, was born ten years after they were married). Further, New Orleans was changing from a French town to an American city. And so it was that Natalie Benjamin consoled herself in other ways, and finally took their child with her to Paris, where she would remain (except, of course, in the summertimes, when she would take the waters at fashionable resorts). Judah Benjamin visited her every summer as his practice permitted.

His marriage something of a disaster, Judah Benjamin turned to building his practice. Three months after his admission to the bar, he carried an appeal from the state District Court, *Florence v. Camp*, to the Louisiana Supreme Court, "the first of several hundred he was to argue before that tribunal". He won his first case. At this time he set about compiling a digest of Louisiana appeals cases. In 1834, he and his co-author, Thomas Slidell, published the *Digest of the Reported Decisions of the Superior Court of the Late Territory of Orleans and the Supreme Court of the State of Louisiana*. It was an instant success, and accelerated Benjamin's assimilation into the Louisiana Bar. By 1839, Benjamin's name appeared frequently in the cases before the State Supreme Court. By 1846-47, he or his firm appeared in forty-nine of the appeal cases reported in the contemporary volume

of the Louisiana Law Reports.

The great port of New Orleans kept commercial litigators busy and profitable. Judah was now adept in French and English. Moreover, he was teaching himself Spanish and was obtaining cases from California. He worked hard on his cases.

And in 1848, he became a member

of the bar of the Supreme Court of the United States. He was thirty-seven years old at the time.

In the meantime, this energetic, affable lawyer had turned to politics in his home state: he joined the Whig party, the party of Clay and Webster. After some initial failure, he ran for election to the lower house of the state legislature and won. He then became (not without some difficulty) a Whig delegate to the 1844 Louisiana Constitutional Convention. His call to Washington, D.C. began with nomination in absentia (he was away visiting Natalie and Ninette in France) to the Louisiana State Senate. Benjamin had hardly been



At the age of 17 and with very little money, Benjamin moved to New Orleans to make his fortune. The city is shown here as depicted in an 1852 drawing.

NY Public Library

elected to the State Senate when it became clear that he was “in play” for the United States Senate, and he was elected to the U.S. Senate after a vote on the floor of the Louisiana State Senate. Not quite forty-two, he would serve in the United States Senate from March 4, 1853 until 1861, first as a Whig, and later as a Southern Democrat. From the time of his first election to the U.S. Senate until his departure he was offered two appointive positions by two separate Presidents: first, as Justice of the Supreme Court of the United States and second, as U.S. Minister to Spain. As Charles Warren reports, Justice John McKinley (the Circuit Justice for Louisiana and Alabama) had passed away July 19, 1852, and President Millard Fillmore was in a quandary because two nominees of his had each been rejected by the U.S. Senate as they were not residents of Louisiana.

Taking cognizance now of the sentiment demanding a candidate resident in the Circuit, but being unwilling to appoint either George Eustis of Louisiana or Solomon W. Downs, the Senators from that State, both of whom, as Unionist Whigs, had received strong endorsement, he offered the position to Judah P. Benjamin, and on the latter’s declination owing to his recent election as Senator from Louisiana, he nominated Benjamin’s law partner, William C. Micou, on February 24, 1853.

Five years and a different President later, President James Buchanan offered Benjamin, by letter of 31 August 1858, the appointment of Minister to Spain:

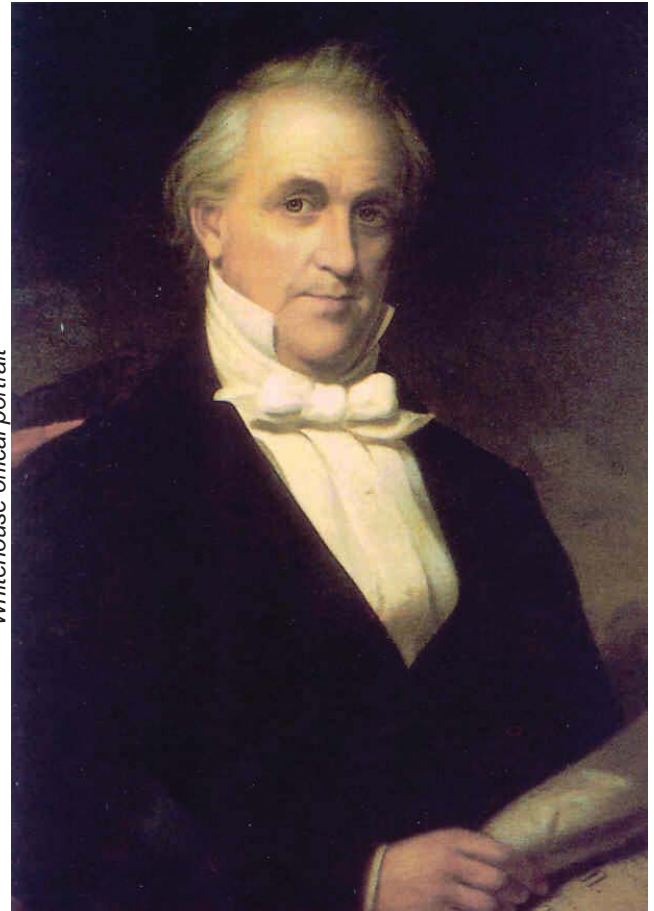
I write for the purpose of tendering you the appointment of Minister to Spain & expressing a strong desire that you may accept it. I feel satisfied that the Country will unite with me in opinion that this is an appointment eminently fit to be made. Indeed I am not acquainted with any gentleman who possesses superior, if equal, qualifications to yourself for this important mission. Such being the case I think your Country has a right to the benefit of your services....

One can only marvel at the prospect of a Sephardic Jew returning, in the role of a Minister Plenipotentiary, to a country that had expelled his ancestors. Benjamin turned down this offer as well: his work in the Senate and his private law practice required his presence in the United States, and specifically in Washington. Benjamin, as noted earlier, specialized in commercial cases. In Washington, he specialized in commercial appeals before the Supreme Court. In the December 1856 term of the Supreme Court, he appeared in eight cases. In the December 1857 term, he appeared in ten. In the words of Pierce Butler, a Benjamin biographer: “He was not only a debater, but also a most active and efficient worker in the Senate, and at the same time was carrying out his practice, frequently going from a political argument in the Senate to address the Supreme Court as an advocate.”

Former Senator George G. Vest of Missouri, in an article in *The Saturday Evening Post* about Judah Benjamin, notes that as a professional “although comparatively a young

man, he had no superior in the United States, and, above all the men I have known, he excelled in clear analytical statement.” Senator Vest goes on to relate an instance of Benjamin’s professional excellence:

“The late Associate Justice Field of the United States Supreme Court told me that the first time Benjamin appeared in the Supreme Court his opponent was Jerry Black, of Pennsylvania, unquestionably one of the most eminent lawyers in the United States. The case was a very important



Whitehouse official portrait

President Buchanan offered Benjamin an appointment as U.S. Minister to Spain.

one, from New Orleans, and the amount in controversy very large. When Benjamin, who represented the plaintiff in error, arose to open the case it was but half an hour before the noon recess, and he said that he should content himself by simply stating his case and should reserve his argument of the legal questions until his opponent had been heard in the afternoon. Justice Field declared that he had never listened in all his experience to a statement so lucid, comprehensive and convincing as that made by Benjamin, and when the Judges filed off the bench at one o’clock for the ordinary one hour’s recess he said to Black, as he passed him, ‘You had better look to your laurels, for that little Jew from New Orleans has stated your case out of court.’”

The short of it was that Benjamin as a lawyer was recognized as the “consummate master of stating his case; he proceeded on what is . . . conceded to be the wise plan

of making out his own case rather than picking flaws in his adversary's." In *McDonogh v. Murdoch* (1859), a case involving a will contest between the relatives of a wealthy testator and the cities of New Orleans and Baltimore which had been the beneficiaries of what was then an immense fortune, Benjamin had been successful in overturning the will for the relatives in the United States Circuit Court. Now, ably assisted by Reverdy Johnson of Maryland, he was defending that decision in the Supreme Court. A newspaper reporter present at the argument, said that "whoever was not in the Supreme Courtroom this morning missed hearing one of the finest forensic speakers in the United States." He went on to note that Benjamin's address was "refined, his language pure, chaste and elegant; his learning and reading evidently great; his power of analysis and synthesis very great." As it sometimes happens it was to no avail: Justice Campbell who wrote the majority opinion, praised the "great power and ability" of Benjamin and Johnson, but determined that the law was against their clients, and found for the two cities.

Benjamin devoted as much time and detailed attention to his Senatorial duties as he did his courtroom assignments. By the time of his re-election as Senator in 1858, he was serving on the important Senate Judiciary Committee and was promoted to the chairmanship of the Committee on

Private Land Claims. Senator Vest notes that some months after he became a member of the United States Senate, "I asked Dennis Murphy, who had been official reporter of the Senate for nearly forty years and was himself a lawyer of considerable ability and one of the best-informed men on all subjects I have ever known, who, in his judgment, was the ablest and best-equipped Senator he had known during his service as a reporter. He replied, without hesitation, Judah P. Benjamin."

Benjamin's term of office was to expire in 1865, but Louisiana seceded from the Union on 26 January 1861 and on 4 February Benjamin and John Slidell, the two Senators from Louisiana, withdrew from their seats in the Senate. Benjamin's parting speech was made to a hushed chamber. Whatever their position on secession, Senators shook hands with Benjamin and Slidell, with tears in their eyes. Benjamin then left the Senate and bade farewell to Washington. We shall resume our study of Judah P. Benjamin in the last days of the Confederacy just before Robert E. Lee's surrender at Appomattox Courthouse. By that time, Judah has served as Attorney General, Secretary of War, and Secretary of State of the Southern Confederacy, and at 54 years of age, is a fugitive fleeing from Union soldiers and agents. He has little money, he is the support of relatives in the United States and France, and there is an ocean between him and England. All he has is his imperturbable little smile and his will. We will see that he survives and flourishes. But that is for another day.

**Judah Best is a member of the Supreme Court Bar, and is, inter alia, a member of the bars of the State of New York and the District of Columbia. He is a Fellow of the American College of Trial Lawyers, former Chair of the ABA's Standing Committee on Judiciary, and Past Chair of the ABA's Section of Litigation. He is a retired partner of the law firm of Debevoise and Plimpton. Mr. Best wishes to convey his appreciation for the extraordinary help of the staff of the library of the Supreme Court as well as the staff of the Library of Congress.*

Editor's Note:

Part 2 of this article will appear in the next issue of the Quarterly. The text and end notes for this half of the article will be posted on the Society's web site.



Courtesy of the author

After affording him the last rites of the Catholic Church when he was too feeble to protest, Benjamin's wife interred his remains in the family tomb of their daughter's in-laws in a Paris cemetery where his identity was obscured. In 1938 the Daughters of the Confederacy placed his full name on a plaque and the monument is now marked with a Confederate flag which is regularly replenished.



Interesting Admission to the Supreme Court Bar

This photograph appears in the collection of the Library of Congress and was titled “Washington couple admitted to practice before US Supreme Court.” The original caption went on to describe “[t]he happiest couple in the Capitol today, Mr. and Mrs. Alfred L. Taylor, who were admitted to practice before the United States Supreme Court.”

The caption provided only scant information, but did say that “Mrs. Taylor is a graduate of Washington [University] and does not practice with her husband, who is of George Washington University Law School.” Presumably, Mr. Taylor was a professor of law. The records of the Court show that they were admitted on Friday, February 5, 1937. Currently the Court does not hold sessions on Fridays, indeed, Fridays are often conference days.

The photo was attributed to Harris & Ewing, a photographic service founded in 1905. The company specialized in formal portraiture, but also hired photographers to take photos of historic and news-related events. This photograph was probably taken by a photographer assigned to work on Capitol Hill to record news-worthy events.

Mr. and Mrs. Taylor’s concurrent admissions to the Supreme Court would have been very unusual in the 1930s as there were very few female attorneys in the country, and even fewer admitted to practice before the Highest Court. Husband and wife admissions to the Supreme Court Bar are still uncommon, but the number of women admitted to the

Bar has increased dramatically.

Interestingly, the date of February 5, 1937 became significant not only to the Taylor family, but also to the Nation. On that day President Franklin D. Roosevelt sent a bill to Congress proposing to expand the size of the Court to as many as 15 members. The proposal quickly became known as the “Court-packing” bill. The President justified the proposal by citing the heavy caseload and

the advanced age of many members of the Court. Opponents saw it as a poorly disguised plan to appoint members to the Court who would support his New Deal legislation. The proposal precipitated a bitter contest between the executive and judicial branches of government and the legislation was never enacted.



Mr and Mrs Alfred Taylor admitted to the Supreme Court Bar Feb 5th, 1937

“Hail to the Chief” Trivia Quiz

This will test your knowledge of the lives and backgrounds of the former Chief Justices of the United States. Most of the questions have multiple answers.

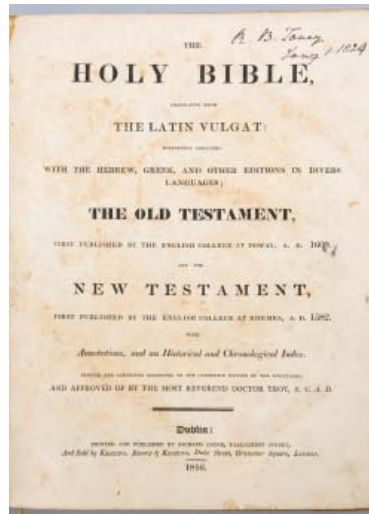
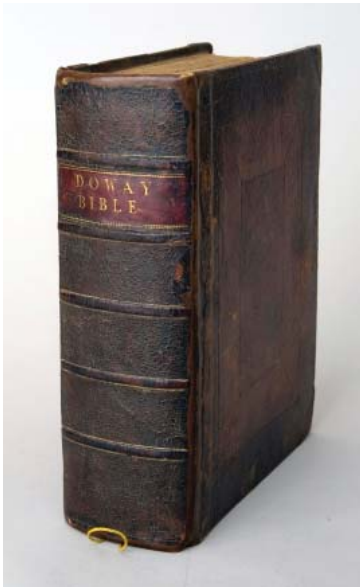
1. Which Chief Justice previously served as Attorney General?
2. Name the Chief Justice who actually served on the Court but was never confirmed by the Senate.
3. Name a Chief Justice who attended the Constitutional Convention.
4. Name a Chief Justice who served in the House of Representatives.
5. Which Chief Justice served as Secretary of the Treasury?
6. Name a Chief Justice who was already on the Court when named Chief.
7. Name a Chief Justice who had been Solicitor General.
8. Name a Chief Justice who was a Senator when appointed to the Court.
9. Here is an easy one—Name a Chief Justice who was also President of the United States.
10. What Chief Justices were governors of states prior to their service as Chief Justice.

(Answers on page 15)

A Long Term Loan Becomes A Donation

Earlier this year, several items once owned by Chief Justice Roger B. Taney, formerly on long term loan to the Curator's Office at the Supreme Court, were donated to the Collection through the Supreme Court Historical Society. Mr. Chris Taney, a Society member, made the gift in January, concluding the loan that his father, Joseph A. Taney, had started with the Court back in 1992. The objects include a lacquered document box that once had Taney's name painted

ed on the top; a Family Bible printed in Dublin, Ireland, in 1816, and inscribed by Taney in 1824; and a small sterling silver cup with floral details and a monogrammed script "T". This cup was later given by one of Taney's daughters, Maria Key Allison, to her cousin who was named after the Chief Justice. The last item in the donation is a solid wood book reportedly carved by Roger Taney in his youth to represent a Bible.



WANTED

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

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 James R. Clark, Milwaukee

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AUSTRALIA

Andrew J. Stone, Sydney

CHINA

Kong Xiangjun, Beijing

GERMANY

David Broder, Bonn

UNITED KINGDOM

David Lynch, Wirral

Answers to the Hail to the Chief Trivia Quiz on Page 10



Roger Brooke Taney

1. Roger Brooke Taney was Attorney General in the Cabinet of Andrew Jackson and Harlan Fiske Stone was Attorney General under Coolidge.



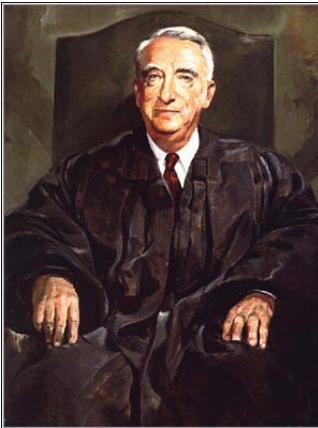
John Rutledge

2. John Rutledge was given a recess appointment by George Washington. Since the Senate was not in session, he actually presided over a short term of the Court. When the Senate reconvened he was not confirmed and was forced to leave office.



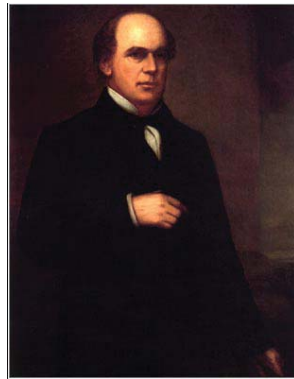
Harlan Fiske Stone

3. Two Chief Justices were at the Convention: John Rutledge was a delegate from South Carolina and Oliver Ellsworth a delegate from Connecticut. Rutledge actually signed the Constitution, Ellsworth was not present for the signing.



Fred Vinson

4. John Marshall and Fred Vinson both served in the House.



Salmon P. Chase

5. Roger B. Taney, Salmon P. Chase and Fred Vinson all led the Treasury Department.

6. Edward Douglass White, Harlan Fiske Stone and William Rehnquist were Associate Justices when appointed. John Rutledge and Charles Evans Hughes had previously served as Associate Justices, then left the Court and were reappointed as Chief Justice.

7 & 9. William Howard Taft.



Oliver Ellsworth

8. Oliver Ellsworth was a Senator from Connecticut when appointed Chief Justice. Edward Douglass White was a Senator from Louisiana when appointed initially to the Court as Associate Justice, and later became Chief. Salmon P. Chase had served as a Senator from Ohio but was not in the Senate when appointed to the Court.



President William Howard Taft (seated third from left) paid a formal visit to Governor Charles Evans Hughes (to right of Taft) at the Governor's Mansion in Albany, NY.

10. John Rutledge was governor of South Carolina, Salmon Chase was governor of Ohio, Charles Evans Hughes was governor of New York and Earl Warren was governor of California prior to their service on the Court. John Jay became Governor of New York after he left office.



By Ray Lustig, Washington Post

In February of 1984, Chief Justice Rehnquist (second from left) supervised the measurement of snow on the front plaza of the Supreme Court Building. The Chief Justice, who had a keen sense of humor, enjoyed making small bets on almost anything to enliven things. At his funeral, several speakers reminisced about his fondness for making little wagers and recounted some of the unusual things that had been the subject of his bets. One speaker mentioned this incident. After making their estimates inside chambers, Rehnquist and several clerks went outside to verify the depth of the snow. (Left to right, David Leitch, Ron Mann and Bill Lindsay, beside Chief Justice Rehnquist). Washington Post photographer Ray Lustig recorded the event for posterity.