



Portrait of Justice John Paul Stevens Unveiled

The official portrait of Justice John Paul Stevens was unveiled and presented to the Supreme Court on October 14, 2011. The portrait was commissioned by the Supreme Court Historical Society on behalf of Justice Stevens' clerks who raised the necessary funding. Justice Stevens, one of the longest serving Justices in history, was appointed by President Gerald Ford in November 1975.

During his time on the Court, he served with three Chief Justices: Warren Burger, William H. Rehnquist, and John G. Roberts, Jr. Justice Stevens also has personal memories of two other Chief Justices: Fred Vinson who served at the time of Stevens' clerkship, and Earl Warren who was Chief Justice at the time Stevens argued before the Court. In his recent book, **Five Chiefs: A Supreme Court Memoir**, Justice

Stevens recounts his personal experience working with all five of the Chief Justices. In one of the chapters of his book titled "Second Among Equals," he describes in detail the special responsibilities and duties that fall upon the Senior Associate Justice. His service in that position was one of the longest in the history of the Court. It commenced in 1994 upon the retirement of Justice Blackmun and continued until his own retirement in June of 2010.

Chief Justice Roberts presided over the October 14 ceremony. In addition to Justice and Mrs. Stevens, other guests included current and retired Justices as well as past

law clerks to Justice Stevens.

The Chief Justice welcomed the audience and paid a warm tribute to Justice Stevens. The Chief Justice said: "On October 14, 1970, John Paul Stevens received his first judicial commission, as a circuit judge on the Seventh Circuit Court of Appeals. Many may think the language is just historical boilerplate, but in a judicial commission the President tells all who may see the commission that he reposes 'special Trust and Confidence in the Wisdom, Uprightness, and Learning' of the judge. What a fitting description of the man we honor today. . . . The President's special trust and confidence were well placed."

Later in his remarks, the Chief Justice noted that October 14 was "[t]he day the Cubs won the 1908 World Series, and the *New York Times* reported, 'The games were singularly free from squabbling, and on only two or three occasions were the decisions of the umpires questioned. At no time was it necessary for a player to be sent to the bench to enforce discipline and good order.' Justice Stevens brought that same spirit to the Court."

Referring to the portrait that was to be unveiled soon thereafter, the Chief Justice explained that "[u]ntil recently, [the portrait] has been on display at Northwestern School of Law, Justice Stevens' *alma mater*. I'm glad it has finally



Retired Justice John Paul Stevens and his wife, Maryan, stand beside his official portrait which was unveiled on October 14, 2011.

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A Letter from the President



Gregory P. Joseph

The Society has just published an excellent new book, **Courtwatchers** by Clare Cushman, the Society's Director of Publications. The book is a delightful, anecdotal history of the Court, drawing on first-hand accounts and providing a unique look at the Court given sometimes by the Justices themselves, or by Supreme Court spouses or children.

Their perspectives and stories add richness to the factual history of the Court. The book also contains an enormous number of interesting nuggets of Supreme Court history. Illustratively:

- Of the 112 Justices who have served on the Court, 12 served in 6 seats in the first decade.
- Justices were not permitted access to the stacks at the Library of Congress until 1812.
- The Court did not request written briefs until 1833, and did not require them until 1849.
- Congress didn't formally and finally abolish Circuit riding duties until 1911.
- It was 1925 when the first nominee to the Court agreed to testimony before the Senate.
- Until the 1970s, Justices read aloud their full opinions.

But the heart of the book consists of stories. Dennis Hutchinson, editor of *The Supreme Court Review*, writes that "the institution emerges with novelistic clarity as a collection of men, and eventually women, with vivid personalities, strong feelings, and every manifestation of the human condition. Cushman wisely relies on firsthand evidence from those on the inside to provide both authenticity and telling detail."

The story of Thurgood Marshall's arrival at the Court is a good example. Elizabeth Seay Black, the wife of Hugo L. Black, served as the Secretary of the Supreme Court Historical Society in the early years of its history, and one of these stories in **Courtwatchers** describes Justice Marshall's arrival at the Court.

Hugo told me there was a possibility that Thurgood Marshall would be sworn in today and for me to keep in touch. I arrived at the Court about 2:30, and found the Supreme Court Marshal, Perry Lippitt, sitting in the guard's box in the driveway. He didn't know when Marshall was due to come in

and he didn't intend to miss him. Perry escorted the Marshalls—his wife Cissy, Thurgood Jr. age eleven, and John, age eight—to Hugo's office. Hugo called Bill Brennan, the only other Justice in the building, at the time. Hugo asked Thurgood if he had a favorite chapter in the Bible, and Thurgood said he couldn't think of one, so Hugo said, "What about I Corinthians 13: 'And now abideth, faith, hope, charity, these three: but the greatest of these is charity.'" Thurgood loved it, and Hugo swore him in on his white Gideon Bible bearing an insert saying it was from the U.S.S. Arizona. I suggested that Hugo present the Bible to Thurgood. We all wrote our names in the margin of the page of I Corinthians 13. Thurgood wished his daddy could have been there, but said he knew he was on some street corner in heaven shaking his finger and say, 'I knew my boy would do it.'

In a book Mrs. Black published in 1986, she completed the story by detailing the day of Marshall's official investiture in Court.

Monday, October 2. There was a suppressed excitement that accompanies knowing the President is going to be in the Court. I sat on the back row with Winifred Reed, Ethel Harlan, Marion White, Andy Stewart, and Cathy Douglas. . . . Thurgood Marshall's family was on the front row: his wife, his two sons, his wife's sister, and I believe his mother. The President came in exactly at 10:00, watched while the CJ announced that Marshall had taken the first oath before Hugo and would now take the Constitutional oath, and saw him installed in his seat. Byron White now sits between Thurgood and Bill Brennan. John Harlan has moved next to Hugo in Tom Clark's old seat, and Potter and Abe are on the far side of the bench. The Justices were all in good form today.

In addition to Mrs. Black, Cecilia (Cissy) Marshall has also been closely involved in the work of the Society. Mrs. Marshall is currently a Vice President of the Society after many years of service as a Trustee. She has often

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Quarterly

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Managing Editor

Kathleen Shurtleff

Advisory Editor

James B. O'Hara

Advisory Editor

Frank D. Wagner

come to the Court. We can never see enough of Justice Stevens.”

The Chief Justice then called upon Justice Stevens who made brief remarks. He thanked all in attendance and in particular, his clerks for their contributions to making the portrait a reality.

At the conclusion of Justice Stevens’ remarks, the Chief Justice introduced Clifford Sloan who represented the more than 100 law clerks who served with the Justice during his tenure. Mr. Sloan served as a law clerk to the Justice in the 1985 October Term. He offered this tribute to the Justice on behalf of his fellow clerks:

Clerking for Justice Stevens was the honor of a lifetime and the joy of a lifetime. I will tell you that, while clerking for Justice Stevens, I sometimes thought that being a law clerk to Justice Stevens was a little bit like being a bat boy to Ted Williams. You get to hand the bat to one of the game’s all-time greatest players, but you also know full well that that beautiful swing is all his.

Clerking for Justice Stevens was a very special experience for two reasons. The first was the example that he set, every day, of his personal commitment to the rule of law. I don’t mean here simply the substance of his majority opinions, concurrences, and dissents, although I surely do mean to include that. But what I also mean is the example Justice Stevens set of approaching the facts and law of every case—and I mean every case, no matter how prominent or obscure—as much as humanly possible, without preconception, with an open mind, and with a scrupulous commitment to intellectual honesty and judicial rigor. I also remember thinking as a law clerk that, if the measure of a judge is whether, as a citizen, you would want your case to be heard by him or her because you knew that you would get a fair hearing, then Justice Stevens set the gold standard for what you hoped for in a judge.

The second reason why clerking for Justice Stevens was the experience of a lifetime was something that everybody in this room knows--his simple human kindness and decency. In this wonderful painting that we are about to see, my favorite part is that the artist has perfectly captured



Prior to the unveiling, many of the Court and invited guests assembled. Shown here are (left to right) Mrs. Maryan Stevens, Justice John Paul Stevens, Mrs. Jane Roberts, and Chief Justice John G. Roberts, Jr.

Justice Stevens’ gentle gaze. Every Stevens clerk will tell you about “the black chair”—the oversized, comfortable chair in the clerks’ office. The Justice would come in several times a day, plop down in the black chair, and share a smile, a laugh, a thought, a story. Each and every one of us saw that gentle gaze every day. And each and every one of us loved it.

Finally, I’d like to thank two of the people who are among the most responsible for the gift to the nation that is Justice Stevens’ tenure on the Supreme Court. The first is Senator Charles Percy. Senator Percy, of course, fought for Justice Stevens to be on the Seventh Circuit. On the occasion of Justice Stevens’ appointment to the Supreme Court, Senator Percy said that Judge Stevens has been a ‘lawyer’s lawyer,’ and he had become a ‘judge’s judge.’ Even then, Justice Stevens was the personification of a commitment to the rule of law.

The second person I want to thank is President Gerald Ford. Everybody here knows that President Ford appointed Justice Stevens, and, in 2005, President Ford said that he was content to let the entire judgment of history of his Presidency rest on his appointment of Justice Stevens to the Supreme Court. I speak for every Stevens law clerk when I say that, like President Ford, we would be delighted to have our entire life’s work judged by our association with Justice Stevens.

At the conclusion of his remarks, Mr. Sloan introduced Jim Ingwersen, the artist who painted the portrait. Mr. Ingwersen and his niece, Kate Seward, came forward to unveil the portrait, which was painted in 1991. Mr. Ingerwsen studied painting at the American Academy of Art in Chicago under William Mosby. He commented in a press interview in 2008, that “[a]rt has always been a part of my life.” Ingwersen is nationally known for his portraits of distinguished statesmen, scholars, business leaders, and jurists. In preparation for painting portraits, he utilizes numerous photographs and conducts interviews his subjects to “get to know them, get a feeling for them.”

The portrait is now being displayed in the Lower Great Hall of the Supreme Court Building, where it can be viewed by visitors to the Court.

Summer Institute for Teachers Concludes 2011 Session

During the last two weeks of June, 60 social studies teachers representing 31 different states gathered in the nation's capital to participate in the Supreme Court Summer



Photos courtesy Street Law, Inc.

Participants listen to attorney Stuart Gerson in the classroom where they spent their time at Georgetown Law Center.

Institute for Teachers. Cosponsored by the Society and Street Law, Inc., the Institute was held at Georgetown University Law Center near Capitol Hill. In its 17th year, the Institute gives teachers the opportunity to learn, share, and experience the workings of the Supreme Court from right around the corner. Teachers attended sessions with notable experts, including attorneys, academics, and journalists—many of them members or Trustees of the Society—who gave first-



Teachers act as advocates and Justices during their Moot Court of *Graham v. Florida*.

hand, informative, and even humorous accounts of their experiences with the Supreme Court.

Many of the teachers came to Washington having just finished their school years, but this did not dampen their enthusiasm for six days of professional development

about the Court. These teachers received a warm welcome from top Supreme Court advocate and SCOTUSblog creator Tom Goldstein (during session 1) and advocate Lisa Blatt of Arnold & Porter (during session 2). Both sessions started off with a fantastic welcome dinner, hosted by Jones Day's Washington office—which included a perfect view of the Capitol and downtown Washington.

Over the six days of each session of the Institute, participants experienced the Supreme Court from inside and out. The Court's deputy clerks answered questions about how the Court functions and how last minute death penalty appeals are handled. A lunch with former law clerks to past and current Justices included those who had clerked for Chief Justices Rehnquist and Roberts, and Justices Breyer, Souter, and Thomas.

Workshops included complex discussions on teaching about the Commerce Clause and constitutional interpretation. Supreme Court reporters Lyle Denniston (SCOTUSblog) and Jess Bravin (Wall Street Journal) discussed coverage of the Supreme Court in the media and the efforts to make the Supreme Court accessible to a larger audience.

Many of the workshops focused on how to teach students about important cases, including five from the current term. Teachers participated in a moot court of *Graham v. Florida*, which considered whether sentencing a minor to life without parole for a non-homicide crime is "cruel and unusual" punishment under the Eighth Amendment. Teachers were divided into groups of petitioners, respondents, and justices and were coached by attorneys who were involved in the actual case. Roy Englert, a society Trustee and member of the Program Committee, served as an expert resource during the Moot Court session, training the team for Florida. Other expert resources for the moot court included Brian Matsui from Morrison & Foerster, Ashley Parrish and Jeff



Institute participants have the opportunity to visit some of the sights in Washington, DC. Here they are shown visiting the Lincoln Memorial.



Group sessions and feedback from colleagues are huge parts of the Institute, allowing teachers from all over the nation to discuss different teaching practices, lessons and views on important issues civics teachers are facing.

Bucholtz from King & Spalding, Ed Darden from Appleseed, and Scott Ballenger from Latham & Watkins.

At the end of each session, the teachers visited the Supreme Court to hear decisions handed down. On June 20, teachers heard four decisions announced, including *Wal-Mart v. Dukes*. Teachers witnessed Justice Scalia announce the decision, which ended what would have been the largest civil rights class-action suit in U.S. history. On June 27, the last day of the Supreme Court's term, teachers observed the decision in *Brown v. EMA*, in which the Court held that the California law banning the sale or rental of violent video games to minors was unconstitutional.

The undeniable highlight for teachers was a reception at the Supreme Court hosted by the Chief Justice during the first session and by Justice Sotomayor during the second session. Both the Chief Justice and Justice Sotomayor were generous with their time, speaking to each group about the importance of civic education. Society trustees were on hand



Bob Corn-Revere leads the session on the controversial case *Snyder v. Phelps*, in which Street Law's deliberation method "Structured Academic Controversy" served as the primary pedagogy.

to greet the teachers and learn about their experiences and enthusiasm.

Participants in the second week met with Justice Sotomayor on what turned out to be the Justice's birthday. The teachers and other guests at the reception sang "Happy Birthday" to the Justice, and this provided a warm conclusion to the reception.

Every teacher present reported that they would recommend this program to a colleague and enthusiastically so. They loved the reception at the Court, and enjoyed having time with historical society members to learn more about the interesting aspects of the Society. Teachers who participate in this program continue to train others with the resources provided by Street Law and the SCHS. In the past, the teachers have been able to train between 100-500 others each year. We look forward to the reports from this year's cohort as they return to the classroom and train their colleagues. One participant from 2011 has already written an article about his experience for his state social studies journal, calling it "one of the best workshops I have ever been to." That sentiment is echoed by many – past participants continue to tell Street Law and the Society how much their week in D.C. has impacted their teaching. One participant from 2011 said, "From the beginning to the end this was a first rate program. The resources, people, and activities are all relevant and beneficial."

Each Institute includes a trip to the Supreme Court to listen to a public lecture, then a meeting with the deputy clerks to discuss more about the inner workings of the Court.



Our Week 1 participants pose at Jones Day, with the view of the Capitol in the background.

StreetLaw can be found on the internet at:

<http://www.streetlaw.com>

and their facebook page at

<http://www.facebook.com/StreetLawInc>

“The Treason Trial of Jefferson Davis”

By Jonathan W. White *

As the Civil War was coming to a close, Confederate president Jefferson Davis hoped somehow to prolong the conflict and still bring the North to recognize Confederate independence. Fleeing Richmond on April 10, 1865, Davis made his way south, stopping at several places and encouraging his fellow countrymen not to lose heart. As circumstances continued to deteriorate, Davis seemed to be the only Confederate leader who failed to recognize the gravity of the situation. “We can whip the enemy yet, if our people will turn out,” he told his cabinet. But the cabinet, which was meeting in a railroad boxcar near Greensboro, found little

comfort or encouragement in their president’s words.

Indeed, time was running out. On May 10, 1865, the Federals finally caught up with Davis’s party near Irwinville, Georgia. As Union troops approached their party, Varina Howell Davis attempted to conceal her husband’s identity by covering him with a shawl. But a Union soldier noticed Davis’s feet and declared: “Oh no, you don’t play that game on us, them boots don’t look very much like they belonged to a woman.” The Union forces claimed their prize and sent him under guard to Fort Monroe, in Hampton Roads, Virginia. Newspapers throughout the nation delighted in depicting the rebel chieftain as a fugitive coward dressed in drag.

At Fort Monroe, Davis was placed in irons for five days; he faced sleep deprivation, his mail was censored, and initially he was not given silverware for fear that he might use it to commit suicide. Davis would spend 2 years in prison at Fort Monroe, the first 5 months of which was in a makeshift cell that is still open to the public today.

A national debate emerged over what to do with Davis. Many in the North called for a swift military trial and execution. Others believed that he should be tried in a federal court. Still others wanted him banished, or punished in some other way. Three entrepreneurs from Iowa offered to pay the government \$300,000 for permission to take Davis around the country in a cage as part of a traveling exhibition. The Iowans offered to post a \$100,000 bond to ensure that they would return Davis “in good physical condition.” They also promised to give the government half of the profits they earned from the admission charges.

A trial in federal court seemed to many to be the most appropriate method of trying Davis. Article III of the Constitution implies that trials for treason should be conducted in a federal court rather than before a court martial. But in the early postwar period, there were many greater things at stake than the fate of the former Confederate President. The vote of a single juror in such a trial could bring about a hung jury since unanimity would be necessary for conviction and a judgment of capital punishment. And a hung jury, in turn, could undo the question of the legality of secession which the war had seemed to settle.

Radical Republicans, like Pennsylvania’s Thaddeus Stevens, publicly called for a trial by court-martial. According to Stevens, Davis could be tried as a “belligerent” and “conquered enemy.” In winning the war the Union could claim the right to try and execute rebel leaders in this manner: “How many captive enemies it would be proper to execute, as an example to nations, I leave others to judge,” stated Stevens. “I am not fond of sanguinary punishments, but surely some victims must propitiate the manes of our starved, murdered, slaughtered martyrs. A court-martial could do justice according to law.”



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This cartoon portrays Jefferson Davis dressed in women’s clothes as he tried to evade capture by Union soldiers.

The option of a military trial for Davis appealed to many other northerners. Trials of civilians by military commission had become somewhat commonplace during the Civil War—nearly 4,300 civilians were tried before military courts under Lincoln. In fact, at the time of Davis’s arrest, the Lincoln assassination conspirators were themselves before a military tribunal that would eventually sentence four of the eight conspirators to death. It would not have seemed extraordinary had the government decided to try Davis in that way.

Bringing Davis before a military tribunal would provide many advantages to the government: a military trial would not be hamstrung by the constitutional limitations imposed on civil trials; instead of a jury of Davis’s peers; Davis would be judged by Union military officers; instead of the requirement for unanimity to convict, only a majority would be needed (and a two-thirds majority to execute); the rules of evidence would be different; and instead of having to try Davis in the state or district where he had committed his crime, the military commission could hold its sessions at any place that was convenient. For these reasons, Judge Advocate General Joseph Holt favored the use of a military commission; it would, he said, be “unencumbered by the technicalities and inevitable embarrassments attending to the administration of justice before civil tribunals.”

Ultimately, the decision of how to handle Davis



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US District Judge John C. Underwood was the district judge assigned to the treason trial of Jefferson Davis.

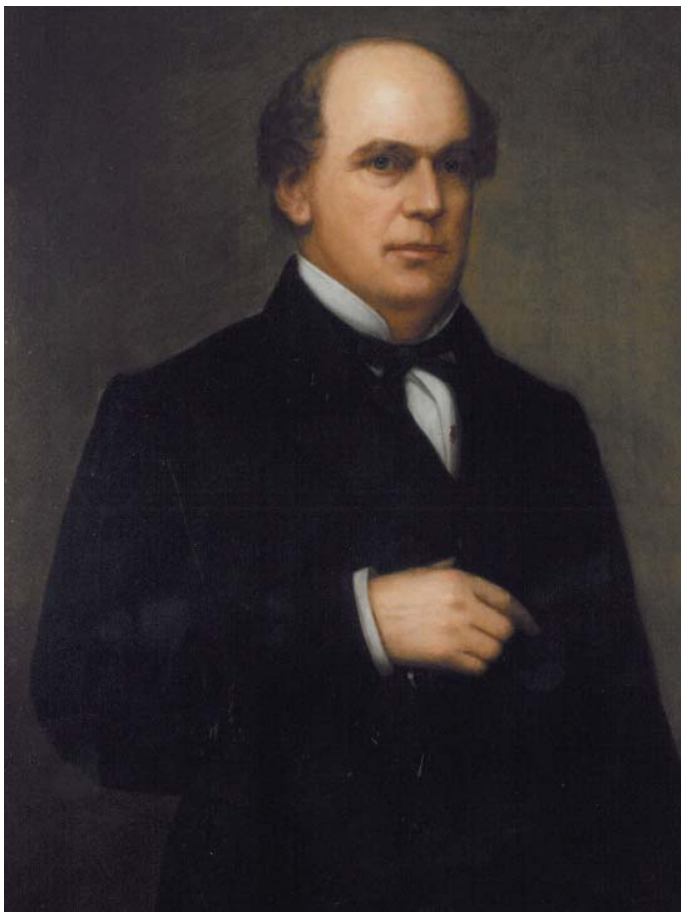
rested with one man, and in July 1865, President Andrew Johnson decided to move forward with a civil trial. Many politicians feared that it would be impossible to obtain a conviction from a Southern jury, so they sought to try Davis in a court somewhere in the North. Writing from Indiana in November 1865, Governor Oliver P. Morton told President Johnson that Davis could be tried in Indiana as the authority behind John Hunt Morgan’s raid there. He added: “There can be no difficulty in getting a jury [in Indiana] that will do justice to the Government and to Davis.” But Johnson didn’t like this idea because it seemed to violate the constitutional requirement that a person be tried in the state or district in which they had allegedly committed their crime.

Instead, Johnson decided to prosecute Davis for treason in the U.S. Circuit Court for the District of Virginia, where Davis had actually acted as president of the Confederacy. Presiding over the case would be U.S. District Judge John C. Underwood and Chief Justice of the United States Salmon P. Chase, both of whom had been appointed to the federal bench by Lincoln.

Underwood and Chase were sharp contrasts in judicial temperament. Both men were extremely ambitious, and both were members of the radical wing of the Republican party. Chase had been a U.S. Senator and was Lincoln’s rival for the presidency in both 1860 and 1864. For most of the war years, Chase served as Secretary of the Treasury. Underwood, too had worked in the Treasury Department during the war, until Lincoln placed him on the federal bench in 1863.

Nomination to the federal bench appears to have had very different effects upon these two men. As Chief Justice, Chase approached the business of the judiciary with reservation and humility. Chase declared that courts “have no

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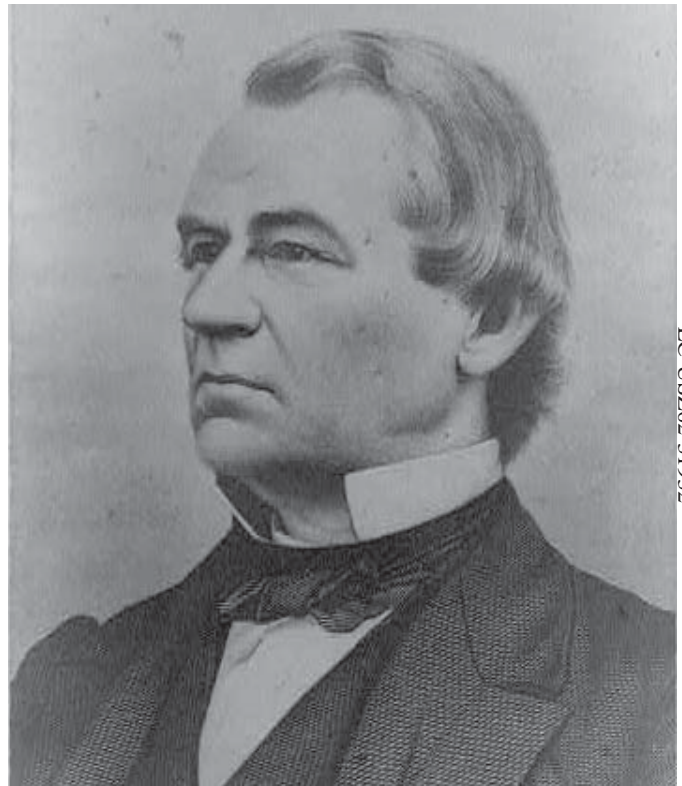
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Davis’s treason trial was prosecuted in the 4th Circuit, the Circuit to which Chief Justice Salmon P. Chase was assigned.

policy” and “no right to exercise political discretion.” The business of the judiciary, in his view, was not to “fritter away [the] plain words [of the Constitution] by arbitrary interpretation” but “to declare their obvious meaning, and leave to the political departments of the government the duty of applying their proper mitigations.” “In political matters I generally accept your views,” Chase told one abolitionist, “but in questions of law I am and must be a mere judge; or be dishonest.”

By contrast, Judge Underwood seemed to be spoiling for a fight. To be fair, Underwood had spent some twenty years as an abolitionist in the slave state of Virginia. Having been cowed and threatened with violence on several occasions, he now finally believed he had the power and authority to fight back.

Underwood openly expressed his eagerness to try the rebel leaders for treason. Indeed, he continued to play the part of a Radical politician during his time on the federal bench. In January 1866, while testifying before Congress, Underwood betrayed his lack of judgment. Senator Jacob Howard of Michigan asked Underwood whether a “loyal” jury could be obtained in Virginia, to which the judge replied: “Not unless it is what might be called a packed jury.” Howard followed up: “Do you think it practicable to call a jury in Virginia that would convict a man of treason?” Underwood sighed, “It would be perfectly idle to think of such a thing. They boast of their treason, and ten or eleven out of the twelve on any jury, I think, would say that Lee was almost equal to Washington, and was the noblest man in the State, and they regard every man who has committed treason with more favor than any man in the State who has remained loyal to the government.” Howard then asked if Robert E. Lee or Jefferson Davis could be convicted of treason. “Oh, no; unless you had a packed jury,” answered the judge. “Could you manage to pack a jury there?” inquired the Senator. Answer: “I think it would be very difficult, but it could be done; I could pack a jury to convict him; I know very earnest, ardent Union men in Virginia.

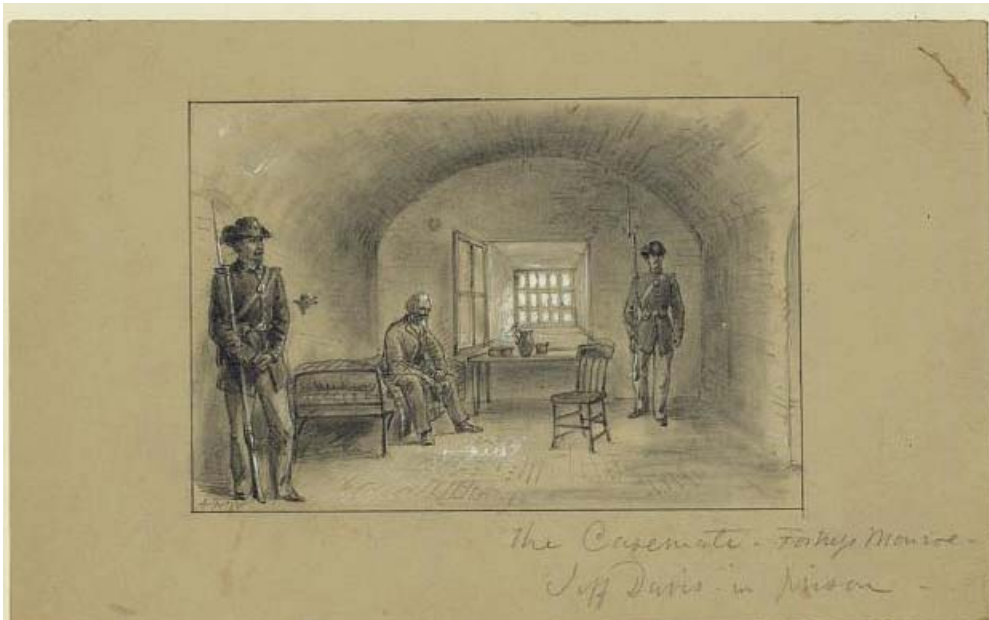


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President Andrew Johnson made the decision to prosecute Davis in a civilian trial rather than before a military tribunal.

Underwood’s lack of propriety placed the Johnson Administration in a difficult position. Having determined to try Davis in Richmond, Johnson was now wary of proceeding with the case unless the Chief Justice was also present.

For various reasons, Chase refused to preside over



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This drawing by contemporary artist Alfred Waud shows Davis in his makeshift cell in Fort Monroe. The area, referred to as a “casement” was normally used for housing a cannon.

the Davis trial. First, because Virginia was still under martial law, and he believed that the civil courts could not operate freely in a place under martial law. Later, Chase was called away to preside over the impeachment trial of Andrew Johnson. But in truth, Chase did not believe trials

for treason were

good policy in the postwar period—he wanted to see healing between the two sections. “I can see no good to come, at this late day, from trials for treason,” Chase wrote from Richmond. “I would



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In May 1867, Davis appeared in the US District Court of Richmond on a writ of habeas corpus. This illustration appeared in Frank's Illustrated Paper.

rather engage in trials of mutual good will and good help.”

For nearly two years Davis sat imprisoned at Fort Monroe. Finally, on May 1, 1867, Davis’s counsel decided to press the issue and call for either a trial or release on bail. When the government was forced to admit it was not prepared for trial, Underwood set bail at \$100,000, much of which was supplied by several leading Republicans and former abolitionists—Horace Greeley, Gerrit Smith, and Cornelius Vanderbilt, among others. These men hoped that amnesty would help usher the way for a peaceful reunion with black suffrage and political rights. On May 13, 1867, two years after his initial capture, Davis was released from captivity. The courtroom erupted in “deafening applause.” Davis’s lawyers were now convinced that their client would never have to go to trial. Sentiment in the North “for amnesty and the restoration of good feeling” was growing. Memories of wartime animosities were fading. Time, in short, was on Davis’s side.

Davis’s release on bail did not end the ex-president’s judicial ordeal. His trial was postponed to November 1867, then March 1868, then June 1868, then November 1868.

In the midst of these delays, the Fourteenth Amendment was ratified on July 9, 1868. Section 3 of the amendment disqualified certain rebels from holding office in the United States, unless Congress removed the disability. Chief Justice Chase let it be known that he considered this disability a punishment for treason so that any further prosecution of Davis would be a violation of the Fifth Amendment’s double jeopardy clause.

For several days in late November and early Decem-

ber 1868, Chase and Underwood sat at the U.S. Circuit Court in Richmond, hearing arguments from both sides regarding the applicability of the Fourteenth Amendment to Davis’s case. Davis’s attorneys argued that the court should quash the indictment, claiming that Davis had already been punished under the Fourteenth Amendment, while the government maintained that the Constitution did not impose a criminal penalty but instead merely defined the qualifications for holding office in the U.S. The two judges could not agree, so they sent the case forward to the Supreme Court.

Before the Supreme Court could render a decision, the lame duck president intervened. On Christmas Day 1868, Johnson issued his final presidential proclamation offering “full pardon and amnesty for the offence of treason” to “all and to every person who directly or indirectly participated in the late insurrection or rebellion.” The proclamation effectively ended all prosecution against the former rebel commander-in-chief. What might have amounted to the most important treason trial in U.S. history closed, after three years, before it ever really began.

* *Jonathan W. White is an assistant professor of American Studies and a fellow at the Center for American Studies at Christopher Newport University. His new book, **Abraham Lincoln and Treason in the Civil War: The Trials of John Merryman**, discusses the struggles of the Lincoln administration, the Supreme Court and Congress as they attempted to balance the rule of law and due process with the realities of civil war. The book is available through the Society’s Gift Shop.*

Judah Benjamin's Career on the Northern Circuit and at the Bar of England & Wales

By: His Honour David Lynch*

Editors' Note:

*As a response to the first half of the Judah Benjamin article that appeared in the Quarterly earlier this year, we received a copy of a biographical sketch of Judah Benjamin's life as an English barrister which was one of over 3,000 entries of Northern Circuit judges and barristers in Judge Lynch's **Directory of the Northern Circuit, 1876-2004**. The foreword to the book by Lord Justice Christopher Rose describes it as ". . . a unique, comprehensive and up-to-date work of reference about the people who have underpinned the administration of justice in the North West (of England) over a span of almost 130 years. It briefly chronicles the lives of barristers who have given the Circuit its resilient existence to date and its expectation of a vigorous future. . . . The Directory, is however, much more than a reference book. Its pages are enlivened by photographs, sketches and anecdotes which exude an atmosphere of professional commitment, integrity, comradeship and fun which, together, provide the lifeblood of this greatest of Circuits."*

Judge Lynch's profile discusses Benjamin's career as a barrister and we are pleased to publish excerpts from the article as they provide additional insight into Benjamin's career in England following the Civil War. We are grateful to Judge Lynch, who is a member of the Society, for making this article available to our readers. It makes a wonderful complement to the two-part biography written by Judah Best which appeared in the two previous issues of the Quarterly.

After an adventurous journey, Benjamin arrived almost penniless in Liverpool in 1865. Benjamin later wrote to his law partner in New Orleans that 'when called to the Bar I shall take the Northern Circuit which includes Liverpool where I hope to get my first start with the aid of some of our old clients there'. In his excellent biography **Judah P. Benjamin—The Jewish Confederate**, Eli Evans states, 'Liverpool was the home to the largest number of Confederate Sympathizers—shipping firms and mercantile bodies whose owners had supported the South during the war and, having known Benjamin as the South's reigning international lawyer, would welcome his services once

again." Because of his standing and experience Benjamin was not required to wait the normal three years of training. Having been trained by Charles Pollock, he was called to the Bar at Lincoln's Inn on 13 January 1866 within five months of having been admitted as a student. He was elected to the Northern Circuit some weeks later. Despite being befriended by Quain and Holker, the then-leaders of the Circuit, Benjamin made a slow start. He put all of his efforts into a textbook on the sale of goods. It achieved immediate, widespread success. It is a fitting memorial to him that a 6th edition was issued in 2002.



After the collapse of the Confederacy, Judah P. Benjamin established himself in a very successful career as a Solicitor and Queens Counsel in Great Britain.

When he first arrived in England, Lord Chelmsford refused him Silk for fear of causing offense to the United States Government. [The phrase refers to the act of being appointed a Queen's Counsel, known as "taking silk." Queen's counsel wear distinctive full-bottomed wigs and their silk gowns. The silk gown is the same as that worn when appearing in court. It is this gown which gives rise to the colloquial reference "to Queen's Counsel as 'silks'" and to the phrase "taking silk" referring to their appointment.] However, Benjamin was appointed Queen's Counsel of the Court of the County of Lancaster. He did take Silk in 1872 and his performance in Court so impressed Lord Hatherley that he granted Benjamin a Patent

of Precedence. It has been suggested that Lord Coleridge wished to make Benjamin a High Court Judge but Lord Cairns refused because he was not British born. Despite that, Benjamin pronounced Cairns the greatest lawyer before whom he had argued a case [Lord Cairns served on the Court of Appeals and Benjamin argued before him in that Court.]

Serjeant Robin described Benjamin thus:

I am bound also to mention that Benjamin's appearance was far from prepossessing; he was short and stout—in fact what the irreverent might call stumpy, and his voice had about it what we are in the habit of deeming the very worst of American twangs. There was nothing in his gait or bearing that could compare with the dignity of aspect which characterized Sir William Follett, for instance, and many other leaders. If I refer to these difficulties and defects, it is only for the purpose of suggesting

how powerful must have been the energy and the intellect that could defy and surmount them all.

This description accords with that given by Sir John Hollam when he deals with Benjamin's unorthodox approach to advocacy. It comes from Judge Parry's **Seven Lamps of Advocacy**.

It was in a case which came on for hearing before Lord Justice James, then Vice-Chancellor, and 'it appeared to be generally thought that, as usual at the time, a decree would be made directing inquiries in chambers. The matter was being so dealt with when Mr. Benjamin, then unknown to any one in Court, rose from the back seat in the Court. He had not a commanding presence, and at that time had rather an uncouth appearance. He, in a stentorian voice, not in accord with the quiet tone usually prevailing in the Court of Chancery, startled the Court by saying, 'Sir, notwithstanding the somewhat off-hand and supercilious manner in which this case has been dealt with by my learned friend Sir Roundell Palmer, and to some extent acquiesced in by my learned leader Mr. Kay, if sir, you will only listen to me—if, sir, you will only listen to me' (repeating the same words three times, and on each occasion raising his voice), 'I pledge myself you will dismiss this suit with costs.' The Vice-Chancellor and Sir Roundell Palmer, and indeed all the Court, looked at him with a kind of astonishment, but he went on without drawing rein for between two and three hours. The Court became crowded, for it soon became known that there was a very unusual scene going on. In the end, the Vice-Chancellor did dismiss the suit with costs, and his decision was confirmed on appeal.

Benjamin's courage was further demonstrated when arguing a case in the House of Lords with Lord Selbourne presiding. Benjamin stated the propositions of law for which he was about to contend. One drew from Lord Selbourne the

comment "Nonsense." Benjamin stopped short, slowly put his papers together; tied the tape around them; made a low bow and left the Bar of the House. His able junior stepped into the breach but before long the Lord Chancellor said that he was sorry that Mr. Benjamin had left the House and that he was afraid that he was the cause of it by saying that which he ought not to have said. Before long Benjamin took only appeals to the House of Lords or Privy Council. He is reputed to have earned more than any member of the Bar of his time—having received £480,000 in his sixteen years of practice. In 1883, the year in which Benjamin retired, Lord Chief Justice Coleridge in an address to the New York State Bar Association put Benjamin's achievements into perspective when he said: "It is delightful to find that as we familiarly quote your great men, Kent, Story, Parsons, Duer, Philips and Greenleaf—so you on your side are familiar not only with our old great men, with Sir William Blackstone and with Lord Hale and Lord Coke but with our modern men, with Lindley, with Pollock, with Benjamin, the common honor of both Bars of England and America."

Upon his retirement, Benjamin was given a farewell dinner in Inner Temple Hall on 30 June 1883. He thanked his many friends on the Bench and at the Bar for 'the kindness and generosity with which they had received a destitute fugitive from another land.' He died at his home in Paris the following year.

**His Honour David Lynch is a retired Circuit Judge from Liverpool, England. A member of the Society, he wrote this sketch of Benjamin's career as an English barrister for his history of the English Northern Circuit. We are grateful to him for making it available to the readers of the Quarterly. Judge Lynch is presently researching the Marshall Court for a PhD thesis.*

For more information about Benjamin, please see the two-part biography written by Judah Best, which appeared in issues 2 and 3 of the *Quarterly* for 2011.

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

2011 SUPREME COURT ORNAMENT

The 2011 ornament features the Supreme Court Building framed with tree branches lightly covered in snow. A lone passerby is seen standing in front of the Court building holding an umbrella. Although the Court's term is relatively short, beginning in October and winding down in June, the Court building hosts over 350,000 visitors annually. And, even with such a limited schedule, inclement weather rarely affects the operations of the Court. The 2011 ornament is plated in 24kt. gold and can be hung along with your other ornaments or it can stand on its own "feet". This ornament is packaged in a beautiful box, perfect for gift-giving and years of enjoyment.

Item # 113054 \$28.95 Members \$23.16



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The Seal of the Supreme Court is etched onto each of the optical crystal coasters in this handsome set. The wooden base is stained in a rich mahogany finish. The bottom of the base is covered with felt to protect your furniture. Individually, they could also be used as paperweights.

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This is one of the most attractive mugs that we carry. The Seal of the Supreme Court is imprinted in gold on this very festive ruby red glass coffee mug.

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Entertain in style with this crystal pitcher and set of four glasses. Each of the five pieces in this set are etched with the Seal of the Supreme Court.

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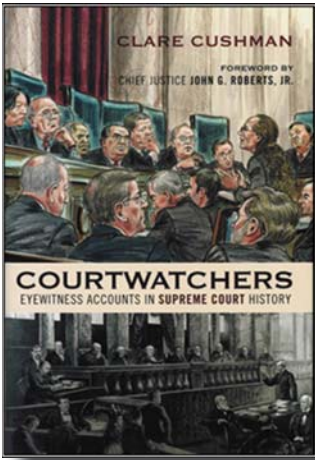
2012 POCKET CALENDAR

This week-at-a-glance calendar is embossed with the "Seal of the Supreme Court of the United States". Small

enough to carry with you anywhere.

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COURTWATCHERS: EYEWITNESS ACCOUNTS IN SUPREME COURT HISTORY

BY CLARE CUSHMAN

There are many fine one-volume histories of the Supreme Court, but this unique volume is one of the best. Instead of a chronological review of cases and Justices, Clare Cushman, who is Director of Publications for the Society, takes us on a tour of the Court through contemporary eyewitness accounts.

The sources of these accounts are varied. There are stories of the hazards of 19th century circuit riding—told by Justices who did it. There are wonderful accounts of the 1940s feuds within the Court. There are poignant accounts of Justices leaving the Bench after years of service. The whole volume is a wonderful and entertaining look at the Court. Copies autographed by the author are available.

Item # 113093 \$35.00 Members \$28.00

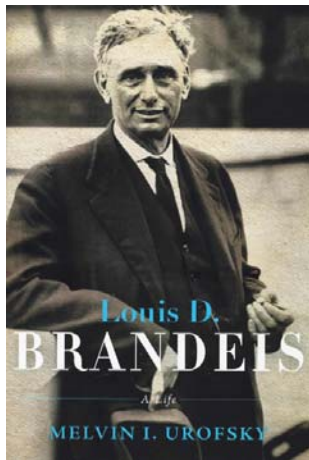
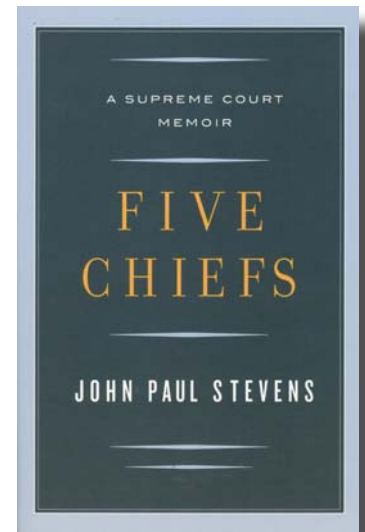
FIVE CHIEFS: A SUPREME COURT MEMOIR

BY JOHN PAUL STEVENS

Retired Justice Stevens has written a most unusual memoir. **Five Chiefs** centers around the five Chief Justices Stevens personally knew. While still young and a recent graduate of Northwestern Law School, Stevens served as a clerk for Justice Wiley Rutledge while Fred Vinson was Chief Justice. Later, as a practicing lawyer, he followed the Court and even argued before it, during the tenure of Earl Warren. And, of course, from 1975 to 2010, John Paul Stevens was an Associate Justice while Warren Burger, William H. Rehnquist and John G. Roberts, Jr. served as Chief.

This candid book assesses the personalities and contributions of the five Chiefs. But it also comments on other members of the Supreme Bench, reflects (sometimes unfavorably) on major decisions, and gives an interesting insight into Justice Stevens' remarkable career. It is a readable and informative look at the modern Court from the inside.

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LOUIS D. BRANDEIS: A LIFE

BY MELVIN UROFSKY

In the pantheon of American law, few names are of greater importance than Louis Brandeis. This towering figure was a major force in shaping the progressive path of the early 20th century. The first Jewish Justice was appointed to the Supreme Court by Woodrow Wilson in 1916. The contributions he made in the Court—together with his friend Oliver Wendell Holmes—not only gave a new direction to understanding freedom of speech, but also provided the intellectual and philosophical underpinnings to most of Roosevelt's New Deal.

Professor Urofsky is a distinguished Supreme Court scholar whose specialized knowledge of Brandeis is unsurpassed. The book was awarded the Griswold Prize for 2010—the Society's highest award for Contributions to Supreme Court History.

Item # 112883 \$40.00 Members \$32.00

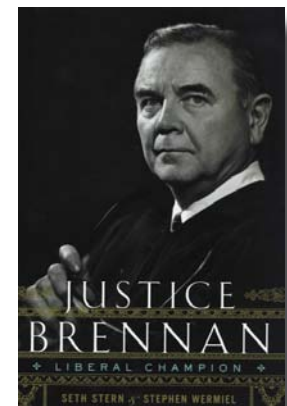
JUSTICE BRENNAN

A LIBERAL CHAMPION: BY SETH STERN AND STEPHEN WERMIEL

William Brennan was virtually unknown when he was named to the Supreme Court in 1956. Thirty-four years later, when he retired in 1990, he was recognized as one of the most important figures of the Warren Court Era, and his influence continues to the present.

Professor Wermiel had open access to the Justice during his lifetime, including personal interviews. This prize-winning book, coauthored by Seth Stern, is the long-awaited result of those labors.

Item # 112979 \$35.00 Members \$28.00



Continued from page 2

thrilled participants in the Summer Institute for Teachers programs by attending receptions held in their honor and mingling with the teachers and chatting with them. We are fortunate to have a second member of the Marshall family, Thurgood, Jr., serving the Society as a Trustee.

Tangible ties to the Court like these provide the Society with a unique connection to the institution it serves. Many of our members and a number of our Trustees have served as clerks to the Justices. Of course, every member of the Society makes an important contribution to our success,

Among the many wonderful events planned for 2012 is a program on Thurgood Marshall's work as counsel to the NAACP Legal Defense Fund that will be held in New York on February 6th, as well as a new series of Leon Silverman Lectures focusing on property rights and the Supreme Court that will be delivered at the Court. These programs will afford many members an opportunity to participate, and I hope you will make plans to attend as many events as you can.

Autographed copies of **Courtwatchers** are available for sale both in the shop or on line, making the book an even more attractive gift. The two preceding pages of this magazine contain gift items, including this book and several other titles, as well as other gift items. Your purchases also support our general operations and I think you will find many attractive items. You can access even more options by linking to the shop through the Society's web site, <http://supremecourthistory.org>.

In these times of challenge and change, I hope you will consider the Society when you plan your charitable donations. These programs and publications would not be possible without your support, and we are grateful for your generosity.



NEW SUPREME COURT HISTORICAL SOCIETY MEMBERSHIPS July 1, 2011 through September 30, 2011

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JOHN MARSHALL SILVER DOLLAR PROOF COIN

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

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

This proof coin has a brilliant mirror-like finish. The term “proof” refers to a specialized minting process, which begins by manually feeding burnished coin planchets into presses fitted with specially polished dies. Each coin is struck multiple times so the softly frosted, yet detailed, images seem to float above a mirror-like field. The coin is then placed in a protective capsule and mounted in a handsome satin-lined velvet presentation case, accompanied by its own Certificate of Authenticity signed by the Director of the United States Mint.

Item #111396 \$39.00 Members \$35.00

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