



THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

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## Society Celebrates Thirty-Seventh Annual Meeting on June 4, 2012

For the thirty-seventh time, the Society conducted its annual day-long meeting at the Supreme Court Building in Washington, DC. The opening event was the Annual Lecture which was given at 2 PM in the Supreme Court Chamber. Society President **Gregory P. Joseph** welcomed the audience and introduced **Justice Stephen G. Breyer**. In his introduction, Mr. Joseph observed that the Justice had given warm and encouraging support to the Society's activities over the years.

Justice Breyer also greeted the audience and then introduced **Professors Judith Resnik and Dennis Curtis**. Both members of this husband and wife team are affiliated with the Yale Law School. Professor Curtis is a member of the American Law Institute and serves as a consultant for law schools through the Association of American Law Schools. Professor Resnik is the Arthur Liman Professor of Law at Yale and holds an honorary professorship at University College, London.

Professors Curtis and Resnik are perhaps best known to the general public for their book **Representing Justice**. This volume is the product of years of study and extensive travel. It considers the iconography and decorative elements utilized in court buildings as architects and artists have attempted to portray the concepts and ideals of justice.

Professor Resnik presented the lecture, focusing on the decorative and architectural details of American Court Buildings. Members of the audience were able to follow a power point presentation to see illustrations of the details she discussed. The lecture was original and thought-provoking

and well received by the audience. Members of the Society will be able to profit from this research when the text of her remarks is published in a future issue of the **Journal of Supreme Court History**.

Following the lecture many Society members and their guests enjoyed tours of the building given by guides provided by the Office of the Curator of the Court. This opportunity to view the building under the direction of know-

ledgeable tour guides is a popular component of the day's events. The Society is indebted to the Curator of the Court, **Catherine Fitts, Gwen Fernandez** Director of Visitors Programs, and her Assistants for conducting the tours.

The annual business meeting of the General Membership and the Board of Trustees opened the evening events at 6 PM in the Supreme Court Chamber.

In a "state of the Society" message, Mr. Joseph noted that in spite of some financial downturn during the year, the Society was debt-free at year-end, with net assets totaling in excess of \$12 million. Further, the Society owns the headquarters building, Opperman House, a significant asset. Renovations are underway in a large room there which will provide additional shelving for the library collection and a suitable setting for web casts, video conferencing and small educational meetings. The building houses a wonderful and growing library as well as providing office and meeting space.

The collection of artifacts and memorabilia of historical significance to the history of the Court continues



(Left to right) Professors Dennis Curtis and Judith Resnik posed with Justice Breyer following the Annual Lecture on June 4.

Photos by Steve Petteway



Gregory P. Joseph

In late August, the Society lost President Emeritus Frank C. Jones, one of its most devoted supporters. Frank was first elected as a Trustee of the Society in 1986, became National Membership Chair and then Vice President, and served six distinguished years as President from 2002 to 2008. Words are inadequate to express the sense

of loss of a great man and great friend of the Society.

One of the major accomplishments of Frank's Presidency was the successful Congressional enactment of the John Marshall Commemorative Coin Bill legislation, which authorized the minting of the first commemorative coin to honor a jurist who had served on the Supreme Court of the United States. Many people worked hard to accomplish this task, and the efforts were spearheaded by Ralph I. Lancaster, who later succeeded Frank as President of the Society in 2008. Proceeds from sales of the coins doubled the Society's endowment fund. Financial viability is critical to the Society's ability to fulfill its mission of collecting, preserving and disseminating the history of the Supreme Court.

A second milestone achieved during Frank's Presidency was the successful completion of the **Documentary History of the Supreme Court of the United States: 1789-1810**. The eighth and final volume in the series, published some 30 years after the project began, brought this important project to an auspicious conclusion. In addition, Frank's tenure as President saw the first Supreme Court Institute for Teachers that was conducted outside of the Washington, DC area. This opened up an educational opportunity for many teachers who are unable to attend the oversubscribed summer program held each June at the Court.

Frank was an ardent supporter of the Society's historical landmark cases reenactment program. He prevailed upon his partner at King & Spalding, former Attorney General Griffin Bell, to serve as counsel for the State of Georgia during the reenactment of *Chisholm v. Georgia*. When the case was heard, Georgia maintained that it was a sovereign state and therefore not subject to the jurisdiction of the federal government. Consistent with that premise, Georgia did not send a representative to present

argument when the case was heard by the Court in 1793. On the evening of the reenactment 206 years later, in 1999, Frank quipped that Judge Bell had prepared the argument that the fine State of Georgia could and should have made. Perhaps not surprisingly, the Court did not come to a different conclusion in 1999 than it had in 1793, despite Judge Bell's able presentation. Frank's enthusiasm for the reenactment of historical cases was well known. On the completion of his term as President, an annual reenactment program was initiated and named in his honor. It is a testament to him that friends and admirers have generously contributed to a fund to help support the Frank C. Jones Reenactment Series.

Frank's charming Southern accent frequently conveyed wonderful stories, maxims and advice. An example: "If you don't toot your own horn it is liable to remain in a state of 'untootedness.'" A true Southern gentleman, he was a formidable adversary in the courtroom. Frank's family has said that he enjoyed his work for, and association with, the Society more than any of his other extracurricular activities, of which there were many. He was a past President of the American College of Trial Lawyers and the State Bar of Georgia. For more than 60 years, he taught Bible class at the church his family has attended since the Civil War. He was active in the Anti-Defamation League of B'nai B'rith, the Atlanta Symphony Orchestra League and the Jimmy Carter Library and Museum. President Carter, a longtime client of Frank's, paid him the honor of attending his funeral.

Briefly reviewing some of Frank's accomplishments, it is gratifying to appreciate that the Society is continuing the traditions and programs championed by so many of its dedicated past leaders. The Society has achieved a great deal since its founding in 1974, and now in its fourth decade, we continue to build upon the firm foundation established by dedicated leaders who had the commitment and vision to create this organization.

None of this would be possible without the loyal members who support the Society and help it to accomplish its mission. As we near the end of the calendar year, I hope you will remember the Society in your charitable plans as the organization is dependent upon your generosity and support.

On March 13, 2013, the Society will host an inaugural fundraising dinner at the Plaza Hotel in New York. The Officers and Trustees of the Society join me in recommending this event to you as the Society seeks to raise funds to continue its important work. It will be an extraordinary evening, but we need your help in assuring that the event is successful. A special "Save the Date Notice" will be mailed in the coming weeks, and I hope that you will consider supporting the event to the extent that you are able. It will be a wonderful evening.

to grow as the Society works closely with the Curator of the Court to identify appropriate items. Many of these items are used in displays enjoyed by visitors to the Supreme Court Building.

During the past year three issues of the highly respected **Journal of Supreme Court History**

were produced, as well as four issues of the *Quarterly* newsletter. FY 2012 also saw

the publication of **Courtwatchers**. This volume contains anecdotal first-hand accounts concerning the Supreme Court. The volume has garnered praise from reviewers and readers alike. Of particular note in FY 2012, was the publication of **Chef Supreme**, an illustrated cookbook honoring the late Professor Martin Ginsburg and featuring many of his favorite recipes. Much more than a cookbook, it contains family photographs, personal reminiscences and tributes written by spouses of Supreme Court Justices, personal friends, family



Society Trustee David Weinstein (right) enjoys the reception with his son Matthew, and Matthew's guest, Amina Edwards.



Justice Thomas presented an award to Professor Tony Freyer (center) and Daniel Thomas (right). They received the Hughes Gossett Literary Prize for an article they co-authored concerning *The Passenger Cases*.

members and others close to the late professor.

Work is already underway on a one-volume history of the federal judiciary. The book is a joint project with the Federal Judicial Center's (FJC) Office of History. It will be written by Peter C. Hoffer, N.E. H. Hull and William James Hull Hoffer. We anticipate publication in 2015 or 2016.

Many outstanding programs were produced during the year, including lectures and reenactments

of historical cases of great import. The 2012 Leon Silverman Lecture series is underway and focuses on the theme of the "Supreme Court and Property Rights." The Frank C. Jones Reenactment held in November 2011 revisited the case of *Texas v. Ware*. Two outstanding oral arguments were presented by **Patricia Millett** on behalf of Ware and the other bondholders, and **David Beck** for the State of Texas. **Justice Antonin Scalia** performed the job of serving as the Court evidencing his great knowledge of the law and his keen sense of humor. The Society announced that the FY 2013 reenactment will explore the case of *Flood v. Kuhn*. Baseball

fans will recognize that as the landmark case governing Major League Baseball's free-agency issues.

In April 2012, the Society celebrated the 30<sup>th</sup> anniversary of **Justice Sandra Day O'Connor's** first term on the Supreme Court with an historic panel discussion featuring all four women who have served on the Court to date. This sold out event was co-hosted by the Freedom Forum and moderated by

**James Duff**, a long-time Trustee of the Society and President of the Freedom Forum You can link from the Society's web site to hear the complete presentation.

The now traditional Summer Institute training seminars are held in June each year. We are pleased and grateful that sufficient financial support was received from donors to enable the Society to host two sessions of this wonderful program. Participants leave the session better informed and energized and are armed with lesson plans and new teaching methodologies to share with their students and colleagues.

Following his overview, Mr. Joseph turned to the business portion of the meeting. The first order of business was an amendment to the By-Laws prompted by a revision of the laws of the District of Columbia governing the operation of non-profit organizations. The Executive Committee endorsed a proposal to redefine the term



Mary Nold Larimore receiving an award for her successful work as the Indiana State Membership Chair.

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“voting members.” Modeling other non-profit membership organizations in the District of Columbia, it recommends that the By-Laws be amended to define “voting members” of the Society as members of the Board of Trustees. After discussion, the formal motion was made and the vote was cast. The amendment was passed and the By-Laws will be amended.

Following the voting, Mr. Joseph called upon **Philip Kessler**, Secretary of the Society and Chair of the Nominating Committee, to present a slate of candidates for election to the Board of Trustees. The following persons were nominated to serve an initial three-year term on the Board of Trustees: **Patricia Millett, R. Hewitt (Hew) Pate, and Chilton Davis Varner.**

Mr. Kessler then presented a slate of candidates for election to an additional three-year term as a member of the Board of Trustees. Those nominated were: **Peter G. Angelos, Max W. Berger, Beth S. Brinkmann, Vincent C. Burke III, Paul D. Clement, Robert A. Clifford, Sheldon S. Cohen, Harlan R. Crow, Charles W. Douglas, Miguel A. Estrada, Gregory S. Gallopoulos, Kenneth S. Geller, Dorothy T. Goldman, Brad S. Karp, August P. Klein,**



Karen “Kay” Deming was recognized for her work as the State Membership Chair for Georgia.

**Daniel Kolb, Christopher Landau, Jerome B. Libin, Maureen E. Mahoney, Thurgood Marshall, Jr., Timothy J. Mayopoulos, Lee I. Miller, Michael E. Mone, James W. Morris III, James B. O’Hara, James W. Quinn, Jay A. Sekulow, Kelly J. Shackelford, Dennis R. Suplee, Daniel K. Webb, W. Wayne Withers and W. Foster Wollen.**

Mr. Kessler presented a third slate of candidates for election. The following individuals were nominated to fill a one-year term as an At-Large member of the Executive Committee: **Charles J. Cooper, Kenneth S. Geller, Maureen E. Mahoney, Teri P. McClure, James W Morris, John M. Nannes, James B. O’Hara, Theodore B. Olson,**



James R. Hobbs is joined by his guest Jane Zhu when Justice Thomas presented him an award for his successful work as the Missouri Membership Chair.

**Leon B. Polsky, Richard A. (Doc) Schneider and Seth P. Waxman.** All nominees were elected.

The elections concluded the business of the Annual Meeting of the Board of Trustees and Mr. Joseph resumed the podium to conduct an awards ceremony. He announced that **Justice Clarence Thomas** would assist in presenting awards to those recognized that evening. On behalf of the Society, he expressed gratitude to Justice Thomas for his support and asked the Justice to join him.

The first awards presented were literary prizes associated with the

**Journal of Supreme Court History.** The Hughes Gossett Literary Prizes recognize the accomplishments of authors whose literary contributions make a meaningful contribution to the scholarship on the Supreme Court. This year for the first time in the history of the award, the prize for the outstanding article authored by academics, was shared by two co-authors: **Professor Anthony Freyer, and Daniel Thomas.** The article for which the authors were recognized was “*The Passenger Cases Reconsidered in Transatlantic Commerce Clause History.*” Professor Freyer is University Research Professor of History and Law at the University of Alabama. Daniel Thomas is a law student at the University of Alabama School of Law. Mr. Thomas was a student of Professor Freyer’s who collaborated with him on the article. Both prize winners were recognized and presented marble awards. The cash prizes associated with this award were made separately. Mr. Joseph then announced that **Chris Heckman** was the winner of the outstanding article authored by an individual who was a student when the article was written. This prize was awarded for Mr. Hickman’s article “*Courting the Right: Richard Nixon’s 1968 Campaign against the Warren Court.*” Mr. Hickman recently earned a doctorate in history from George Washington School of Law and is now teaching at the University of Northern Florida.

Following the presentation of the literary prizes, Mr. Joseph asked **Christy Jones, National Membership Chair** to make presentations to successful State Chairs. He observed that notwithstanding her assignment as National Chair, Ms. Jones has continued to serve in the capacity of the state chair for Mississippi.

Ms. Jones assumed the podium, accompanied by Justice Thomas who assisted her in making presentations to individual chairs. The successful state chairs present to be recognized on June 4 were: **Robert Anello, New York; Karen Deming, Georgia; Francis Devine III, Pennsylvania East; Troy Giatras, West Virginia 1; Charles E. Griffin, Mississippi; James R. Hobbs, Missouri West; Mary Nold Larimore, Indiana; C. Rufus Pennington III, Florida**



Annual Meeting Chair Maureen Mahoney visits with Chief Justice Roberts as Society Trustee Thomas Tongue looks on.

**North 2; and Steven R. Smith, California West.**

Mr. Joseph resumed the podium to conduct an awards ceremony honoring a number of the Society’s most faithful and generous contributors. He commented that uncharacteristically, a number of the Society’s most faithful supporters were unable to attend, and he expressed gratitude for their continuing assistance and commitment to the Society. He again called upon Justice Thomas to assist in making the awards,

Mr. Joseph noted that some of those receiving awards were recognized for personal contributions, while others represented organizations and foundations providing vital support to the Society. Those present to be recognized that evening were: **Vincent C. Burke III, The Clark-Winchole Foundation; Sheldon S. Cohen, The Marshall Coyne Foundation; James L. Goldman; David G. Leitch; Maureen E. Mahoney; Lee I. Miller, DLA Piper; Steven F. Molo, Molo Lamken; Mr. and Mrs. Dwight D. Opperman; Jay A. Sekulow, American Center for Law and Justice; Kelly J. Shackelford, Liberty Institute; Thomas H. Tongue, American College of Trial Lawyers; and David Weinstein.**

At the conclusion of the ceremony Mr. Joseph

offered thanks to Justice Thomas for his assistance, and then adjourned the meeting.

The traditional black tie reception and dinner was held at 7 PM. The East and West Conference Rooms provided the setting for the reception. The Annual Dinner was held in the Great Hall. Mr. Joseph welcomed guests and thanked the eight current members of the Court and one retired member who were present for their participation. The current members of the Court present were: **Chief Justice Roberts, Justice Scalia, Justice Kennedy, Justice Thomas, Justice Ginsburg, Justice Breyer, Justice Alito, and Justice Sotomayor. Retired Justice Sandra Day O’Connor** also attended. Following brief recognition of the special guests, Mr. Joseph called upon **Chief Justice Roberts** to deliver the traditional toast to the President of the United States.

At the conclusion of dinner service, Annual Meeting Chair, **Maureen Mahoney**, offered thanks to all in attendance, and extended special thanks to the members of the Court who were present to show their support for the Society. Further, Ms. Mahoney extended thanks for the outstanding assistance of **Marshal Pamela Talkin** and the members of her staff who coordinate all of the physical arrangements in the building necessary to make the evening successful.

Ms. Mahoney then announced the performers for the evening. For the first time the concert was performed by a group of young singers, the **Highbridge Voices**, who come from the Bronx area of New York. The Choir is an afterschool music and academic program serving children and families of the South Bronx under the direction of **Bruno Casolari.**



Ms Mary Clementi, musical conductor of The Highbridge Voices, introduces her choir prior to their performance at the Annual Dinner.

Justice Sotomayor recommended the group after seeing them perform in New York.

The concert was given by the premier ensemble of **Voices** under the baton of musical director **Ms. Mary Clementi.** The Chamber Choir is comprised of students aged ten to seventeen. On the evening of June 4<sup>th</sup>, the choir performed a variety of selections ranging from Puerto Rican Folk Songs

to Broadway favorites. Following the adjournment of the Annual Dinner, the members of the choir had a brief meeting with Justice Sotomayor in the Supreme Court Chamber.

It was a memorable evening for all present and the meeting was adjourned until June 2013.



## Professor Randall Kennedy Lectures on Thurgood Marshall: “Mr. Civil Rights”

The second program in an on-going series with the Historical Society for the Courts of the State of New York was held on February 6, 2012. The series topic is “Nominated from New York: New York’s Contributions to the Supreme Court Bench.” Professor Randall Kennedy former clerk to Justice Thurgood Marshall, used this opportunity to speak about his legendary mentor’s career as chief attorney for the NAACP from the 1930s through the 1950s. Professor Kennedy is the Michael R. Klein Professor of Law at Harvard Law School and currently is the visiting professor of civil rights at the University of Pennsylvania’s Penn Law School.

The lecture was presented in the New York City Bar Building in midtown Manhattan before a capacity

crowd of 450 attendees comprised of lawyers, judges, and professors. Participants included Associate Justice Sonia Sotomayor, Chief Judge Jonathan Lippman, Retired Chief Judge Judith Kaye and former Court of Appeals Judge Albert Rosenblatt, who is the current President of the Historical Society for the Courts of the State of New York.

In introducing Professor Kennedy, Justice Sotomayor reminisced that she had served with the Professor on an advisory committee at Princeton University, where both had been undergraduate students. She told the

audience that she had never met Justice Marshall in person, and she regretted that because she considered him a great champion of civil rights and an authentic hero. The Justice commented that as a woman she had benefitted personally from his achievements in the field of civil rights. She knew that doors had been opened to her as the result of Marshall’s legal victories.

Unlike Justice Sotomayor, Professor Kennedy had known Thurgood Marshall personally. Kennedy served as a law clerk to Marshall at the Supreme Court. The Professor opened his comments by saying that he had studied and

written about Marshall often during his career, but that he had been surprised that he had learned many new things about him while preparing the lecture. He also noted that he was experiencing a certain poignancy that evening since his last meeting with the late Justice had been in the very room in which the audience was gathered.

After providing a brief biographical sketch of Marshall’s early life, Kennedy turned to the question of how Thurgood Marshall had earned the title “Mr. Civil Rights.” Born and raised in the Baltimore area, Marshall was no stranger to racial discrimination. Indeed, Marshall had himself been the victim of discrimination when he was refused admission to the School of Law at the University of Maryland because blacks, as a matter of state policy, were not

admitted to the student body. Unable to attend the state university, Marshall enrolled in the Howard Law School. Professor Kennedy suggested that this circumstance might have been a “case in which racial injustice actually steered someone in a good direction because at Howard... [Marshall] fell under the sway of the great Charles Hamilton Houston.” It was Houston who proposed that the best way to achieve civil rights would be in a series of carefully planned legal challenges that would build one upon the

other, creating a legal framework on which to develop civil rights protection throughout the nation for all citizens. This is the strategy that Marshall pursued with such brilliance and success in his career with the NAACP.

Upon graduation from law school, Marshall returned to Baltimore and undertook a carefully calculated legal assault upon segregation. In Baltimore, Marshall convinced a young man, Donald Murray, to sue the University of Maryland for denying him enrollment in the law school because of his race. The case, *Murray v. Pearson*, was Marshall’s first step in seeking legal recognition and political freedom for blacks



Participants in the “Mr. Civil Rights” program were: (From Left to Right) Front: Chief Judge Jonathan Lippman, Justice Sonia Sotomayor and Retired Judge George Bundy Smith. Back: Prof. Randall L. Kennedy, Retired Chief Judge Judith S. Kaye and Retired Judge Albert M. Rosenblatt.

Photos Courtesy New York Bar Journal

and other minorities in America. Marshall “wanted to attack the system of racial exclusion” that resulted in blacks being denied admission to the schools they wanted to attend. In *Murray*, Marshall set forth the legal argument that under the laws of the state of Maryland, the state was committed to provide “separate but equal” educational opportunities. Marshall maintained that as there was no law school available to blacks in the entire state, that the state had not met its “separate but equal” responsibilities. Surprisingly, Maryland state courts agreed with Marshall’s argument and his client was admitted to the law school. The first step on Marshall’s long career to achieve civil rights through legal action had been taken.

It is of interest that this victory in the state courts of Maryland was not only a surprise to Marshall, but also something of a disappointment. While pleased for his client’s victory, he was disappointed that he could not take the issue before the Supreme Court of the United States where a legal victory would help to undermine segregation on a national, rather than a state-wide basis. In time, he did have a case which would fulfill that goal.

Kennedy cited another case of great personal significance to his own family. Professor Kennedy told his audience that he had grown up in Mississippi prior to the end of segregation. He had a memory of his own father “going to see Thurgood Marshall argue *Elmore v. Rice* before the Fourth Circuit. Kennedy’s father never discussed the legal issues involved in the case, nor even Marshall’s performance as a lawyer. The most memorable aspect of the trial to him was that Marshall was treated with respect by the judges.

In 1947, when the case was argued, segregation was still in full effect. Marshall could not eat in most restaurants and could not stay at local hotels. Generally he had to rely on the black community where he was working to house and feed him. He travelled by car to avoid public transportation and the indignity of being relegated to an undesirable portion of the conveyance. Under the operative social code of the South in that period, white people did not refer to black men as ‘Mister.’ Instead, white people typically referred to black men by their first names or otherwise by calling them, ‘boy.’ Mr. Kennedy Sr. was awestruck to witness the respect shown in the court room when the judge addressed Thurgood Marshall as “Mr. Marshall.” Mr. Kennedy was so impressed that he repeated the story of this experience over and over to his family. Witnessing the use of the term of respect “Mister” impressed Kennedy’s father beyond any of Marshall’s eloquence.

Thurgood Marshall travelled throughout the country to pursue his agenda. He tried to focus on cases where he believed there had been a gross miscarriage of justice. Kennedy said he had been somewhat surprised to realize that Marshall was very selective about the cases he took and that

he carefully avoided taking some cases. He tried to focus on cases where legal victories would expand civil rights and he tried to avoid criminal cases unless they met that goal. He also refused to defend any one he suspected was guilty.

This approach was quite controversial in its day and indeed many modern scholars have been critical. But Professor Kennedy suggested that Marshall selected cases with an eye to achieving the overarching goal and declined to take any case that might distract or detract from that goal. The cases he pursued all sought to break down the existing legal restrictions and barriers which propped up segregation. Favorable judgments in these cases had the potential for far-reaching consequences. Kennedy further surmised that Marshall worried that a negative outcome in a criminal case might possibly discredit his other efforts.

Professor Kennedy noted that Marshall also refused to defend cases involving conscientious objection to military service based on military segregation. Marshall considered it imperative that the NAACP be viewed as completely loyal to the United States during a time of world war and national emergency. In the case of Winfred Lynn, Marshall not only refused to take the case himself, but also counseled the American Civil Liberties Union to refuse support to Lynn. Professor Kennedy said that while he thought Marshall was sympathetic to Lynn’s plight, his greater concern was to avoid the appearance that blacks were not patriotic citizens, willing to serve in a time of need and peril.

Kennedy suggested that during his years at the NAACP Marshall made many tough decisions as he formulated the tactics and strategy he pursued as chief counsel for the organization. Indeed, his decision to pass over Robert Carter and name Jack Greenberg, a white man, as his successor was widely criticized. But Kennedy suggested that there again, Marshall made a practical decision that he thought would best advance the goals of the organization.

Kennedy said that the decisions made by Marshall were those of a great tactician who had a goal in mind and did not shrink from the criticism that followed his sometimes unpopular strategy. He observed that intensive study of Marshall’s early career led him to believe that Marshall was one of the greatest advocates not only in the history of the United States, but in the history of the world.

Following Professor Kennedy’s remarks, Retired Judge George Bundy Smith spoke briefly. Judge Smith was a Freedom Rider and worker in the Civil Rights movement. Judge Smith noted that Marshall was his personal hero and that in his own career he strove to emulate the great Supreme Court Justice. Indeed, his choice of a legal career was in large part motivated by his admiration for Marshall. Judge Smith served in the New York State Court system for 31 years, the last 14 of which he served on New York’s highest court.



## 2012 Supreme Court Summer Institute for Teachers

By: Katie Zimmerman, Undergraduate Summer Intern, Street Law, Inc.

The lawyers were assembled in the courtroom, waiting to argue their cases. A hush fell over the room as the Justices filed in. The Marshal of the Court opened the session with the traditional “Oyez! Oyez! Oyez!” to begin the proceedings.

This was the scene at Georgetown Law Center’s Moot Courtroom, where teachers from the 2012 Supreme Court Summer Institute for Teachers had gathered to conduct oral arguments for *Miller v. Alabama*, a case questioning whether a sentence of life without possibility of parole for a juvenile is in violation of the Eighth Amendment. After being divided into three groups (Justices, petitioners, and respondents), the teachers met with expert resource people to help them prepare for the simulation. Roy Englert, a member of the

cast their votes to decide the outcome of the case.

This moot court session was part of two six-day professional development programs co-sponsored by Street Law, Inc., and the Supreme Court Historical Society.

Sixty social studies teachers representing twenty-seven states, the District of Columbia, and an American military base in Germany gathered in Washington, D.C., to participate in the 2012 Institute. Through workshops and group work, talks from highly knowledgeable lawyers, educators, and journalists, and an opportunity to see the workings of the Court up close, the teachers were not only able to deepen their own knowledge of



**Mrs. Thurgood Marshall (center) is surrounded by participants in the second session of the Summer Institute program at a closing night reception at the Supreme Court hosted by Justice Kagan.**

the Court, but also learn strategies in order to effectively pass this information on to students.

One portion of the Institute focused on how the Court functions. The first day included an excellent overview of the operations of the Court provided by Jeff Lamken, partner at MoloLamken, during the first week and Tom Goldstein, partner at Goldstein and Russell and creator of SCOTUSblog, during the second week. Teachers had the opportunity to visit the Court, as well as meet with Deputy Clerks Cynthia Rapp and Gary Kemp. While at the Institute, teachers



**Teachers had the opportunity to share ideas within their professional development groups.**

Program Committee, trained the Justices. Other expert resources for the Moot Court session included Chris Landau and Jen Hardy, from Kirkland & Ellis, Danielle Spinelli from WilmerHale, Ed Darden from Appleseed, and Brian Matsui from Morrison & Foerester. After arriving in the courtroom, the teachers had the opportunity to deliver an initial argument and a rebuttal to the opposing side’s argument, while being bombarded with tough questions from those serving as Justices. After a few minutes of deliberation, the Justices



**Teachers prepare to present their cases to the Justices in the moot courtroom.**

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## John Marshall's Batteau Trip Recreated By Andrew Shaw\*

While John Marshall has established a secure place in the pantheon of American heroes as “the great Chief Justice” and is still remembered for his role in the ratification of the Constitution by his home state of Virginia, some of his important extra-legal accomplishments have long been forgotten.

In 1812, the Chief Justice, then 56 years old, was asked by the Virginia General Assembly to go on survey. Essentially, he led a group of other commissioners on a journey of some 250 miles of tumultuous Appalachian Rivers between Lynchburg, VA and the Great Falls of the Kanawha, in what is now West Virginia. Marshall and his group left Lynchburg with a crew of boatmen on September 1<sup>st</sup>, 1812.

They traveled in a long, narrow-bottomed boat, generally 40 to 60 feet long and 6 to 8 feet wide. These river boats were called by the French name *batteaux*. The James River *batteaux* had been developed in 1771 by Anthony Rucker, a prominent Piedmont Planter. Its construction was ideal for the James and its adjacent rivers. Even today this river system is characterized by long stretches of shallow and rocky waters, sometimes with falls and rapids which make boating extremely hazardous. But the survey had important economic goals—to establish a reliable river-based trade route through the mountains.

Marshall shared a vision with other early American leaders, including George Washington, for the utilization of rivers and canals as connective routes between the ports of the east and the fertile lands of the mid-west.

Marshall's journey carried significant risks. Appalachia was sparsely populated and the journey was arduous. From Lynchburg the crew traveled upstream for more than 100 miles-- gaining over 400 feet on the James and Jackson Rivers. Once at Covington, they carted their *batteau* over the Allegheny Mountains on 30 miles of unimproved roads. Rather than a leisurely downstream float on the Greenbrier, they found a river in drought. Marshall notes making only three miles in one day even as horses were fetched to drag the boat over a virtually dry riverbed. Upon entering the New River, Marshall's crew confronted high volume rapids, culminating in a descent over the New River Gorge. With no knowledge of what lay ahead, the crew conquered a section of treacherous whitewater now home to

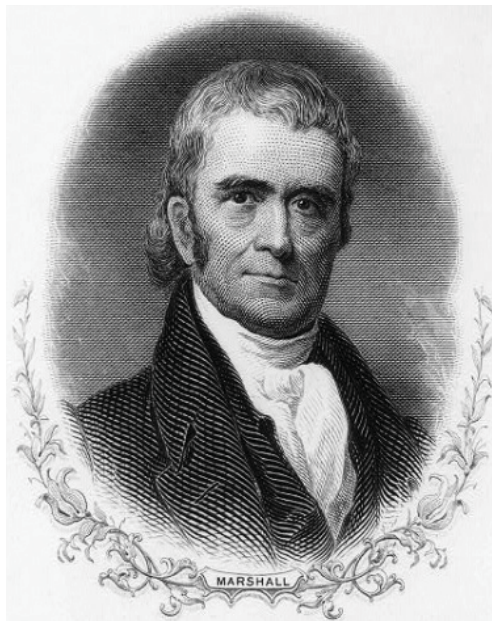
a thriving commercial rafting industry. Of the New, Marshall wrote “The New River ... having to search its intricate way through a long chain of lofty and ragged mountains, whose feet it washes, exhibits an almost continued succession of shoals and falls, from which the navigator is sometimes, though rarely, relieved by a fine sheet of deep placid water.” On October 9, 1812 the commissioners reached Kanawha Falls and returned home overland.

Despite the journey's difficulties, Marshall returned to Richmond an optimistic and ardent advocate for the construction of a canal between Richmond and Kanawha Falls. The James River Company had been planning a canal between Lynchburg and Richmond, and Marshall's report encouraged aspirations beyond Lynchburg. In 1832, this company became the James River and Kanawha Company, whose stated mission was to realize Marshall's vision. The canal was never completed due to funding development. However, the path out remains a means of penetrating US Route 60 and Interstate 64 all follow the same general corridor.

issues and railroad Marshall laid Appalachia. CSX,

Almost 200 years later, I voyaged with a small group of friends on a similar journey retracing Marshall's path. Our expedition was meant to be a tribute to John Marshall's vision and accomplishment.

Inspired by Marshall, my crew and I, all native sons of the James River, wanted to retrace the entire intended line in a boat of our own. What began as a shared pipe dream between me and Wesley Andrews during our final year at the University of Virginia would now become a reality. My high school friends Dylan and Issac Schumacher jumped on board along with Wes's friend Ford Prior. Kevin Farrell a commercial fisherman in the Bering Sea, rounded out our crew. We spent months in planning. We sought sponsorships and finally we began constructing a boat. As we envisioned it, this would be the longest *batteau* expedition since 1818. And we were able to secure funding from a National Geographic Young Explorers Grant, with additional support from the Alumni Association at Virginia, from the Virginia Canals and Navigations Society and Keene Footwear.



At the age of 56, Chief Justice John Marshall made a journey of 250 miles to survey the Appalachian Rivers between Lynchburg, VA and the Great Falls of the Kanawha River.

LOC #3a03498

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When we were ready to start, we had to build the boat. We constructed a James River *batteau* very much like the one Marshall had used. We modeled ours using rib pattern tracings from a discovery made 30 years ago in a Richmond construction site. We built a tapered boat that was remarkably maneuverable and efficient. It was 43 feet long and 7 feet at its widest. From January to March, 2012, we worked day and night meticulously crafting the vessel that would be our home. When we were finished we named it the *Mary Marshall*, in honor of the Chief Justice's wife.

Our journey launched from Watkins Landing on the James, just upstream from Richmond, VA on the crisp spring morning of April 5<sup>th</sup>. Standing on the edge of what promised to be a strenuous and historic journey we were excited and confident of our ultimate success. In our path lay countless rapids and the potential for floods that could delay our journey for weeks.

Faith in our success lay in the historic record; if Marshall did it, then so could we.

Our first challenge came in simply moving our vessel. *Batteau* do not track well due to the absence of a keel. Navigating upstream we ran only a rear "sweep" – a long steering oar made from a solid piece of white oak. With one man on the sweep, the other five poled in unison. Beginning at the front of the boat, each planted his pole firmly on the riverbed and walked to the rear. The rear sweep man must keep the boat straight while contending with the current, a headwind, and the varying pole placement of the crew. It was a task that confounded us in the first few hours of the trip, and left more than one crewmember beginning to wonder just how we would manage to do this for over 225 miles.

Regardless of difficulty, the crew quickly fell into a rhythm, and moving upstream proved to be a thrill. One of the greatest joys of our journey was accomplishing something collectively that alone would have been impossible. This played out each time we came to a rapid or shoal. On countless occasions the boat would stall in a rapid, only to be propelled forward when the last man's pole found a good bite on the riverbed.

In the first 137 miles of our journey, the James River meanders through the gently rolling hills of Virginia's Piedmont. Through long days and countless rapids the crew worked tirelessly, often poling more than 14 hours a day and eating meals on the move. We

arrived in Lynchburg after only ten days on the river. Along the way we enjoyed breathtaking scenery, the hospitality of friends along the river, and the satisfaction of going to sleep thoroughly spent after a long, hard day's work. Each crewmember is a Virginia native with hours on the river; yet each found poling upstream to be an experience unlike any other.

The last few days to Lynchburg were increasingly difficult as the water level dropped and increasingly we found ourselves dragging the boat over shallows. Once at Lynchburg, we trailered around 23 miles of dams and put back in at Snowden. From there we passed through Balcony Falls, the most significant rapid on the James, and continued on into Appalachia.

Finally, after many weeks we began to see the end. We were on the Jackson River and the last days there were incredibly grueling. The

Jackson has been left scarred by development as it parallels I-64. As we battled our way through what felt like the one gigantic rapid of the foul watered Jackson, we felt mocked by the cars that zipped along I-64. By five o'clock in the evening our final day we were still at least eight miles from our destination, and a crew that was normally light hearted and determined was showing the strain of an incredibly difficult days' work. Our battle for Covington happened to coincide with a lunar event that created some of the brightest night skies in recent memory; the crew toiled on until midnight under a glowing moon. Exhausted, we made camp a mile below our destination under the glowing lights of the local Wal-Mart.



The crew had to negotiate Balcony Falls, the most significant rapid on the James River.

Photos courtesy Andrew Shaw



Traversing shallow water required the crew to use poles to move the batteau forward, a physically exhausting process.



While arduous, the upstream journey was incredibly rewarding. After crossing the Alleghenies, we began our downstream journey. We treated ourselves to a week's respite on the 50 miles of the Greenbrier River and met local people who had read of our adventures in their weekly newspapers. We were even entertained by descendants of families who had lived on the same land when John Marshall passed through.

Beyond the Greenbrier, we entered the New River. Just like Marshall, we confronted high volume, technical whitewater that culminated in a dramatic descent of the New River Gorge.

Our journey would be cut a few miles short of Marshall's. In the 1930's the last eight miles of the New were dewatered by the Hawks Nest Dam, which diverts the river under the mountains to make electricity. Although we weren't able to float all the way to the Kanawha, we considered our expedition a success in every way. Each challenge was handled efficiently as a cohesive group. We had the privilege of living on Appalachia's beautiful rivers and enjoying the hospitality of people on the river. Marshall's courage and vision in undertaking such a task is a testament to the determination of our founders to effect development in our young nation, and we are proud to have helped tell his story.



**Large rocks made travelling through portions of the Appalachian River system treacherous.**

*\*Andrew Shaw grew up on the banks of the James River in Lynchburg VA, fostering a passion for the river and an appreciation for its role in our history. He graduated from the University of Virginia with a BA in History in 2011. Andrew can be reached at [adshaw5@gmail.com](mailto:adshaw5@gmail.com)*

*Summer Institute continued from Page 8*

also learned about the process of granting cert, the many aspects of nominating a Justice to the Court, and the role of interest and advocacy groups in Supreme Court proceedings. Later in the week, teachers enjoyed eating lunch with lawyers who previously clerked for Justices and hearing their behind-the-scenes accounts of what goes on within the Court.

Another unique aspect of the Supreme Court Summer Institute was the opportunity for teachers to delve into current cases before the Court, with the help of attorneys and expert resource people who have worked directly with these cases. Ann O'Connell, assistant to the Solicitor General, and Jeff Green, of Sidley Austin, led sessions on *U.S. v. Jones*, a case dealing with the constitutionality of GPS tracking under the Fourth Amendment. Kristina Campbell, law professor at UDC, and Karen Grisez, of Fried Frank, served as valuable resources for the *Arizona v. United*



**Week One teachers pose in front of the Court on their last night in Washington.**

*States*, an immigration case. In addition, Erin Murphy, of Bancroft LLC, taught teachers about the Commerce Clause, particularly its application to the *Patient Protection and Affordable Care Act*.

The teachers also had ample time to socialize and experience the Supreme Court in action. Both weeks began with a delicious dinner at Jones Day's office, with wonderful views of the

Capitol, and the opportunity for teachers to get to know one another. The culmination of the Institute for all participants was the opportunity to visit the Court on Monday to hear decisions handed down and then attend a reception at the Court hosted by Chief Justice Roberts, for the first week participants, and Justice Kagan, for the second group. Both Chief Justice Roberts and Justice Kagan were generous with their time and made the evenings a once-in-a-lifetime experience for the teachers.

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 Kathryn Todd, McLean  
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 Katrina N. Harper, Morgantown  
 Ian Hedges, Charleston  
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 David Krech, Morgantown  
 Steve Mancini, Beckley  
 Steve Skinner, Charles Town  
 Larry V. Starcher, Morgantown

**WISCONSIN**

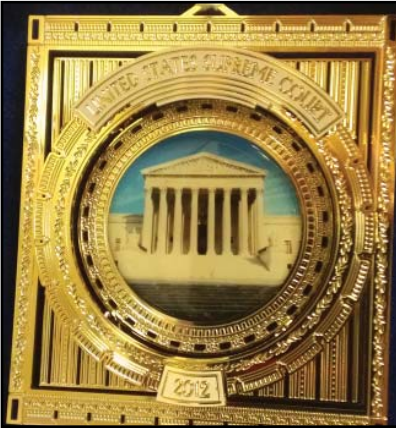
Joseph Gordon Hylton, Milwaukee

**INTERNATIONAL****People's Republic of China**

Zhu Dongmei, Guizhou Province

## 2012 Fall/Winter Giftshop Features

Please visit our giftshop online at [SupremeCourtGifts.org](http://SupremeCourtGifts.org) or call to place your order. All current Historical Society members receive the Member's price in red. Gift memberships can also be purchased through our website and by phone. Please call 1(888)539-4438 to place your order or if you need assistance.



### 2012 Ornament - Item #113113

Everyday Price \$27.95

**Member's Price \$22.36**

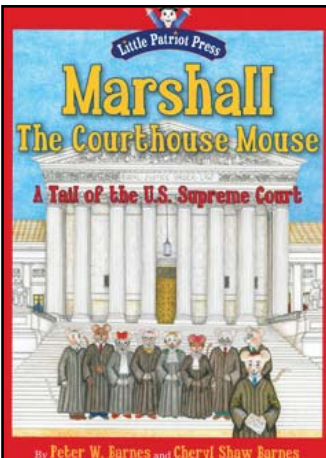
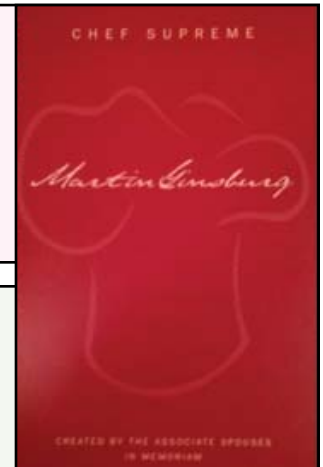
The Supreme Court is featured on the 2012 ornament. A bright blue sky overlooks the Supreme Court building and its front plaza. The background details of this dimensional ornament are taken from wooden panels in the East and West Conference rooms. The Supreme Court is embossed on the reverse side of the ornament. The 2012 ornament is plated in 24kt. gold and complements the other ornaments in the Supreme Court Historical Society series. This ornament is packaged in a beautiful box, perfect for gift-giving and years of enjoyment.

### Supreme Chef - Item #1210

Everyday Price \$24.95

**Member's Price \$19.96**

**Chef Supreme** is more than just another cookbook, it is a tribute. Full of recipes, photos and fond tales, this cookbook was created by the Spouses of the Justices of the Supreme Court in memory of Martin Ginsburg. It is the perfect gift for those who enjoy cooking!



### Marshall the Courthouse Mouse - Item #111899

Everyday Price \$16.95

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Should mice be able to eat any cheese they please? That's the question in front of Chief Justice Marshall J. Mouse and his mice justices in **Marshall, the Courthouse Mouse**. Written and illustrated by the award winning and bestselling writer/illustrator team Peter and Cheryl Barnes, **Marshall, the Courthouse Mouse** follows the United Mice of America's Supreme Court as Chief Justice Marshall and his fellow mice justices debate the constitutionality of a sacred mouse law. Children will be educated and entertained as they learn about everything from petitioning the high court to handing down decisions to the laws of the land. With a "find the turtle" activity throughout the book and a resource section for teachers and parents at the end, **Marshall, the Courthouse Mouse**, delights and amuses kids as they learn about the Constitution, court opinions, and our nation's laws.



### "Approaching the Bench" Chess Set - Item #112906

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Elegant and austere, **Approach the Bench: The Chess Set for Legal Professionals**, is the perfect gift for an attorney, law school graduate, judge, or anyone associated with the law. "Approach the Bench" combines the strategy and intellectual prowess of chess, with figures and images one would find in the courtroom. The chess pieces, made of cold cast bronze are based on iconic courtroom figures: The chessboard is uniquely "stepped" to resemble a jury-box and a bench, and is handcrafted from cold cast bronze and Italian stone tile.







**2013 Pocket Calendar - Item #0100**  
Everyday Price \$4.95  
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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.

**Gavel-headed Pencils**

Item #112351  
Everyday Price \$.95  
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The verdict is in ... these ARE our most popular items. These gavel-headed pencils have two erasers and are inscribed "With Liberty and Justice For All", "The Supreme Court of the United States". Assorted Colors.



**The Rhetoric of Supreme Court Women - Item #112947**

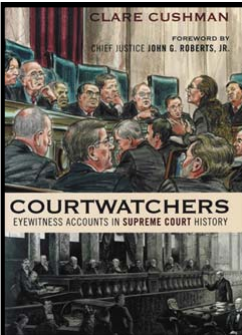
Everyday Price \$65.00  
**Member's Price \$52.00**  
Author Nichola D. Gutgold analyzes the rhetoric of the first four women appointed to the Supreme Court: Sandra Day O'Connor, Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan. Gutgold's thorough exploration of these pioneering women's rhetorical strategies includes confirmation hearings, primary scripts of their written opinions, invited public lectures, speeches, and personal interviews with Justices O'Connor, Ginsburg, and Sotomayor. These illuminating documents and interviews form rhetorical biographies of the first four women of the Supreme Court, shedding new light on the rise of political women in the American judiciary and the efficacy of their rhetoric in a historically male-dominated political system. Gutgold's *The Rhetoric of Supreme Court Women* provides valuable insight into political communication and the changing gender zeitgeist in American politics.

THE RHETORIC OF SUPREME COURT WOMEN



From Obstacles to Options

NICHOLA D. GUTGOLD



**Courtwatchers: Eyewitness Accounts in Supreme Court History - Item #113093**

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In the first Supreme Court history told primarily through eyewitness accounts from Court insiders, Clare Cushman provides us with a behind-the-scenes look at the people, practices, and traditions that have shaped an American institution for more than two hundred years. Drawing from letters, diaries, and newspaper accounts by the Justices, their spouses and children, Court reporters, clerks, oral advocates, Court staff, journalists, and other eyewitnesses these accounts allow readers to feel as if they are present as exciting events unfold. This entertaining and enlightening tour of the Supreme Court's colorful personalities and inner workings will be of interest to all readers of American political and legal history.

**Representing Justice - Item #113125**

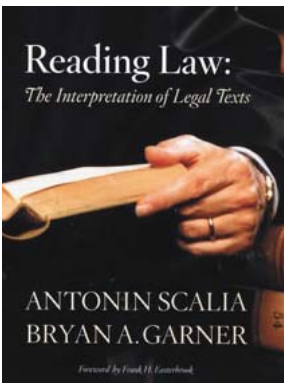
Everyday Price \$75.00  
**Member's Price \$60.00**  
By mapping the remarkable use of the icon of Justice, a Lady portrayed with scales and sword, and by tracing the development of public spaces dedicated to justice—courthouses—the authors explore the evolution of adjudication into its modern form as well as the intimate relationship between the courts and democracy. The authors, Professors Judith Resnik and Dennis Curtis, analyze how Renaissance "rites" of judgment turned into democratic "rights," requiring governments to respect judicial independence, provide open and public hearings, and accord access and dignity to "every person." With over 200 images - the book was the subject of the 2012 Annual Lecture hosted by the Society. Each book is signed by the authors.



REPRESENTING JUSTICE

Invention, Controversy, and Rights in City-States and Democratic Courtroom

Judith Resnik and Dennis Curtis



**Reading Law - Item #112783**

Everyday Price \$49.95  
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In this groundbreaking book by best-selling authors Justice Antonin Scalia and Bryan A. Garner, all the most important principles of constitutional, statutory, and contractual interpretation are systematically explained in an engaging and informative style--including several hundred illustrations from actual cases. Both authors are individually renowned for their scintillating prose styles, and together they make even the seemingly dry subject of legal interpretation riveting. Though intended primarily for judges and the lawyers who appear before them to argue the meaning of texts, **Reading Law** is sound educational reading for anyone who seeks to understand how judges decide cases-or should decide cases.

Reading Law:  
The Interpretation of Legal Texts

ANTONIN SCALIA  
BRYAN A. GARNER

Foreword by Frank H. Easterbrook



Supreme Court Society Inaugural Gala  
Wednesday, March 13, 2013  
The Plaza Hotel, New York, NY  
Reception 6:30 PM  
Dinner 7:30 PM

Special Honorees

Paul T. Cappuccio  
General Counsel of Time Warner  
Former Clerk to Justices Scalia  
and Kennedy

Ted Ulyot  
General Counsel of Facebook  
Former Clerk to Justice Scalia

Proceeds will support the Society's Summer Institute for High School Teachers and other educational programs and publications.

Further information will be mailed to all members in the near future.

Information available by contacting  
SCHS Offices at (202) 543-0400

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  
Everyday Price \$39.00  
Members \$35.00

