



THE SUPREME COURT
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Second New York Gala a Great Success

The renowned Plaza Hotel in New York City was the site of the Society's Second Fundraising Gala. On October 28, 2014 more than 350 guests gathered to join a cocktail reception, dinner and dessert reception to award the Society's Amicus Curiae Award to two prominent lawyers, Katherine L. Adams, Senior Vice President & General Counsel of Honeywell, and Ivan K. Fong Senior Vice President Legal Affairs and General Counsel 3M Company. The Amicus Curiae Awards recognize individuals who have made outstanding contributions to the legal profession.

The festivities were enhanced by the display of rare and important historical documents related to the founding of the country and the judicial underpinnings of the judicial system. Through the generosity of Society Vice President Dorothy Tapper Goldman, a leading collector, two original documents that illustrate the development of the earliest amendments to the Constitution of the United States were displayed side by side to allow viewers greater insight into these amendments commonly referred to as the Bill of Rights.

Dinner was served under an artistic image of the *Bill of*



Approximately 350 people attended the Second New York Gala in the Ball Room of the Plaza Hotel, where guests dined under an image of The Bill of Rights.

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A Letter from the President



November 20, 2014 marked a milestone for the Supreme Court Historical Society — its 40th anniversary. Created at the suggestion of Chief Justice Warren E. Burger, who was concerned no organization focused on the preservation and collection of items related to the history of the Supreme Court, the fledging Society outlined an ambitious set of goals in its organizational

papers. Chief Justice Burger assembled notables from various walks of life to discuss and take part in the founding of an historical society, and the Society's goals reflected the diversity of their backgrounds.

The three incorporators are good examples of the breadth of experience and interests that came together to create the Society. Earl W. Kintner, a former Chairman of the Federal Trade Commission, was a senior partner in the distinguished law firm of Arent, Fox, Kintner, Plotkin & Kahn, where he inaugurated and directed the firm's antitrust practice. Rowland Falconer Kirks' career included 35 years of service in the United States Army, the private practice of law, a law school deanship and university presidency (both at National University), and service as an Assistant Attorney General of the United States. In 1970, Chief Justice Burger appointed Kirks to serve as Director of the Administrative Office of the United States Courts, where he served at the time of the Society's incorporation. Alice L. O'Donnell served as secretary and assistant to Justice Tom C. Clark from 1949-1967 before moving from the Supreme Court to the Federal Judicial Center, where she was Director of Inter-Judicial Affairs & Information Services.

A fourth figure important in the development of the Society was Elizabeth Hughes Gossett, the youngest daughter of Charles Evans Hughes. This founder's experience included intimate knowledge of the Court — what it meant to be part of the Supreme Court family. Between them, these four were acquainted with Presidents, Justices, and important figures in the legal and business community and the academic world.

The fundamental objectives outlined in the Society's Articles of Incorporation are:

(1) To disseminate knowledge of and provide opportunity for research on all aspects of the Court and the Justices with a goal to increase public knowledge of the Supreme Court of the United States and its place in American history.

(2) To acquire knowledge concerning the history of the entire Judicial Branch of the United States Government.

(3) To make the knowledge and materials acquired available to scholars, historians, and the public.

(4) To acquire through gift, loan or purchase documents and other objects of historical significance associated with the Supreme Court to be used in displays within the United States Supreme Court building or elsewhere.

Though a great deal remains to be done — historical preservation is a task with ever new objectives — the Society has made great strides toward achieving these goals over the past 40 years. Among the things accomplished: a large number of outstanding publications addressing a wide range of Supreme Court topics; fascinating lectures and programs delivered by leading scholars; successful and effective teacher training programs; the creation of an extensive and significant collection of artworks and artifacts; assistance to the Court for special needs; the production of a documentary history of the first 12 years of the Court's history; and the preparation of an important history of the federal judicial system due to be published by Oxford University Press in the not too distant future.

Society members can be justly proud of these accomplishments and with your continuing support we will achieve even more. It is unlikely that any of the incorporators could have anticipated the two wonderful Gala fundraising events we have held in New York City (see page 1 of this magazine for a report on the second). I am certain, though, that they would be very pleased that the Society has achieved a sound, if perpetually unsettled, financial footing and earned the recognition and confidence of leading institutions and scholars throughout the nation. It is gratifying to know that the Society has taken seriously its charter and achieved a great deal in attempting to meet the lofty goals propounded in 1974. I look forward to working with you to continue to build on this solid foundation as we strive to educate and disseminate information about the history and rich heritage and contributions to the fabric of American life made by the Supreme Court of the United States and the federal judiciary.

Quarterly

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Guests viewed rare historical documents relating to the Bill of Rights.

Rights projected on the ceiling of the Ballroom. Across the back of the stage, images of Supreme Court Justices, group photographs of the Court and details of the Supreme Court Building were projected on a rotating basis. These images provided a backdrop for the event and for the program. Society President Gregory Joseph welcomed the guests during a brief program. He acknowledged the presence of distinguished guests, including Judges Lorna G. Schofield and Laura T. Swain of the United District Court for the Southern District of New York.

Present at the Gala were representatives of ten benefactors, four patrons, and twenty-eight sponsors of the evening. Mr. Joseph expressed gratitude for the generosity of these donors that made the event possible and more importantly meaningful for the many worthwhile endeavors of the Society. These include the creation of a one-volume history of the federal judiciary that upon publication will become the seminal reference work on the subject. Other outstanding programs include the Frank C. Jones Supreme Court case reenactments presided over by a Justice of the Supreme Court. The recent reenactment of *McCulloch v. Maryland*, was presided over by Justice Stephen G. Breyer. Other prestigious programs include the Leon Silverman Lectures, named for the Society's revered late President and Chairman of the Board of Trustees. Continuing publication of the highly regarded **Journal of Supreme Court History** is also supported by the event. Support also extends to the acquisition of items for the permanent collection of the Curator of the Supreme Court. Many of these items are showcased in displays viewed by members of the public when visiting the building, while others are used throughout the building. Other endeavors supported by the event involve providing educational training and resources for social studies and history teachers, who utilize the things they learn in their classrooms to enrich and enhance the understanding of thousands of students throughout the United States.

To present the Amicus Awards, Mr. Joseph called upon David Leitch, Chair of the Development Committee of the

Society and Chair of the Gala. Mr. Joseph observed that Mr. Leitch is himself General Counsel for the Ford Motor Company, a supporter of the Society, and has a long-standing relationship with the Supreme Court dating back to his service as a law clerk to Chief Justice William H. Rehnquist.

In opening remarks Mr. Leitch observed that Chief Justice Rehnquist was a staunch supporter of the Society and had participated in many Society activities, introducing speakers and penning the foreword to several Society publications. Chief Justice Rehnquist's enthusiasm for the organization was infectious and was one of the reasons why Mr. Leitch became associated with the Society.

The Society's prestigious Amicus Curiae Awards are presented to individuals who are part of the Court's



Reception guests mingle prior to dinner.

history and who have assumed leadership roles in the legal community.

The first recipient honored on October 28 was Katherine L. Adams, Senior Vice President and General Counsel of Honeywell. She received an undergraduate degree at



Society Trustee Harry Reasoner and his wife Macey Reasoner visit with Society Trustee Michael Cooper during the reception.

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Brown University before earning a law degree from the
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Development Committee Chair David Leitch presents the Amicus Curiae Award to Katherine Adams.

University of Chicago Law School. She went on to clerk for two important figures in the history of the Supreme Court of the United States: first for then-First Circuit Chief Judge Stephen G. Breyer, and after for Associate Justice Sandra Day O'Connor. Her subsequent career included teaching posts at New York University Law School and Columbia University Law School, service as a trial attorney for the Department of Justice, and as a partner at Sidley Austin before joining Honeywell. Throughout her career, she has maintained a relationship with the Court that epitomizes the spirit of the Amicus Curiae Award. Following the presentation of the award, Ms. Adams made brief remarks, thanking the Society both for the honor of the award and for its contributions to educating the American public on the importance of the Supreme Court and the Federal Judiciary.

The second award was presented to Ivan K. Fong, Senior Vice President, Legal Affairs and General Counsel for 3M. In this position Mr. Fong leads the company's legal compliance, and government affairs departments. Prior to joining 3M Company, Mr. Fong served as General Counsel for the U.S. Department of Homeland Security. Before joining DHS in 2009, he was the Chief Legal Officer and Secretary of Cardinal Health, Inc. During his career at Cardinal Mr. Fong was named one of the "Most Influential General Counsel" by the *National Law Journal*. He also served as Senior Vice President and General Counsel of GE Vendor Financial Services and as GE's first privacy leader and senior counsel, Information Technology. A well-rounded attorney, Fong's earlier career included service as deputy associate attorney general at the U.S. Department of Justice, as a partner with Covington & Burling in Washington, DC, and as an adjunct professor at Georgetown University Law Center. He served as a law clerk to Judge Abner J. Mikva of the U.S. Court of Appeals for the D. C. Circuit and to Associate Justice Sandra

Day O'Connor. He holds degrees from MIT, a J.D. from Stanford Law School, and a B. C. L from Oxford University. He is also a registered patent attorney. Upon acceptance of his award, Mr. Fong commented on the importance of the judicial system in the United States and praised the contributions made by the Society to educating the public about the role of the federal judiciary in American life.

At the conclusion of dinner, Mr. Joseph again thanked those present for their support and participation and invited them enjoy a dessert reception and another opportunity to view the historical documents relating to the Bill of Rights. The items shown are from the private collection of Society Vice President Dorothy Tapper Goldman. Displayed were an original copy of the first printed proposal of the final Bill of Rights as distributed to Congressmen as a slip bill on August 25, 1789 and an original copy of **The Journal of the Senate for Its First Session**, printed in 1789. It was open to the page containing the amendments as adopted by the Senate. A comparison of the documents reveals that the list of amendments outlined in the **Senate Journal** was not identical to the list of amendments listed in the slip bill on August 25, 1789.

The Gala provided a wonderful and festive occasion to celebrate the Court and the Historical Society in a unique setting and location. It provided an opportunity to view rare documents from the founding of our nation, and to mingle with many who are interested in the Court's history, have had experience arguing before the Court, and in some cases, working as law clerks to Justices on the Court. The Society is grateful to all who make possible the important work of promoting and preserving the history and heritage of the Court. As a tribute, a complete list of donors appears on the following page.



Honoree Ivan Fong (right) receives an Amicus Curiae Award from David Leitch.

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19th Session of Summer Institute

In June, the Supreme Court Historical Society and Street Law, Inc. held the twentieth annual Supreme Court Summer Institute, a professional development program for secondary educators. Almost five dozen law, government, and social studies teachers, hailing from 27 states, traveled to Washington, D.C. for six days of concentrated education about the Supreme Court of the United States. The Institute provides its participants with innovative content and interactive strategies to teach students about this critical and oft-misunderstood branch of government. Additionally, the Institute shows teachers how to incorporate resources such as legal experts, and media sources, as resources in their classrooms. Upon their return to the classroom, the teachers have the opportunity to present professional development activities in order to train their peers about the Court utilizing the Institute's materials and methodology.



Supreme Court Summer Institute Week 1 teachers and staff pose on the steps outside the Supreme Court

One of the Supreme Court Summer Institute's strengths lies in the merit and diversity of the lawyers, educators, and journalists who serve as resource experts during the sessions. Participants had the privilege of learning about the Court from the attorneys who argue before it, the journalists who cover it, and from the justices' former clerks. Tom Goldstein, a partner at Goldstein, Howe & Russell and founder of SCOTUSBlog, and Pratik Shah, co-head of the Supreme Court Practice at Akin Gump led introductory sessions on Supreme Court practice. One teacher commented, "The opportunity to hear firsthand from experts is a total game changer." The participants were equally enthused about a session on *McCullen v. Coakley*, a contentious case regarding the constitutionality of free speech "buffer zones" around abortion clinics. They had the privilege of learning about the intricacies of the issue from Bob Corn-Revere, a First

Amendment lawyer and partner at Davis Wright Tremaine.

Another Institute strength is its use of student-centered, interactive teaching methods. Teachers participate in case studies, engage in a deliberation, and conduct a moot court. By giving the educators the opportunity to experience these interactive strategies as students, they gain the confidence and know-how to implement them effectively in their own classrooms.

One of the highlights of the week was an exciting moot court held in Georgetown University Law Center's impressive Supreme Court Institute Moot Courtroom. There, the teachers acted as lawyers for petitioners and respondents in the case of *Town of Greece v. Galloway*, which considered the constitutionality of opening prayers at town meetings. They were guided and coached by the very experts involved in the actual case: Thomas Hungar, a partner at Gibson, Dunn & Crutcher LLP who argued the case for the petitioner, Mayer Brown's Richard Katskee, who worked on the respondent's case, and Elizabeth Papez from Winston & Strawn who helped prepare an amicus brief. A group of teachers playing the justices were coached by Roy Englert from Robbins Russell, and Judge Sri Srinivasan from the DC Circuit Court of Appeals. One teacher commented, "This was amazing... It was fun and challenging and interesting to participate in an incredible and informative to hear from all the experts ... and this helped me understand how to use [moot courts] more effectively."

For many teachers, the most powerful experience of the Institute was the opportunity to hear decisions at the Supreme Court. One participant called it "amazing to see the Court in action and hear first-hand how a decision is read. [It is] Very important to share that first-hand knowledge with my students."

The culminating event, receptions at the Supreme Court hosted by Justices Breyer and Alito gave the teachers the opportunity to ask questions of the justices, continue conversations with the resource people, and reflect on their overall Supreme Court Summer Institute experience. "Street Law and the Supreme Court Historical Society put on a tremendous institute and reception. Thank you for the opportunity to meet the people who made this possible and, of course, for providing an opportunity to meet Justice Alito," said a participant. Without the collaboration of these legal experts and the Supreme Court Historical Society, the Supreme Court Summer Institute would not be the enriching and reputable professional development opportunity that it is. The skills and knowledge gained at the Institute will enrich the learning experiences of students and educators alike across the nation.

Relatively Speaking Trivia Quiz Answers (Turn first to the quiz found on the back of this issue)

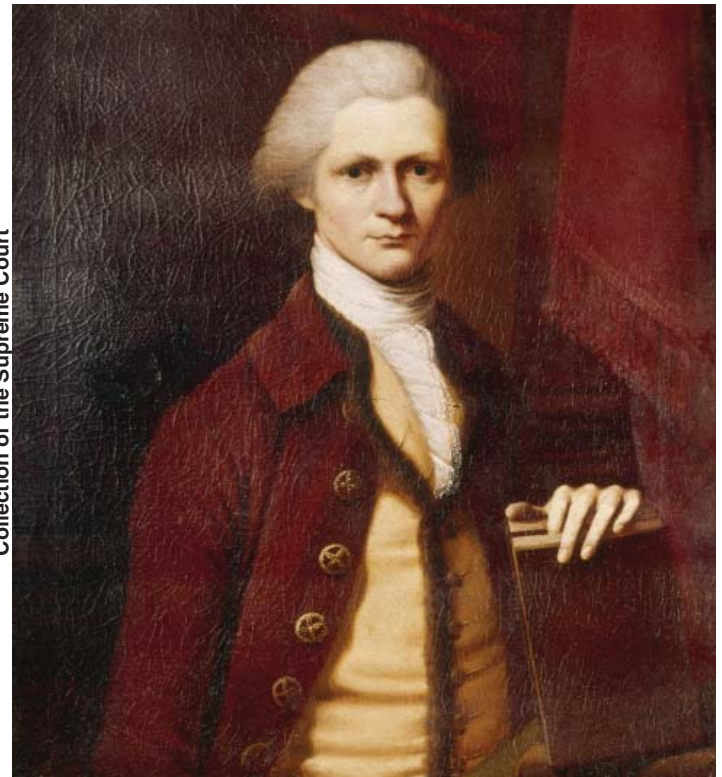
1. Bushrod Washington (shown to the right), appointed to the Supreme Court by President Adams in 1798, was the son of George Washington's brother, John Augustine Washington.

2. William Howard Taft was the son of Alphonso Taft, who was Attorney General under Ulysses Grant.

3. Justice Tom Clark was the father of Ramsey Clark, Attorney General under Lyndon Johnson.

4. Justice Oliver Wendell Holmes was the son of the great American literary figure of the same name. The Elder Holmes is now mostly remembered as the author of the poem "Old Ironsides". He was also a professor at Harvard and a distinguished physician.

5. John Marshall Harlan was appointed to the Supreme Court by President Hayes. His grandson, of the same name, was appointed by President Eisenhower.



Collection of the Supreme Court

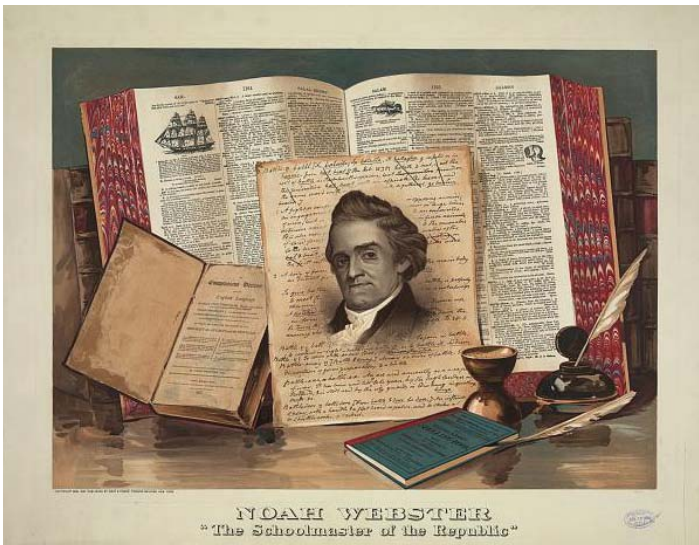
Bushrod Washington served on the Supreme Court of the United States for over 30 years after his appointment by his Uncle, George Washington.

7. Charles Evans Hughes, Jr. resigned as Solicitor General when his father was appointed Chief Justice by President Herbert Hoover.

8. Justice Lucius Quintus Cincinnatus Lamar was appointed to the Supreme Court in 1888 by President Grover Cleveland. His uncle Mirabeau Bonaparte Lamar was the second President of the Republic of Texas after it declared independence from Mexico. Lamar, Texas, is named for the Uncle.

9. Justice Thomas Todd was appointed to the Court by Jefferson in 1807. In 1812 following the death of his first wife, Todd married Dolley Madison's widowed sister, Lucy. The marriage ceremony is believed to be the first ever held in the White House.

10. Justice Stephen Field was the brother of Cyrus Field, the guiding spirit behind one of the greatest technological achievements of the 19th century, the Atlantic cable connecting the United States to Europe.



In this poster dating from 1886, Noah Webster is referred to as "the schoolmaster of the Republic":

6. Noah Webster married the daughter of Chief Justice Oliver Ellsworth. Webster was also a lawyer and "read" law under Ellsworth.

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“A Scholar and Historian of the Court”: Merlo J. Pusey’s 20th Century Washington Post Editorials

By Edward E. Adams, Edward L. Carter and Scott Nash*

Editors’ Note:

This is the second half of an article about the career of Merlo Pusey. The first half appeared in the previous issue of the Vol. XXXVI, No. 3, 2014. The text of that issue with accompanying foot notes is now available on the Society’s website, supremecourthistory.org.

Court Critic

Some of Pusey’s critiques of the Court related to issues in his work and that of other journalists. For example, in 1931 Pusey decried the fact that written Court opinions were not furnished to news reporters after the opinions were read from the bench. Pusey seemed genuinely interested not just in making work easier for his colleagues but also in helping the Court’s opinions to be understood better and reported on more accurately. “Decisions of the Supreme Court are among the most important public documents that ever get into print,” he wrote. “It is highly desirable that the press should be able to quote their exact language. . . .”

The *Post* editorial page waged a long-standing campaign to convince the Supreme Court to consider timing the release of its opinions to achieve maximum public understanding, not to mention accommodation for journalists. An editorial on the matter appeared in June 1950, soon after the Court “dumped 18 opinions into the lap of bewildered newspaper and radio reporters” in a single week approaching the end of the Term. Pusey acknowledged that public relations might not be atop the Court’s priority list but argued nonetheless that the Court’s lack of “both purse and sword” meant that it had to rely on public acceptance of its work. Eight years later, Pusey revisited the same subject, decriing the fact that important Court decisions were misunderstood or buried among other news items due to lack of planning in the

Court’s system for releasing its decisions.

Pusey and the *Post* strongly criticized the Court for its substantive due process reasoning in striking down portions of New Deal legislation, including minimum-wage laws. After the Court’s *Morehead* decision in June 1936, a *Post* editorial found in Pusey’s collection warned presciently that “the most important result of the decision will probably be the reaction against the Court itself.” The editorial argued that previous opinions against New Deal legislation appealed to logic and had strong basis in the Constitution, but *Morehead* rested “on much more precarious ground.”

Notwithstanding dislike of the Court’s stance against New Deal legislation, the *Post* editorial page reacted stridently to Roosevelt’s plan to increase the number of justices to 15. In an editorial in which Pusey took great pride, the *Post* eviscerated the Roosevelt administration’s rationale. Regarding the argument that the Court needed more justices in order to carry its workload, Pusey said that “[w]hoever is responsible for this captious bit of propaganda must be ignorant

of the purpose which the Supreme Court serves.” He noted that legislation by Congress in 1925 had given the Court discretion over its docket and allowed the Court to focus on splits of authority in federal appellate courts and areas of the law that were unclear. Pusey took issue with Roosevelt’s transparent attempt to “secure constitutional

interpretations in line” with his administration’s agenda, particularly where the arguments in favor of the proposal were based on “distorted statistics and flimsy conclusions.” Pusey wrote dozens of editorials on the court-packing plan until it was finally defeated by Congress in July 1937.

During and after World War II, Pusey wrote a column under his own byline and continued to write unsigned house



Collection of the Supreme Court

In 1944 Pusey criticized ongoing bickering between Justices Felix Frankfurter and Hugo L. Black, William O. Douglas and Frank Murphy. Shown here are the members of the Court in 1944: Front row (left to right) Justices Stanley Reed, Owen Roberts, Chief Justice Harlan Fiske Stone, Justices Hugo L. Black and Felix Frankfurter. Back row (left to right) Justices Robert H. Jackson, William O. Douglas, Frank Murphy and Wiley Rutledge.

editorials. Pusey feared that civil liberties had been unnecessarily sacrificed during the war. Writing about *Korematsu v. United States*, in which the Supreme Court upheld an executive order sending Japanese Americans to internment camps, Pusey opined, “it appears that the Supreme Court has shifted the responsibility of maintaining civil liberties in wartime to Congress and Congress has shifted it to the Army.”

Pusey took some Court members to task in 1944 for bickering among themselves and allowing it to come through to the public in published Court opinions. In a concurring opinion in *Brown v. Gerdes*, Justices Felix Frankfurter and Robert Jackson accused members of the Court of resorting “gratuitously” to “a wholly novel doctrine of constitutional law. . . .” Pusey noted that this was part of an ongoing feud among Frankfurter, on the one hand, and Justices William O. Douglas, Hugo L. Black and Frank Murphy, on the other hand. Pusey wrote that Black and Murphy “verbally spanked Justice Frankfurter a month ago” and that these public spats could undermine the credibility of the Supreme Court.

“For the country expects something better than a display of wrath or even personal irritation of its Supreme Court,” Pusey scolded. “It expects men who take upon themselves the great responsibility of Supreme Court justices to rise above the petty bickering that sometimes discredits politicians and bureaucrats.”

Pusey continued his criticisms of Black, Douglas and Murphy throughout 1944. He accused them of trying to turn the Court into a “second legislature” by overturning numerous long-standing precedents without justification. After the 1943 Term ended, Pusey wrote that “[t]he justices will doubtless have time during the summer recess to reflect upon this public relation to their heavy output of new precedents.” At the end of 1944, Pusey wrote that the public discussion and criticism of the Court was good so the justices could be reminded they did not work in an “ivory tower and handing down decisions out of the fullness of its own wisdom.” What the Court needed at that time, Pusey concluded, was “a Holmes, both for judicial balance and consistent support of civil liberties against a Government of unprecedented power.”

Pusey aimed darts at the Supreme Court for not siding with would-be University of Florida law student Virgil D. Hawkins in 1957. Pusey felt the Supreme Court was inappropriately ducking an opportunity to advance desegregation when it denied Hawkins’ petition for certiorari and suggested Hawkins seek redress in federal district court. “It does not appear that the Court was following the formula that it laid down for the abolition of segregation in the public schools with all deliberate speed,” Pusey said. “To be meaningful, the right to an education must be enforced before the student becomes too old to take advantage of it.”

On February 26, 1969, Pusey directed a critique at Justice Black for his dissent in the decision released two days

previously in *Tinker v. Des Moines Independent Community School District*. Noting that Black was a self-identified absolutist on free-speech questions under the First Amendment, Pusey expressed amazement at Justice Black’s “[e]specially harsh dissenting opinion.” The majority’s opinion, which recognized the First Amendment right of schoolchildren to wear black armbands protesting the Vietnam War, was squarely “in line with the finest judicial tradition of respect for both freedom and order[.]” Pusey wrote.

Not long after the 1969 resignation of Justice Abe Fortas amid questions about his acceptance of fees for speaking and consulting, Pusey took the Supreme Court to task for failing to require its members to adhere to the same conduct rules applied to federal district and circuit judges. This situation, Pusey said, was “an unfortunate gap in the reassurance which the Chief Justice [Earl Warren] has sought to give the country in regard to integrity on the bench.” Although some Supreme Court Justices said they would follow the ethics rules even if not binding on them, Pusey decried the inconsistency of making the rules mandatory in lower courts and advisory in the Supreme Court. Pusey faulted the Justices who voted against making the rules mandatory for themselves, saying they had tarnished Warren’s distinguished career on the eve of his retirement.

Historian and Educator

Pusey took seriously his role as self-appointed Court historian for his readers, and he took advantage of opportunities to educate the *Post’s* audience about the Court and its members. Pusey used the occasion of anniversaries, deaths, retirements and other milestones to reflect on the Court’s place in American society. Although his lessons often targeted a general audience, Pusey sometimes appeared to speak directly to particular individuals. For example, upon the retirement of Chief Justice Hughes and the appointment of new Chief Justice Harlan F. Stone in 1941, Pusey noted that eight of the nine justices on the Court by then had been appointed by Roosevelt. This did not automatically mean they would be biased, he said, even though they were “drawn from the President’s official family or his circle of advisers.” Still, Pusey warned—in a message seemingly directed at the justices themselves—the situation required “special emphasis upon the court’s tradition of courageous independence.”

Pusey wrote flowery editorials eulogizing various justices, including George Sutherland in 1942, James C. McReynolds in 1946, Robert H. Jackson in 1954 and Owen J. Roberts in 1955, among others. In 1949, when Justice Wiley B. Rutledge died at age 55 and Justice Frank Murphy died at age 59, both while sitting members of the Court, Pusey openly wondered if the Court’s workload was simply too much and might kill off other justices too. Pusey also reflected on the mortality of Supreme Court justices after William O. Douglas was thrown from a horse and seriously injured. But Pusey expressed confidence in Douglas’ ability

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"A Scholar..." Continued from page 9

to recover: "He is an especially vigorous and active man who supplements his strenuous winters of opinion writing with strenuous summers of mountain climbing."

On the 200th anniversary of the birth of John Marshall, Pusey extolled the virtues of the man he said was as responsible as anyone for the success of the American republic. Pusey marked the 100th anniversary of the Court's *Dred Scott* decision with an expression of gratitude that the Court had regained the respect it lost in that pre-Civil War decision of "abused authority" that flew "into the face of the Constitution with its gratuitous ruling . . . that Congress had no authority to limit slavery in the territories." Just over a decade later, Pusey struck a more laudatory chord in celebrating a century of the Fourteenth Amendment and praising the Court for incorporating the provisions of the Bill of Rights against the states. He noted the retirements of Justices Stanley F. Reed and Harold H. Burton, respectively, with expositions about the role of a judge as a non-political actor in a democratic system.

The nominations of Associate Justices and Chief Justices were topics of great interest to Pusey. When Associate Justice Abe Fortas was nominated as Chief Justice in 1968, Pusey wrote a long review of the history of nominations of Chief Justices. Pusey noted that President George Washington named three Chief Justices—John Jay, John Rutledge and Oliver Ellsworth—and that 12 other presidents had nominated one each. Pusey concluded that each Chief Justice nomination was unique but that success for the country depended on the president choosing a Chief Justice with "vision, intellectual dynamism and judicial temperament."

The *Post* editorial staff was rather sanguine about the Senate's rejection of Judge Clement Haynsworth in 1969, giving a long list of rejected nominees and noting resignedly that "[d]espite the indications that the Founding Fathers expected the Senate to pass only upon the qualifications of the nominee, it has often been actuated by politics and such unworthy motives as senatorial courtesy." At other times, Pusey was less patient with the Senate's confirmation processes. For example, Pusey and the *Post* editorial staff wrote no fewer than six impatient house editorials urging the confirmation of John Marshall Harlan in early 1955. When the Senate confirmed him after four months, the *Post* breathed a sigh of relief with an editorial titled "Confirmation At Last."

Pusey related to *Post* readership helpful insights about the functioning of the Court. For example, discussing cases with sharp contrasting written opinions, Pusey said that "the ruling and dissenting opinions are often convincing themselves."

Conclusion

In the early 1960s, having written about the Supreme Court for more than three decades, Pusey reflected that "[t]he Supreme Court continued to hold my foremost journalistic interest, but my general empathy for the Court and the disposition to defend it against its critics sometimes underwent a strain." The strain was primarily caused by justices who "elevate their own whim or personal convictions about the law," Pusey said. In that case, Pusey considered that the press should perform its duty to expose this tendency and not just applaud the Court, even when its decisions were popular. The emphasis on judicial and

journalistic independence marked Pusey's entire career as an editorial writer.

When Pusey died at the age of 83 in 1985, the *Post's* obituary noted his love for the U.S. Constitution and his interest in the Supreme Court. Of course, Pusey's work was not his whole life. He wrote near the end of his life that his religious beliefs and membership in The Church of Jesus Christ of Latter-day Saints had always been important to him. He was a dedicated husband and father. He was eulogized by his own newspaper as "scholarly, principled, civil and tough-minded." He left a legacy of words so it was a fitting tribute when the *Post* obituary quoted Pusey's statement in *Supreme Court Crisis*:

Only under authoritarian rule are institutions crushed because they do not serve the immediate purpose of the group in power. . . . This does not mean, of course, that the power of the Court is superior to that of Congress. "It only supposes," as Hamilton pointed out a century and a half ago, "that the power of the people is superior to both"—and that revolutionary changes should await their approval.

**A team of three scholars from the Department of Communications of Brigham Young University collaborated on this article utilizing Pusey's personal papers donated to the University library. The authors are: Dr. Edward E. Adams, Professor of Communications; Edward L. Carter, a lawyer and Associate Professor of Communications; and Sean Nash, an M.A. Candidate in the Department of Communications.*



Collection of the Supreme Court

When Associate Justice Abe Fortas was nominated as Chief Justice in 1968, Pusey wrote a history of nominations to Chief Justice.

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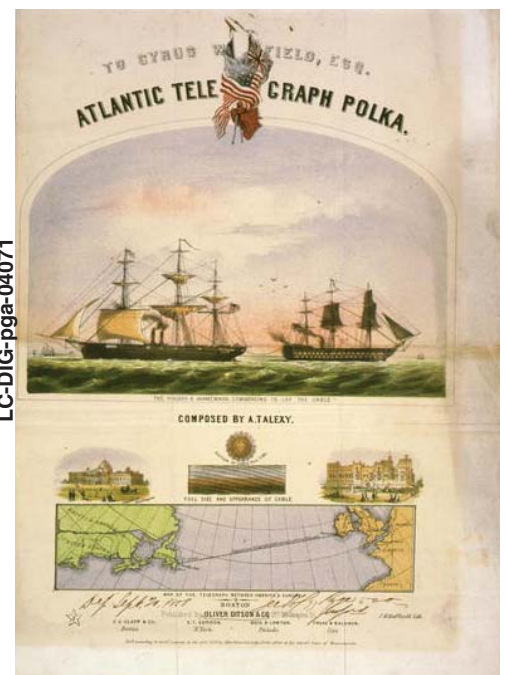
Trivia Quiz: Relatively Speaking

By Professor James B. O'Hara

Supreme Court Justices are important figures because of their major Constitutional responsibilities. But many of the Justices were also relatives of other important figures. This quiz will provide the matchups.

1. This Justice was the nephew of a President.
2. This Justice was the son of an Attorney General.
3. This Justice was the father of an Attorney General.
4. This Justice was the son of a famous poet and novelist.
5. This Justice was the grandfather of another Supreme Court Justice.
6. This Justice was the father-in-law of Noah Webster, the well known compiler of the first important American dictionary.
7. This Justice was the father of a Solicitor General.
8. This Justice was the nephew of the President of Texas.
9. This Justice was married to the sister of a First Lady.
10. This Justice was the brother of the man responsible for the Atlantic Cable.

(Answers found on page 7)



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The invention of the Atlantic Cable was celebrated through the United States, even in song. The image above shows sheet music for a song honoring the cable.