



THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

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## The Legacy of Justice Antonin Scalia

Associate Justice Antonin Scalia died suddenly on February 13, 2016. The Justice was 79, only a month short of his 80<sup>th</sup> birthday. Until the end, his schedule was busy and active. He is the first Justice to die while still serving on the Court since Chief Justice Rehnquist, but this seemed different because the Chief Justice had been ill prior to his death. Scalia was the first Justice to die during a Court Term since Robert Jackson died in 1954. Scalia was also the longest serving member of the current Court, sitting on the Supreme Bench for nearly thirty years, from September 26, 1986 to February 13, 2016.

Justice Scalia's body was brought to lie in repose in the Great Hall on Friday, February 19, 2016. In a moving, yet brief and silent ceremony, his casket was carried up the front steps of the building by officers of the Court police force. The steps were lined with most of the men and women who had clerked for the Justice over the years. Members of his family and his fellow Justices met the casket just outside the bronze doors. His son Paul, a Catholic Priest, led the casket and mourners into the building and conducted a short private service. For the next hour the Great Hall was open only to the Court's immediate family. When the public was later admitted, the viewing time had to be extended for two hours because the lines were so long. The official portrait of the Justice was on display at one end of the Great Hall flanked by US flags and floral wreaths.

Throughout the day, former clerks stood at each corner of the casket, rotating every half-hour. The casket rested on the catafalque used in the U. S. Capitol when President Lincoln lay in state following his assassination.

Antonin Gregory Scalia was the son of Salvadore Eugene and Catherine Panaro Scalia. The Justice's father, who usually signed his name S. Eugene, emigrated from his native Sicily while still a teenager. Eugene became a professor, teaching romance languages at Brooklyn College. He was also the author of several books. Catherine Scalia was a first-generation Italian-American who taught elementary school prior to her son's birth. Antonin acquired the nickname "Nino" as a child, probably in remembrance of his grandfather. Friends and family continued to use that name throughout his lifetime. The Justice's father had a profound influence on him, particularly since he was an only child. The elder Scalia instilled in his son the values of conservatism, hard work and discipline. These values were hallmarks of his work and service throughout



Associate Justice Antonin Scalia (1986-2016)

his lifetime. The expectations of his educator parents were very high for their son and Nino met those expectations.

The Justice grew up in the New York City borough of Queens. He attended public school in the elementary grades and then Xavier High school in Manhattan. Xavier was a

*Continued on Page 3*

## A Letter from the President



As I compose this letter the well-worn Dickens' phrase "it was the best of times, it was the worst of times" comes to mind, as recent events have been both very sad and very good. We were deeply saddened by the sudden and unexpected loss of Justice Antonin Scalia, whose undoubted historical significance will be assessed for many, many years.

Justice Scalia's long association

with the Society began prior to his appointment to the Court. In 1985, while serving on the U. S. Court of Appeals for the D.C. Circuit, Judge Scalia delivered the Society's Tenth Annual Lecture, accompanied by his friend and colleague, fellow D.C. Circuit Judge Ruth Bader Ginsburg. That lecture foreshadowed his participation in many other lectures, reenactments, and countless other activities in which he invaluable assisted the Society, unstintingly sharing his sharp wit and powerful intellect with members of the Society. That lecture also marked the beginning of the Society's close relationship with Justice Ginsburg. The Society is deeply indebted to both Justices. Volumes can and will be written about Justice Scalia, and a forthcoming edition of the **Journal of Supreme Court History** will contain many tributes, but on page 5 of this *Quarterly* you will find a brief tribute to Justice Scalia given at the New York Gala last month by one of his former clerks, Robert Kry. The tribute is both personal and touching, and gives a sense of the man as well as the jurist.

The tribute to Justice Scalia on page 5 provides a natural segue to the first piece of good news I would like to share. The Society's New York Gala held on February 24<sup>th</sup> was an enormously successful event, and we are deeply grateful for all the support received from the many generous donors. Well over 400 people attended the event, held once again in the Ballroom of the Plaza Hotel. While the Gala will be more completely discussed in the next issue of this *Quarterly*, I would be remiss if I did not take this opportunity to offer thanks to our two outstanding Honorees, David Leitch of

Bank of America and Gregory Palm of Goldman Sachs. Both of our honorees have close ties to the Court having clerked there. Mr. Leitch clerked for Chief Justice Rehnquist and Mr. Palm clerked for Justice Lewis F. Powell. I would also like to express gratitude to our Gala Chair Robert Giuffra whose outstanding efforts and leadership played a critical role in the success of the Gala. The revenue raised through the event provides vital support that helps to underwrite the costs of our publications and educational programs.

Another important milestone achieved earlier this year was the publication by Oxford University Press of our newest volume, **The Federal Courts: An Essential History**. This book was envisioned in the ambitious founding documents of the Society. It would take more than thirty-five years before it became feasible to embark on such an undertaking. My predecessor, Ralph Lancaster, determined that the Society was positioned to make this dream a reality. Work began in 2011 and it was neither an easy nor an inexpensive undertaking. It would not have been possible without the ongoing support of our Trustees, members and other donors who supported the project, including through contributions raised at the Galas. This book is the first and only one-volume history of the U.S. Federal Courts — from their inception to the present day — and it might be described as the Society's gift to the federal judiciary. It is now on sale through the Gift Shop, and we hope that it will be used not only as a reference work, but also as a textbook to help inform students, teachers and other interested readers about the history and the functions of the Third Branch. Members can take pride knowing that their Society helped to create and bring to fruition this important learning tool, working closely with the Federal Judicial Center.

Many events are scheduled for the upcoming months. In April the Society will partner for two programs with the Fred W. Smith National Library for the Study of George Washington at Mount Vernon. Information is available at the website, [www.supremecourthistory.org](http://www.supremecourthistory.org). The first two lectures in the 2016 Leon Silverman Lecture series — focused on *The Supreme Court and the Progressive Era* — will be delivered in May. The Society's Annual Meeting will take place on June 6, 2016. We are honored that Justice Stephen G. Breyer will present the Annual Lecture this year. I hope that you will attend as many of these events as possible.

Thank you for your continuing support of the Society. As a member you play a crucial role in accomplishing the mission of the Society, and I urge you to continue your support through membership and through contributions to the Annual Fund. Without your assistance, we could not succeed.

*Gregory P. Joseph*

# Quarterly

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**Officers of the Supreme Court Police Force carried the casket of Justice Scalia up the stairs to lie in repose in the Great Hall on February 19. The stairs were lined with men and women who had clerked for the Justice.**

military school run by the Jesuit order of the Catholic Church. There Scalia again excelled and was valedictorian of his graduating class.

Scalia received an A. B. from Georgetown University and the University of Fribourg, Switzerland and an LL.B. from Harvard Law School. He was a Sheldon Fellow of Harvard University from 1960-1961. Scalia’s career was varied, mixing together private practice, university teaching and public service. He particularly enjoyed teaching, sometimes as a full-time faculty member and sometimes as a visiting professor—at the University of Virginia, at the University of Chicago, at Georgetown and at Stanford.

His public service was always at high level: General Counsel of the Office of Telecommunications Policy, Chairman of the Administrative Conference of the United States, and Assistant Attorney General for the Office of Legal Counsel. In 1982, he was appointed a Judge of the United States Court of Appeals for the District of Columbia, and in 1986 was appointed by President Reagan to his position as Associate Justice of the Supreme Court to fill the vacancy created when Associate Justice William H. Rehnquist was

elevated to serve as Chief Justice. He took his seat on the Court on September 26, 1986.

Justice Scalia was a wonderful friend to the Society, assisting on many occasions and in many ways. That service included delivering three Annual Lectures, hosting dinners, assisting in making award presentations, hosting lectures and acting as “the Court” in reenactments of historical cases. In recent months he introduced Prof. McMahon for the Erwin Griswold Prize lecture in April 2015.

He married Maureen McCarthy and they are the parents of nine children: Ann Forrest, Eugene, John Francis, Catherine Elisabeth, Mary Clare, Paul David, Matthew, Christopher James, and Margaret Jane. They are the grandparents of 36 grandchildren.

A funeral Mass was held at the Basilica of the National Shrine of the Immaculate Conception on February 20, 2016. He was buried later in a private ceremony.

In accordance with Supreme Court tradition, Justice Scalia’s Bench Chair and the Bench directly in front of it were draped with black wool crepe in memoriam. In addition, a black drape was hung over the Courtroom doors.



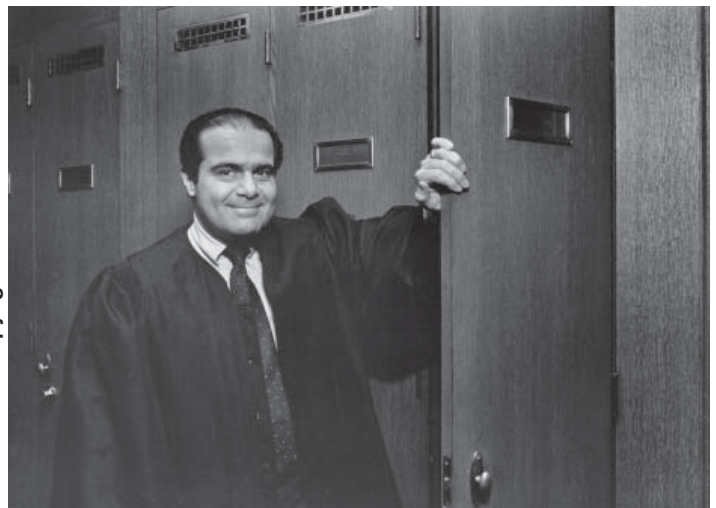
Photos by Steve Petteway



Justice Scalia enjoys a light moment with Trustee Drew Days at a Society dinner event.

Justice Scalia's Bench Chair and the area of the Bench immediately in front of it were draped in black crepe in memoriam. A black drape also hung over the Courtroom doors to mark his passing.

Copyright © 1987 Janet Fries



Justice Scalia was photographed by Janet Fries on a snowy afternoon in early 1987, shortly after he took his seat on the Court.

This tradition dates back at least as far as the death of Chief Justice Salmon P. Chase in 1873. It is believed to have been followed since, with the Bench Chair and Bench draped on the death of each sitting Justice, and the Courtroom door draped on the death of each Justice, sitting or retired. The flags on the Court's front Plaza were flown at half-staff for 30 days.

The current and retired members of the Supreme Court each issued statements upon the death of Justice Scalia. The statements are available by accessing the Court's website, [www.supremecourt.gov](http://www.supremecourt.gov) and going to the News Media Section. The statements are found in the Press Release portion of that section. The Society's Honorary Chair, Chief Justice John G. Roberts, Jr. issued the following statement: "On behalf of the Court and the retired Justices, I am saddened to report that our colleague Justice Antonin Scalia has passed away. He was an extraordinary individual and jurist, admired and treasured by his colleagues. His passing is a great loss to the Court and the country he so loyally served. We extend our deepest condolences to his wife Maureen and his family." We print here a few images taken during his long and distinguished service on the Court as a small tribute to his memory.

Photo by Steve Petteway



At a Society dinner party, Justice Scalia presented an award to Mrs. Thurgood Marshall. The award recognized her support of the Society and its activities.

## In Memoriam – Justice Antonin Scalia By Robert Kry\*

In Justice Scalia's chambers, there's a photograph on the wall from a trip he took to India many years ago with his colleague, Justice Ginsburg. The two of them are riding together – on an elephant. I have to admit that, when I first began my clerkship for the Justice thirteen years ago, I found that picture more than a little puzzling.

Like most clerks fresh out of law school, my impressions about the Justice had been formed largely from his legal writings. Brilliant, but trenchant – clashing with his colleagues over everything from the independent counsel statute to the Virginia Military Institute's admission policies.

Being on the receiving end of one of those dissents is not the sort of thing I would have thought likely to inspire someone to want to go out for an elephant ride with you.

If this was puzzling at first, it was not for long. Those who have ever had the good fortune to know the Justice can attest that one of his gifts was his capacity for friendship and good humor even toward those with whom he disagreed. He had a spirit of collegiality about him every time he interacted with his fellow Justices – or indeed anyone at the Court. That unwavering good nature really stood out during my year there.

I don't mean to downplay his abilities as a judge. Clerking for the Justice was a humbling experience. I remember being handed the latest draft of an opinion and just being floored by the writing – the incredible turns of phrase you knew would shortly be quoted in newspapers and textbooks for decades; yet there you were, reading them before the ink was even dry, like some kid peeking at his Christmas presents a day early. Or debating over how a case should come out by reading passages from Blackstone – a scene that a cynic might conjure up as a caricature of the judicial process, except you were there and you know it actually happened. Those are moments I will always vividly remember.

As great a judge as he was, I would be remiss if I did not also mention the many times we were the beneficiaries of his character, humor, and good nature. As with generations

of clerks before us, the Justice took us all out to his favorite Italian restaurant, an old dive named A.V. Ristorante – a Washington institution that was sadly paved over in the name of progress a few years ago. The Justice considered it an

important part of our education to be introduced to his particular dish of choice, the anchovy pizza – an exercise that proved that, although there is always a right answer in the law, pizza is definitely a matter of personal taste.

Another highlight was the time he invited us to his home for dinner. Those of you who have met his wife Maureen know that she is surely responsible for much of the Justice's good

disposition. And let me add that the Scalia family makes a mean whiskey sour slushy.

It would be an honor to give a memorial to the Justice in any forum. But I think he would be especially pleased to be honored here, at the Supreme Court Historical Society. The Justice cherished history. Not just for its artifacts and memorabilia. But because he saw history as the basis for the Court's legitimacy and the foundation for the rule of law.

The Justice's judicial philosophy carried the day on the Court more often than some of his critics would like to admit. He never persuaded all of his colleagues all of the time. But he pursued his principles with fervor and integrity wherever they led him, and I don't think those principles could have asked for a better spokesman.

The Justice knew that we not only receive history but make it as well. Just as we read Chief Justice Marshall's opinions, future generations will read ours – the dissents as well as the majorities. The Court's legacy, though, is more than its bound volumes. It is also the respect, the camaraderie, and the friendship among those who have been part of the Court, in whatever capacity and however briefly. There too, the Justice left his indelible mark. We will miss him.

*\*Robert Kry clerked for Justice Scalia in the 2003 Court Term. He now practices law at MoloLamken and represents clients before the Supreme Court and other Federal Courts.*



**Justice Scalia's official portrait was displayed while his casket lay in repose in the Great Hall of the Supreme Court Building.**

Collection of the Supreme Court

## Chief Justice Roberts and Charles Evans Hughes: Leadership and the Role of the “First Among Equals”

Chief Justice John G. Roberts traveled to New York to present a program for the Society on Chief Justice Charles Evans Hughes and his leadership role. The program consisted of two parts. The first was an illustrated presentation during which the Chief Justice focused on Hughes’ legacy as the Chief Justice of the United States and his role as the leader of the Third Branch. The second part of the program was an interview between Chief Judge Robert Katzmann of the US Court of Appeals for the Second Circuit and Chief Justice Roberts as they considered the role of the “first among equals,” and other aspects of serving as the presiding member of a Court. The program was cosponsored by the Society in partnership with the Historical Society of the Courts of New York as part of the continuing series: “Nominated from New York: The Empire State’s Contributions to the Supreme Court.”

Hughes was a powerful and important public and political figure throughout the first half of the twentieth century. His career included service as Governor of New York, Associate Justice of the Supreme Court, Republican candidate for President in 1916 against Woodrow Wilson, Secretary of State, and culminated in his appointment as Chief Justice of the United States. Hughes has the distinction of being the only individual to date to have non-sequential service as both an Associate Justice of the Supreme Court, followed by service as Chief Justice of the United States. That fact alone makes him unique in American judicial history.

Utilizing still images and brief movie footage provided by the Office of the Curator of the Court, Chief Justice Roberts utilized visual images of Hughes to discuss his leadership traits and role. The use of images was particularly appropriate as Hughes’ physical appearance and demeanor were intrinsically linked to his reputation and career: he looked the part of a powerful leader and that became a distinct advantage

in his career. Upon entering public life in 1905, journalists and members of the public alike seemed fascinated not only by his enormous ability and talent, but also with his striking physical appearance. He entered the public arena wearing an impressive beard at a time when most men had stopped

wearing beards. That distinctive characteristic is one he retained throughout his life. Cartoonists portrayed the beard as his defining feature and it was a prominent and often exaggerated feature in illustrations of Hughes. By the time he became Chief Justice in 1930, his signature feature had turned to white, providing him an even more imposing appearance. The late Chief Justice William H. Rehnquist once commented that

“Central casting could not have produced a better image of a Chief Justice, and his presence matches his appearance.” Then-Solicitor General of the United States Robert H. Jackson once observed of Hughes that “. . . he looks like God and talks like God.”

Chief Justice Roberts reflected upon Hughes’s leadership role as the leader of the Third Branch, and Chief Justice of the Supreme Court. He discussed Hughes’ path to the Chief Justiceship and his approach to working with his colleagues. Hughes had a reputation for promoting collegiality among his colleagues on the Bench, one that had been fractious in earlier days. One of the most galvanizing moments of his career as Chief Justice came when Hughes was confronted with President Roosevelt’s “Court-Packing” Plan, a scheme designed to counteract the Court which had rejected much of FDR’s New Deal legislation. Historians agree that Hughes’ response to the perceived threat was masterful and statesmanlike and that he derailed what could have been a very difficult political incident. Chief Justice Roberts remarked that fittingly, it was Hughes who oversaw most of the preparations for the new and imposing Supreme Court



Rick Kopstein/New York Law Journal

**Following a powerpoint presentation about Charles Evans Hughes and his role as Chief Justice of the United States, Chief Justice John G. Roberts had a conversation with Chief Judge Robert Katzmann of the Second Circuit (right). During the interview the Chief Justice discussed, among other things, aspects of his role on the Court.**



Collection of the Supreme Court

**Prominent Judges who attended the event posed after the presentation. (Left to right) Former Chief Judge of New York Judith Kaye, Chief Justice Roberts, Chief Judge Robert Katzmann, and then-Chief Judge of New York Jonathan Lippman.**

Building built behind the U.S. Capitol Building. Hughes presided over the cornerstone laying ceremony and over the first session of the Court in 1935.

During his conversation with Chief Judge Katzmann, Chief Justice Roberts discussed the responsibility of managing the Court and other duties that the office of Chief Justice encompasses. He noted that “somebody does have to represent” the Court to other groups and that it is important to cultivate an appropriate image of the Court when interfacing with other organizations and nations. His comments on how Hughes handled those duties provided some insight into his

own philosophy of how to conduct his own role. Another unique aspect of service as the Chief Justice is that while that individual is one of the nine members of the Court with “only one vote” on each case, he is also tasked with the responsibility of making the institution run smoothly.

The Chief Justice maintained a light tone throughout the evening, displaying his dry wit and sense of humor from time to time, and making entertaining quips about his predecessor and his defining facial hair. Chief Justice Roberts’ great love of history was also very apparent during his presentation. In response to a question from Chief Judge Katzmann about emulating Hughes as he fulfilled his own role as his successor, Chief Justice Roberts stated emphatically that there were two things he would not do: “I am not going to grow a beard;” and he does not plan “to run for President of the United States.”

In his discussion, the Chief Justice utilized many images contained in an outstanding photographic exhibit currently on display in the Supreme Court Building in Washington, D. C. The exhibit is a study of the career of Charles Evans Hughes. Hughes was a towering figure on the American political scene in the 20th century, capturing public attention with his initial battles against the corrupt Tammany Hall administration. He gained a reputation as being fearless and beyond reproach in that work and other positions of public trust soon followed: Governor of New York, Secretary of State, Judge on the Permanent Court of International Justice, Associate Justice of the Supreme Court and he came within a hair’s breadth of becoming President of the United States.

But he is probably best remembered for his service as Chief Justice of the United States from 1930-1941.

From the outset of his career his appearance played a large role in public perception. Dignified and regal in his carriage, his memorable beard became the defining feature that made his image instantly recognizable and perhaps realizing that it was an integral part of his image, Hughes never abandoned it even when beards had become unfashionable. He was a “seemingly incorruptible crusader with legendary intellectual powers.”

The first panel of the exhibit explains that “. . . the pieces in this exhibit explore various facets of that image. Collectively, they show that image helped define him as a public figure. While his long and distinguished career was due to his intellectual ability and hard work, his iconic image made an indelible impression which most certainly aided in his success.”



Collection of the Supreme Court

## Seventh Erwin Griswold Prize Awarded

The awarding of the seventh Erwin Griswold Prize was marked by an event on April 15, 2015. Justice Antonin Scalia hosted the evening and introduced the prizewinner, Professor Kevin McMahon who was honored for his book **Nixon's Court: His Challenge to Judicial Liberalism and its Political Consequences**. Donald B. Ayer, Chair of the Publications Committee, conducted the program for the Society.

In opening remarks, Mr. Ayer commented that he had served as the chair of the Prize Committee and that several excellent books were considered after which the Committee selected Professor McMahon's book. He explained that the Griswold Prize is awarded occasionally when a book published about Supreme Court History warrants the special recognition.

The prize is named in honor of Erwin N. Griswold, a remarkable lawyer of the last century. The Dean, as he preferred to be called, was one of the founding leaders of the Supreme Court Historical Society and was serving as Chairman of the Board at the time of his death. His distinguished 65-year career included 21 years as Dean of the Harvard Law School; service as Solicitor General of the United States; as well as a number of years in private practice. Dean Griswold returned to

the practice at the law firm of Jones Day in 1974, at which time Mr. Ayer was working at the firm as a relatively new lawyer. Mr. Ayer said he worked with Dean Griswold on several occasions, and that the Dean evidenced a high level of enthusiasm for and interest in the cases they worked on together. That approach to his work typified Dean Griswold and his lifelong commitment to doing what makes the law work. Following Dean Griswold's death, the Society and the firm of Jones Day created the Griswold prize to memorialize his name and honor the standards of excellence he had exemplified throughout his lifetime.

Mr. Ayer then introduced the late Justice Antonin Scalia and thanked him for his warm support of the Society over nearly three decades. Justice Scalia in turn expressed his pleasure in being associated with the Griswold Prize. He attended Harvard Law School under Dean Griswold's

leadership and he was greatly influenced by the Dean. He said that the Dean's recommendation was influential in Scalia's decision to join the law firm of Jones Day after graduation. Justice Scalia commented that Griswold had appeared frequently as an advocate before the Supreme Court during the Justice's early years on the Supreme Court bench. At the time, Griswold was one of the few advocates who did appear before the Court with any regularity, as there was no significant Supreme Court Bar.

The Justice then directed his remarks to an introduction of Professor McMahon, the John Reitemeyer Professor of Political Science at Trinity College. He received a Ph.D.

in politics from Brandeis University, and is the author of many articles and books, including the book for which he received the Griswold prize, **Nixon's Court: His Challenge to Judicial Liberalism and its Political Consequences**.

During his Presidency, Richard Nixon had the opportunity to fill four vacancies on the Supreme Court. The President's selection of candidates to be nominated were governed by an underlying attempt to meet specific goals. Many historians believe Nixon failed to accomplish these objectives, but Prof. McMahon contends that Nixon did not fail, that instead, many historians

had misinterpreted his philosophy.

Prof. McMahon identified three specific points which he contends illustrate Nixon's objectives. First, was that the philosophy Nixon exhibited during his election campaign strategy embodied his goals for the Court. The campaign focused on Nixon's perception that many Americans were dissatisfied with the direction the Warren Court had taken; that it had become too liberal and indeed had become activist, and needed to be checked. On the final night of the Republican Convention, Nixon articulated his intention to speak for "the forgotten Americans, the members of the great Silent Majority. These Americans were the non-shouters, non-demonstrators. They were people who worked, saved and paid their taxes and felt that they had been left out of the national discussion." These Americans thought that the Warren Court had done more harm than good. Nixon focused



Photo by Steve Petteway

Professor Kevin McMahon received the Erwin Griswold Prize for his book **Nixon's Court: His Challenge to Judicial Liberalism and its Political Consequences**.





U.S. National Archives

failed nomination, Nixon nominated Harry Blackmun, another mid-westerner, whose philosophy seemed to be similar to that of Warren Burger. Indeed, both men knew each other and came from the same state and were dubbed “The Minnesota Twins” by the press.

When the opportunity came to appoint two additional members of the Court, in October 1971, Nixon was finally able to win confirmation for a Southerner, in the person of Lewis F. Powell of Virginia. For his fourth appointment, he chose William Hubbs Rehnquist, an assistant attorney general from Arizona who had been influenced by the political conservatism of Senator Barry Goldwater.

His success in attempting to rein in the Court was in part a result of the fact that the four Justices who left the Court had been among the most liberal. His appointments did not always meet Nixon’s expectations, and ultimately, his plan to curb the Court was adjudged more of a “counter revolution that wasn’t.” While many of the Warren Court’s decisions were not reversed, some were tempered, while other decisions of the Burger Court expanded rights in other ways. Prof. McMahon’s conclusion was that Nixon’s strategy was a practical attempt to temper the liberalism of the Court, not to completely reverse it. When viewed from that perspective, his philosophy can be deemed successful.

Professor McMahon’s lecture was taped by C-Span and may be viewed in its entirety through our web site, [www.supremecourthistory.org](http://www.supremecourthistory.org) and accessing the video content of the site. The site also includes an interview with the Professor conducted by Clare Cushman, Director of Publications for the Society.

**Professor McMahon asserts that President Richard M. Nixon (above) selected candidates to the Supreme Court with the goal of making the Court less liberal in its rulings.**

his campaign on addressing those fears and concerns. He determined to achieve this reform, first by winning election, and then through carefully selected appointments to the Court.

Nixon’s campaign was predicated on the idea that electoral success was more important than pushing an ideological brand of conservatism. His definition of conservatism concerning the Court was targeted fairly narrowly, focusing on two specific issues about which many voters were uneasy. These were first, the perceived lessening of law and order in the country because of Supreme Court rulings; and second, the mandate to use busing to achieve desegregation.

Following his election, President Nixon strove to appoint judges to the Court who were known to have more conservative views. He chose Warren E. Burger of Minnesota to serve as Chief Justice. Burger was known to be “tough” on law and order and a moderate on desegregation. That confirmation was achieved with little resistance. When the opportunity to make a second appointment came he nominated a Southerner thought to be moderate on desegregation in an attempt to allay the fears of Southern voters. His first nominee failed to gain confirmation, and after a second

Collection of the Supreme Court



**Nixon’s first two appointments to the Supreme Court included Chief Justice Warren E. Burger and Associate Justice Harry Blackmun. The reconstituted Court sat for a formal picture. Front row, left to right: John Marshall Harlan, Hugo L. Black, Chief Justice Burger, William O. Douglas and William Brennan. Back row left to right: Thurgood Marshall, Potter Stewart, Byron White and Harry Blackmun.**

## Acquisitions Committee Highlights: 2012-2013 by Matthew Hofstedt, Associate Curator, Supreme Court of the U.S.

The Society's Acquisitions Committee works in close cooperation with the staff of the Curator's Office at the Supreme Court to review potential donations and other acquisitions with the goal of adding objects of historical significance and interest to the collection. These objects are used in exhibitions at the Court, to illustrate publications, and as part of the decorative arts program in the Court building. To kick off 2016, this two part feature will review some of the interesting or rare objects added to the collection over the past few years. As always, please let us know if you are aware of any Supreme Court-related objects.

Louis D. Brandeis was donated by Martin Jefferson Davis and his wife, Barbara Ruth Lane Davis. "A beautiful end of a consecrated and triumphant life!" Justice Roberts wrote. "Death cannot take away the greater and the enduring part you in such great measure, and I in lesser degree, have been privileged to share, his great and noble spirit. For what he generously gave me, I can never be sufficiently grateful." The gift was made in memory of James Mercer Davis, Jr., who argued two cases before the Court.



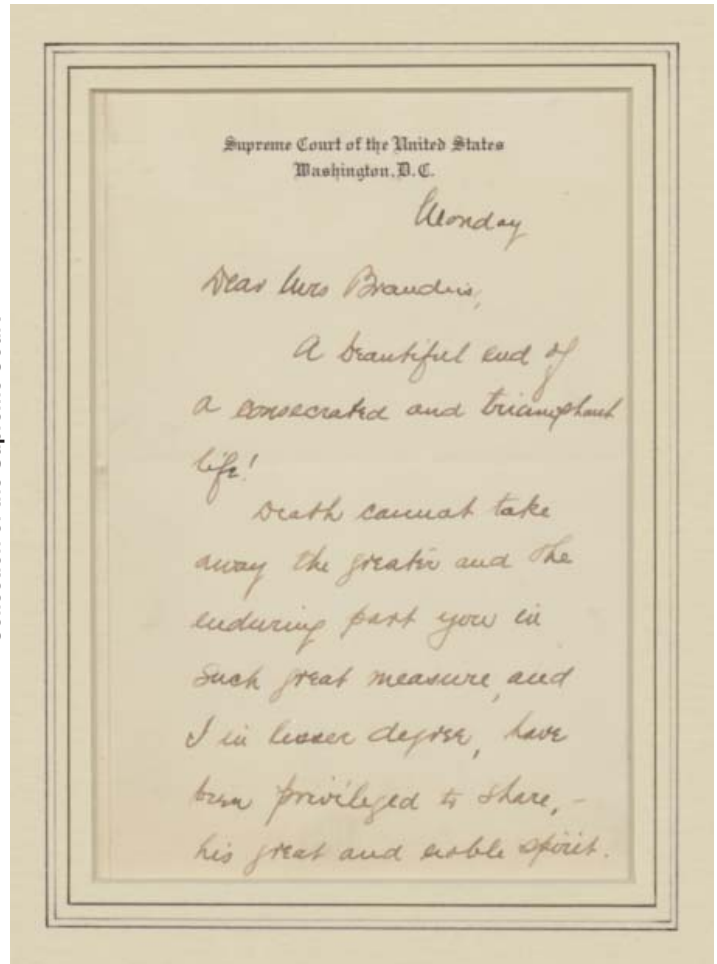
A collectible plate depicting the steamboat Chief Justice John Marshall.

From 2012:

A blue transferware plate attributed to Enoch Woods & Sons depicting the steamboat *Chief Justice Marshall*, 1830s. Following the landmark decision in *Gibbons v. Ogden* (1824) which opened steamboat competition on the Hudson River, the new Troy Line named its flagship in honor of Marshall. The ship became known as the "Race Horse of the North River" after a record 14-½ hour trip from New York City to Albany. The 105-passenger ship had a barber shop and new safety features like a net to prevent children from falling overboard! After a boiler explosion in 1830 (a common occurrence in the early days of steam power), the ship was moved to the Connecticut River. In April 1835, the *Marshall* ran aground in a storm near New Haven but thankfully all of its passengers and crew were saved.

A condolence letter written by Justice Owen J. Roberts to Mrs. Alice Brandeis upon the news of the passing of Justice

Collection of the Supreme Court



Letter written by Justice Owen J. Roberts on the occasion of the death of Justice Louis Brandeis.

From 2013:

A portrait of Roger B. Taney painted by an unknown artist in the early 1830s. This portrait had been shown to the Court's Marshal, Thomas E. Waggaman, in the late 1940s while he was actively seeking portraits for the Court's collection. Contact with the owner was lost after Waggaman retired, but in 2013 the portrait was rediscovered. In contrast to the Court's official portrait which shows Taney near the end of his career, this portrait depicts Taney during the years he rose to national prominence. It was likely painted around

# WANTED

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



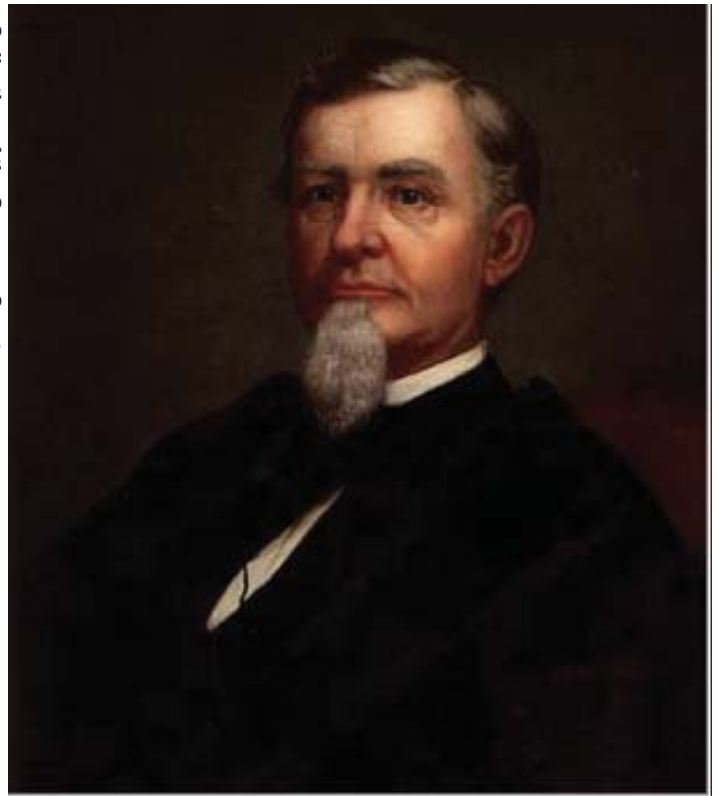
Oil portrait of Chief Justice Roger B. Taney painted in the early 1830's.

the time he was serving in President Andrew Jackson's cabinet as the Attorney General of the U.S. and then Secretary of the Treasury. In 1835, Jackson nominated Taney as an Associate Justice to replace Gabriel Duvall, but the nomination was postponed by the Senate. The following year, Jackson named Taney to take the place of the late John Marshall and Taney would preside as Chief Justice for over 28 years.

A collection of 83 letters, telegrams and other notes relating to Justice Howell E. Jackson's appointment to the Supreme Court was donated by Ms. Elizabeth Ragland Perkins, great granddaughter of Justice Howell E. Jackson. Two pieces were sent to Jackson by William H. Taft, who was serving with Jackson as a federal judge on the Sixth Circuit Court of Appeals. "One effect of your appointment," wrote Taft, "I sincerely hope, is that the fire eaters and the malignant enemies of the Federal judiciary will find themselves

without support in the Democratic party in the attack upon that institution of our government upon which depends its integrity--I mean the Supreme Court of the United States... Therefore, I rejoice for the country at your appointment, for even a wider reason than the intellectual and legal strength which is added to the tribunal by your accession to it." Taft's joy for Jackson would be short-lived; Jackson contracted tuberculosis shortly after joining the Court and died in 1845. Taft, of course, would one day join the Court himself as Chief Justice, from 1921 to 1930.

Collection of the Supreme Court



The collection recently obtained a group of letters, telegrams and notes relating to Justice Howell E. Jackson who served as an Associate Justice from 1835-1845.

## The Supreme Court & Reconstruction: 2015 Lecture Silverman Concluded

The hard-won victory for the Union achieved in 1865 ushered in a new era, politically, with the emancipation of 4 million slaves. The transition from slavery to citizenship was not easy to accomplish and was beset with many pitfalls. The period immediately after the War was one of the most conflicted in all of American history. On the part of the North, there was a desire to punish the South. The former Confederacy, on the other hand, had its own feelings of anger and despair. Large numbers of the former Confederate leaders lost their right to vote and therefore their right to be elected to public office. The former slaves, now newly enfranchised, were obtaining a voice in government and for the first time in American history African-Americans were elected to state legislatures and even to Congress. This combination of recrimination and resentment sent the country into one of its most complicated eras.

Photos by Steve Petteway



Following Professor Brandwein's talk, she was photographed with (left to right) Society Vice President Chilton Varner, Professor Pamela Brandwein and Justice Ruth Bader Ginsburg.

Professor Pamela Brandwein presented the second program **The Forgotten History of the Reconstruction Amendments**. She is a Professor of Political Science at the University of Michigan and the author of *Reconstructing Reconstruction and Rethinking the Judicial Settlement of Reconstruction*. Her research provides a detailed look at the Court's role during the Reconstruction era and provides new insights into the Court's effort to deal with the rights of the newly-freed Blacks, and the resistance to those rights on the part of both northern and southern legislatures.

The topic of the third program was **The Reconstruction of Rights: The Fourteenth Amendment and Popular Conceptions of Governance**. In her lecture, Professor Laura F. Edwards of Duke University focused many of her comments on the political and legal situation of women during the period. She has published several books discussing



Professor Michael A. Ross (left) poses with his father and the official portrait of Justice Samuel A. Miller.

The 2015 Leon Silverman Lecture series explored the role of the Supreme Court in these years, analyzing the changes and developments in American jurisprudence during the period. Four distinguished scholars working in the field delivered lectures which were divided over the spring and Fall of 2015, with two occurring in each period. The text of these lectures will appear as articles in a forthcoming issue of the **Journal of Supreme Court History**.

The first lecture was given by Professor Michael A. Ross, and his topic was: **The Supreme Court, Reconstruction and the Meaning of the Civil War**. Professor Ross based a portion of remarks on his book *Justice of Shattered Dreams: Samuel Freeman Miller and the Supreme Court During the Civil War Era*. Miller was a towering figure in the history of the court providing dramatic leadership to his colleagues as they grappled with the complex issues of these difficult times.



Professor Ross visits with colleagues and students during the reception held following his lecture on Justice Samuel A. Miller.



Photos by Steve Petteway

**Professor Laura Edwards spoke about the fourteenth amendment and Reconstruction Era rights.**



**Professor Brandwein visits with a Society member, Steven Shore, following her lecture.**

the political culture of the South in this period and how it affected women residing there. She was a recipient of the John Simon Guggenheim Foundation Fellowship in 2012-2013.

The final program, **The Supreme Court and the**

wrote the opinion of the Supreme Court in one of the most hotly debated cases of the Supreme Court's entire history.

The 2016 Leon Silverman Lecture Series focuses on The Supreme Court and the Progressive Era, and will consist of four lectures, two delivered in May, and two in the Fall. The first programs are: May 11, 2016 "The Supreme Court and the Chinese Exclusion Cases" by Dean Polly Price of Emory University School of Law; and May 25, 2016 "A Conversation on Lochner" with Professor Randy E. Barnett of Georgetown University Law Center and Professor Paul Kens of Texas State University; moderated by Victoria Nourse of Georgetown University Law Center.

The Fall lectures will be: November 2, 2016 "The Supreme Court and Property Rights in the Progressive Era" by Professor James W. Ely, Jr. November 16, 2016, "Felix Frankfurter and the Sacco and Vanzetti Case" by Professor Brad Snyder, University of Wisconsin Law School.



**The fourth lecture was given by Professor Randy E. Barnett who spoke about The Supreme Court and the Slaughterhouse Cases.**

**Slaughterhouse Cases** was presented by Professor Randy E. Barnett of Georgetown University Law Center where he directs the Georgetown Center for the Constitution. He was awarded a Guggenheim Fellowship in Constitutional Studies in 2008. *The Slaughterhouse Cases* came before the Supreme Court in 1873 arising from actions taken by the Louisiana legislature in 1869 which granted a monopoly to a company to slaughter animals in the New Orleans area. Local butchers sued in state court challenging the action, claiming that it violated the "Privileges and Immunities" Clause of the new Fourteenth Amendment. They appealed the state's ruling to the Supreme Court in 1873. Justice Samuel Miller



**Guests attend a reception held in one of the Conference Rooms immediately after a lecture in the series. A reception follows all lecture events and is open to all participants.**

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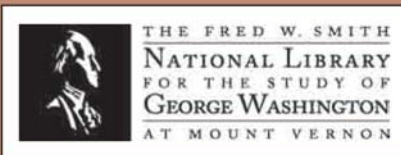
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