



THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XXXIX

NUMBER 3, 2017

42nd Annual Meeting June 5, 2017

Beautiful weather created the perfect setting for the Society's 42nd Annual Meeting on June 5, 2017. Following the now time-honored schedule, the first event of the day was the Annual Lecture. It was given in the Supreme Court Chamber as it has been for two decades and was presented by President Emeritus John Sexton of New York University. President Sexton spoke on the subject of *Warren Burger, the Court and Society*. As many members already know, the Supreme Court Historical Society owes its existence to Chief Justice Warren Burger. He saw the need for an organization that would be dedicated to protecting, preserving and exploring the history of the Supreme Court and he played a fundamental role in the creation of the Society. It can truly be said that the Supreme Court Historical Society would not exist had it not been for Warren Burger. He served as the first Honorary Chair and displayed a keen interest in our activities and programs until his death.

The Society's then-President Gregory Joseph introduced John Sexton who was eminently qualified to present the Annual Lecture for several reasons. First, he had clerked for Chief Justice Burger, and second, for a life-time he has been teaching law and researching and writing on the Supreme Court. The possessor of multiple degrees, Dr. Sexton's law degree is from Harvard, where he served as Supreme Court

editor for the **Harvard Law Review**. Upon completion of law school he clerked for Judges Harold Leventhal and David L. Bazelon of the U.S. Court of Appeals for the D.C. Circuit. Immediately afterwards he clerked for Chief Justice Warren Burger during the Court's 1980-81 Term.

In 1981 Sexton joined the faculty of the New York University School of Law and was named its Dean in 1988. He was appointed the 15th President of New York University in 2002 and held the office until 2016.

President Sexton opened his presentation commenting that he had enjoyed the privilege to clerk for three remarkable judges: Judge Leventhal, Judge Bazelon and Chief Justice Burger. He said that no one, including himself, would have predicted that he would be chosen by Burger

to serve as a clerk because he had been recommended by many of Burger's sharpest critics. The process of selection was somewhat short-circuited when Judge Leventhal died prior to the final selection and Sexton began clerking for Judge Bazelon. Aware that the Chief Justice and Judge Bazelon did not get along very well Sexton asked to have his name removed from the potential clerk pool to create an opportunity for a more acceptable candidate. He was advised by a colleague that Chief Justice Burger should never be stereotyped. Sexton was delighted and somewhat surprised



President Emeritus John Sexton discussed the contributions of Chief Justice Warren E. Burger during the Annual Lecture on June 5, 2017.

Photos by kevin@kevinkennedy.com

A Letter from the President



This fall season has been a busy one for the Society. I will start with the 2017 Leon Silverman Lecture Series. As of the time I write, three of the four programs in the series have been presented. Built around the overall theme of “Supreme Court Justices in Presidential Cabinets,” the series has explored Justices who also served as members of a Presidential Cabinet.

The first lecture addressed two Justices whose names are writ large in the founding of our country: John Jay and John Marshall. Both Jay and Marshall served as Secretary of State for the new country. Professor Sai Prakash of the University of Virginia presented an engaging review of their experiences. The second speaker, Cynthia Nicoletti, also a Professor at the University of Virginia, spoke about Salmon P. Chase who served as Secretary of the Treasury under President Lincoln, prior to his appointment to the Court. You can read more about his activity in that capacity in the article on page 10 of this magazine. Reading the article will convince you that Chase was not opposed to self-promotion!

The third lecture moved to the 20th Century, as Professor John Q. Barrett discussed Robert H. Jackson’s service as Attorney General under Franklin D. Roosevelt. Professor Barrett explained the close association Jackson developed with FDR that led to Jackson’s meteoric rise in public life. The fourth and final lecture in the series will be given on Dec. 6 by Sidney M. Milkis of the University of Virginia Department of Politics, who will discuss James F. Byrnes and FDR. Byrnes, in an unusual move, and at the request of the President, resigned from the Court to accept an appointment as Director of Economic Stabilization. A forthcoming issue of the **Journal of Supreme Court History** will contain the text of these lectures, making them available to those who were unable to attend in person.

Recently, the annual 2017 Frank C. Jones Reenactment re-envisioned the case of *Cassius Clay v. United States*. This famous case about conscientious objectors and the draft was explained by Thomas G. Krattenmaker, a retired academic with extensive public service who set the historical stage for the oral argument. Attorneys Theodore Wells and Donald B. Ayer engaged in lively advocacy before Justice Sotomayor, who presided over the event. The next issue of this magazine will review this event in detail, but in the interim, we thank the four principals. Each spent hours preparing for the reenactment, and that effort produced a memorable and engaging evening. We were honored to have two family members attend the presentation: Lonnie Ali, the widow of

Cassius Clay (later known as Muhammad Ali), and Khaliah Ali, one of Mr. Ali’s daughters. Their presence made the evening even more meaningful.

The Society’s newest publication will be available in early December: *Table for Nine: Supreme Court Food Traditions and Recipes*. As it turns out, the well-known cliché, “when people meet, they eat,” can be applied even to the Justices of the Supreme Court. The tradition of meals taken together has been a part of the experience of the Justices since the earliest days of the Court, and it continues to play an important role in fostering camaraderie. The back page of this newsletter provides more information about the book, and shows the cover artwork, which is an original drawing created specifically for the book by noted courtroom artist Art Lien. The “icing on the cake” is a Foreword by Justice Ruth Bader Ginsburg. In the center of this issue there is a four-page color flyer that illustrates other inviting items available through the Society’s gift shop. To order the new cookbook (which is perfect for holiday gift-giving), or any other gift items sold by the Society, please check the website, www.supremecourtgifts.org, or telephone the gift shop directly at the toll-free number (888)-539-4438.

Now to the New Year that fast approaches. One of the most important events scheduled for 2018 is the Society’s Fourth New York Gala, which will be held on March 14, 2018 in the Ballroom of the Plaza Hotel in New York City. On that occasion the Society will honor the accomplishments of David Rubenstein, a noted champion of historical preservation. The Galas have become an important source of funds that underwrite the costs involved with producing many of the educational programs conducted by the Society. Information about the event is included on the website. Please consider sponsoring a table for the event if you have not done so already. If participation in the Gala is not convenient, please consider making a year-end gift to the Society’s Annual Fund. These donations are also an important element of fundraising to support our work.

Your support of the Society’s work is greatly appreciated. With your engagement, the coming year will be a great one.

Chilton D. Varner

Quarterly

Published four times yearly in Spring, Summer, Fall, and Winter by the Supreme Court Historical Society, 224 E. Capitol Street, N.E., Washington, D.C. 20003. Tel. (202) 543-0400, <http://www.supremecourthistory.org>. Distributed to members of the Society, law libraries, interested individuals, and professional associations.

Managing Editor Kathleen Shurtleff
Advisory Editor James B. O’Hara



James B. Barnes (right) received the student Hughes-Gossett Award from the Chief Justice John G. Roberts Jr.

when he was chosen.

Public perception of Chief Justice Burger was that he was aloof, but Sexton's experience taught him that was also a misconception. Shortly after the Chief Justice had interviewed him for the prospective clerkship he called Sexton. The Chief Justice told Sexton that he knew he was going through some very hard times, so he wished to inform him without delay that he had been chosen to serve as a clerk. Sexton said that he never knew how the Chief Justice learned that Sexton's mother was battling cancer, but he learned that the thoughtfulness Burger demonstrated that day was very characteristic of the Chief Justice. Indeed, he and his fellow Burger clerks developed warm personal relationships with the Chief Justice during their service, relationships that continued long after the clerkships ended.

Beyond his customary duties as Chief Justice, Burger cared deeply about the state of the legal profession in general and the judicial system. With an eye to improving the functionality of the Court system, he created an Institute for Court Management, and his involvement with the National Center for State Courts was unprecedented. His vision inspired the creation of the Supreme Court Fellows Program which now places fellows each year at the Supreme Court and three other agencies related to the judiciary. These innovations can be linked directly to Burger's leadership and vision.

Chief Justice Burger also sensed a need for an historical

organization dedicated to collecting, preserving and furthering the history of the Court. To that end he asked a few associates with both legal and historical backgrounds to research what would be involved in creating such an organization. With the encouragement of Burger, these volunteers planned and created the Supreme Court Historical Society. Chief Justice Burger served as Honorary Chairman of the Board of the Society throughout his lifetime and took an active interest in the work of the organization. Through his encouragement, the newly created Society focused on developing publications and lecture opportunities and started an ambitious acquisition program to obtain through gift or purchase meaningful items of significance to the history of the Court and the individuals who have served thereon.

At the conclusion of his speech, Mr. Joseph thanked President Sexton for his thoughtful and insightful presentation. Mr. Joseph then recognized Mrs. Leonora Burger, the widow of Chief Justice Burger's son Wade, and their daughter Andrea Barber, in the audience.

Following the lecture, tour guides provided by the Office of the Curator of the Supreme Court conducted tours of the building for members and their guests. An earlier tour opportunity was provided to members as well. The Society is grateful to Curator Catherine Fitts and Director of Tours Nikki Peronace and other members of the Curator's staff for leading the tours that day and for their assistance throughout the year.

The Annual Meeting of the Board of Trustees was



Mrs. Leonora Burger (left) and her daughter Andrea Barber visited with President Sexton following the Annual Lecture.



Chief Justice Roberts with Professor Steven Brown (right) who received the Hughes-Gossett Award.

Photos by Kevin@kevinkennedy.com



Robert Anello (right) was congratulated by Chief Justice Roberts for his service as the National Membership Chair.

convened at 6:30 PM by President Joseph. He was joined by Chair of the Board Ralph Lancaster, Vice Presidents, Dorothy Goldman and Chilton Varner, Secretary Philip Kessler and General Counsel Bob Juceam. President Joseph reported to the members of the Board of Trustees on the activities of the Society during the past year, and referring to some of the formative activities and efforts of the Society. He prefaced his remarks by referencing the lecture given by President Emeritus Sexton. In that lecture, Sexton remarked that the Society had been founded through the leadership of Chief Justice Burger. Indeed, the records show the Society was created by a handful of persons with a small number of members and on a shoestring budget. One of its first and most enduring projects was the publication of the Society's **Yearbook 1976**. The **Yearbook** was renamed the **Journal of Supreme Court History** in 1990. The original tradition of one volume per year was expanded to three issues per year and it is now a well-respected periodical adding significantly to the scholarship on the Court. The Publications Committee currently chaired by **Don Ayer** has embarked on a series of special publications in addition to the **Journal**, the most recent being the one-volume history of the federal judiciary. Current publications

efforts are focused on producing a Supreme Court cookbook containing recipes favored by Justices and their families throughout the Court's history. It will also include anecdotal material about food traditions at the Court.

Lectures and educational programs presented by the Society have also increased in number and variety since the Society was created. **Trustee Kenneth Geller** chaired the Program Committee for more than a decade. Although most of the programs are conducted in Washington D.C., a number have been produced in other areas of the country on an occasional basis. These programs include the Leon Silverman Lecture Series, the Frank C. Jones Supreme Court Reenactments, The Summer Institute for Teachers, and the National Heritage Lecture as well as cooperative programs given in conjunction with other organizations.

Beyond these activities, the Society provides significant financial support for the Supreme Court Fellows Program inspired by Chief Justice Burger. This program is administered by the Office of the Counselor to the Chief Justice, and the Society is very grateful to **Jeffrey Minear, Counselor to the Chief Justice** for his oversight. Mr. Minear and the members of his staff provide vital support to the Society throughout the year and contribute greatly to the success of the Society's endeavors.



The Chief Justice with Katie Recker who received an award for her membership work in Pennsylvania.

The Society also works with the Office of the Curator of the Court under the direction of **Curator Catherine Fitts** in pursuit of the Acquisitions Program. Ms. Fitts works closely with **Vice President Dorothy Goldman** who chairs the Society's Acquisitions Committee. Together they work to identify and acquire items of significance to the history of the Court. Acquired items become a part of the permanent collection. Ms. Goldman is faithful and diligent in this work and shares her knowledge of and experience with collecting in filling the role. She has been a generous contributor to the Acquisitions Fund and has made items of her personal collection available for display on special occasions such as the Galas held in New York City.

Under the leadership of President Justin Stanley, an endowment for the Society was created in the early 1980s. The original goal was to raise \$2.5 million. Over the years, that fund has continued to grow through funds received from the minting of the John Marshall Commemorative Coin and other sources. The substantial work necessary to obtain that coin was spearheaded by our current **Chairman of the**

Board Ralph Lancaster who worked tirelessly to obtain the required support in Congress to authorize the minting of the coin. That tremendous effort, in which a number of other Trustees were also involved, produced approximately \$2.6 million which essentially doubled the endowment fund. Careful investment has helped to increase the balance and the fund today approaches \$11 million. Financial operations for the Society are carefully supervised by **Treasurer Carter Phillips** whose responsibilities dovetail with those of **Investment Committee Chair George Adams**.

Development Committee Chair Robert Giuffra spearheads the efforts to obtain grant and other financial support to underwrite the activities of the Society. He also served as the Chair of the 2016 Gala, an enormous undertaking in its own right. The Galas have become an essential part of the Society's fundraising efforts and Mr. Giuffra will serve as Chair of the 2018 event. The Gift Shop on the ground floor of the Supreme Court building is another important aspect of the Society's work. Careful oversight of the shop's operation is provided by **Vice President Vincent C. Burke III**. The shop offers a variety of items including books about and authored by members of the Supreme Court and provides an important service to the hundreds of thousands of visitors to the building each year. The shop is located in a beautifully-detailed space that was renovated in keeping with the design of the building, and Mr. Burke played a large role in bringing that to pass.

Membership recruitment is the focal point of much of the Society's efforts each year. Each year an annual membership campaign is conducted under the direction of a National Chair. **Robert Anello** spearheaded this important work for the second year and he recruited leading lawyers across the country to assist in their home areas and states, thus spreading the outreach of the Society throughout the country.

After the report on the progress of the past year, Mr.



Photos by kevin@kevinkenedy.com

Chief Justice Roberts presented an award to Society Vice President Robert J. Giuffra, Jr., (right) for his support.

Joseph asked Chief Justice Roberts and Mr. Anello to join him at the podium to assist in recognizing the work of the successful State Chairs. The following persons were present to be recognized for achieving their goals for 2017 Fiscal Year: **Dale Amburn, Tennessee; Ed Harnden, Oregon; John Houlihan, Connecticut; Randy Howry, Texas; Brian Jacobs, New York City, Katie Recker, Pennsylvania, and John Tucker, Oklahoma.**

The next item of business was the election of Trustees and Officers of the Society. **Philip Kessler**, Secretary and Chair of the Nominating Committee, presented the candidates nominated for election. The first nominees were candidates to be elected to an initial three-year term as a Trustee of the Society. Those nominated were: **Paul Curnin, Greg Garre, and Gayle Wright**. The Nominating Committee then presented a slate of candidates for election to an additional three-year term as a Trustee of the Society. Those nominated were: **Robert Anello, Dennis Block, Norman Brothers, James R. Figliulo, David Frederick, James Gauch, William J. Haynes, Philip Kessler, Gregory Joseph, Robert Juceam, Christy Jones, Thomas Leighton, Joan Lukey, Mrs. Thurgood Marshall, Theodore Olson, John Quinn, Teresa Roseborough, Richard Schneider, Kenneth W. Starr, Jeffrey E. Stone, Theodore Ullyot, Paul Verkuil and David Weinstein.**

Candidates were presented for election as Officers and At-large Members of the Executive Committee for the term specified: **Chilton Varner, President for a three-year term; Vincent C. Burke III, Robert J. Giuffra, Jr., and Mrs. Thurgood Marshall were nominated as Vice President for a three-year term; Philip Kessler, Secretary for a three-year term.**

Those nominated for a one-year term as an At-large



Bart Dalton of the American College of Trial Lawyers (right) was recognized by Chief Justice Roberts.

member of the Board of Trustees were: **Robert Anello, Charles J. Cooper, David G. Leitch, Teri P. McClure, Jeffrey P. Minear, James W. Morris, III, John M. Nannes, James B. O'Hara, The Honorable Theodore B. Olson, The Honorable Leon Polsky, Richard A. Schneider, and Seth P. Waxman.**

Mr. Joseph resumed the podium and called for a motion to elect those nominated to the offices and for the terms as indicated. **A motion was made to elect the nominees as presented by the Nominating Committee. The motion was seconded. A vote was taken and the Motion was carried.** Mr. Joseph then welcomed newly-elected President Chilton Varner to the podium to conduct the awards ceremony.

President Varner preceded the awards recognition by paying tribute to Gregory Joseph for the outstanding leadership he has provided over the preceding six years. He has been an exemplary leader and under his direction the Society has achieved many important goals. She noted that he became President at the time of the economic depression. Faced with the need to find new funding or cut programs and activities, he instituted the New York Gala which has become a very effective tool in fundraising. She gave other examples of his leadership, and ended by extending thanks to Mr. Joseph on behalf of the other Officers and Trustees as well as the entire Society. She told those at the meeting that Mr. Joseph will continue to be involved with the activities and operations of the Society and will serve as President Emeritus.

Mrs. Varner thanked Chief Justice Roberts for his support as Honorary Chair of the Society and asked him to assist in the awards ceremony recognizing special contributions. The first to be recognized were the Hughes-Gossett Prize Winners for the year. The first was **James B. Barnes** whose article concerning *Wickard v. Filburn* and federal power was written while he was a law student, received the student prize. The second was **Professor Steven Brown** of Auburn University whose article *The Girard Will Case and Twin Landmarks of Supreme Court History* received the senior literary prize.

Mrs. Varner then recognized special supporters. Chief Justice Roberts assisted in handing out awards. Those present to be recognized were: **Robert J. Anello, Morvillo Abramowitz Grand Iason and Anello; Bartholomew J. Dalton, American College of Trial Lawyers; Richard**

Cullen; Laurie Webb Daniel; David C. Frederick; Robert J. Giuffra, Jr.; Dorothy Tapper Goldman; William J. Haynes, II; Gregory P. Joseph, Joseph Hage Aaronson; Philip J. Kessler; Ken Klukowski, Liberty Institute; Thomas C. Leighton, Thomson Reuters; Steven F. Molo, Molo Lamken; Gary P. Naftalis, Kramer Levin Naftalis & Frankel; Michael H. Park; Jeffrey E. Stone, McDermott Will & Emery; Chilton D. Varner, and Tal M. Weberg.

President Varner thanked all those who have given so generously of their time and funds to support the Society and the meeting was adjourned.

The 42nd Annual Reception was held in the East and West Conference Rooms. The Annual Dinner was held in the Great Hall of the Court. President Emeritus Gregory Joseph welcomed all present, and thanked Chief Justice Roberts, the Honorary Chair of the Society for sponsoring the event. He then thanked the members of the Court who were present that evening: Chief Justice John G. Roberts, Jr., Justice Clarence Thomas, Justice Samuel A. Alito, Jr., Justice Ruth Bader Ginsburg, Justice Stephen G. Breyer and Justice

Sonia Sotomayor. Following the welcome, the Chief Justice gave the traditional toast to the President of the United States.

At the conclusion of dinner service, Annual Meeting Chair Dorothy T. Goldman, gave special recognition and expressed thanks to **Marshal Pamela Talkin** and the members of her staff who facilitated the events of the day. She observed that the members of the Marshal's staff provide vital assistance at every event the Society holds in the Supreme Court, and expressed thanks for all that is done to make these events successful.

Ms. Goldman then introduced the after-dinner concert. Entertainment was provided by Ms. Sandra Turley. Ms. Turley began performing as a child and has performed professionally throughout the country and abroad. She performed the role of Cosette in *Les Misérables* on Broadway, reprising the role in China. Ms. Turley was accompanied by her mother, Michelle Dudley. Ms. Turley presented a medley of Broadway show tunes that exhibited the range of her musical skills and performance acumen. Her program included selections from *Les Misérables*, *Phantom of the Opera* and *Hamilton*, among other shows, and she concluded the program with a moving rendition of "God Bless America," providing a patriotic and fitting end to the evening.

Photos by kevin@kevinkennedy.com



Sandra Turley (right) who performed the concert is shown with her daughter Ava and her mother Michelle Dudley who accompanied the performance.

Frank C. Jones Reenactment Reconsiders *Goesaert v. Cleary*

By Robert White*

Justice Ginsburg presided over the latest installment of the Frank C. Jones reenactment series at the Court on May 1, 2017. The case reenacted was the Supreme Court appeal of the Michigan barmaids complaint in *Goesaert v. Cleary* (1948). *Goesaert* marked the first occasion on which the Court considered how discrimination against women violates the equal protection clause of the Fourteenth Amendment. “That was 1948,” reflected Justice Ginsburg: “How far we have come.”

Gregory Joseph welcomed guests to the Court for the event and thanked Justice Ginsburg for assuming the role of the Court for the reenactment. In opening remarks, he noted that The Women’s Bar Association for the District of Columbia had partnered with the Supreme Court Historical Society in cosponsoring the event to celebrate the Bar Association’s Centennial. He called upon Association President Ms. Lorie Masters who spoke briefly on behalf of the Association: “In looking backward, we hope to inspire all of you—current generations and future generations of lawyers, as well—to move forward and to follow our Founders’ commitment to promote justice, to maintain the integrity of the profession, and to promote friendship among all lawyers.”

Society Trustee Judge Patricia Millett, a Circuit Judge of the Court of Appeals for the District of Columbia Circuit, gave the audience some background of the *Goesaert* case. The “Drys” (those advocating temperance) had endured the repeal of Prohibition in 1933 and enacted temperance laws in many states like Michigan, where a constitutional amendment gave the Liquor Control Commission “complete control” of alcoholic beverage traffic. Members of the all-male Bartenders’ Union sought to stay in the good graces of the Commission by cultivating a clean image. Remarking that “discrimination can make strange bedfellows,” Judge Millett described how together Drys and bartenders successfully pressured the legislature to make it illegal for women to tend bar in cities of more than 50,000 people, excepting licensed barmaids whose father or husband owned the bar in which

they worked.

The bartenders used the “moral protectionism” of conservative Michiganders to their own advantage: all-male occupations paid higher wages, and excluding women would naturally benefit the men of the Bartenders’ Union. Barmaids, especially those tending their own bars or those of their mothers, immediately recognized the injustice of the law and sued for an injunction. The law survived the review of the Michigan courts before attorney Anne Davidow agreed to champion a federal suit. Ms. Davidow, who had been fired from a job for wearing a suffragist button and had been denied enrollment at her chosen law school because she

was female, would later remember, “I was quite radical in the sense that I couldn’t see any reason a woman couldn’t do anything a man could do.” After the District Court upheld the Michigan law in a split decision, Ms. Davidow would become the twenty-ninth woman to argue a case before the Supreme Court.

The audience at the reenactment signaled its approval when Judge Millett concluded that Justice Ginsburg, a leading figure in the history of gender discrimination law, would be “taking the role of all nine male justices”

that evening. Marshal Pamela Talkin, the first woman to serve as Marshal of the Supreme Court, called the Court into session.

Ms. Deanne Maynard, a Society Trustee, took the role of Ms. Davidow representing the appellants. Ms. Maynard co-chairs the Appellate and Supreme Court Practice Group at Morrison Foerster, is a former Assistant to the Solicitor General, and has argued thirteen cases before the Court. She argued, as Ms. Davidow had argued, that the Michigan law was repugnant to the Fourteenth Amendment because it arbitrarily discriminated between persons similarly situated in relation to the purpose of the statute; namely, between men and women who owned or tended bars and between barmaids and waitresses. Ms. Maynard neither argued that women have a constitutional right to be in bars nor argued that women pour liquor the same way men do—indeed, the appellants had testified that women make better bartenders than men do. Ms. Maynard did not ask the Court to scrutinize



Photos by Kevin@kevinkenedy.com

Justice Ginsburg, shown at the Bench, presided over the reenactment of *Goesaert v. Cleary*. Deanne Maynard (left) presented for the appellants.

Frank C. Jones Reenactment Continued from Page 7
the classification because it differentiated between men and women, but because it did not relate to the purpose of the Michigan law.

She observed that identifying that purpose would be difficult because the legislature had offered no reasoning in enacting the law. Judge Simons, of the District Court, had supposed, “If the court is able to perceive that there is some reasonable ground for making this classification, aren’t our hands then tied so far as interfering with the operation of the state law?” Ms. Maynard relied on the law’s proviso for wives and daughters of bar owners to rule out every reasonable ground she could imagine, as Ms. Davidow had in 1948. She argued that the purpose of the law could not be to protect women from alcohol or the men who drink it because the law allowed women to freely drink, sell, and serve alcohol however they pleased and did not require that any man supervise a barmaid behind her husband’s bar. What purpose could the law reasonably promote by excluding the daughter of a female bar owner from being a barmaid while allowing the daughter of a male bar owner to work as a barmaid? She concluded that the true explanation, involved the economic interests of the Bartenders’ Union, but the lower Court had refused to admit such speculation.

Mr. Roy Englert, Jr., stepped to the podium in the place of Mr. Edmund Shepherd to represent members of the Liquor Control Commission. Mr. Englert is an appellate litigator at, and co-founder of, Robbins Russell and a member of the Society’s Program Committee. He is a former Assistant to the Solicitor General, and also is an Adjunct Professor at the Appellate Litigation Clinic at the Georgetown University



Judge Patricia Millett (left) of the U.S. Court of Appeals for the D. C. Circuit, presented an historical overview of the case. Shown to the right is Marshal Pamela Talkin, the current Marshal of the Court and to date, the only woman to hold that office.

Law Center, and has argued twenty-one cases before the Court. The crowd became quieter as Mr. Englert laid out the same defense that Mr. Shepherd had supplied, which Justice Ginsburg summarized as “Anything goes. Anything the legislature wants to do with regard to women’s occupations as long as someone could conceive of some basis for it—that’s good enough. Anything goes.” Mr. Englert responded by saying that such “reasonable” justification for his argument could be found in the opinion of the District Court.

Mr. Englert commented, that “it is conceivable that the Legislature was of the opinion that a grave social problem existed because of the presence of female bartenders in places where liquor was served in the larger cities of Michigan. It

may have been the Legislature’s opinion that this problem would be mitigated to the vanishing point in those places where a male licensee was responsible for the condition and the decorum maintained in his establishment. It may have determined that the self-interest of male licensees in protecting the immediate members of their families would generally insure a more wholesome atmosphere in such establishments. The Legislature may also have considered the likelihood that a male licensee could provide protection for his wife or daughter that would be beyond the capacity of a woman licensee to provide for herself



Photos by kevin@kevinkennedy.com

The theme of the case was the right of women to tend bar. During the reception following the reenactment a female bartender assisted guests.

or her daughter. The power of the Legislature to make special provision for the protection of women is not denied.”

He further noted, that the police power of the state was so broad that a law would survive if a reasonable person might have thought that its classifications could advance a legitimate purpose, regardless of whether or not the legislature really had reasoned so unwisely. Moreover,

Mr. Englert reminded the Court that it had repeatedly upheld gender classifications and that traditionally courts had allowed legislatures to regulate the traffic of alcohol-related occupations more restrictively than other occupations.

At the conclusion of oral argument, Justice Ginsburg said, “I will not attempt to substitute a different opinion for the one that the Court wrote in 1948. Instead, I will speak of the fate of the Court’s affirmation in *Goesaert* that the legislature may, in Justice Frankfurter’s words, ‘draw a sharp line between the sexes.’” The Court upheld the Michigan law 6-3 in 1948, with the three dissenters objecting only to the discrimination against women



Deanne Maynard and Roy Englert, Jr. provided engaging arguments in the reenactment. Ms. Maynard represented *Goesaert* and Mr. Englert represented the Liquor Control Commission.

who owned bars; the validity of the other classifications was considered “beyond question.” The decision regarding gender classifications was so unremarkable at the time that Justice Ginsburg remembered, “In the constitutional law casebook used at the law school I attended in the late 1950s, *Goesaert v. Cleary* was offered as an illustration of the



Mr. Englert presents oral argument while Ms. Maynard confers with her colleague at counsel table.

Photos by kevin@kevinkennedy.com



Guests enjoy the buffet following the reenactment. In the foreground on the right are two Society members, Mark Schwimmer behind Marcia Sowles (right)

Court’s retreat from the *Lochner* decision championing liberty of contract. Not a word was said in the casebook, or by my professor, about the blatant gender-based discrimination infecting the Michigan law.” Contemporary views aside, modern feminists may count the *Goesaert* plaintiffs among their trailblazers for having been the first to argue before the Supreme Court that discrimination against women violates the Fourteenth Amendment.

The Court would not subject gender discrimination to intermediate scrutiny until deciding *Reed v. Reed* (1971), by which point Congress would have already “largely outlawed gender-based occupational exclusions” with the Civil Rights Act of 1964, and the Michigan law that the *Goesaert* decision upheld was fully dismantled by 1956. Justice Ginsburg closed the evening observing that by 1995, women were 53.5% of the nation’s bartenders, and by 2012, 59.9%.

**Robert White assists with Society publications and membership work.*

Salmon P. Chase and John Marshall Portraits on U.S. Currency

By Jeff Brueggeman*

Salmon P. Chase is well known as the sixth Chief Justice. But his more enduring legacy may be as the man who started the era of modern paper money in the United States. Prior to his appointment to the Court, Chase served as Lincoln's Secretary of the Treasury and it was under his direction as Secretary, that paper money was first issued by the U.S. government.



Chief Justice John Marshall's image appeared on the first \$500 bill issued by the Federal Reserve system in 1918.

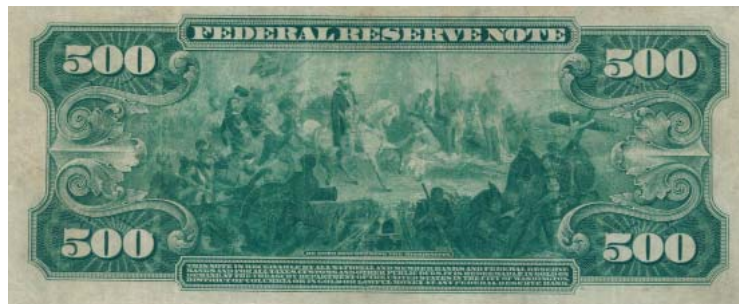
Paper money had ended in hyperinflation in colonial times, when the only paper money was issued by individual banks and municipalities. This led to many difficulties because notes had to be redeemed at the location of the issuer. Any note which was not strictly local was traded at a discount because the reliability of a non-local bank was often difficult to ascertain. Under Chase's direction, the Treasury started to produce the type of notes known as Legal Tender. These notes were obligations on the United States government rather than on any one bank. Chase placed his own portrait on the first \$1 bill made in the United States in 1862. Because smaller notes saw greater circulation than notes of larger denominations, his portrait became well known. An example of this note was donated by Jordan Cherrick to the Supreme Court Historical Society and is now in the collection.

Before the Federal Reserve system was created in 1913, the United States had several classes of paper money in circulation. Some notes were backed by gold, some by silver and others still by the general assets of the United States. At present these variously named notes have been removed from circulation and all paper money is backed by the assets of the Federal Reserve system. Chase's portrait was also placed on the first \$10,000 Federal Reserve Note. These notes however were never in general circulation, but were used primarily to transfer large amounts of money between banks. None of these 1913 notes are privately owned. Chase's portrait remained on the \$10,000 Federal Reserve Note when the United States moved to the modern

smaller sized currency starting in 1928. Only a few hundred of these notes remain in the hands of private collectors, but some are in the collections of the Smithsonian Institution and the Federal Reserve Bank itself.

The only other Chief Justice to appear on United States paper money was John Marshall, who also served as Secretary of State. John Marshall's image appeared on the \$20 Treasury Notes of 1890 and 1891. The 1890 note had a more ornate reverse, and the 1891 note was designed with a more open back design. The Society owns an example of the 1890 note thanks to the generosity of Jordan Cherrick. As with most design changes in United States currency, the switch from the ornate back to the open back was said to be done to thwart counterfeiting efforts.

Treasury Notes were odd notes in United States monetary history in that they were redeemable for either gold or silver. There was much populist political pressure to replace the gold standard with a bi-metallic standard of silver and gold. This would have increased the money supply, which would have been good for the silver industry and debtors, but bad for bankers who made loans. Marshall was the only figure on these notes who was not a Civil War era military figure or cabinet member. Marshall also was the portrait for the first \$500 bill issued by the Federal Reserve system in 1918. Roughly one hundred of these remain in private hands today.



The reverse of the \$500 bill featuring John Marshall's portrait on the front contains an image of President Washington on horseback.

Notes Can be found online on our website at www.supremecourthistory.org/publications/ under the Quarterly section.

**Jeff Brueggeman received his PhD from the University of Illinois at Urbana-Champaign. He is the membership secretary and librarian for the Society of Paper Money Collectors. He is the proprietor of Action Currency and can be found at www.actioncurrency.com.*

NEW SUPREME COURT HISTORICAL SOCIETY MEMBERSHIPS

April 1, 2017 through June 30, 2017

ALABAMA

Steven Brown, Auburn
Thomas Summers Hale, Birmingham

ARIZONA

Heidi Bonfante, Phoenix
Christopher Evans, Chandler
Nancie Lindblom, Meza

ARKANSAS

Hannah Mhoon, Springdale
Amber Pinter, Fayetteville
Frederick S. Ursery, Little Rock

CALIFORNIA

Eilona Lyka Aguilar, Pittsburg
Robert Altomare, San Francisco
Marshal Armwine, San Francisco
Matthew Baker, Concord
Darlene Balagot, Oakland
Sanford A. Berliner, Saratoga
Anika Bristol, Concord
Dennis Callahan, San Francisco
Robert C. Carlson, San Diego
Margaret A. Chidester, Irvine
Maximiliano Delgado, Concord
David W. Fleming, Studio City
Selome Getachew, Oakland
Thomas V. Girardi, Los Angeles
Moira Harada, Clovis
LaTasha Hill, San Francisco
Paul Holton, San Francisco
Benjamin Horwich, San Francisco
Mario Iskander, San Francisco
Kelly M. Klaus, San Francisco
Carmen R. Larsen, San Jose
Jeselle-Ann Laxa, Pittsburg
Faye Lee, San Francisco
Margaret McKeown, San Diego
Niraj Mehta, El Dorado Hills
Neil O'Donnell, San Francisco
Daniel Oren, San Francisco
Stanley Panikowski, San Diego
Carla Lopez Perez, Oakland
Sonia Rebelo, San Jose
Daniela Rosales, Antioch
Sabha Salamah, San Francisco
Elise R. Sanguinetti, Oakland
Jannah Schwab, Pacifica
Vanessa Segura, Riverside
Suzelle M. Smith, Los Angeles
Charlie Sweeney, San Francisco
Matthew Vann, San Francisco
David Virden, San Clemente
Wendy W. Williams, Oakland

COLORADO

Michael R. Davis, Denver
Nicole Morgan, Englewood
Robert Rich, Denver
Kurt Scryfall, Montrose
Monique Taylor, Aurora

CONNECTICUT

Jilda Aliotta Ph. D., Bloomfield
John Allen, Putnam
James D. Bartolini, Hartford
Kathryn Calibey, Hartford
Brendan Faulkner, Hartford
Joseph E. Gasser, New Haven
Andrew P. Griering, New Haven
Andrew S. Groher, Hartford
Trudie R. Hamilton, Waterbury
Paul M. Iannaccone, Hartford
Michael C. Jainchill, Hartford
Patrick J. Kennedy, Hartford
Mark Sherman, Stamford
Eugene K. Swain, Hartford
Elizabeth M. Swanson, Hartford

DELAWARE

Stacy Walls Bartkowski, Newark
Matthew Davis, Wilmington
Amy Moores, Smyrna
Bruce A. Rogers, Georgetown

DISTRICT of COLUMBIA

Samantha Block
Frank G. Burt
Michael Fires

Gregory G. Garre
William S. Greenberg
Sheila Slocum Hollis
Daryl A. Libow
James O. Rogers
Thomas G. Saunders
Rebecca Scaife
Stephanie Schlatter
Mark Schwimmer
James L. Swanson
Jennifer Thunem
Lori Warlick
Richard E. Young

FLORIDA

Timothy G. Anderson, Tampa
Sarah Boler, Bradenton
Nicholas A. Brown, Tampa
Nancy Ciampa, Miami
Michael Dexter, Tampa
Brenda Fulmer, West Palm Beach
Denise Harle, Tallahassee
Jean - Francois James, Hollywood
Julie Kane, Coral Gables
Andrew R. Kruppa, Miami
John Lauro, Tampa
David H. Margol, Jacksonville Beach
Stuart May, Boca Raton
Robert L. Parks, Miami
Allison Sheridan, Deltona
Peter D. Webber, Tallahassee
C. Steven Yerrid, Tampa

GEORGIA

John Childs, Atlanta
Kice H. Stone, Macon

ILLINOIS

Gilbert Cornfield, Chicago
Jennifer Harris, Pawnee
Jerry R. Jenkins, Grayslake
Jamie Kupferer, Glen Carbon
Richard E. Stites, Bloomington

INDIANA

Pierce Mumaw, New Albany

IOWA

Lee R. White, Winthrop

KANSAS

Megan Berry, Abilene
Michael Nolan, Wichita

KENTUCKY

Alex Waters, Richmond

LOUISIANA

Charles C. Bourque Jr., Houma
Charles D. Elliott, Alexandria
Jeremy Martin, Matchieoches
Frank X. Neuner Jr., Lafayette
Philip D. Nizialek, New Orleans
Darrel J. Papillion, Baton Rouge
Anthony Peck, Baton Rouge
Drew Ranier, Lake Charles
James P. Roy, Lafayette
Marta-Ann Schnabel, New Orleans
Joseph L. Shea Jr., Shreveport
Judith Windhorst, New Orleans

MAINE

Kelley Borge Duffy, New Castle
Jacob Maddaus, Bangor

MARYLAND

Irwin Arias M. D., Bethesda
Todd Bolton, Smithsburg
William H. Greer Jr., Chevy Chase
An Hoang, Silver Spring
Erin Lange, Gambrills
Jennifer Mascott, Chevy Chase
Mark Midei, Monkton
Edward Neufville III, Silver Spring
Adrianna Oddo, Silver Spring
Joshua Z. Rokach, Silver Spring
Miles Taylor, Silver Spring

MASSACHUSETTS

Michael Adame, Cambridge

Walter Bush, Chatham
Edward D. McCarthy, Cambridge
Abbye Meyer, Northampton
Alan D. Rose, Boston

MICHIGAN

Helen Marie Berg, Ann Arbor
Alexandra Boyd, Ann Arbor
Timothy Buchalski, Grand Rapids
Goethel Engelhardt, Ann Arbor
Marjory W. Epstein, Bloomfield Hills
Mark E. Fatum, Grand Rapids
Hillary John, Dearborn
Paul J. Manion, Detroit
Marcy R. Matson, East Lansing
Vanessa McCamant, Grand Rapids
William A. Tanoury, Livonia

MINNESOTA

Jeffery Ali, Minneapolis
Robert Bennett, Minneapolis
Brian Hayes, Minneapolis
Gene Hoff, St. Paul
Iain McIntyre, Minneapolis
Charles Reid, St. Paul
Alexander S. Rinn, Minneapolis
Sarah Stensland, Minneapolis
Saukshmya Tricni, Minneapolis

MISSOURI

Wally Bley, Columbia
Glenn E. Davis, St. Louis
Robert F. Epperson Jr., St. Louis
Hamp Ford, Columbia
James R. Hobbs, Kansas City
Kent O. Hyde, Springfield
Marilyn B. Keller, Kansas City
Joe Kibler, St. Louis
Rod Loomer, Springfield
Ron Mitchell, Joplin
John B. Morthland, Hannibal
Mindy Prenger, Hannibal
Bruce P. Robert, St. Louis
Becky Rose, Belle

MONTANA

Jacqueline T. Lenmark, Helena

NEBRASKA

Milton A. Katske, Omaha
Aaron Martin, Minden

NEVADA

Condell Williams, Reno

NEW HAMPSHIRE

Elisabeth Berry, Alton
Charles A. DeGrandpre, Portsmouth
Paul S. Moore, Bedford
James O'Neill III, Laconia

NEW JERSEY

Rachel Wainer Apter, Englewood Place
Andrew Boufford, Edison
Christopher J. Carey, Morristown
Daniel Farabaugh, Westfield
Alison Laidlaw Hogarth, Highstown
Rick Morey, Berkeley Heights
Christine P. O'Hearn, Westmont
John C. Pidgeon, Arlington
Bryan Williamson, Egg Harbor Township

NEW MEXICO

Bobby R. Baldock, Roswell

NEW YORK

Elkan Abramowitz, New York
Stephen F. Arcano, New York
David Azrin, White Plains
Daniel Bachman, Massapequa
Andrew Bauer, New York
Ashley Burns, New York
Deborah J. Chadsey, Buffalo
Scott Chludzinski, New York
Erica Lee Fruiterman, Philadelphia
Arleigh P. Helfer III, Philadelphia
Francis Helmski, Paoli
Rachel Horton, Philadelphia

Nancy Erickson, Brooklyn
Benjamin Fischer, New York
Stanley H. Fischer, Great Neck
Jeffrey M. Freedman, Buffalo
Hector Geribon, New York
Daniel M. Gitner, New York
Hima Gleeson, New York
Dave Hattem, New York
Stephen Juris, New York
Jesse M. Kantor, White Plains
Martin E. Karlinsky, New York
Dawn Kirby, White Plains
Phillip Landrigan, White Plains
J. Mark Lane, White Plains
Allie Lin, New York
Kathy Marks, White Plains
Jacob Mermelstein, New York
Brian Moran, Chappaqua
Robert M. Morgenthau, New York
Parvin Moyné, New York
Andrew I. Panken, White Plains
Robert Radick, New York
Bob Rice, New York
Pamela Rosado, New York
Craig Ruoff, Irvington
Peter Sloane, White Plains
Emily Stubbs, New York
Sarah Sulkowski, White Plains
Douglas S. Trokie, White Plains
Martha Verscaj, New York
Daniel Wachtell, New York
Michael Wainston, New York
Evan Wiederkehr, White Plains

NORTH CAROLINA

Chris Carroll, Newton Grove
Abbey McNaughton, Durham
Katherine B. Wheeler, Chapel Hill

OHIO

Jennifer Bard, Cincinnati
Ron DeGregorio, Perrysburg
Rick Robisch, Norwood
Gayle C. Wright, Dayton

OKLAHOMA

Noble McIntyre, Oklahoma City

OREGON

Kyle T. Abraham, Portland
Amy L. Angel, Portland
Nelson D. Atkin II, Portland
Paula A. Barran, Portland
Maya Crawford, Portland
Ben Eder, Portland
David Eder, Portland
Barbara Hayden, Portland
Charlotte Hodde, Portland
Richard C. Hunt, Portland
Allison Jacobsen, Portland
Anthony D. Kuchulis, Portland
Shayda Zaeppor Le., Portland
Richard F. Liebman, Portland
Damien T. Munsinger, Portland
Andrew M. Nars, Portland
Sean P. Ray, Portland
Traci R. Ray, Portland
Jeffrey G. Robertson, Portland
Andrew M. Schpak, Portland
Iris K. Tilley, Portland
Tyler J. Volm, Portland

PENNSYLVANIA

Meredith Auten, Philadelphia
Wendy Beestlestone, Philadelphia
Marissa B. Bluestine, Philadelphia
Laurel Brandstetter, Pittsburgh
Patrick Casey, Scranton
Mark Cedrone, Philadelphia
Elizabeth Chapman, Patton
Arthur T. Donato, Media
Doug Duda, Pittsburgh
Jeffrey Dutt, Allentown
Thomas J. Elliott, Blue Bell
Michael Engle, Philadelphia
James Evans, Pittsburgh
Erica Lee Fruiterman, Philadelphia
Arleigh P. Helfer III, Philadelphia
Francis Helmski, Paoli
Rachel Horton, Philadelphia

Howard Klein, Philadelphia
Frank A. Mayer III, Philadelphia
Terri Pawelski, Philadelphia
David Richman, Philadelphia
Jeffrey Rosen, Philadelphia
Alicia Ross, New Milford
Mark Sheppard, Wayne
Stephanie A. Short, Pittsburgh
Kay Sickles, Bala Cynwyd
Jonathan B. Skowron, Pittsburgh
Megan Warner, Carlisle
Kevin Wynosky, Philadelphia

RHODE ISLAND

Paula Altman, Providence
Michael D'Ippolito, Providence
Ali Khorsand, Providence
Kelly A. Kincaid, Providence
Caroline Lapish, Providence
Chad Nelson, Providence
Stephen Nelson, Providence
Kaitlin Kelly Smith, Providence
Matthew Waters, Providence
Casey A. White, Providence

SOUTH CAROLINA

Brea Amick, Chapin
Molly Hood Craig, Charleston
D. Jay Davis Jr., Charleston
Wallace Lightsey, Greenville
John P. Linton, Charleston
Joel H. Smith, Columbia

SOUTH DAKOTA

Chris Larson, Sioux Falls

TENNESSEE

Barry P. Allen, Knoxville
Heidi Allen, Knoxville
Jerome A. Broadhurst, Memphis
Amanda Busby, Knoxville
Leslie Gattas Coleman, Memphis
Ben Cunningham, Knoxville
Wade V. Davies, Knoxville
James M. Doran Jr., Nashville
Joe M. Duncan, Memphis
Daryl Fansler, Knoxville
Jeff D. Germany, Memphis
Warren Gooch, Knoxville
Tom Hale, Knoxville
Virginia Hiner, Nashville
Linda Holmes, Memphis
Reggie Keaton, Knoxville
Wayne Kline, Knoxville
Steven Lipsey, Knoxville
Jason H. Long, Knoxville
G. Mark Mamantov, Knoxville
Michael G. McLaren, Memphis
Tim McLemore, Knoxville
J. Michael Murphy, Memphis
Harry Ogden, Knoxville
Doug Overby, Knoxville
James W. Parris, Lenoir City
Arnold E. Perl, Memphis
Marshall Peterson, Knoxville
Timothy A. Priest, Knoxville
Marc E. Reisman, Memphis
Jack M. Tallent, Memphis
Bill Vines, Knoxville
Gary Wade, Knoxville
Lee Welch, Memphis

TEXAS

Price Ainsworth, Austin
A. Boone Alamanza, Austin
Austin Benesh, Austin
Jeff Brannen, Dallas
Paul Bruno, Irving
Karen C. Burgess, Austin
John Carlson, Austin
William Frank Carroll, Dallas
Russell F. Coleman, Dallas
Jason Luke Dow, Austin
Matt Dow, Austin
James Hatchitt, Austin
Tim Herman, Austin
Carlos Hernandez, Irving
Pamela Kimble, Denton
Kelly Kocurek, Austin
Raymond E. LaDriere, Dallas

Chris Lavorato, Austin
Nicole LeClaire, Houston
Harriet Miers, Dallas
Victoria Palacios, Laredo
Jessica Rader, Euless
Charles C. Reeder, Dallas
Daniel Ross, Austin
Karl S. Stern, Houston
Lawrence Temple, Austin
Glen Wilkerson, Austin
David Wright, Austin

UTAH

Mary Holm, Park City

VIRGIN ISLANDS

Adriane J. Dudley, St. Thomas

VIRGINIA

Julie Arizpe, Falls Church
Miranda Dore, Arlington
Ted Edison, Richmond
Amanda Rose Falk, Great Falls
Christina Marie Falk, Great Falls
William H. Hurd, Richmond
Michael C. Maibach, Alexandria
Horace McClerkin, Alexandria
Colette McCrone, Reston
Scott McKeag, Middlethian
Areej Al Nagbi, McLean
Steven Owen, Virginia Beach
Christian Rice, Charlottesville
Margaret Rusconi, Arlington
Joseph Shelko, Haymarket
Doris Shank, McLean
Alison Steed, Charlottesville

WASHINGTON

Anna Morin, Bellevue

WEST VIRGINIA

James S. Arnold, Charleston
Gregory W. Bowman, Morgantown
Steven R. Broadwater Jr., Fayetteville
Taylor B. Downs, Fairmont
Kendra H. Fershee, Morgantown
Max Gottlieb, Charleston
Mark A. Imbrogno, Morgantown
Tod J. Kaufman, Charleston
Timothy J. Manchin, Fairmont
Eve Mitchell, Yankey
Jed R. Nolan, Fayetteville
Miguel Pazos, Charleston
Jason Spears, Huntington
Paul Stroebel Jr., Charleston
Vince Trivelli, Morgantown
Rosemary Hunway Wamuth, Wheeling
Steven S. Wolfe, Logan

WISCONSIN

Don Carlson, Milwaukee
Steven B. Goff, River Falls
Derrick A. Grubb, Beloit
James Jansen, Madison
Douglas Klingberg, Rothschild
Joseph D. McDevitt, Elm Grove
John M. Moore, Madison
James Naugler, LaCrosse
Richard C. Nimmann, Milwaukee
Gerald M. O'Brien, Stevens Point
Don Prachthauer, Milwaukee
Daniel A. Rottier, Madison
Frank A. Scherkenbach, Burlington
Eric J. Van Vugt, Milwaukee

WYOMING

Sarah Aksamit, Sheridan
Tasha Cleland, Sheridan
Jeremy Kising, Sheridan
Amanda Roberts, Sheridan

INTERNATIONAL MEMBERS:

CANADA

Jeffrey Leon, ONTARIO

UNITED KINGDOM

Ian Fagelson, London

Supreme Court Historical Society
224 East Capitol Street, N.E.
Washington, D.C. 20003
<http://www.supremecourthistory.org>

NON PROFIT ORG
US POSTAGE
PAID
WASHINGTON, DC
Permit No. 8232

AVAILABLE NOW AT THE GIFT SHOP,
THE SOCIETY'S NEWEST PUBLICATION.



Art Lien, Courtartist.com

Table for 9

Supreme Court Food
Traditions & Recipes

BY CLARE CUSHMAN

FOREWORD BY Ruth Bader Ginsburg

PLEASE CHECK WWW.SUPREMECOURTHISTORY.ORG
FOR SOCIETY NEWS, EVENTS AND ANNOUNCEMENTS