

THE SUPREME COURT  
HISTORICAL SOCIETY

# Quarterly

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## Society Sets June 15, 1992 For Seventeenth Annual Meeting Author Liva Baker to Deliver Annual Lecture

The Officers and Trustees of the Supreme Court Historical Society are pleased to announce that on Monday, June 15, 1992, the Society will hold its Seventeenth Annual Meeting at the Supreme Court of the United States. The day's events will include the Annual Lecture, a tour of the building provided by the Office of the Curator of the Court, the annual meeting of the membership and the Board of Trustees, as well as a black tie reception and dinner in the evening.

Ms Liva Baker, who recently published the highly acclaimed Holmes biography, *The Justice From Beacon Hill*, will deliver this year's Annual Lecture. The topic of her lecture devolves from research on a previous biography she published on Justice Felix Frankfurter in 1969. The lecture will examine correspondence between Justices Frankfurter and John Marshall Harlan II stemming from *Plessy v. Ferguson* and is entitled: "What Did John Marshall Harlan, I Really Mean By Saying 'Our Constitution is Color Blind': The Frankfurter-Harlan, II Debate?"

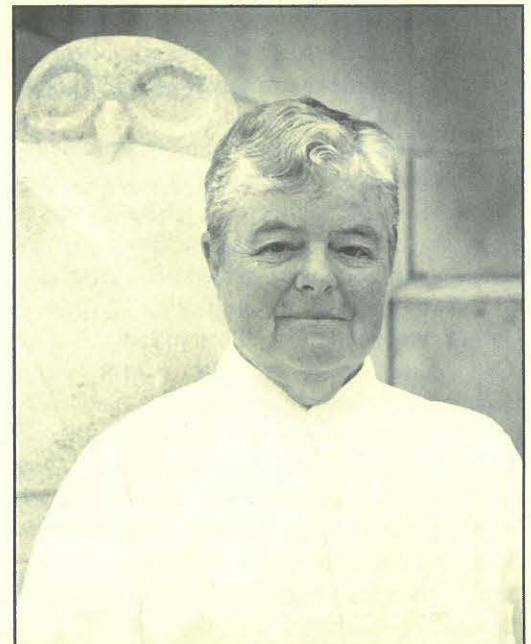
Ms Baker has extensive experience writing about the Court. She was at one time employed by *Newsday* and has been a free-lance contributor to the *Washington Post* and the *New York Times*. As always, the lecture is open to any member of the Society without charge. The lecture will be held in the Supreme Court chamber at 2 PM and members should arrive early as seating is not reserved.

Immediately following the lecture, tours of the building will be available to any

interested  
Society mem-  
ber. The tours  
will originate

from the Supreme Court Chamber and will be conducted by guides from the Office of the Curator of the Court. The tours will cover such topics as the construction of the building and its architectural details and ornamentation, as well as some history.

The annual reception and dinner will be held in the East and West Conference Rooms and the Great Hall. This event is a paid event and will require advance reservations. Because it is very popular and there is limited seating, it is advisable to make your reservations promptly upon receipt of the invitation. Unfortunately, no reservations can be taken prior to the distribution of the invitations. The invitations will be mailed to all members thirty to forty-five days preceding the meeting and should be received by May 15th.



Ms Liva Baker, author of *The Justice From Beacon Hill*, will deliver the Society's 1992 Annual Lecture.



Members photographed in the Court's Great Hall at the 1991 Annual Dinner.



## A Letter from the President



Leon Silverman

As announced in the article on page one of this issue of the *Quarterly*, the Society's Seventeenth Annual Meeting will be held on Monday, June 15, 1992. Invitations will be mailed to members 30 to 45 days preceding the meeting. We are very grateful to the Chief Justice for allowing us the use of the building for the

Annual Meeting. It is certainly the most appropriate and desirable setting for the day's events. But, the building cannot comfortably accommodate more than 300 persons for our meetings, reception and dinner, and if you have been keeping track lately, our membership now well exceeds 4,000. Since attendance at the Annual Reception and Dinner is limited. I cannot over-emphasize the need to respond immediately when you receive your invitation.

I think any member who has attended one of the Society's previous Annual Meetings has come away impressed. The Annual Lecture, delivered in the Supreme Court Chamber, is inspiring both as a consequence of the lecture site and the consistent high quality of the speakers selected, who range from Supreme Court Justices and other distinguished jurists to noted authors and academics. This year we are delighted to have Ms Liva Baker, author of the recently released, and highly acclaimed Holmes biography, *The Justice From Beacon Hill*.

The General Membership and the Board of Trustees Meetings are concise and informative. These meetings provide members an opportunity to learn first-hand how the Society is running, what its current programs are, and what we plan for the future. I anticipate, for example, that we will have much to report upon with regard to the oral history project, initiated this Spring in cooperation with the Federal Judicial Center.

The benefits of this project must, largely speaking, be evaluated on a long-term basis, since release of much of the content of the interviews may be restricted for an undetermined period. But these tapes will preserve aspects of the Court's history and the personalities of Justices not available from other sources.

The Society's goal is to include within this project interviews with every retired Justice who agrees to participate. I hope to be able to say more in my report at the General Membership Meeting on June 15th.

For many, of course, the highly popular Annual Reception and Dinner, which conclude the day-long program, are the high points of the Annual Meeting. In past years, we have been very fortunate to have as guests several members of the Court, Court officers and other dignitaries. Their support throughout the year is crucial to the Society's success, and their attendance at

these events gives members an opportunity to meet them in a relatively informal setting.

It should come as no surprise that planning for an event with this record of success begins many months before the meeting. Early last Fall we began compiling a list of possible speakers for the afternoon Lecture. Concurrently, an ad hoc committee, Chaired by Professor Philip B. Kurland, was completing its selection of a winner for the Society's first Triennial Book Prize, which will be awarded at the Annual Meeting (see Annual Meeting article on page one). This prize, which includes a \$5,000 award, will go to Professor David Currie (U. of Chicago Law School) for his book, *The Constitution in the Supreme Court*.

In January, we held our State Membership Chairs/Endowment Dinner which kicks off the Society's annual membership drive (see article on page 15). The Membership Committee, chaired by Frank Jones, is striving to make the 1992 Annual Meeting the most successful in the Society's history by reporting a record high 4,500 active members.

Although Frank Jones and his Membership Committee have some considerable distance to cover to reach this ambitious goal, with 4,200 active members on board they have already surpassed all previous Society records in membership. State Membership Chairs who meet their membership goals by the date of the Annual Meeting will be recognized the day of the meeting at a special ceremony.

Throughout the Spring, Annual Meeting Chairman William Bradford Reynolds will be working with the Society's staff, and representatives of the Marshal's Office at the Court, to coordinate a successful program. This will include the Annual Lecture, an open house at the Society's headquarters, a tour of the Court conducted by the Court Curator's staff, the General Membership Meeting, the Board of Trustees' meeting, and the Annual Reception and Dinner.

The program will also include a presentation of the two annual Hughes-Gossett Awards for Historical Excellence. These awards, which include first and second prizes of \$1,500 and \$500 respectively, are to be presented to the authors of the two best original articles to appear in the Society's *Journal of Supreme Court History*. Selections are made by the *Journal's* Board of Editors, chaired by Professor Michael Cardozo.

While the agenda is quite full, it is also well planned. I hope you will find it enjoyable and I look forward to seeing you at the Court on June 15th.

A handwritten signature in dark ink, reading "Leon Silverman". The signature is fluid and cursive, with the first name "Leon" written in a slightly larger, more formal script than the last name.

## Acquisitions Committee Notice

In the interest of preserving the valuable history of our highest court, the Supreme Court Historical Society is seeking to contact relatives, associates, or any others who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature or any other information related to the history of the Court and its members. 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, 111 Second Street, N.E., Washington, D.C. 20002, or call (202) 543-0400.



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# Membership Committee Presses for 4,500 Member Goal

The Society's Membership Committee, chaired by Frank C. Jones, is diligently pursuing a self-imposed goal to attain a membership of 4,500 by the date of the Society's June 15th Annual Meeting. Mr. Jones' Committee has succeeded already in keeping the Society's membership hovering at or above record levels throughout the Winter--an accomplishment of some magnitude in the current economic climate.

Still, Mr. Jones and his Committee regard the Society's 4,200 membership level as a jumping-off point for a vigorous Spring campaign toward the 4,500 member goal, and he is seeking the help of current members to assist the State Membership Chairs.

"We are welcoming help from every quarter," Mr. Jones asserts. "If you want to recommend a new member, that's just great. If you have an idea for membership development that you think we may have overlooked, we want to hear from you."

In addition to selective use of direct mail, much of the Society's membership campaign is conducted on a person-to-person basis by volunteer State Membership Chairs appointed by Mr. Jones. Anyone who wishes to assist their State Chair with his or her respective campaign can contact them at the addresses and phone numbers which follow:

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Names and honorifics appear as they do on membership applications.

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# Felix Frankfurter

by Philip B. Kurland

Curator's Office, Supreme Court

Felix Frankfurter was born in Vienna, Austria, on 15 November 1882. He was nominated to be the 78th Justice of the Supreme Court of the United States on 5 January 1939, unanimously confirmed by the Senate on 17 January, and took his seat on 30 January of that year. He was the sixth, and to date the last, foreign-born Justice, having been preceded in this regard by James Wilson, born in Scotland; James Iredell, born in England; William Paterson, born in Ireland; David Brewer, born in Smyrna (of American parents); and George Sutherland, born in England. Felix Frankfurter was the third Justice of Jewish extraction.

Once Frankfurter started his life-long habit of consuming multiple newspapers each day, he became their most ardent supporter and most severe critic, believing that freedom without responsibility was mere license. As a teen-ager, he quickly mastered English at the City College of New York, where the curriculum was rather a combination of *gymnasium* and college. He took a year to earn some money in the Tenement Department of the City and after a false start towards other law schools was persuaded to matriculate to Harvard to satisfy his doctor's recommendation for the bucolic life. Ever after, he was a devotee of the "Cleopatra's nose" theory of historical causation.

He was the first in his class in all three of his years at Harvard. At the end of his schooling, he helped edit a volume of Professor Gray's Property Cases, and accepted a position at a munificent \$1,000 a year at the Hornblower firm in New York--the first Jew to be invited by a first-line New York law firm. But he soon gave that up to become Henry Stimson's assistant in the U.S. Attorney's Office at \$750 per annum, as part of a reform movement for federal law enforcement. Thus began both Stimson's and Frankfurter's public careers under Theodore Roosevelt.

The U. S. Attorney's Office afforded Frankfurter experience in quantity and depth; Stimson gave him all the responsibilities the job would carry, in and out of the courts. In 1919, Stimson, under the aegis of Theodore Roosevelt's Progressive revolt from the Republican party, ran for Governor of New York, with F. F. as his primary campaign aide, Frankfurter's sole direct effort on the hustings. It was not his metier any more than Stimson's; they were more interested in resolving the issues than in popularizing them. When Stimson became Secretary of War in Taft's Cabinet in 1911, Frankfurter again went with him, carrying the title of Law Officer in the Bureau of Insular Affairs in the War Department.

In Washington, he was at the center of a circle of energetic, industrious, and ambitious young men, later to rise as statesmen not only of this nation but of England and Canada and Australia. It was then, too, that he used Professor John Chipman Gray's introduction to begin his enthrallment to Holmes. One of Frankfurter's biographers, Liva Baker, perspicaciously noted that F.F. succeeded in life through "expectation": "This relationship between Frankfurter and Stimson was one of Frankfurter's early exercises in friendship by expectation, a style for which he later became well known. The most famous example later, was Franklin Roosevelt, but the style was not restricted to highly placed people. It crossed all class, color, party, and religious lines.



Justice Felix Frankfurter  
(1939-1962)

Indeed his expectations went far beyond the area of friendships; his whole life was based on them. There would later be education by expectation, legislation by expectation, politics by expectation, judging by expectation--even civilization by expectation." (Liva Baker, *Felix Frankfurter* 29-30 (1959), New York: Coward-McCann.) I suppose expectation failed him substantially only in the case of Supreme Court judgments and even then not always.

Washington meant not only Frankfurter's introduction to the machinery of national government but to the role of Supreme Court advocate, in which he apparently excelled. The world was his oyster, and he had found the pearl. For even after Stimson left, he had the comforts of the regulars at "The House of Truth,"\* where the best and the brightest convened and where he met Louis Dembitz Brandeis, who was probably the only one of his "great" friends, including Holmes, T. R. and Stimson, who recommended that he accept the offer of a professorship from Harvard Law School. To show how little even the most perspicacious understood this man, Holmes told Frankfurter: "Academic life is but half life--it is withdrawal from the fight in order to utter smart things that cost you nothing except the thinking them from a cloister." (Holmes to FF, July 1913, Harv. L. S. Library.) But that was before Frankfurter conjoined the law school world with the public battles for justice that made his name anathema in the "best" homes in Back Bay. He picked up

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\*The House of Truth was a group house in which Frankfurter lived with several other bright and upcoming young men. The nickname was derived from their informal discussions held there concerning public policy questions and other important social issues. Oliver Wendell Holmes, Jr., was a frequent visitor to the House, as were many of the powerful and influential leaders of the era.



the minimum wage and maximum hours cases to be argued in the Supreme Court that Brandeis had to abandon when he was appointed by Wilson in 1916. After World War I he defended, with Zechariah Chafee, Attorney General Palmer's victims in the red scares on which Palmer had hoped to build a presidential campaign. In the late 1920's came his almost surgical dissection of the record in the Sacco-Vanzetti case potently showing the want of due process. His role as investigator for the United States in the Mooney case and the Bisbee deportation had already alienated America's Babbitts. Aid and comfort to the N.A.A.C.P. and the A.C.L.U. only confirmed "the radical nature" of the man.

Frankfurter had been commissioned a major in the reserves of the Judge Advocate General's Office in 1914. When World War I was declared he went to work for Newton Baker, with whom he had worked when Baker ran the Consumer's League. As Secretary of War, Baker was in charge of the nation's labor relations. F.F.'s most visible job was as head of the War Labor Policy Board, essentially an attempt at mediating the interests of capital and labor to keep up war production: as usual the difficult job was reconciling the egos of the prima donnas rather than the interests on both sides.

When the war ended, he went to Versailles, not as an American official but on behalf of the Zionist organization, of which Julian Mack and Louis Brandeis and Stephen Wise were American leaders, not yet supported by the "better" class of American Jews. In the battle over "Palestine" and the Balfour Declaration, Frankfurter did better with Prince Feisal in furthering the Zionist interests than he did with Wilson. Wilson

was a preacher, not a statesman, and lost every diplomatic contest to his Allies. The price was World War II, as Maynard Keynes predicted from Versailles before he left in disgust.

Frankfurter's "radicalism" was also to be found in the classroom. He had his students dissect the cases, examine the circumstances which produced them, understand the sociological and economic as well as the legal environments in which they occurred. The number of cases covered in the course of a term were few, the amount of material was superabundant. Certainly here there was education by expectation.

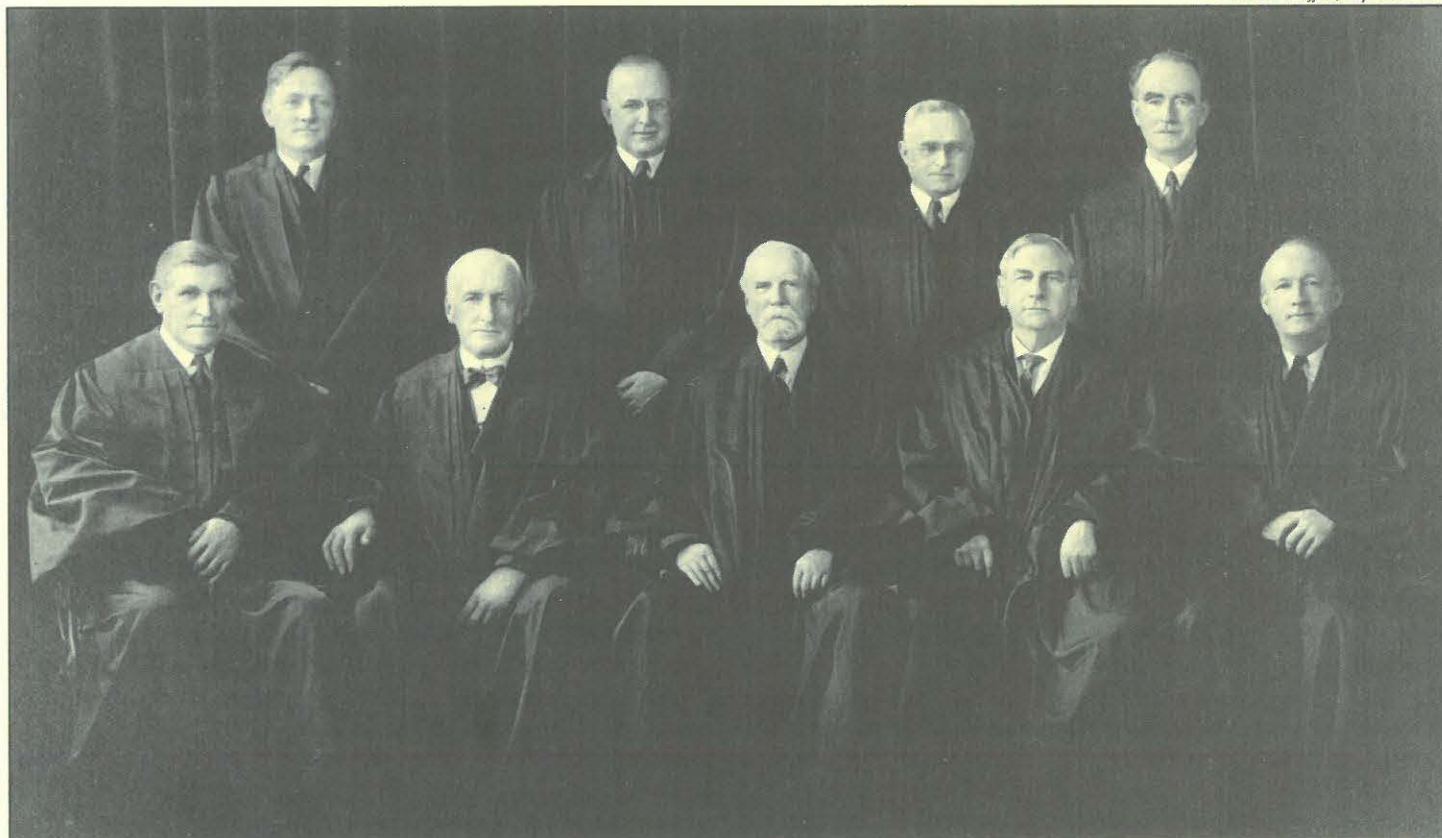
Before it was fashionable for law professors to be judged by the number of printed pages to which they signed their names, his publications were moderate. His best work appeared in the *Harvard Law Review* and books made of lectures; his casebooks in administrative law and in federal jurisdiction were pioneering efforts. And his study with Roscoe Pound of "Criminal Justice in Cleveland" was an early precursor of much "legal sociology."

Meanwhile, he found time to woo and win the beautiful Marion Denman, the love of his life. The wedding was performed by Benjamin Cardozo on 20 December 1919. She was a frighteningly bright woman, every bit his intellectual equal, with more refined tastes in art and literature, and a will of iron. She was house-ridden and then bed-ridden during most of their Washington, D.C. stay and he seldom attended mixed social gatherings in her absence.

From his return to Cambridge until his final departure for Washington to take the oath as a Supreme Court Justice,

--continued on next page

Curator's Office, Supreme Court



The Hughes Court of 1940 was a bench in transition. Barely a year on the Court, Frankfurter (back row, second from right) was already twice removed from his short tenure as the junior Justice. President Franklin D. Roosevelt had named five of the nine Justices shown: (back row, left to right) William O. Douglas, Stanley Forman Reed, Frankfurter, Frank Murphy, and (front row, far right) Hugo L. Black. The four pre-FDR appointees were (front row, left to right): Owen J. Roberts (Hoover appointee), James C. McReynolds (Wilson), Chief Justice Charles Evans Hughes (Hoover) and Harlan Fiske Stone (Coolidge).



## Frankfurter (continued)

Frankfurter became one of the most controversial public figures in the United States. He had no hesitation in giving advice to important elected officials, but more important they had no hesitation in asking for it. He had worked with Franklin Delano Roosevelt in the Wilson Administration and was called on to provide advice to the Governor, whom he quickly collected as a bosom friend. Frequently pictured by the press after Roosevelt's election as a Richelieu or Rasputin, they got it wrong. He did successfully proffer nominees for important posts: he had an army of friends and former students to call on. But he was serving his clients' interest not his own. He probably enjoyed working with recent graduate students to frame legislative remedies for difficult social problems.

It was not that he had a distaste for power. But he had a clearer conception of the realities of government than most. A professor might better be able to influence government through private advice and public declarations than could high officials, especially if the immediate were subordinated to the long-range. In any event, Frankfurter rejected a nomination to the Supreme Judicial Court of Massachusetts which Governor Ely had sent up to the Council without first consulting him and he then told F.D.R., after the November 1932 election, that he did not want to become Solicitor General of the United States, even if that were, as F.D.R. suggested, a necessary condition to a Supreme Court nomination. In any event, he was scheduled to occupy the Eastman chair at Balliol College, Oxford for 1933-34 and was a sufficiently devoted Anglophile not to let that chance go by. Indeed, it was then that he met Nils Bohr, as a result of which he was one of the few non-scientists in on the discovery of the atomic bomb. This knowledge added to the myth, when it came out, that Frankfurter knew even the most intimate secrets of our government.

The two talents that contribute most to the capacity of a Justice are the mastery of lawyering and the mastery of statecraft. And Frankfurter devoted his life to the development of these two talents. While mastery of the law and philosophy might be adequate to a Justice's capacity to perform his tasks well, witness Holmes and Cardozo, the broader-gauged the jurist in terms of statesmanship as well as the law, the greater the comprehension of what is truly at stake in the great issues brought before the Court. This is not to suggest that Frankfurter's mind was cabined by law and politics. Frankfurter was truly a polymath, especially if we exclude mechanical capabilities from consideration: certainly all the so-called social sciences and humanities came within his ken.

There was, moreover, no man in America better versed in the lore of the Supreme Court and its Justices at the time of his appointment than Felix Frankfurter. His familiarity with its his-



Justice and Mrs. Frankfurter disembarking a train. Mrs. Frankfurter was bed-ridden during much of Justice Frankfurter's tenure on the Court.

tory and its judgments, with its personnel and their idiosyncracies, with its problems and its needs was unmatched. His close association with Brandeis gave him a window into the world of the nine Justices, his affiliation with Brandeis and Holmes informed him of their difficult parts, and his diligent study of the dockets, the briefs and arguments, and the business of the Court made him a natural choice to succeed Justice Cardozo. At a time of Germany's trumpeting of the superiority of the master race, Frankfurter's appointment, like Joe Louis's victory over Max Schmeling, was a thumb in Hitler's eye. By the 1930s, Roosevelt regarded the Court as broken and appointment of Justices Black, Reed, Frankfurter and Jackson as a means of fixing it. But appointments are made to cure past problems and events were moving faster than changes in personnel. Whatever Frankfurter's expertise, however well he may have been the best problem solver for the Court's problems if acting alone, he had to exercise his authority in committee. And he was better at ad-

dresssing issues than convincing his peers how to do so.

His judicial philosophy cannot be encapsulated. For twenty-three years he wrote opinions: some for the Court, others expressions of his or a smaller than a majority's understanding of the issues and their proper resolution. Except for his persistent rejection of a tyranny of absolutes and his faith in reason and his requiring as full a comprehension of the facts as man can achieve, it is hard to assign Frankfurter a jurisprudential position or judicial doctrine. There was no doctrinal base except the long-accepted verities of the rule of law. Unlike some of his contemporaries and successors, he claimed no *vade mecum*, no skeleton key to unlock the mysteries of the arcane provisions of the Constitution. Those who would encapsulate his judicial efforts in a phrase label him as a devotee of "judicial restraint." Probably his talk at the Harvard bicentennial celebration of John Marshall's birth most aptly gave summation to his judicial attitude. Excerpts cannot serve, but in the space available they must suffice:

*It may be that responsibility for decision dulls the capacity of discernment. The fact is that one sometimes envies the certitude of outsiders regarding the compulsions to be drawn from vague and admonitory constitutional provisions. Only for those who have not the responsibility of decision can it be easy to decide the grave and complex problems they raise, especially in controversies that excite public interest. This is so because they too often present legal issues inextricably and deeply bound up in emotional reactions to sharply conflicting economic, social, and political views. It is not the duty of judges to express their personal attitudes on such issues, deep as their individual convictions may be. The opposite is the*



truth. It is their duty not to act on merely personal views. .

No doubt, these provisions [the Due Process and Equal Protection Clauses] of the Constitution were not calculated to give permanent legal sanctions merely to the social arrangements and beliefs of a particular epoch. Like all legal provisions without a fixed technical meaning, they were ambulant, adaptable to the changes of time. That is their strength; that also makes dubious their appropriateness for judicial enforcement. Dubious because their vagueness readily lends itself to make of the Court a third chamber with drastic veto power. This danger has been pointed out by our greatest judges too often to be dismissed as a bogey. Holding democracy in judicial tutelage is not the most promising way to foster disciplined responsibility in a people. (Kurland, ed., *Felix Frankfurter on the Supreme Court*, 546-49 [Cambridge: Harvard U. Press 1970].

However, when it was not a government's legislative voice that was called in question, Frankfurter frequently recognized the obligation of the Court to impose restraints on discretionary administrative acts, especially police actions doomed by the specific, "fixed technical" terms of the Bill of Rights.

As early as 1912 he had told Morris Cohen, the famed philosopher, who had been his roommate at Harvard: "Precedents, not underlying philosophic principles, form our legal habit of thought. It is the case system--which is the empiric scientific method, that gives us the necessary data and method, first for a historic, and then for a sociological basis of law." (Lenore Cohen Rosenfield, *Portrait of a Philosopher, Morris A. Cohen, Life & Letters* 240-41 [N.Y.: 1952]; Leonard Baker, *Brandeis & Frankfurter: A Dual Biography* [N.Y.: Harper & Row, 1984]).

Frankfurter was not a modest man. He took to heart an early admonition of his mother: "Hold yourself dear." It does not demean him to say that he was almost as talented as he believed himself to be, among a triumvirate of Harvard Law Justices, with Holmes and Brandeis, and, I would add, Learned Hand.

Frankfurter's principal occupation in life was communicating with others, with Presidents and workmen, with professors and pupils, from the elegant to the hoi polloi, but mostly with friends, for friendship, deep and abiding and caring, was his passion. His friendships were legion, not only in law and academe and government, but in theatre and music and literature and publishing. Even after he had suffered a heart attack brought on by a cerebral stroke, he continued to write letters in his almost undecipherable hand which became more and more inscrutable as to both words and meaning. He remained a devotee of Holmes's dictum: "to live is to function" -- to function is to live.

Frankfurter died in Washington, D.C. on 22 February 1965. To those who knew him and for whom he cared, he was an unique and wonderful experience, even for those with whom he was in irreconcilable disagreement. For the many who did not know him, he was an object of admiration, or respect, or envy or distaste, or even hatred. He had learned early, from "Mr. Stimson" he said, that the only criticism that counted was that of those he respected. All his life he discounted the "calumnists" and the partisans who expected him to indulge their prejudices and not his own. Thus, like all Supreme Court Justices, his name will continue to be conjured up favorably and unfavorably, depending on the conjurer and the temper of the times. Somehow, one thinks that Frankfurter, like his contemporaries on the Court, Black, Stone and Jackson, and his predecessors, Brandeis, Cardozo, and Holmes, will survive in history, however often they may rise or fall with current ideology.

Curator's Office, Supreme Court



By 1958, when this photograph of the Warren Court was taken, Frankfurter (front row, second from right) had served with four Chief Justices and nearly a quarter of all the Justices who had ever served on the Supreme Court. He shared nearly his entire tenure with two other Justices shown: Associate Justices William O. Douglas (front row, far left) and Hugo L. Black (front row, second from left).



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# Clerking for Harlan Fiske Stone

by Louis Lusky

*Editor's Note: Professor Lusky, Betts Professor of Law Emeritus at Columbia University in the City of New York, recently wrote a short biographical sketch of Harlan Fiske Stone. We excerpt here some of his recollections of Justice Stone. Professor Lusky clerked for Stone and the material we publish here reveals something of Stone's personality and character, as well as shedding light on how the Court operated at the time.*

Late in 1923, [after a tenure of thirteen years as dean of the Columbia Law School] Stone left Columbia and accepted a partnership in Sullivan and Cromwell, heading its litigation department and at last earning enough to satisfy his yearning for such amenities as a box at the Metropolitan Opera. Six months later, however, President Coolidge (a fellow-student at Amherst) solicited his assistance with the prosecution of oil fraud cases and scandals within his Cabinet. Eventually Coolidge offered Stone the position of Attorney General, which paid an annual salary of \$12,000, approximately one-eighth of what he had been making at the law firm. Stone became Attorney General in 1924. During his tenure Stone concentrated on clearing up internal corruption in the Department of Justice. It is also noteworthy that he appointed J. Edgar Hoover to become head of the F. B. I. Stone served a little less than a year as Attorney General because President Hoover (who had recently succeeded Coolidge) nominated him to the Supreme Court to fill the vacancy created by the retirement of Justice McKenna.

One problem that faced Stone when he became a Justice was to find adequate office space. At that time the Court occupied cramped quarters in the old Senate Office Building along with a number of Senators. With such help as Chief Justice Taft could provide, Stone made do with what was available. But he and his wife soon built a home of their own with a roomy two-story wing reserved for his library and chambers, which became a source of great pride.

Physically large and robust, Stone did his best to keep in shape. He was a member of President Hoover's "medicine ball cabinet" which exercised together on the White House lawn at 6:30 a.m. whenever possible. After Hoover left office Stone kept one of the white balls, autographed by all the players, on one corner of his desk as a memento.

When Justice Holmes retired in 1932, Stone played a part in inducing Hoover to appoint Benjamin N. Cardozo in his place. Hoover hesitated to add another New Yorker to the Court. Stone thereupon offered to resign, if necessary, to make way for a man he considered the pre-eminent jurist of his time.

Stone responded quickly when the predicaments of



The above photo of Harlan Fiske Stone was taken at his home, in December 1934, during his tenure as Associate Justice. The photo was taken by John Knox, who clerked for Justice McReynolds.

others came to his attention. Early in 1938 Justice Cardozo fell ill. A faulty diagnosis led to a severe setback and he lost confidence in his physician. He was too weak to discharge him and seek another, however, and no relative was available to do it for him. One afternoon a Cardozo law clerk called on Stone for help. Stone promptly went to see Cardozo's physician, explained the situation, and induced him to withdraw on Stone's promise to locate a

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## Justice Stone *(continued)*

competent replacement satisfactory to the patient--which he did that same day.

Sometimes Stone volunteered more help than was wanted. One winter day his law clerk parked his car across the street from Stone's house, headed downhill. After a snowy afternoon the clerk found his battery dead, and he could not start the car by rolling down the hill because another car was parked just ahead of his. He returned to the office and phoned for a tow truck. Stone overheard, and immediately--without donning coat or hat--walked to the car intending to push it back uphill far enough for the clerk to steer it around the other car. The clerk, fearing that the Justice would hurt himself, begged him not to attempt it. Just then the tow truck arrived and did the job. Stone returned to the house, declaring indignantly that the next generation would probably have no feet since the young people were always driving instead of walking.

Stone himself took daily walks of two miles or more, usually accompanied by Agnes [his wife] or a breathless law clerk. On a holiday trip in the summer of 1936 Stone contracted bacillary dysentery, however, and was unable even to hear cases, much less engage in exercise, until February, 1937. Soon thereafter he resumed his daily walks.

During Stone's decades as a teacher he perceived the

value of student feedback. He learned that students could (and, if encouraged, would) point out ambiguity or other unclarity in what he said or wrote. When he became a Justice he therefore decided to follow the practice of Holmes and Brandeis who took a new law clerk each year from the graduating class at their law school [Harvard]. Stone, of course, resorted to Columbia Law School where his friend and former colleague Noel T. Dowling, professor of constitutional law, made recommendations every year. The use of annual clerks involved some loss in efficiency since they were less familiar with the Court's procedures than were the permanent clerks who served the other Justices; but the loss was outweighed, Stone thought, by their familiarity with new legal development and their readiness to criticize his work. Each of his opinions went to the law clerk for comment before it was distributed to other Justices, and the clerk's criticisms or suggestions received full and sympathetic consideration.

Not infrequently he called on a clerk for extensive research on points of law not adequately dealt with by the parties in a case, and he was quick to grasp a new idea and use it. The clerks, flattered though they were by his use of their work, were sometimes astonished by the ease with which he made the ideas his own. One case, involving the Treaty of Guadeloupe Hidalgo which ended the Mexican War, had kept the clerk at work for a solid week poring over ancient land records. In Stone's opinion for the Court he adopted the clerk's analysis, prefacing it thus: "With but a little research it becomes apparent that . . ."

*Curator's Office, Supreme CourtCu*



The photograph above was taken of Stone in his chambers some time between 1941 and 1946, during his tenure as Chief Justice. Stone died suddenly on April 22, 1946, felled by a stroke while presiding over a session of the Court.



## Justice Thomas Presents Awards Honoring State Membership Chairs and Endowment Leadership Donors

Justice Clarence Thomas was the guest of honor at the Society's annual State Membership Chairs/Endowment Leadership Donors reception and dinner at the Supreme Court on January 15, 1992. The function, which began in 1986, has a two-

ognized for their efforts in promoting the Society's cause.

A dinner program followed, at which President Silverman welcomed Justice Thomas and retired Chief Justice Burger and thanked those in attendance for their efforts on the Society's behalf. Mr. Silverman then introduced Special Gifts Committee Chairman Vincent C. Burke, Jr. to introduce the Endowment Leadership Donors to whom Justice Thomas would be presenting awards that evening.

The awards Justice Thomas presented were polished marble paperweights affixed with the Seal of the Supreme Court. They were cut from stones which were originally part of the Supreme Court building leading the Justice to wonder aloud just what part of the building the Society had decided to dismantle for this purpose. Mr. Burke assured Justice Thomas that at the present rate of usage his Chambers were safe for the foreseeable future.

Mr. Burke then called forward six representatives of Endowment Leadership Donors to receive awards:

George S. Leisure, Jr., representing Donovan, Leisure, Newton and Irvine;

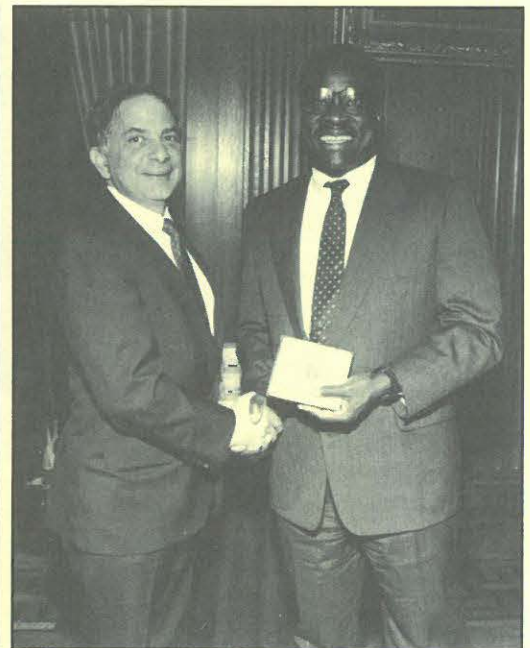
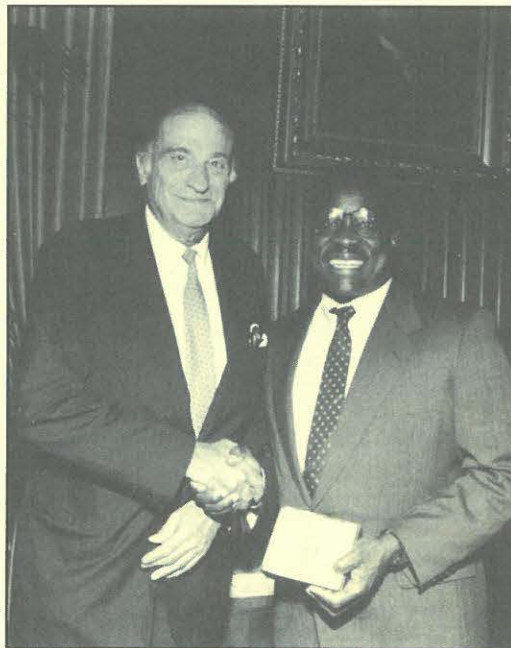
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Above left: Special Gifts Committee Chairman Vincent C. Burke, Jr. welcomes Justice Thomas and gives him the first award he will present that evening. Above right: Membership Committee Chairman Frank Jones thanks Justice Thomas for presenting awards to both the Endowment Leadership Donors and the State Membership Chairs who met their membership goals.

fold purpose. It is intended to recognize the support of firms, foundations, and individuals who have donated \$25,000 or more to the Society's endowment. It also recognizes the efforts of past and current State Membership Chairs, and serves as a kick-off for the Society's annual State Membership Chairs' campaign.

The evening began with a reception in the Court's West Conference Room, at which the Society was represented by several Officers and Trustees, including retired Chief Justice Burger (Honorary Chairman), Dean Erwin N. Griswold (Chairman), Leon Silverman (President), Alice L. O'Donnell (First Vice President), Frank C. Jones (Vice President), E. Barrett Prettyman, Jr. (Vice President), Virginia Warren Daly (Secretary), and Trustees Vincent C. Burke, Jr., S. Howard Goldman, Robb M. Jones, William Bradford Reynolds, John C. Shepherd and Justin A. Stanley. State Membership Chairs and Endowment Donors from throughout the Nation were also present to be rec-



Justice Thomas presents awards to George Leisure (above left) of Donovan, Leisure, Newton & Irvine and Abraham Sofaer (above right) of Hughes, Hubbard and Reed, for their firms' respective gifts to the Society's endowment campaign.



## Membership/Endowment Awards *(continued)*

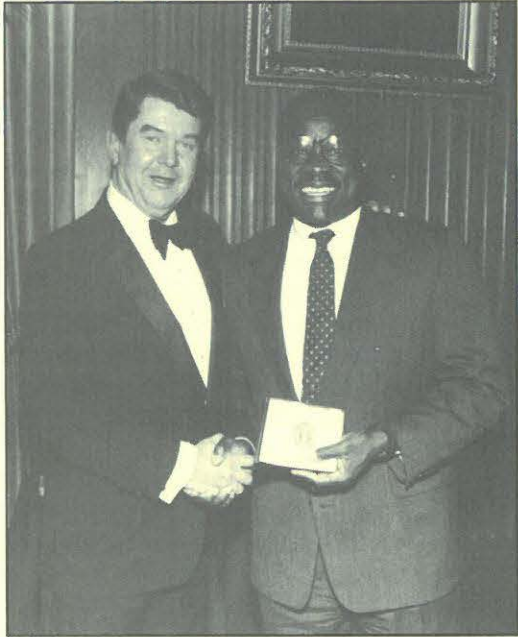
Timothy Hobbs, representing Dykema Gossett;  
Abraham D. Sofaer, representing Hughes, Hubbard & Reed;  
Bruce J. Ennis, representing Jenner & Block;  
Ralph Borello, representing The Mary and Daniel Loughran  
Foundation; and,  
Thomas W. Evans, representing Mudge, Rose, Guthrie,  
Alexander & Ferdon.

After this ceremony, Membership Committee Chairman Frank  
C. Jones assumed the podium to announce the names of those  
past or current State Membership Chairs in attendance who had

met their annual membership recruiting goals. Four State  
Chairs were recognized with awards by Justice Thomas:

Foster Arnett	Tennessee
John Dolan	New Jersey
Andrew Hartzell	New York
James Hall	Ohio

Mr. Jones also called forward Judge John and Mrs. Vera  
Brown of Texas to receive a special award for their efforts in  
expanding awareness of the Society in Texas. As a result of an  
event organized by Mrs. Brown, the Society gained over seventy  
new members in that state.



Justice Thomas presents awards to John Dolan (above left) and Foster Arnett (above right) for their outstanding  
work in expanding the Society's membership in New Jersey and Tennessee, respectively.

Prior to the conclusion of the  
evening's program, Chief Justice  
Burger asked to be recognized by  
President Silverman to present two  
additional special awards of lim-  
ited edition cuff links which were  
designed for the U.S. Commission  
on the Bicentennial of the United  
States Constitution. Chief Justice  
Burger presented the first pair to  
Justin Stanley for his "six years of  
service as President" and to recog-  
nize his successful development of  
the Society's endowment. Mr.  
Stanley then thanked the Chief  
Justice for his thoughtful gesture.

Chief Justice Burger presented  
the second pair of cuff links to  
Leon Silverman, "as an advance"  
he said on the hard work he antici-  
pated Mr. Silverman would be  
devoting to the Society during his  
term. Mr. Silverman thanked the

Chief Justice, and went on to thank all of those in  
attendance for their continuing work on the Soci-  
ety's behalf, after which he adjourned the pro-  
gram.

Retired Chief Justice Burger, the Society's  
Honorary Chairman, makes special presenta-  
tions to the Society's immediate past President,  
Justin A. Stanley (far left) and to current  
President Leon Silverman in recognition of  
their work for the Society.



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