

THE SUPREME COURT HISTORICAL SOCIETY

Quarterly

VOLUME XIV

NUMBER 2, 1993

Society Celebrates Eighteenth Annual Meeting

The Supreme Court Historical Society held its Eighteenth Annual Meeting on June 7, 1993. The day began with the Annual Lecture by the Honorable Herbert Brownell. This was held in the Supreme Court Chamber. (See page seven for more on Mr. Brownell's lecture.) After the lecture, the Curator's Office graciously provided tours of the building to any interested member of the Society. The afternoon concluded with an open-house and reception at the Society's headquarters.

The evening portion of the program began with the Annual Meeting of the Membership of the Historical Society. The proceedings took place in the Supreme Court Chamber. Leon Silverman, President of the Society, presided over the meeting during which he presented a report on the status of the Society and its activities. Of special note was his report on the progress of the Documentary History Project and the work that must be done toward meeting its funding needs in the next five years. He noted with great appreciation the \$100,000 pledge by Dwight Opperman on behalf of West Publishing. He also expressed gratitude to the William Nelson Cromwell Foundation for its \$50,000 grant during the preceding year and to the Clark-



Dean Erwin N. Griswold, Chairman of the Board of Trustees, addresses the Society's Annual Meeting as Virginia Warren Daly looks on.

Winchcole Foundation for its \$25,000 pledge toward general program support.

Mr. Silverman then called Mrs. Virginia Warren Daly to the podium to present the recommendations of the Nominating Committee for the election of Trustees. Mrs. Daly first reported the Committee's proposal to elect Justice William J. Brennan, Jr. and Justice Lewis F. Powell, Jr. as Honorary Trustees. Both were elected by acclamation from the membership. Mrs. Daly then presented for consideration names for election to the Board of Trustees, after which the following individuals were elected to a three-year term as Trustee of the Society: Herbert Brownell; Sheldon S. Cohen; Charles Hanger; Thurgood Marshall, Jr.; Vincent McKusick; John Nannes; Gordon Pehrson; Jerold Solovy; and Kenneth Starr.

Mrs. Daly then presented the names of the following individuals for re-election to an additional three-year term on the Board of Trustees: Vincent C. Burke, Jr.; Virginia Warren Daly; William Edlund; Charles O. Galvin; Kenneth S. Geller; Frank B. Gilbert; S. Howard Goldman; Lita Annenberg Hazen; William E. Jackson; Frank C. Jones; Peter A. Knowles; E. Barrett Prettyman, Jr.; John R. Risher, Jr.; William P. Rogers;

--continued on page fourteen



The Chief Justice addresses the Society's membership. Following his comments he was joined by Membership Chair Charles Renfrew (left) and Development Committee Chair George Adams (right) in an awards ceremony recognizing some of the Society's most loyal supporters.

A Letter From the President



Leon Silverman

The Society's campaign to ensure adequate funding for the completion of the *Documentary History of the Supreme Court of the United States, 1789-1800* is well underway. We have a long way to go to raise the estimated \$1,000,000 needed to complete the Project in 1999. Yet, it seems that whenever the Society's need is

the greatest, our most loyal and generous supporters rally to the call.

Dwight Opperman of West Publishing Company and Mrs. Laura Phillips of the Clark-Winchcole Foundation are two such valued friends of the Society, who time and again have provided substantial support for the Society's programs.

Mr. Opperman, on behalf of West Publishing Company, has recently promised \$100,000 for the Documentary History Project. As a result of Mrs. Laura Phillips' generosity, the Clark-Winchcole Foundation is also donating \$25,000 this year, which the Society intends to use to help defray some of the expenses associated with the Project. We are most grateful to Mr. Opperman and West Publishing Company, and to Mrs. Phillips and the Clark-Winchcole Foundation. As a result of their generosity, we are that much closer to our goal.

Several other potential major donors are considering grant proposals for the Project, and the Society hopes to circulate many more requests in the coming months, with the help of some of the Society's most active members.

We have compiled a list of potential corporate and foundation donors which has already been mailed to Officers, Trustees, State Membership Chairs, Committee members, and others interested in the Society. We are asking that they help us identify people who serve on these organizations' boards of Trustees/Directors who might be sympathetic to the Society's cause.

Membership support will be equally important to the success of this campaign. That support, in some instances, will help in assisting the Society to identify and solicit gifts and grants from outside donors. In other cases, members themselves may choose to make outright gifts.

At its upcoming July meeting, the Executive Committee will be considering, among several agenda items, a revision of the Society's dues structure. As many of the Society's long-time members know, the Society has not had a dues increase since 1984, and despite a very frugal administrative operation, inflation over the last nine years has eroded the proportion of membership dues available to support programs.

One possible alternative to an outright dues increase that the Executive Committee may consider is a voluntary additional contribution of \$25-50 which would be earmarked for program support. If the volunteer spirit within the Society is as strong as past experience indicates, this funding approach could reduce the projected annual shortfall in the Documentary History Project's budget by half. Whatever the combination of funding approaches the Society takes, we must all act as expeditiously as possible.

We have assembled a trained staff of scholars who are producing volumes on a timely basis. Volume 4 was published last Fall. The manuscript for Volume 5 is now at the publishers, and the remaining three volumes will be completed by the end of this decade.

The end will come sooner, and with a far less satisfactory result, if we fail to adequately provide for the Project's operating costs. Years of research will have been squandered and the substantial investments by the Society, the Court, the National Historical Publications and Records Commission will have been for naught.

My predecessor, Justin Stanley, who was fond of paraphrasing Robert Frost, often said "We have many miles to go before we sleep," and such is the case with this campaign. Our early progress suggests that, with a good deal of hard work, we will be successful, and I urge each of you to pitch in.

I want to end this quarter's column by reporting to you on how hard work and a long-term commitment by the Society has lead to the successful conclusion of another publication project - *The Supreme Court Justices: Illustrated Biographies, 1789-1993*, which has just been published by Congressional Quarterly, Inc.

In light of the large number of orders we have received for the collection of biographies prepared by the Bicentennial Commission, a word of explanation is in order. That book, entitled *The Supreme Court of the United States: Its Beginnings & Its Justices, 1790-1991* is a handsome, full-color hard-bound volume including photographs of all of the official portraits of the Court's past and present Justices. It was developed by the Commission on the Bicentennial of the Constitution to commemorate the Court's 200th anniversary. Hundreds of members have already ordered this unique book at the member-discounted price of \$27.96 (regular price \$34.95).

We hope member response will be equally strong for *The Supreme Court Justices*, just released by Congressional Quarterly, Inc. This book is a substantially longer 576-page black-and-white volume, containing five-page 2,000-word biographies of each of the Court's past and present Justices illustrated with numerous historical photographs, political cartoons and other drawings, woodcuts, and engravings.

First contemplated by the Society's Publications Committee in 1987, the manuscript for this book involved years of work by Society volunteers and staff members to assemble and edit a collection of biographies on all of the Court's Justices, many of which were written by leading scholars around the country. Photo research alone required over a year's work, and inquiries to archives, Justices' families and alma maters and other public and private collections. The book will be sold at the Society's gift shop for \$23.95, and members will receive a 20 percent discount.

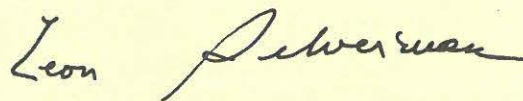
The release of *The Supreme Court Justices* is a major milestone in the Society's publication program, and I want to take this opportunity to thank a few of those who were involved in bringing it to fruition, and for making it the outstanding publication that it is.

First, on behalf of the Officers and Trustees, I express the Society's gratitude to Chief Justice Rehnquist for contributing his kind introduction in the book's Foreword. I also want to thank Kenneth S. Geller, and the dedicated members of the Publications Committee, for their hard work in reviewing and refining the initial proposal to ensure that this book would fulfill a real need, and represent the best use of Society resources. I want to thank the authors and members of the editorial review committee who donated their time and labor to writing the text, and ensuring its historical accuracy. Indeed, one of the virtues of this book is that it corrects dozens of errors in some prior biographies which have been so often repeated over the years that they have taken on a life of their own, irrespective of fact.

Finally, I want to thank the Society's staff. Clare Cushman, who has since moved to Paris, coordinated the book's production, assigned pieces to authors, maintained schedules, and brought the manuscript to completion. Her successor, Publications Director Jennifer M. Lowe, has faithfully followed through on the myriad details in the intervening year since Clare left. Jennifer was also involved in the early stages of production, writing a biography, checking facts, and assisting in the photo research. Kathy Shurtleff, the Society's Assistant Director, not

only wrote several of the biographies, but devoted many hours to proofreading the other biographies, bringing to bear the substantial knowledge of Court history she has acquired in nearly fourteen years with the Society. Neither last, nor least, is David Pride, the Society's Director, who proposed this book to the Publications Committee some six years ago, and worked diligently to keep the project alive when the Society had neither funds to publish it nor a commitment from an outside publisher. David believed in this book, persuaded the Executive Committee that scholars would contribute their time and knowledge for a worthy cause, and persevered in spite of impediments too numerous to mention.

Undertakings such as this, and such as the Documentary History Project, demand and deserve that kind of commitment. We have demonstrated with *The Supreme Court Justices* that the Society has the tenacity and foresight to stick with a long-term project until our goal has been met. It's time to rise to the challenge again.



Equal Justice Under Law Films Available to Classroom Use

A series of five 30 minute films, *Equal Justice Under Law*, was produced by WQED/Pittsburgh, with funding and consultation from the Committee of the Judicial Conference of the United States. The films are dramatic reenactments of early Court cases with a narrative provided by the well-known actor E. G. Marshall.

The films address some of the most important cases decided during the tenure of John Marshall, frequently referred to as the "Great Chief Justice." John Marshall served as Chief Justice of the United States for 34 years--from 1801 until 1835. He led the Court at a critical time in its development, and his compelling logic and far-sighted opinions shaped the course of America. The film series *Equal Justice Under Law* presents some of the brilliant jurist's crucial decisions.

Two of the films treat defendants' rights and presidential privilege in the context of the Aaron Burr treason trial. The other three depict and comment on the Supreme Court's action in the landmark cases of *Marbury v. Madison* (affirming the Court's role as an interpreter of the Constitution), *Gibbons v. Ogden* (the power to regulate commerce) and *McCulloch v. Maryland* (national sovereignty in relation to state claims).

WQED/Pittsburgh, a PBS national production center, wrote and produced the films in consultation with noted historians and the Judicial Conference. The series was filmed in WQED studios in an exact reproduction of Marshall's court and home.

While there is no charge for use of the films, there will be a \$5 shipping fee and a \$50 deposit which will be refunded upon return of the films.

The films are available as a set in VHS videocassette format. The Society has approximately 25 sets of films which are available on an eight-week loan basis for classroom use. Interested educational institutions and/or instructors, should contact Mr. Jeffrey Tait, Gift Store Manager, c/o the Supreme Court, #1 First Street, N.E., Washington, DC 20543. Mr. Tait may be reached by telephone at (202) 554-8300 Monday through Friday from 9 AM until 4:30 PM.

The Supreme Court Historical Society Quarterly

Published four times yearly in Spring, Summer, Fall and Winter by the Supreme Court Historical Society, 111 Second Street, N.E., Washington, D.C. 20002. Tel. (202) 543-0400. Distributed to members of the Society, law libraries, interested individuals and professional associations.

Managing Editor	Kathleen Shurtleff
Assistant Editor	Jennifer M. Lowe
Consulting Editor	Kenneth S. Geller

Membership Update

The following members joined the Society between March 16, 1993 and June 15, 1993. Names and honorifics appear as they do on membership applications.

Alabama

Stephen R. Arnold, Esq., Birmingham
David Barber, Esq., Birmingham
Will M. Booker, Esq., Birmingham
Timothy L. Dillard, Esq., Birmingham
C. Burton Dunn, Esq., Birmingham
Linda G. Flippo, Esq., Birmingham
The Hon. Orson L. Johnson, Birmingham
Robert P. McGregor, Hoover
Cecil T. Nail, Esq., Birmingham
Teresa Pulliam, Birmingham
Thomas R. Robinson, Huntsville
J. Mark White, Esq., Birmingham

Arizona

Professor Michael A. Bench, Tempe
Donald W. Bivens, Esq., Phoenix
Michael Burke, Esq., Phoenix
The Hon. Robert J. Corcoran, Phoenix
Ed Hendricks Jr., Tempe
Andrew D. Hurwitz, Esq., Phoenix
Robert V. Kerrick, Esq., Phoenix
William J. Maledon, Esq., Phoenix
Michele M. Mitiski, Esq., Phoenix
Jamie McAlister, Esq., Phoenix
Randall C. Nelson, Esq., Phoenix
David B. Rosenbaum, Esq., Phoenix
Greg Valladao, Tucson

Arkansas

H. David Blair, Esq., Batesville
Bradley D. Jesson, Fort Smith
Robert L. Jones III, Esq., Fort Smith
James M. Moody, Esq., Little Rock
Nicholas H. Patton, Esq., Texarkana
Dale Price, Esq., Little Rock
Val P. Price, Esq., Jonesboro
Issac A. Scott Jr., Esq., Little Rock
Jeffrey A. Weber, Esq., Sherwood
William R. Wilson Jr., Esq., Little Rock

California

James L. Arnone, Esq., Los Angeles
Seth Aronson, Esq., Los Angeles
Mr. Louis Bachleder, San Francisco
Thomas G. Blomberg Jr., Esq., San Francisco
Thomas G. Bost, Esq., Los Angeles
George Colman, Calabasas
Cynthia Cwik, Esq., San Diego
James W. Daniels, Esq., Costa Mesa
Theodore H. Davie, La Jolla
Mr. Eric James Diamond, Los Angeles
Farella, Braun & Martel, San Francisco
Martin L. Fineman, Esq., San Francisco

David W. Fleming, Esq., Universal City
Ernest J. Getto, Esq., Los Angeles
Alan N. Halkett, Esq., Los Angeles
J. Stewart Harrison, Kentfield
Vance Hopkins, San Jose
Susan Illston, Esq., Burlington
Clayton R. Janssen, Eureka
Cheryl D. Justice, Esq., Los Angeles
G. Andrew Lundberg, Esq., Los Angeles
Grover Merritt, Esq., Rancho Cucamonga
Peter N. Molligan, Esq., San Francisco
Jeffrey T. Pero, Esq., Costa Mesa
James F. Sweeney, Esq., La Mesa
William P. Tanner III, Esq., Costa Mesa
Charles S. Treat, Esq., San Francisco
Bruce D. Wagner, Esq., Redwood City
Robert F. Waldron, Esq., Irvine
Burton K. Wines, Esq., San Jose
James B. Young, Esq., San Francisco

Colorado

University of Denver
Professor Norman Provizer, Denver

Connecticut

Jerome Berkman, Esq., Hartford
Daniel E. Brennan Jr., Esq., Trumbull
Dean M. Cordiano, Esq., Hartford
John Crosskey, Esq., Stamford
William F. Gallagher, Esq., New Haven
Thomas F. Harrison, Esq., Hartford
Ray Helsel, Madison
Anthony A. Piazza, Esq., Stamford
Frank J. Silvestri Jr., Esq., Bridgeport
David A. Swerdloff, Esq., Stamford
Stanley A. Twardy Jr., Esq., Stamford

Delaware

Thomas J. Capano, Wilmington
William C. Gordon, Wilmington
Michael B. Tumas, Esq., Wilmington
S. Maynard Turk, Greenville

District of Columbia

Robert S. Bennett, Esq.
David T. Cluxton
Richard Danzig, Esq.
Miguel A. Estrada, Esq.
Eugene R. Fidell, Esq.
John A. Fraser III
The Hon. James Jeffords
Sheldon H. Klein, Esq.
William A. Long, Esq.
The Hon. Abner J. Mikva
Emmet V. Mittlebeeler

Gordon O. Pehrson Jr., Esq.
Ronald Plessner, Esq.
Bruce E. Rosenblum, Esq.
Richard A. Sauber, Esq.
Nicholas B. Sheetz
John J. Sullivan, Esq.
Jennifer A. Susman
Thomas D. Sydnor, Esq.

Florida

Mr. & Mrs. Bertram S. Bermar, Palm Beach
Lisa J. J. Bradford, Naples
Fredric B. Burns, Miami
Marwin S. Cassel, Esq., Miami
Richard P. Cole, Esq., Miami
William G. Earle, Esq., Miami
Richard Essen, Esq., North Miami Beach
Bruce Greer, Esq., Miami
William F. Jung, Esq., Tampa
Ned R. Nashban, Esq., Ft. Lauderdale
Stuart Singer, Esq., Miami
Barbara Leigh Spitaleri-Vaughn, Largo

Georgia

J. Converse Bright, Valdosta
William S. Jacobs, Atlanta

Illinois

Professor Robert Bennett, Chicago
Romano DiBenedetto, Chicago
Susan M. Fyda, Chicago
William J. Gibbons, Esq., Chicago
Gwen Niedbalski, Esq., Chicago
Christina J. Norton, Esq., Chicago
John E. Rosenquist, Esq., Chicago
Professor Arthur J. Sabin, Chicago
Kenneth Saunders, Chicago
Ralph Saunders, Chicago
Vicki Saunders, Chicago
Timothy J. Storm, Esq., Chicago
Paula Susman-Anastasiou, Esq., Chicago
Matthew Van Tine, Esq., Chicago
Robert E. Williams, Esq., Chicago

Indiana

Jay T. Hirschauer, Esq., Logansport
John N. Shanks II, Esq., Indianapolis

Iowa

Susan Boe, Esq., Des Moines
Gregory R. Brown, Esq., Des Moines
Matt Duncan, Esq., Des Moines
Mrs. Linda Stearns Fisher, Coralville
Michael A. Giudicessi, Esq., Des Moines

Joseph A. Happe, Esq., Des Moines
Elizabeth Kincaid, West Des Moines
Kasey Kincaid, Esq., Des Moines
Thomas J. McCann, Esq., Des Moines
Marsha Rodd, Ankeny
Melissa Shafter, Esq., Des Moines
Kim Walker, Des Moines

Kansas

Ron Campbell, Esq., Wichita
Terry G. Paup, Esq., Wichita
Dale M. Stucky, Esq., Wichita

Kentucky

Randolph A. Brown, Esq., Louisville
Thomas Kelsey Herndon, Louisville
The Hon. John G. Heyburn II, Louisville
Michael McGraw, Esq., Louisville
Jennifer A. Moore, Esq., Paducah

Louisiana

Eldon E. Fallon, New Orleans

Maine

Mr. & Mrs. William Fenton, Bar Harbor
William Harwood, Esq., Portland
The Hon. Paul L. Rudman, Bangor

Maryland

Howard G. Feldman, Esq., Bethesda
Andrea M. Jones, Baltimore
Raymond M. Jones, Baltimore
Mrs. Susan Scheffres, Rockville
Richard Schifter, Esq., Bethesda
Lisa S. Snodgrass, Abingdon

Massachusetts

Jacob M. Atwood, Esq., Boston
David B. Broughel, Esq., Boston
Richard P. Campbell, Esq., Boston
Richard M. Howland, Esq., Amherst
John A. Lahive Jr., Esq., Boston
William F. Looney Jr., Esq., Boston
Margaret M. Madden, Esq., Norwood
Kieran B. Meagher, Esq., Boston
George Michaels, Esq., Boston
Frederick S. Paulsen, Esq., Boston
Peter L. Resnik, Esq., Boston
Edward Tafe, Newton Centre
Jerome Weinstein, Esq., Boston
William Zolla, Boston

Michigan

Terrence H. Bloomquist, Esq., Grayling
Maggie Boleyn, Oak Park
Frederick J. Boncher, Esq., Grand Rapids
Robert B. Borsos, Esq., Kalamazoo

Conrad A. Bradshaw, Esq., Grand Rapids
Timothy J. Curtin, Esq., Grand Rapids
James N. Deboer, Esq., Grand Rapids
The Hon. Martin Doctoroff, Southfield
The Hon. Tyrone Gillespie, Midland
The Hon. Robert P. Griffin, Traverse City
Dirk C. Hoffius, Esq., Grand Rapids
W. Stevenson Jennette III, Esq., Grand Rapids

Edythe C. Katz, Lansing
Mark A. Lattermann, Esq., Lansing
John H. Logie, Esq., Grand Rapids
Richard D. McLellan, Esq., Lansing
Robert L. Nelson, Esq., Grand Rapids
Thomas Roumell, Esq., Northville
Rosemary Scott, Esq., Grand Rapids
The Hon. Clifford W. Taylor, East Lansing
George R. Thompson, Esq., Traverse City

Minnesota

Mark J. Kemper, Mendota Heights
Victor Vieth, Esq., Windom

Mississippi

Gerald Blessey, Esq., Biloxi
David Cottrell Jr., Esq., Gulfport
John R. Countiss III, Esq., Jackson
Alben N. Hopkins, Esq., Gulfport
William B. Kirksey, Esq., Jackson
Lauch M. Magruder Jr., Esq., Jackson
Joe Sam Owen, Esq., Gulfport
William L. Waller Sr., Esq., Jackson
E. Bragg Williams III, Esq., Poplarville

Missouri

J. Thomas Archer, Esq., St. Louis
Alex Bartlett, Esq., Jefferson City
Gerard T. Carmody, Esq., St. Louis
Joseph A. Colagiovanni, Esq., St. Louis
Michael Coles, Esq., St. Louis
John M. Edgar, Esq., Kansas City
James L. Eisenbrandt, Esq., Kansas City
Burton M. Greenberg, Esq., St. Louis
Ronald L. Holt, Esq., Kansas City
James E. Hullverson, Esq., St. Louis
Kim P. Jones, Esq., St. Louis
James A. Kearns, Esq., St. Louis
Mark B. Leadlove, Esq., St. Louis
Dan M. Lesicko, Esq., St. Louis
James R. Loranger, Esq., St. Louis
Michael B. McKinnis, Esq., St. Louis
Dennis E. O'Connell, Esq., St. Louis
John L. Oliver Jr., Esq., Cape Girardeau
Dale Reesman, Esq., Boonville
Jeffrey S. Russell, Esq., St. Louis
Thomas P. Schult, Esq., Kansas City
John W. Shaw, Esq., Kansas City
James E. Spain, Esq., Poplar Bluff
Erwin O. Switzer, Esq., St. Louis
Donald P. Thomasson, Esq., Cape Girardeau
John A. Vering III, Esq., Kansas City

Thomas E. Wack, Esq., St. Louis

Nevada

Ann Bersi, Esq., Las Vegas
Andy Brignone, Esq., Las Vegas
Pat Lundvall, Esq., Reno
Ann Lyter Thomas, Esq., Las Vegas
The Hon. Cliff Young, Carson City

New Hampshire

Wayne C. Beyer, Esq., Concord
Charles H. Bradley III, Esq., Concord
Donald R. Bryant, Esq., Dover
Alfred Catalfo Jr., Esq., Dover
Charles A. DeGrandpre, Esq., Portsmouth
Robert B. Donovan, Esq., East Kingston
Steven Eric Feld, Esq., Portsmouth
Debra W. Ford, Esq., Portsmouth
Daniel P. Griffin, Esq., Portsmouth
Honey Hastings, Esq., Nashua
David L. Nixon, Esq., Manchester
John J. Ryan, Esq., Hampton
William W. Treat, Stratham
Robert A. Wells, Esq., Manchester

New Jersey

Wesley S. Caldwell III, Esq., Newark
The Hon. Philip S. Carchman, Princeton
William S. Greenberg, Esq., Newark
Michael R. Griffinger, Esq., Newark
James F. Hammill, Esq., Cherry Hill
The Hon. Ronald J. Hedges, Newark
Myron Kaller, Asbury Park
Seth Kaller, Asbury Park
Daniel McAlvanah, Montclair
Gordon A. Millsbaugh Jr., Esq., Warren
Theodore D. Moskowitz, Esq., Newark
Harlan E. Schackner, Esq., West Orange
John A. Schepisi, Esq., Englewood Cliffs

New York

Lawrence Altholtz, Seaford
Philip J. Bergan, Esq., New York
Paris Daskalakis, Astoria
Professor Samuel Estreicher, New York
The Hon. Wilfred Feinberg, New York
William P. Frank, Esq., New York
Robert J. Giuffra Jr., Esq., New York
Caroline K. Green, Jamestown
Richard H. Kuh, Esq., New York
John F. Larkin, Esq., New York
Bennett J. Murphy, Esq., New York
Michael C. Pollack, Chappaqua
John H. Stenger, Esq., Buffalo
Gregory F. Talbot, New York
Mary Elizabeth Tom, Esq., New York
William H. Voge, Esq., New York
Henry Weisburg, Esq., New York
Vaughn C. Williams, Esq., New York
Edward Yodowitz, Esq., New York

--continued on next page

Membership Update *(continued from previous page)*

Fredric J. Zepp, Esq., New York

North Carolina

William Lyons, Statesville

Michael L. Robinson, Esq., Winston-Salem

North Dakota

Professor Randy H. Lee, Grand Forks
Mackoff, Kellogg, Kirby & Kloster, P.C.,
Dickinson

Mary Muehlen Maring, Esq., Fargo

Professor Marcia O'Kelly, Grand Forks

Ronald A. Reichert, Esq., Dickinson

Nicholas Spaeth, Esq., Fargo

Mike Williams, Esq., Fargo

Ohio

David W. Alexander, Esq., Columbus

Allison Larkins, Cincinnati

John J. Monroe, Esq., Painesville

Taylor B. Smith, Esq., Columbus

Roger W. Tracy, Westerville

Oklahoma

Patterson Bond, Esq., Tulsa

Darrell W. Downs, Esq., Oklahoma City

David J. Hyman, Esq., Tulsa

Professor Bernard Schwartz, Tulsa

Oregon

Richard J. Brownstein, Esq., Portland

Steven H. Corey, Esq., Pendleton

Joyce Ann Harpole, Esq., Portland

Ronald H. Hoevet, Esq., Portland

John E. Jaqua, Esq., Eugene

Bernard Jolles, Esq., Portland

Carl R. Neil, Esq., Portland

Peter C. Richter, Esq., Portland

Cory Streisinger, Portland

Gayle L. Troutwine, Esq., Portland

Michael L. Williams, Esq., Portland

Pennsylvania

James L. Goldman, Esq., Philadelphia

Biddle Law Library, Philadelphia

Laura E. Little, Esq., Philadelphia

Daniel J. McAleer, Esq., Philadelphia

Judithanne V. Scourfield, Morrisville

South Dakota

Brian B. Meyer, Esq., Onida

Dr. James F. Shekleton, Pierre

Roger A. Tellinghuisen, Esq., Lead

Merton B. Tice Jr., Esq., Rapid City

Larry M. Von Wald, Esq., Rapid City

Tennessee

Melinda D. Davis, Knoxville

James K. Vines, Esq., Nashville

Texas

John S. Maisel, Esq., Houston

Michael G. Stark, Waco

Utah

Jocelyn S. Azarcon, Esq., Salt Lake City

Todd B. Castleton, Salt Lake City

Linda Chatwin, South Jordan

Bradley K. DeSandro, Esq., Salt Lake City

John M. Gynn, Esq., Salt Lake City

Fred P. Lampropoulos, Salt Lake City

Larry R. Laycock, Esq., Salt Lake City

Jonathan W. Richards, Esq., Salt Lake City

John C. Stringham, Esq., Salt Lake City

David R. Wright, Esq., Salt Lake City

Todd E. Zenger, Esq., Salt Lake City

Vermont

The Hon. Jeffrey L. Amestoy, Waterbury

Richard I. Burstein, Esq., Randolph

Michael B. Clapp, Esq., Burlington

The Hon. George T. Costes, Saint Albans

Nicholas L. Hadden, Esq., St. Albans

John J. Long Jr., Stowe

William M. McCarty, Esq., Brattleboro

Michael Popowski, Esq., Northfield

Brian Porto, Esq., Bethel

The Hon. Thomas P. Salmon, Burlington

Virginia

Zebulon Dyer Anderson, Richmond

Robert Armistead Angle, Richmond

John D. Bonderman, Richmond

The Hon. Martin V. B. Bostetter Jr.,

Alexandria

Ashby D. Boyle II, Falls Church

Elizabeth Fletcher Brown, Richmond

L. B. Chandler Jr., Charlottesville

Bernice May Chu, Richmond

Charles J. Cooper, McLean

Shawn Alan Copeland, Richmond

Cyane Bemiss Crump, Richmond

Dmitri Ivanovich Dubograev, Richmond

William Dupray, Arlington

Franklin Spicer Edmunds Jr., Richmond

Edwin F. Farren, Richmond

Christine Helen Grahl, Richmond

Randall Guynn, Esq., Vienna

Patrick R. Hanes, Richmond

John David Hopkins III, Richmond

Paul Thomas Hourihan, Richmond

Talfourd Haas Kemper Jr., Richmond

Christopher Glenn Lanning, Richmond

Thomas William Maddi, Richmond

Thurgood Marshall Jr., Esq., Arlington

John M. Oakey III, Richmond

R. Hewitt Pate, Richmond

Juliana F. Perry, Esq., Roanoke

Anthony Richard Petrilla, Richmond

Tracy L. Prosser, Richmond

Cary D. Pugh, Richmond

Mary A. Quinn, Richmond

Julianne Reynolds, Richmond

David Benjamin Rich III, Richmond

Agustin Enrique Rodriguez, Richmond

Kimberly Ann Satterwhite, Richmond

Dr. George R. Shumate, Roanoke

Elizabeth DeVere Smith, Richmond

Don Stumbaugh, Oakton

James Marlin Taylor Jr., Richmond

Pamela Lynn Ventura, Richmond

Daisy Chia-Wen Wu, Richmond

Washington

Mr. & Mrs. J. Stephen Eckhart, Seattle

West Virginia

James Knight Brown, Charleston

The Hon. Rodney Merrifield, Fairmont

M. Blane Michael, Esq., Charleston

Thomas J. Murray, Esq., Huntington

Forrest H. Roles, Esq., Charleston

Howard E. Seuffer Jr., Esq., Parkersburg

Wisconsin

Bradley D. Armstrong, Esq., Madison

Wayne E. Babler Jr., Esq., Milwaukee

Bruce C. Davidson, Esq., Milwaukee

Dennis L. Fisher, Esq., Milwaukee

Stephen M. Glynn, Esq., Milwaukee

Robert L. Habush, Esq., Milwaukee

Walter F. Kelly, Esq., Milwaukee

E. Campion Kersten, Esq., Milwaukee

Jack E. Keyes, Esq., Milwaukee

Roy C. LaBudde, Esq., Milwaukee

James C. Mallatt, Esq., Milwaukee

Milton E. Neshek, Esq., Elkhorn

Fredericka Paff, Madison

Frank J. Pelisek, Esq., Milwaukee

Richard J. Podell, Esq., Milwaukee

Andrew O. Riteris, Esq., Milwaukee

Daniel A. Rottier, Esq., Madison

James M. Shellow, Esq., Milwaukee

Thomas L. Shriner Jr., Esq., Milwaukee

Michael S. Siddall, Esq., Appleton

Harry L. Wallace, Esq., Milwaukee

Brownell Delivers Society's Annual Lecture

A discussion of *Brown v. The Board of Education* was the focus of the Eighteenth Annual Lecture delivered by former Attorney General Herbert Brownell. An important part of the Annual Meeting each year, the Lecture is the first event of the day and provides an opportunity for members to consider a significant aspect of the history of the Supreme Court.

William Bradford Reynolds, Chair of the Annual Meeting Committee, welcomed guests to the Eighteenth Annual Lecture which was held in the Supreme Court Chamber. He then introduced Leon Silverman, President of the Society.

After brief prefatory remarks, Mr. Silverman introduced Mr. Herbert Brownell, and gave an overview of his career. "Mr. Brownell served as Attorney General of the United States under President Eisenhower, from 1953-1957. He was a partner and of counsel to the law firm of Lord Day and Lord in New York for over 50 years until his retirement in 1987. He graduated cum laude from Yale Law School in 1927. During his career he served as president of the New York City Bar Association, and of the American Judicature Society. Professional honors include the Federal Bar Association's Learned Hand Medal, the Gold Medal of the New York State Bar Association and Yale Law School's certificate of merit. Mr. Brownell's active public life includes five terms in the New York State Assembly and service as Special Ambassador to Mexico. He is the principle author of the Twenty-fifth Amendment to the Constitution relating to presidential disability. Mr. Brownell has served as Vice Chairman of the Bicentennial Commission of the United States Constitution under the chairmanship of Chief Justice Burger whose presence I am delighted and honored to acknowledge at this lecture.

"This month Mr. Brownell also published a book with John Burke entitled *Advising Ike: The Memoirs of Attorney General Herbert Brownell*. I cannot forego a personal word of thanks to



From left to right: Society President Leon Silverman joins Annual Lecturer Herbert Brownell and Annual Meeting Chair William Bradford Reynolds in the Supreme Court Chamber.

our speaker who as Attorney General revived a moribund Department of Justice and made it possible for hundreds of eager young lawyers in the 1950s to do public service in the Department and as Assistant United States Attorneys around the country. Since I was one of the beneficiaries of his efforts to engender an interest in doing public service, as indeed were many others in this room, I think it is right to pay tribute to a remarkable public servant. This afternoon he will address us on *Brown v. The Board of Education* revisited. I am delighted and honored to present to you Attorney General Herbert Brownell."

Mr. Brownell noted that it was "familiar, if I can think back that many years, to be in this courtroom. . . . I am delighted to pay tribute to the Supreme Court Historical Society here today

--continued on page eight

1994-95 Judicial Fellows Program

The Judicial Fellows Commission invites applications for the 1994-95 Judicial Fellows Program. The Program, established in 1973 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who are interested in the administration of justice and who show promise of making a contribution to the judiciary.

Four Fellows will be chosen to spend a calendar year, beginning in late August or early September 1994, in Washington, D.C., at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Courts, or the United States Sentencing Commission. Candidates must be familiar with the federal judicial system, have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories, but will not exceed the GS 15, step 3 level, presently \$71,049.

Information about the Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. (202) 479-3415. The application deadline is November 19, 1993.

Brownell (continued from previous page)

because it has done such a superb job in getting the message of the significance of the Supreme Court in American life over to the people of this country. I also want to tell you that I watched the progress of the Supreme Court Historical Society over the years and I think the officers and the staff of the Historical Society should receive great credit for the growth and prosperity of the organization and I congratulate the officers, past and present, for this achievement.

"Today I would like to talk a little bit, seriously, and to fill in some missing parts, or at least some unrecorded pages of history, from the early days of the enforcement of *Brown v. The Board of Education*, which surely was one of the most important constitutional decisions ever handed down in this room. It posed, of course, immediate and difficult, almost immense problems, of law enforcement for the executive branch of the government, and that included us at the Department of Justice.

"The case, which you will remember was really five cases consolidated, was originally argued before the Court in the waning days of the Truman administration in the period between Eisenhower's election and his inauguration. By inauguration day the case had not been decided. The first intimation that the new administration was to have a significant role to play before the Supreme Court in the pending *Brown* case, came just a few days after the inauguration of Eisenhower. A ceremony was being held at the Justice Department for the swearing in by Chief Justice Fred Vinson of some of the new Assistant Attorneys General. After the ceremony the Chief Justice remained to visit with us informally about a number of matters affecting the Judiciary as to which the previous Attorney General had been asked to take action. . . ."

At this time, Chief Justice Vinson informally said that the Supreme Court would be "interested in the views of the Eisenhower Administration in the pending case of *Brown v. The*

Board of Education. . . . In retrospect it appears that the Court was not at that point unanimous in favor of the school desegregation which it later ordered. . . . So it strikes me as plausible that Vinson was soliciting the new Administration's legal views to tip the balance, either by encouraging waverers on the Court to overturn *Plessy v. Ferguson* if the Eisenhower Administration was on that side of the school desegregation issue, or to dodge the question until public and political support were more evident and the Court would not have to risk its prestige in such a controversial constitutional case. Furthermore, it can be reasoned that if a stronger majority or even unanimity among all the nine Justices could be attained, that the country might be more willing to accept such a drastic change in the mores. . . .

"Near the end of the Supreme Court term in June 1953, instead of handing down a decision, the Court issued an order setting the *Brown* case for reargument in October of that year and it requested the Attorney General to appear in oral argument as amicus curiae and to respond to five specific questions that were listed by the Court. Among them were some dealing with the methods of enforcement of any decree that might be issued by the Court.

"Said the Court order:

In their briefs and on oral argument [on reargument] counsel are requested to discuss particularly the following questions insofar as they are relevant to the respective cases:

What evidence is there that the Congress which submitted to the State legislatures and conventions which ratified the Fourteenth Amendment contemplated or did not contemplate, understood or did not understand, that it would abolish segregation in the public schools?

Assuming it is decided that segregation in public schools violates the Fourteenth Amendment

(a) would a decree necessarily follow providing that, within the limits and by normal geographic school redistricting, Negro children should *forthwith* be admitted to the schools of their choice, or

(b) may this Court, in the exercise of its equity powers permit an effective gradual adjustment to be brought about from existing segregated systems to a system not based on color distinction.

"The Court order concluded:

What specific issues should the decrees reach? Should this Court appoint a special master to hear evidence with a view to recommending specific terms for such decrees?

Should this Court remand to the courts of first instance with directions to frame decrees in these cases, and if so, what general directions should the decrees of this Court include and what procedures should the courts of first instance follow in arriving at the specific terms of more detailed decrees?

The attorney general of the United States is invited



Former Attorney General Herbert Brownell signs a copy of his memoirs for Society Trustee Patricia Dwinell Butler following his delivery of the Annual Lecture.

to take part in the argument and to file the additional brief if he so desires."

As his first response to the questions, Mr. Brownell notified the President of the situation, seeking his opinion and advice. Brownell noted that as one of his first presidential acts, and in fulfillment of a campaign promise, Eisenhower moved to end desegregation of restaurants, hotels, theaters and other places of public accommodation in the District of Columbia.

Eisenhower initially advised Brownell not to participate as the federal government "had not been a party, and was not a party, to any of the five Brown cases." He also feared that involvement from the Executive Branch would constitute a violation of the separation of powers. Brownell thought otherwise, and eventually persuaded the President that the Justice Department should participate in the reargument.

The Justice Department did argue orally, and in an *amicus* brief, "in favor of desegregation of the public schools and also submitted a detailed historical examination of the Fourteenth Amendment in so far as it might bear on school desegregation."

The unanimous decision in *Brown* was handed down on May 17, 1954. It made clear that segregation was no longer acceptable, but "specifically left open the all-important decision of *how* the decision should be enforced--the enforcement problem was left in limbo for a year until the Court's decision in *Brown II* in 1955."

Brownell then discussed the interim period when no directions were given for the implementation of *Brown*. The Justice Department favored a "plan to have each school district where a dispute arose--[whether initiated by] the school board or parents of school children-- submit a desegregation plan to the local federal district court for approval. Plans might differ from school district to school district to meet local needs. The Supreme Court adopted this procedure."

The second recommendation of the Justice Department called for "all affected school districts [to] be required to submit such a plan within a period of ninety days after the Court's decree. The Executive branch would [then] be empowered to step in as soon as a lower court approved a plan to enforce desegregation."

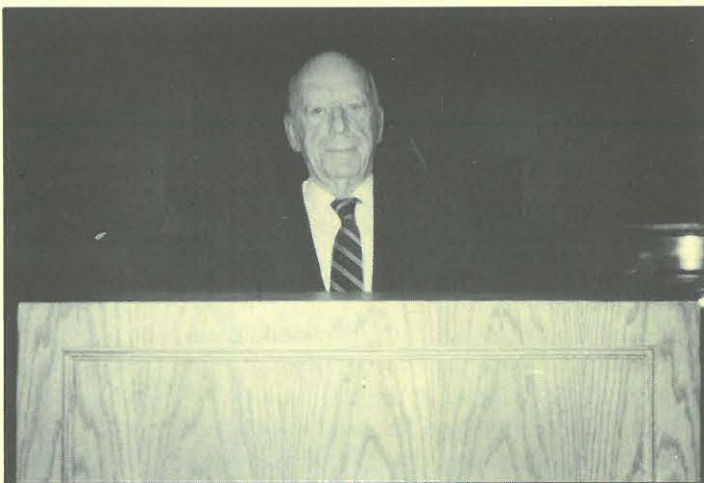


Mr. Brownell greets Society Trustee Vera Brown following the delivery of the Eighteenth Annual Lecture, "*Brown V. Board of Education Revisited*." Mrs. Brown is the widow of Judge John Brown, one of the federal judges charged with enforcing desegregation in Southern states in the wake of the *Brown* decision.

The Court did not accept this second recommendation. In fact, it offered no timetable for the implementation of desegregation, directing instead that it should take place "with all deliberate speed." Brownell explained the effect of the Court's decision on the Executive Branch, which was left with no power of independent action, and indeed, no funds to undertake such action should it be deemed desirable.

Brownell discussed the actions of the Justice Department in light of the decision and the vagueness of how it was to be accomplished. He noted the drafting of the so-called "Southern Manifesto", the sporadic rioting and violence in response to attempts at desegregation, and other difficulties that arose. He noted that until the incident in Little Rock, where the President ordered federal troops to enforce a District Court order to desegregate schools, the burden of enforcing and implementing desegregation was left in large measure to the judges of the federal district courts. He paid special tribute to four federal judges who played a significant role in seeing that desegregation was implemented. He noted that as federal judges, Frank Johnson of Alabama, Albert Tuttle of Georgia, John Minor Wisdom of Louisiana and John Brown of Texas "bore the brunt of judicial enforcement of the *Brown* decision in the Southern states, suffering social snubs and bitter attacks in the local media as a result."

Tracing other incidents in the period, Brownell concluded that "[t]here never was a doubt after Little Rock that the Constitution, as defined by the Supreme Court in *Brown I* would be upheld by the full powers of the Federal government. The old *Plessy v. Ferguson* decision was dead."



Herbert Brownell addresses the members of the Historical Society at the Eighteenth Annual Lecture. Later in the day, Mr. Brownell was elected to the Society's Board of Trustees.

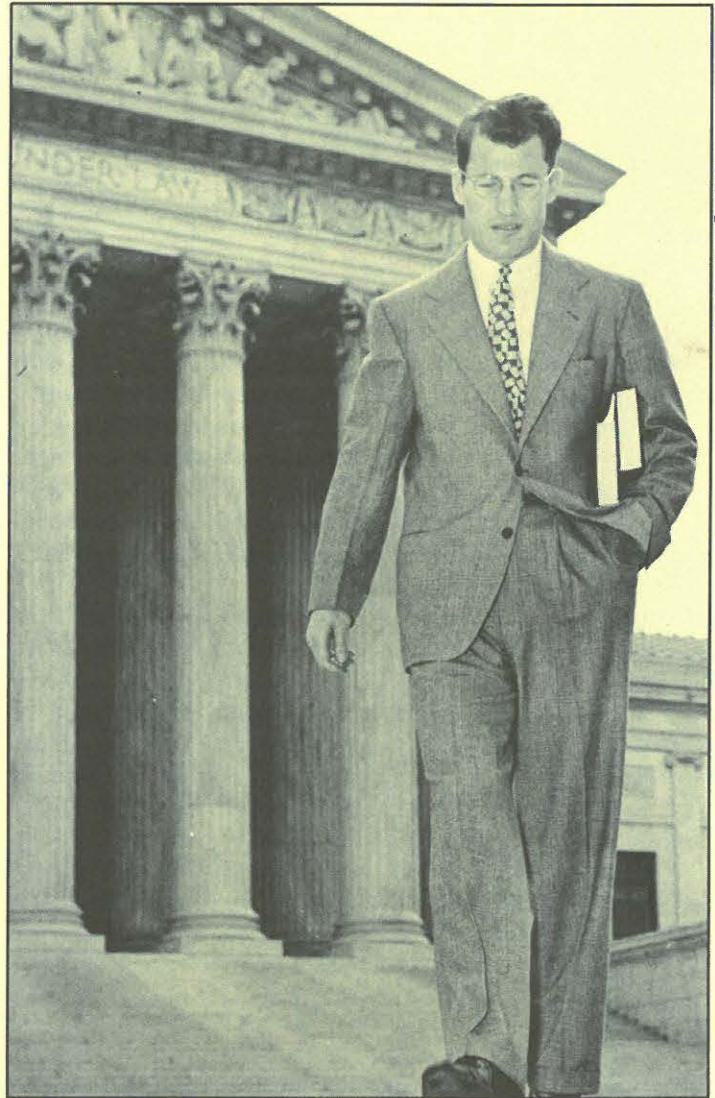
Byron White Justice from Colorado

by
Dennis Hutchinson

Editor's Note: In honor of Justice White's retirement, Professor Dennis Hutchinson has graciously allowed the Quarterly to reprint this biography of the Justice. This piece appears in The Supreme Court Justices, Illustrated Biographies 1789-1993 just published by Congressional Quarterly. For more on Justice White's retirement, please refer to page twenty.

Byron Raymond White was born in Fort Collins, Colorado, on June 8, 1917, but grew up in the sugar beet farming community of Wellington to the east. His father, A. Albert White, managed the local outlet of a lumber supply company. Wellington was hit hard by the Depression, and White recalled shortly after his appointment to the Court that "by the normal standards of today we were all quite poor, although we didn't necessarily feel poor because everyone was more or less the same. Everybody worked for a living. Everybody. Everybody." For him, as a young man, work included manual labor in the sugar beet fields after school and during summers, as well as section work for the Colorado and Southern Railroad.

The strongest personal influence on White was undoubt-



Office of the Curator, Supreme Court

Byron White walking down the steps of the Supreme Court of the United States in 1947. White clerked for Chief Justice Fred Vinson during the 1946-47 term, making him the first of only three Justices to serve as Law Clerks to Supreme Court Justices. Chief Justice Rehnquist clerked for Robert Jackson and Justice John P. Stevens clerked for Justice Rutledge.

edly his brother, Clayton S. (Sam) White, five years his senior. Although neither of the Whites' parents had attended high school, Sam White graduated first in his class and thus earned a state scholarship awarded to all valedictorians. At the University of Colorado he starred in basketball, won a Rhodes Scholarship to Oxford University, and studied medicine.

Not to be out-done, Byron also won the same scholarship. He was a junior Phi Beta Kappa (1st in his 267-person class), president his senior year of the student body, a three-sport star (three letters in football, four in basketball and three in baseball) and football All-American on Colorado's 1937 Cot-



Library of Congress

President John F. Kennedy named Byron White Deputy Attorney General in 1961. A year later, he nominated White to the Supreme Court. White and Kennedy became friends in 1939 while White was at Oxford.

ton Bowl team. He, too, won a Rhodes Scholarship to Oxford, but he was also offered a professional football contract with the old Pittsburgh Pirates. He sat out his senior baseball season to mull over his choices before he learned that he could play for the Pirates and postpone his matriculation at Oxford by one term. "Whizzer," as he was dubbed, led the league in rushing and was the highest-paid player (\$15,000) of the day; in 1954 he was named to the National Football League Hall of Fame.

In January 1939 he went to Oxford, but stayed only two terms, because all American students were sent home in September when World War II broke out. During his nine months abroad White twice met John F. Kennedy, whose father was ambassador to the Court of St. James (Great Britain). White returned to attend Yale Law School, which he attended while simultaneously playing football on weekends during the 1940 and 1941 seasons for the Detroit Lions, who had purchased his contract from Pittsburgh.

After Pearl Harbor, White tried to enlist in the Marines but was rejected for being color-blind. He successfully enlisted in

the Navy, and became an intelligence officer in the Pacific Theater. He encountered John Kennedy again, and was responsible for preparing the report of the sinking of Kennedy's PT- 109. White was awarded a Bronze Star and discharged as a Lt. Commander.

After the war, he returned to Yale--"the most stimulating intellectual experience I had up to that time." He was named to the Order of the Coif, a legal honor society, and graduated magna cum laude, with the Cullen Prize for high academic grades. He clerked for Chief Justice Fred Vinson in 1946, married Marion Stearns (one of the daughters of the President of the University of Colorado) and returned to Colorado to practice law in Denver with the firm that is now Davis, Graham & Stubbs.

For nearly 14 years, he engaged in an extremely diverse general practice. As he later recalled drily, "I had a good, satisfactory practice and a pretty decent life." An intensely,

--continued on page eighteen



Paul Brickner

(Left to right) Justices Potter Stewart, John M. Harlan, Earl Warren, Hugo Black, William O. Douglas, Tom Clark, Byron White, Arthur Goldberg and William Brennan, Jr. march in President Kennedy's funeral procession in November 1963.

Society Co-Sponsors Successful Lecture Series

At the recommendation of the Program Committee of the Society, on March 4, 1993 the Society embarked upon the first, of what is hoped to be a continuing program of lecture series. One of the goals of the lecture programs is to provide interested Society members an opportunity to participate in a continuing education experience, wherein outstanding scholars present lectures concerning personalities and issues which have shaped the legal history of our nation. The first of these lecture programs involved a five-part lecture series sponsored by The Supreme Court Historical Society in conjunction with The Jewish Historical Society of Greater Washington, which considered the five Jewish Justices of the Supreme Court.

Until 1993, only five individuals have occupied the so-called "Jewish seat" on the bench of the High Court; Louis Brandeis, Felix Frankfurter, Benjamin Cardozo, Arthur Goldberg and Abe Fortas. The lecture series, which commenced with a study of the career of Louis D. Brandeis, considered the contributions of the individuals of Jewish heritage who have served on the Supreme Court bench.

While the five individuals studied in the lecture series differed greatly from one another, one common tie that links them, is, of course, the Jewish ethno-cultural heritage. One of the aims of the lectures was to consider to what extent, if any, this heritage influenced the lives and opinions of these Justices.

In Professor Michael Parrish's examination of Frankfurter's career he considered these important issues as they applied to Frankfurter. "As a young lawyer fresh from Harvard Law School in 1906, Felix Frankfurter joined the Wall Street firm of Hornblower, Byrne, Miller and Pitter. Soon after his arrival, a senior partner suggested that he might rise faster there if he anglicized his name. Recalling his mother's admonition to 'always hold yourself dear,' he politely but firmly refused. Later in life, as a Justice of the United States Supreme Court,



Senator Mark Hatfield (R-Oregon) and Professor Michael Parrish (right) discuss their mutual interest in history before Professor Parrish's presentation on Justice Felix Frankfurter.

he expressed anger when told that one of his former Jewish students, faced with the same decision, had chosen to do otherwise. Although a descendant of several generations of Central European rabbis, he seldom set foot in a synagogue or temple after adolescence and usually described himself as a 'reverent agnostic.'

"Of all the Jewish Justices honored in the present lecture series, Felix Frankfurter, it can be argued, was both the least and the most influenced by his ethno-cultural-religious heritage. Among the most secular of our jurists, he displayed an almost Enlightenment faith in the powers of Reason. But he was also, in the shrewd assessment of one recent scholar, 'first and foremost a teacher in the rabbinic style,' who relished 'complexities, balanced truths, entertained questions, and understood puzzles.' Instead of the Torah, however, he quoted copiously and endlessly from the opinions of Holmes and Brandeis, much to the annoyance of his brethren on the bench. . . .

"A Jew, an immigrant, and a naturalized citizen, Felix Frankfurter never attempted to conceal these attributes, but his own journey from New York's Lower East Side to the Supreme Court of the United States shaped his almost mystical faith in assimilation, in the transforming powers of American culture. . . .

"Frankfurter's robust belief in cultural assimilation, in the melting pot, in the ideal of meritocratic social order where talent and brains counted for more than race, religion, or class led him to employ the Court's first Black law clerk in 1948, William T. Coleman, Jr. And it inspired perhaps his greatest contribution to American law: helping Earl Warren forge an unanimous Court to strike down segregated public schools in *Brown v. Board of Education* in 1954."

The excerpts from Professor Parrish's talk exemplify the other lectures in the series, all of which were well researched, insightful, and informative.

The first lecture of the series, on Justice Brandeis, was given in the Supreme Court Chamber, the chamber where Justice Brandeis sat for his final two years of service on the



(Left to right) Michael Goldstein, President of the Jewish Historical Society of Greater Washington, Professor Melvin Urofsky, Chair of the Board of Editors of the *Journal of Supreme Court History*, and Leon Silverman, President of the Supreme Court Historical Society. Professor Urofsky opened the lecture series with a lively talk on Justice Brandeis.

bench. Justice Sandra Day O'Connor introduced the speaker, Professor Melvin I. Urofsky of Virginia Commonwealth University.

Senator Mark Hatfield hosted the second lecture, which was held in the Caucus Room of the Russell Senate Office Building on March 18, 1993. Taking a break from work on the Senate floor that evening, Senator Hatfield introduced Professor Michael Parrish of the University of California, San Diego, who spoke about Justice Felix Frankfurter.

The third lecture was hosted by Senate Majority Leader George Mitchell. The evening of this program the Senate was also working late and Senator Mitchell left business on the Senate floor to introduce Professor Andrew Kaufman. Professor Kaufman, Charles Stebbins Fairchild Professor of Law at Harvard Law School, discussed the career of Justice Benjamin Cardozo.

The fourth lecture, hosted by Justice David Souter, was presented in the Restored Supreme Court Chamber in the United States Capitol building and the lecture was delivered by Emily Van Tassel of the Federal Judicial Center. The subject of her lecture was Justice Arthur Goldberg. In his introduction, Justice Souter noted that shortly after he took his seat on the Supreme Court, he participated in a special memorial tribute by the Bar in commemoration of Justice Goldberg's career.

The final lecture of the series was hosted by Justice Anthony Kennedy. Justice Kennedy introduced Professor Bruce Murphy of Pennsylvania State University. Justice Kennedy commented that he had stayed up late the previous evening as he was engrossed in reading Professor Murphy's biography of Fortas.

Summing up the program, Mr. Silverman noted that "the level of interest and enthusiasm shown by those who have

attended the lectures has been extremely gratifying and the presentations were informative and dynamic." All five lectures were well subscribed with over 200 persons attending four of the programs. The lecture held in the Restored Supreme Court Chamber in the Capitol was also presented before a capacity crowd.

The Supreme Court Historical Society and the Jewish Historical Society of the Greater Washington Area would like to extend their thanks to the following sponsors for making generous financial contributions to the lecture series: The Bender Foundation; The Marjory Kovler Foundation; The Brandeis University Alumni Association; Morgan, Lewis & Bockius; and Freedman, Levy, Kroll & Simonds. A special thanks is also offered to Sheldon Cohen, of Morgan, Lewis and Bockius, who chaired the fundraising efforts for the lecture series.

Plans are underway to produce a special edition of the *Journal of Supreme Court History* that will contain the text of all five lectures with an introductory essay. The book will be produced in the Spring of 1994 and will be sold through the Society's Gift Store. It is hoped that the book will be produced in sufficient quantities so that all active members of the Society will receive a copy.

The Society is currently finalizing plans for a lecture series on the Supreme Court and the Civil War. Tentatively scheduled for the spring and early summer of 1994, the lectures will cover the events leading up to the Civil War, including the *Dred Scott* decision, and will conclude with a look at the Civil War Amendments to the Constitution and Reconstruction. All members of the Society will receive invitations to the lecture series. A future issue of the *Quarterly* will contain more information on the series as it becomes available.



Justice David Souter looks on as Professor Emily Van Tassel delivers an address on Justice Arthur Goldberg in the Restored Supreme Court Chamber in the U.S. Senate. Justice Souter introduced Professor Van Tassel.



Professor Bruce A. Murphy (left) thanks Justice Anthony Kennedy for his gracious introduction to Professor Murphy's speech on the travails of Justice Abe Fortas' career.

Annual Meeting *(continued from page one)*

Justin A. Stanley; and M. Truman Woodward, Jr. All were re-elected to an additional term of office.

The General Membership meeting was adjourned following the election of Trustees. Erwin N. Griswold, Chairman of the Board of Trustees, then convened the Annual Meeting of the Board of Trustees. In his opening remarks, Dean Griswold commented on the many accomplishments of the Society over the past year. He touched on the great work Barrett Prettyman's Program Committee has done in organizing events for members of the Society to enjoy. The recently completed lecture series on the Supreme Court's Jewish Justices, the Second National Heritage Lecture and the recent seven-part program with the Smithsonian Institution were all extremely popular with members of the Society and sold out almost immediately.

Dean Griswold then called upon Virginia Warren Daly to deliver the Report of the Nominating Committee. Mrs. Daly presented a slate of candidates and a vote was taken unanimously electing individuals to positions as indicated: Virginia Daly for an additional three-year term as Secretary; Frank C. Jones and E. Barrett Prettyman, Jr. for additional three-year terms as Vice President; Peter A. Knowles for further three-year term as Treasurer; and Justin Stanley to an additional one year term as an at-large member of the Executive Committee. S. Howard Goldman was elected to a three-year term as Vice President and Vincent C. Burke, Jr. was elected to a one-year term as an at-large member of the Executive Committee.

At the close of the business portion of the meeting, Dean Griswold called upon Chief Justice Rehnquist to assist in the presentation of awards in recognition of outstanding service to the Society. George Adams, Chair of the Development Com-



"John, I always knew you would amount to something," the Chief Justice said in presenting Society Trustee John Nannes an award for his vigorous efforts to build the Society's membership. Mr. Nannes is one of the Chief Justice's former law clerks.

mittee announced the recipients. The first presentation was made to Dwight Opperman in recognition of his pledge from West Publishing Company to the Documentary History Project. The second presentation was to Mrs. Laura Phillips of the Clark-Winchcole Foundation in recognition of its generous support of the Society's programs.

Mr. Adams then stepped down from the dais and Charles Renfrew, National Membership Committee Chair, came forward to assist the Chief Justice with presentations to State Membership Chairs for their outstanding work in recruiting



(Left) The Chief Justice presents an award to Society Vice President Dwight Opperman for his generous support to Society programs. Mr. Opperman is the President of West Publishing Company which recently made a substantial pledge in support of the Documentary History Project. (Right) Chief Justice Rehnquist presents an award recognizing the efforts of Utah State Membership Chair Rick Nydegger who not only met his goal but also recruited two Life members.



Retired Chief Justice Burger, the Society's Honorary Chairman, greets Society Trustee James J. Kilpatrick at the Annual Reception.

new members of the Society. Mr. Renfrew noted that twenty-three Membership Chairs had met their goals in time for the Annual Meeting and several others were expected to do so before the end of the fiscal year. Eight chairs were present to receive their awards: George Andrews, III of Alabama; Steven K. Balman of Oklahoma; James Horner Davis, III of West

Virginia; Joseph E. Frank of Vermont; Ed Hendricks of Arizona; John G. Koeltl of New York; and Rick D. Nydegger of Utah. In addition, John T. Jessee, 4th Circuit Representative, accepted an award on behalf of Virginia State Chair W. Taylor Reveley III. John Nannes, newly elected to the Board of Trustees, was also recognized for his efforts in recruiting new members.

Mr. Renfrew further recognized the outstanding efforts of the fifteen State Chairs who were unable to attend the evening's events: Earl Sutherland of Alaska; Victor Battaglia of Delaware; George Saunders of Illinois; Kasey Kincaid of Iowa; Gordon Davidson of Kentucky; Vincent McKusick of Maine; Lawrence Tafe of Massachusetts; Richard Baxter and Stuart Hoffius of Michigan; Raymond Brown of Mississippi; Veryl Riddle of Missouri; William Beckett of New Hampshire; Ernest Bonyhadi of Oregon; Gene Lebrun of South Dakota; Larry Hammond of Wisconsin.

[Special thanks go to Charles Renfrew and the Membership Committee for their tremendous accomplishments in increasing the membership to 4,809. Congratulations to the following State Chairs who achieved their goals in June after the Annual Meeting: Alston Jennings, Sr. of Arkansas; Robert E. Currie of Southern California; Hugo L. Black, Jr. of Florida; Harvey C. Koch of Louisiana; Mary Kristina Pickering of Nevada; Eugene M. Haring of New Jersey and Sarah Herman of North Dakota.]

--continued on next page



Annual Meeting Chairman William Bradford Reynolds welcomes members to the Annual Dinner in the Court's Great Hall.

WANTED

In the interest of preserving the valuable history of our highest court, the Supreme Court Historical Society would like to locate persons who might be able to assist the Society's Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature or any other materials related to the history of the Court and its members. These items are often used in exhibits by the Curator's Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society's headquarters, 111 Second Street, N.E., Washington, D.C. 20002, or call (202) 543-0400.

Annual Meeting *(continued from previous page)*



The Chief Justice addressed members and their guests at the Eighteenth Annual Dinner prior to making his customary toast to the President of the United States. Joining him (left to right) are: Charles Renfrew, Mrs. Leon Silverman and Mrs. Barbara Renfrew.

The Annual Reception began immediately following the conclusion of the meetings. Guests gathered in the East and West Conference Rooms and enjoyed the summer evening on the adjoining patios. The U.S. Army Band provided string quartets to entertain guests.

The Annual Dinner was held in the Great Hall of the Supreme Court. The Hall was decorated with flags of all fifty states and a large flag of the United States hanging between the columns near the front. Annual Meeting Chair, William Bradford Reynolds, welcomed the guests to the Eighteenth Annual Dinner and then called upon the Chief Justice to make a few remarks and the traditional toast to the President of the



The U.S. Army Chorus performs for Society members and their guests at the Eighteenth Annual Dinner.



Chief Justice Burger shares the company of Mrs. Laura Phillips (left) of the Clark-Winchole Foundation, and Herbert Brownell (right) who served as this year's Annual Lecturer.

United States. The Chief Justice spoke briefly regarding the Society's support of the Court and congratulated the Society on its accomplishments during the year, and on the newly renovated Gift Shop on the lower floor.

As dinner concluded, guests were serenaded by the Strolling Strings of the U.S. Army Band. Mr. Reynolds then introduced the U.S. Army Chorus under the direction of Major Gary Lamb. The chorus presented a short program of popular and patriotic songs. At the end of the program, guests rose to join the chorus in singing *God Bless America*.

Mr. Reynolds then thanked all the performers, Sergeant Major Fox who served as liaison with the Chorus, the technicians who assisted in making the program run smoothly, Lieutenant Colonel C. Benjamin DuBose who directed the U.S. Army Strings, the staff of the Marshal's Office of the Supreme Court for all their assistance in making the event possible, and the staff of the Historical Society for their work in making the Annual Meeting possible. The meeting was then adjourned.

Segal and Griswold Honored for Leadership In Civil Rights

Two of the Society's dedicated Trustees were honored on June 21, 1993 at the Thirtieth Anniversary Gala Dinner of the Lawyers' Committee for Civil Rights Under Law. Receiving Lifetime Achievement Awards were Bernard G. Segal, a founding Trustee of the Supreme Court Historical Society who continues his commitment to and participation in the work of the Society, and Erwin N. Griswold, current Chairman of the Board of Trustees and a Trustee of the Society since its creation. The awards were created to honor members of the Lawyers' Committee who "have provided incomparable service to this nation's pursuit of equal justice and human decency. . . and who have lead the way in 'forging paths to equal justice under law.'"

Bernie Segal, as he is known to his associates, has been a leading member of the national legal community for many years. In the program notes from the Gala Dinner it is noted that "[e]ven before President Kennedy called the nation's most prestigious jurists to the White House to seek peaceful and lawful solutions to the nation's racial turmoil, Bernie took the initiative to draft a press release opposing Governor Wallace's expressed intention to block the admission of two students to the University of Alabama. It was Bernie's initiative that prompted Attorney General Robert F. Kennedy to urge his brother to organize the White House meeting and Bernie's foresight that gave life to the Lawyers' Committee. . . . As a past President of the American Bar Association, and leader in innumerable areas of the law, Bernie's work is unmatched."

Mr. Segal has also been an active participant in the work of the Supreme Court Historical Society since its creation in 1974. He has served as a Trustee since 1975 and in that capacity has been instrumental in securing contributions essential to the growth of the Society.

Erwin Griswold, most often referred to as Dean Griswold because of his 22 years of service as Dean of the Harvard School of Law, has served for the past four years as Chairman of the



(From left) Mrs. Harriet Griswold and Dean Erwin Griswold, Chairman of the Board of Trustees of the Historical Society, join Justice David H. Souter at the Society's 1991 State Membership Chairs Dinner.

Board of Trustees of the Historical Society. Prior to that time he served as a Trustee and a member of the Executive Committee of the Society, providing advice and counsel in every aspect of the Society's work.

Dean Griswold was also honored for his many accomplishments in the legal profession. Like Segal, his career has also been long and fruitful and quite varied. In addition to his career at Harvard, the Dean served as Solicitor General of the United States from 1967-1973. From 1973 until the present, Dean Griswold has been a partner in the Washington office of Jones, Day, Reavis & Pogue. He is the author of many articles and several book-length works, including his recently published memoirs, *Ould Fields, New Corne*. In 1978 he was awarded the American Bar Association's gold Medal, the highest honor given by the ABA in recognition of conspicuous service to the legal profession and the cause of justice in the United States.

Among the written tributes given to Mr. Segal and Dean Griswold was one written by Justice Blackmun, who noted that "[b]oth Bernie and Erwin are giants of the law and in the law. Each has contributed magnificently to good scholarship and to the achievement of a full understanding of the law and our system of justice. Each has devoted himself unstintingly toward the betterment of our profession. I have been privileged to know each of them. Each has influenced my life in distinct ways. They have my highest respect and my gratitude for what they have done for the law, for the profession, and for the public good."

Both Dean Griswold and Mr. Segal have received many professional awards during their careers. While this latest honor is just one of many for both individuals, it is indicative of the caliber of the contributions they have made in the legal community during their long and most fertile careers. The Society is pleased to recognize this latest tribute to two outstanding leaders of the legal profession.



Society Trustee Bernard Segal (center) with Justice Brennan and Mrs. Segal at the 1991 Annual Dinner.

Justice White (continued from page eleven)

even ferociously, private man, he enjoyed his work and his family, which included a son and a daughter. His hobbies were ones of solitude. He was--and is--an accomplished alpine skier and a passionate dry-fly fisherman, preferring the Colorado mountains for the former and western Montana for the latter.

Despite his penchant for privacy, White was always actively involved in local politics, primarily at the grass-roots level. Indeed, his judicial philosophy may have been shaped largely by his faith in the political process and his corresponding skepticism of the legitimacy of public policy created by unelected judges. Shortly after his appointment, he told an interviewer: "Everyone in this country has an obligation to take part in politics. That's the foundation, the most important principle, on which our system is built. If our system is to work, people must intelligently elect their representatives in the legislatures and the Congress and their local government. And the best way to do it is to get their feet wet in politics."

Despite his involvement in Democratic Party politics, White only encountered John Kennedy once between 1947, when Kennedy had been a freshman congressman at the same time White worked for Vinson, and 1960, when Kennedy ran for President. Before the Democratic convention that year, White organized a Colorado Committee for Kennedy, and after the convention, Robert Kennedy asked him to head a National Citizens for Kennedy Committee, which was designed as a non-partisan appeal. After the election, White was named Deputy Attorney General to Robert Kennedy, and enjoyed mixed success in the number two position at the Department of Justice. White was widely praised at the time for helping to recruit a uniformly talented and energetic team of young assistant attorneys general, many of whom went on to distinguished careers in both private and public life. He also was recognized for his courage and icy calm in personally addressing the riots that grew out of the "freedom rides" from Birmingham to Montgomery, Alabama, in the spring of 1961. He was criticized, on the other hand, for not working harder to prevent the nomination of some federal district judges who later became intransigent obstacles to civil rights. As Deputy, White was responsible for overseeing the vetting of more than 100 judicial appointments, more than had ever been made before over even a two-term presidential administration. Cronyism, President Kennedy's own political vulnerability due to a paper-thin election victory, and an entrenched seniority system in the Senate, all made White's task more difficult than some critics conceded.

When Charles Whitaker decided to retire in 1962 after only five years on the Supreme Court, President Kennedy spent a week choosing his successor. He finally narrowed the field to three candidates: Harvard law professor Paul Freund, Secretary of Labor Arthur Goldberg, and federal appeals judge William Hastie, the only non-white of the three. Kennedy told Arthur Schlesinger, Jr.: "But I didn't want to start off with a Harvard man and a professor; we've taken so many Harvard men that it's damn hard to appoint another. And we couldn't do Hastie this time; it was just too early." Nor was Kennedy eager to lose Goldberg from the Cabinet, and, in any event, he felt that

he would be able to make several more appointments to the Court. Nicholas Katzenbach, who would eventually succeed White as Deputy, reported recently that he suggested White's name to Robert Kennedy; others have told how the President was taken with the idea of the model New Frontier judge--the man of great ability and achievement who had no ambition for the office. Twelve days after being nominated, White was confirmed by the Senate, by a voice vote, on April 11, 1962, and took his seat five days later.

Unlike the previous three Court appointees, White had no prior judicial experience, nor had he held elective office. In terms of his personal manner, White's old friend Erwin Griswold has conceded, in an otherwise admiring essay, that White "can give the appearance of brusqueness." Griswold also acknowledges that White developed an aggressive style of questioning on the bench, but explains both traits on the ground that "his mind is so clear and quick."

White joined a Court in transition. Justice Felix Frankfurter suffered a disabling stroke in April and was replaced in the fall of 1962 by Goldberg, who joined Chief Justice Earl Warren and Justices Hugo Black, William O. Douglas and William Brennan, Jr. to form a solid voting bloc in many areas of the Court's docket, especially civil rights. White attracted notoriety early in his career with sharply worded, even caustic, dissents to decisions identifying novel constitutional rights. For example, only months after his joining the Court, it decided *Robinson v.*



Office of the Curator, Supreme Court

Justice White accepted this portrait of Justice Hugo Black on behalf of the Court in March 1990. Justice White served with Justice Black from 1962 until Justice Black's retirement in 1971. Both served as senior Associate Justice, Black for twenty-six years and White for three years.



Justice Byron White (far right) administers the Judicial Oath of Office to Clarence Thomas (far left) as President George Bush and Mrs. Virginia Thomas look on. The ceremony took place in the White House garden.

California (1962), which held that drug addiction was an illness and punishment of it therefore unconstitutional. White said the majority was writing "into the Constitution [their] own abstract notions of how best to handle the narcotics problem." In 1966 he lambasted the majority in the famous criminal procedure case of *Miranda v. Arizona* for inventing a rule that he foresaw having a "corrosive effect on the criminal law," "return[ing] a killer, rapist or other criminal to the streets...to repeat his crime whenever it pleases him," and thus achieving "not a gain, but a loss, in human dignity." His most famous and scorching dissent was to the 1973 abortion decision, *Roe v. Wade*, in which he condemned the Court for acting illegitimately and declared that the decision could be justified only as an exercise of "raw judicial power."

White's importance to the Court is not, however, as a dissenter. He has written a number of important opinions of the Court in a variety of fields, from labor law to antitrust, as well as in the more publicly recognized areas of criminal procedure and race-- most notably *Washington v. Davis* (1976), which established that a certain standard of intent to discriminate needed to be demonstrated for a violation of the equal protection clause of the Fourteenth Amendment. Although sharply criticized by many political interest groups, the opinion was for a unanimous Court on the constitutional issue and reflected White's own attempt to mediate between aggressive enforcement of equal rights, which he earlier championed at the Justice Department, and his view that the Constitution is not an empty vessel into which judges may pour any social policy they see fit. He best expressed the latter view in his opinion in *Moore v. City of East Cleveland* (1977), an economical and eloquent essay on the Court's role in developing the proper scope of the due process clause.

White has also written important opinions on the freedom of press clause in the First Amendment, including decisions denying constitutional protection to the identity of journalists' sources or their premises of work. He has also urged the Court

to marshal its resources more effectively to resolve conflicting interpretations of federal statutes and other important issues. White's style in writing opinions is--like the author--precise, unpretentious, and impatient to finish the job. Time is not wasted measuring competing views or amplifying abstract theories. Nicholas Katzenbach has explained:

"It is my belief that to a large degree his opinions reflect his character and personality as well as his view of the role of the Court. As to the latter, he has strong views as to the predominant role of the political branches in our governmental system and deplores the tendency for justices to believe the Constitution embodies their personal views of what is good for society. As to the former, he has a professional practitioner's view, a belief that hard work and determination can lead to success, and a lack of sympathy for those who abuse power and privilege as well as those who whine about bad luck. These views tend to make him tough on those in government or out who don't respect and comply with law."

Justice White remains a puzzle to many. More than one scholar has expressed perplexity over the perceived dissonance between White's voting record on the Court and President Kennedy's "own often expressed concepts in civil liberties and human dignity." A thoughtful examination of the record will suggest, on the contrary, that the observation rests on a misapprehension both of Kennedy and of White, and on an erroneous assumption about Presidential capacity to know or dictate judicial behavior, especially over time. After three decades on the Court, White has shown himself to be his own man, and not part of a bloc or a negotiating team; to treat his job very pragmatically, and not as an academic seminar for theorists; and, above all, viewed in the best light, to treat his judicial oath as a trust and not as an estate.



President Bush (left) speaks with Senator John Danforth (R-Missouri) (center) and Justice Byron White (right) at the reception on the occasion of Justice Clarence Thomas taking the Judicial Oath. Justice Thomas worked for Senator Danforth in the 1970s, and Senator Danforth championed Justice Thomas' nomination through the Senate.

Justice White Announces Retirement

President Clinton Nominates Judge Ginsburg

On Friday, March 19, 1993 Justice Byron White announced his intention to retire. In a brief statement Justice White said, "I have today notified the president that I have decided to retire from active service as an associate justice, effective at the time the court next rises for its summer recess.

"It has been an interesting and exciting experience to serve on the Court. But after 31 years, Marion and I think that someone else should be permitted to have a like experience.

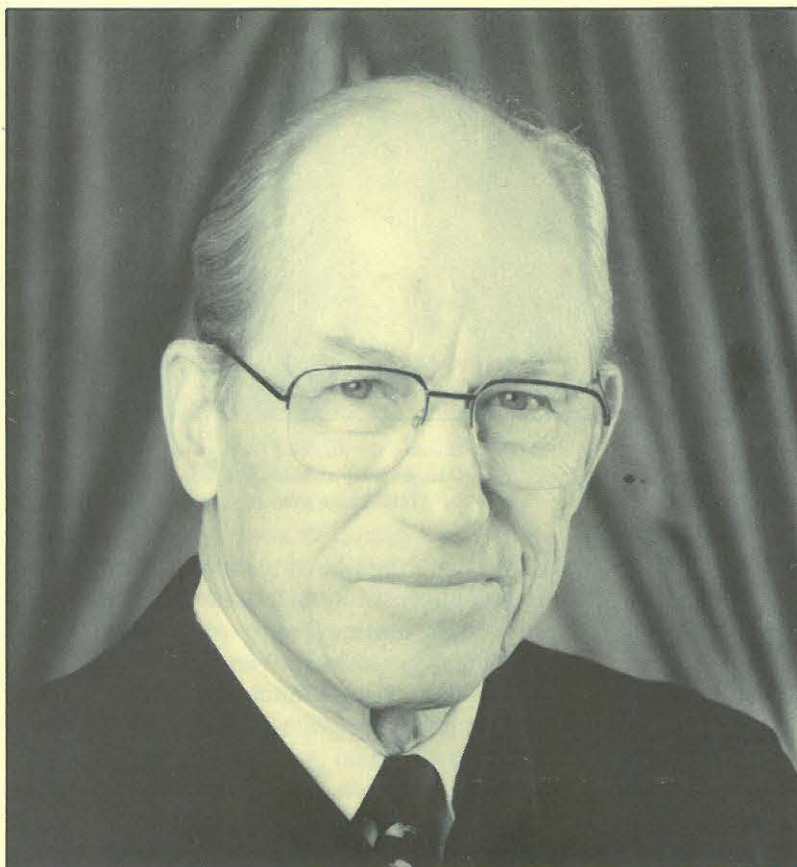
"For the time being we shall remain in Washington, and I shall likely move my office to the new Thurgood Marshall Federal Judiciary Building. I also expect that from time to time I will sit as an appellate judge on the Courts of Appeals."

Justice White was nominated to the Court in 1962 by President John F. Kennedy. In making the nomination President Kennedy said White had "excelled in everything he has attempted" and "seen life." Justice White served on the Court for thirty-one years.

Justice and Mrs. White have been long-time and enthusiastic supporters of the Historical Society. In November, they hosted a dinner for the State Membership Chairs in the Court's East and West Conference Rooms. The 1993 *Journal of Supreme Court History* will feature tributes to Justice White by Chief Justice William H. Rehnquist and Rex E. Lee, President of Brigham Young University and a former Law Clerk to Justice White.

President Bill Clinton nominated Judge Ruth Bader Ginsburg to fill Justice White's seat on June 14, 1993.

Judge Ginsburg currently sits on the U.S. Court of Appeals. The fall issue of the *Quarterly* will cover the nomination in more depth.



At the time of his retirement, Justice Byron White had the longest tenure of any current Justice.

Supreme Court Historical Society
111 Second Street, N.E.
Washington, D.C. 20002