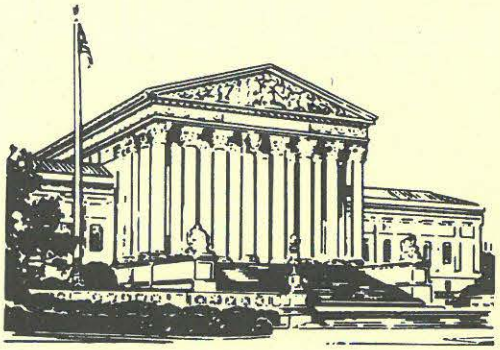


THE SUPREME COURT
HISTORICAL SOCIETY

Quarterly

VOLUME XVI NUMBER 1, 1995

Twentieth Annual Meeting on June 5, 1995

The Officers and Trustees of the Supreme Court Historical Society are pleased to announce that the Society will hold its Twentieth Annual Meeting on Monday, June 5, 1995. The Annual Meeting will be held once again in the Supreme Court of the United States. The day's events will include the Annual Lecture, the annual meetings of the general membership and the Board of Trustees. A black tie reception and dinner in the evening will be the closing event of the day.

The Twentieth Annual Lecture will be delivered by Gerald Gunther of Stanford University where he is both Professor of Constitutional Law and the William Nelson Cromwell Professor of Law. Professor Gunther will speak on Judge Learned Hand—the focus of Gunther's recently acclaimed book *Learned Hand: The Man and the Judge*. The lecture will be held at 1:00 p.m. in the Supreme Court Chamber. Members should arrive early as there is no reserved seating.

Tours of the Supreme Court Building will be available immediately following the lecture to any interested Society members. The tours will originate in the Supreme Court Chamber and will be conducted by guides from the Office of the Curator of the Court. The tours will afford members a rare, behind-the-scenes look at the Supreme Court including a chance to view paintings and artifacts the Society has provided to the Court.

The Annual Reception and Dinner will be held in the East and West Conference Rooms and in the Great Hall of the Supreme Court.

Chief Justice Warren Burger addressed the guests at the Supreme Court Historical Society's First Annual Meeting in 1976. Chief Justice Burger has served as the Society's Honorary Chairman since it was founded in November 1974. The 1995 Annual Meeting will be the Society's twentieth.

This portion of the evening is a paid event and will require advance reservations. Because this a very popular event and seating is extremely limited, it is advisable to make your reservations promptly upon receipt of the invitation. Invitations will be mailed to all members thirty to forty-five days preceding the meeting.

William Bradford Reynolds welcomed members to the Nineteenth Annual Meeting of the Supreme Court Historical Society on June 13, 1994.

Justice Anthony M. Kennedy shares a laugh with former Society Membership Chair Charles Renfrew at the Nineteenth Annual Dinner.

A Letter From the President

Leon Silverman

Many of you will be renewing your membership this spring, and on behalf of my fellow Officers and Trustees, I want to thank you for your continuing support to the Society. Your loyalty, along with the yeoman's job Membership Committee Chair Bill Haight is doing to recruit new members, is giving the Society the stable membership base it needs to carry out its many programs. In fact, by the time you read this, Bill and the State Membership Chairs he appointed for the 1994-5 membership campaign will have been honored at a dinner hosted by Justice Ginsburg on April 13. And, as a result of their efforts, the Society's membership has reached an all-time high of over 5,100.

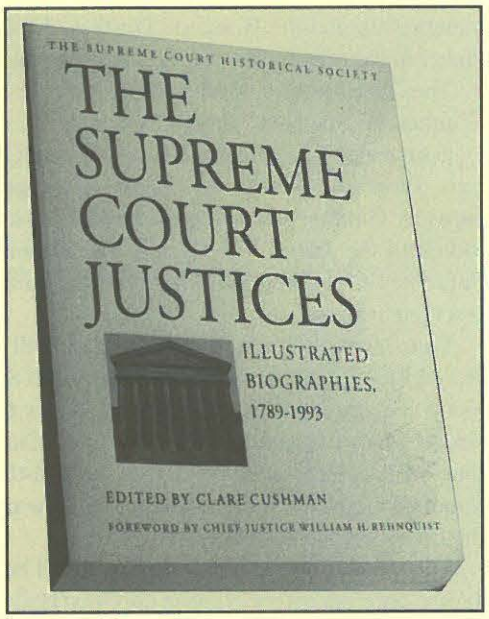
Because I think it provides added inducement to renew your membership, I will take this opportunity to say a few words about some of the programs your generosity sustains. Yet, against the possibility that it may induce some to think that all is well with the Society, and your charitable acts may be better directed elsewhere, I will balance those words with an overview of the needs we must yet address. Indeed, as far as the Society is stretching each and every contribution it receives, some of our activities will soon be in desperate straits if we do not all pitch in and work a little harder to carry them through.

Before I get to that, however, I would like to heap some well-deserved praise upon some of the projects your membership donations are bringing to fruition. Among these is the Supreme Court in World War II lecture series. With four of six planned lectures under our belt, and substantial attendance at each of the talks, this program has already done much to open this intriguing era in the Court's history to a broad audience. That impact will expand dramatically upon the series' completion, however, because Court TV is filming each evening's talk for broadcast at a later date. We will publish the broadcast dates in the *Quarterly* once they are available, for the benefit of members who were unable to attend any of the lectures.

The first lecture in the series on the Supreme Court and the World War II concluded with a reception marking the opening of the Court Curator's exhibit on the Court and World War II.

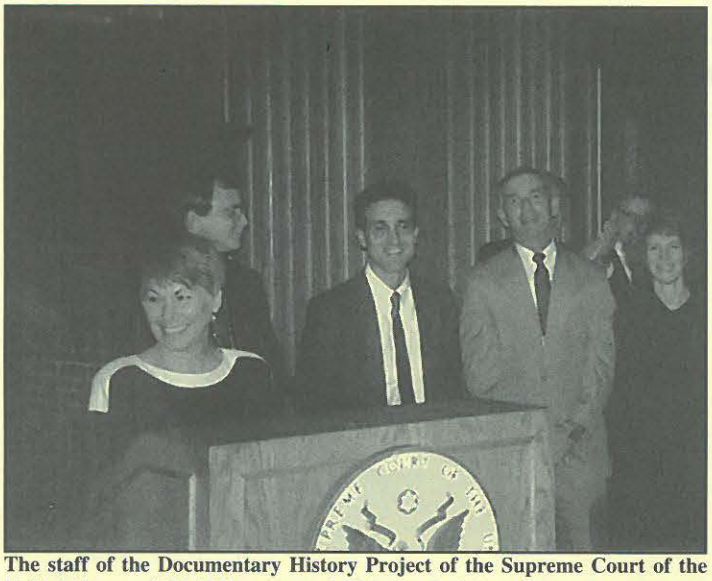
Nor will members who watch little television be left out. Just as Society members recently received the *Jewish Justices of the Supreme Court*, stemming from our lecture series on that subject, a collection of papers delivered in the World War II lecture series will be one of the many membership benefits you can expect between now and next spring. Members can also expect, in the interim, to receive a copy of the yet untitled collection of papers stemming from last year's Supreme Court in the Civil War lecture series.

Other books your membership dues are making possible are a soon-to-be-published collection of photographic architectural studies of the Supreme Court building now being assembled by noted photographer Fred Maroon, and a second edition of the *Supreme Court Justices: Illustrated Biographies*. Two printings of this book's first edition have already sold out. The new edition, which will include biographies of Justices Ruth Bader Ginsburg and Stephen Breyer, will become available within the next few months, and members are entitled to substantial discounts on both the *Illustrated Biographies* and the Maroon photographic study.



In addition to the books your dues are helping to develop, the Society, in cooperation with the National Institute for Citizen Education in the Law (NICEL) is about to introduce its first summer institute for teachers, to improve secondary school educators' ability to teach about the Supreme Court and the Third Branch of government. The pilot program will bring twenty-five or more secondary school teachers to Washington to study the Court first hand for a week in June. Among their responsibilities will be the development of several lesson plans, incorporating what they've learned into a practical curriculum to be made available to schools throughout the country. The Society hopes this outreach program will eventually lead to a dramatic increase in public education about the Supreme Court in the nation's secondary school systems.

I could go on about the many other things the Society is able to accomplish through your support, but I think it important to also make you aware of where we are presently falling short.



The staff of the Documentary History Project of the Supreme Court of the United States, 1789-1800 presented Volume 5, *Suits Against States*, to the Supreme Court in a ceremony in October 1994. Project Editor Dr. Maeva Marcus and Associate Editors Stephen Tull, Robert Frankel, Jr., James Brandow and Natalie Wexler were on hand for the ceremony.

Simmie Knox, Collection of the Supreme Court of the United States

Thurgood Marshall served as an Associate Justice of the Supreme Court for twenty-three years culminating a lifelong career of public service. The Society hopes to pass legislation to authorize a coin commemorating the achievements of this remarkable man: the first African-American Justice and the highest-ranking African-American in United States government history.

Since 1977, the Society has cosponsored, with generous assistance from the Court, the Documentary History of the Supreme Court of the United States, 1789-1800 (DHP). So important has the project been that it has attracted generous contributions from the National Historical Publications and Records Commission, the William Nelson Cromwell Foundation, the Andrew W. Mellon Foundation, West Publishing Company and the Clark-Winchcole Foundation—to name a few. The Court's own budgetary constraints forced a curtailment of its assistance to the DHP in 1993. Since then, the Society has been forced to take on a much larger proportion of the DHP's expenses, resulting in a substantial projected operating deficit if alternative funding sources are not developed between now and the DHP's projected completion in the year 2000.

From a budgetary perspective, the Court has never had adequate funding to afford the collection and preservation of such tangible connections to its past as portraits, busts, antiques, and historical artifacts. Most of its collections of such items has been obtained through the efforts of the Society. These items are used by the Court Curator's Office to create educational displays for the enrichment of visitors to the Court.

Over a million Americans come to the Court each year, and benefit from the fine displays prepared by Curator Gail Galloway and her staff, but attendant to these displays is a growing backlog of unfunded maintenance and preservation of display items. In addition, on several occasions the Court has been forced to forego acquiring historically significant items because the Court's budget simply does not include adequate funding for collecting and preserving its history.

Logically, of course, that is the purpose for which the Society was formed. Although I am pleased to report we are able to do many good works, these are two glaring areas where we come up short.

We are seeking to address this shortfall—to guarantee the Documentary History Project's completion, and to adequately fund the Court's permanent historical collection—by seeking passage of a commemorative coin bill in Congress. I have mentioned this in some of my previous President's letters, and several of you have come forward offering to help with this campaign.

In the weeks ahead, the Society will attempt to secure the 290 cosponsors required for the bill to be considered in the House of Representatives. I am urging each you to call or write your Representative to ask them to support the bill, entitled H.R. 79, which was introduced by Representative Charles Rangel on January 4, 1995. If you have any questions, or would like further information on the bill prior to contacting your Representative, please call the Society's Executive Director, David Pride, at (202) 543-0400. The Society's fax number is (202) 547-7730.

We need your help to ensure the Court's history will be collected and preserved for future generations. I hope each of you will strive to encourage your Congressional Representatives to endorse this important legislation.

Leon Silverman

The Supreme Court Historical Society

Quarterly

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

Supreme Court Humor

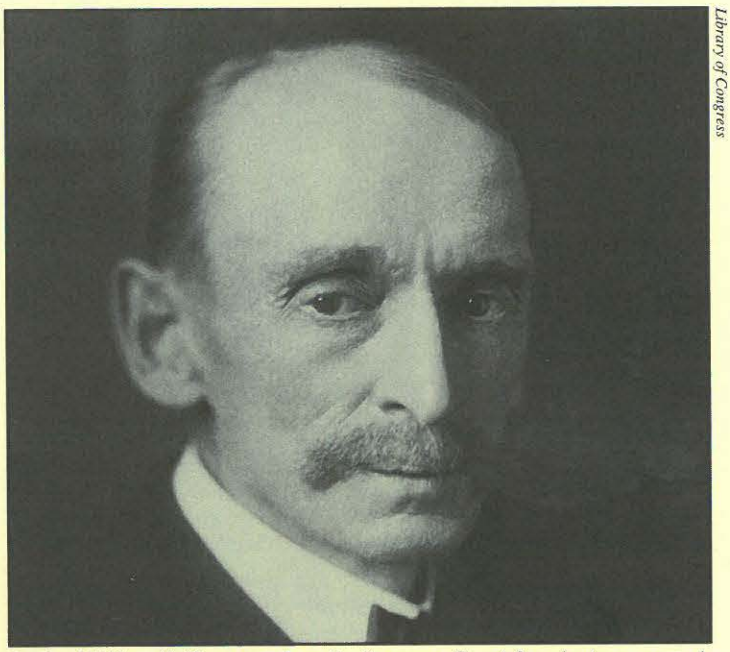
Bernard Schwartz

Supreme Court humor? The very term seems an oxymoron. "Judicial humor," writes William L. Prosser, "is a dreadful thing. In the first place, the jokes are usually bad . . . . In the second place, the bench is not an appropriate place for unseemly levity." That is particularly true when the levity has the litigant as its butt. As Prosser puts it, the litigant's "entire future, or even his life, may be trembling in the balance, and the robed buffoon who makes merry at his expense should be choked with his own wig."

The Prosser quotes are from his book, *The Judicial Humorist*, which presents some forty examples which, he says, show that "it is possible for judges to be funny." None involves a Supreme Court Justice. Yet, the members of the Highest Court, too, furnish examples of humor, some of which will be cited in this article.

Collection of the Supreme Court of the United States

Justice Oliver Wendell Holmes Jr., and Justice Louis D. Brandeis shared a close friendship during their sixteen years on the Supreme Court.



Library of Congress

Justice William R. Day served on the Supreme Court for nineteen years. A physically slight man, he nevertheless had a vigorous interest in sports—especially baseball.

The Justice with the keenest wit was undoubtedly Oliver Wendell Holmes, Jr.,—though there was a sardonic element underlying much of his humor. The anecdotes illustrating his sense of humor are almost endless. Only a few examples can be given here.

One of the most famous saw Justice Holmes (then aged about ninety) and Brandeis (aged seventy-five) walking through the park, when they saw an attractive woman. "Brandeis," said Holmes, "wouldn't it be wonderful just to be seventy again?"

During the early part of the century, Holmes wrote that his Supreme Court colleagues were "enthusiasts for liberty of contract," who invalidated a host of regulatory laws as infringements upon liberty of contract. Their constant invocation of the doctrine led Holmes to say, "When my brethren talk of liberty of contract, I compose my mind by thinking of all the beautiful women I have known."

On the bench, Justice Holmes was noted for his quips and frank comments. His colleague Justice William R. Day was an extremely small man. One day his son, a six-foot former football player was arguing before the Court. Holmes took one look at him and passed a pencilled note along the bench, "He is a block off the old chip."

Another time, James M. Beck, Solicitor General from 1921-1925, was arguing a case. He was a long-winded lawyer who quoted Shakespeare ad nauseam and customarily ended his argument with what he called a "not inappropriate" quotation. During the lengthy argument, Holmes could stand it no longer. He leaned over to the Chief Justice and, in an audible whisper, commented, "I hope to God Mrs. Beck likes Shakespeare!"

—continued on page six

Amicus Curiae

As a member of the Society, you know that your membership dues help to fund the Society's various programs and activities. While membership dollars play a crucial role in supporting the Society, membership dollars alone can not sustain the wide range of programs and publications the Society offers. The cost of these projects is sometimes offset by grants and contributions from foundations, individuals, law firms and the corporate sector. In an effort to increase funding from these vital sources, the Society is launching its first Annual Fund Drive. Contributions to this year's Drive will help the Society accomplish the following:

- Raise funds toward a $130,000 matching grant provided by the Andrew W. Mellon Foundation in support of the Documentary History Project.
- Establish a Summer Institute for Teachers.
- Expand the Oral History Project to include interviews with persons who have had a significant impact on the Court.
- Publish *The Supreme Court and the Civil War.*
- Conduct a lecture series on the history of the Court during World War II.
- Provide support to the Supreme Court Curator's office for procurement and conservation assistance.

The goal for this year's Annual Fund Drive is for $60,000 in contributions. Aside from soliciting corporate and foundation donations, the Society will be asking a select group of members to contribute to the Annual Fund. Many members have already demonstrated their willingness to provide additional support by donating to the Documentary History Project. If you receive an Annual Fund Drive solicitation, we hope that you will consider a donation beyond your yearly dues.

Society Cosponsors Summer Institute For Teachers

The Society is pleased to be part of an exciting new educational program that will conduct a summer institute for secondary school teachers. Classes will be conducted by the National Institute for Citizen Education in the Law (NICEL). The Society joins Georgetown University Law Center as a cosponsor for this program. A spokesperson for NICEL described the origin of the program: "several national studies have shown that only limited information on the Supreme Court's operation is available in high school social studies textbooks. Significant historical decisions are treated only cursorily, and information about the Court's most recent decisions is generally not available. While summer programs of study for teachers are common . . . there has never been, an institute in Washington, D.C. focusing directly on the history, operation and important decision of the U.S. Supreme Court." The program was designed to provide this opportunity and training to teachers.

NICEL has a twenty-two year record of success in working with teachers nationally, and specifically in the District of Columbia. Many of their programs have focused on law-related education, including such classes as Street Law, Teens, Crime and the Community and other programs aimed at helping high school students understand their rights and responsibilities as citizens. In addition to national programs, NICEL also has programs in South Africa, Bolivia, Chile, Ecuador, Nambia, Eastern Europe and Kazakhstan.

The Supreme Court institute will provide a teacher-oriented program of intensive learning and curriculum development. Because it concentrates solely on the Supreme Court and cases before it, the institute will be markedly different in scope than most other summer programs offered to teachers. Teachers will be selected primarily based on their ability to use the material in the classes they teach, but some attempt at geographical balance will also be part of the selection process. The institute will be conducted at the Georgetown University Law Center which will contribute classroom space and library facilities. The Supreme Court Historical Society is providing funding so that this program can become a reality.

The NICEL staff will prepare five new lessons on recent Supreme Court cases. In addition, teachers participating in the program will produce one lesson on a particular legal or constitutional subject. These lessons will be exchanged with other teachers attending the institute. NICEL staff members estimate that 3,000 students will be the direct recipients of this new curriculum as teachers return to their classrooms and implement it in the 1995-96 school year. Additional outreach will be achieved by making the lesson plans available to social studies coordinators in each participating school district. It is also hoped that institute participants will conduct seminars in their own school districts to share their experience with their peers.

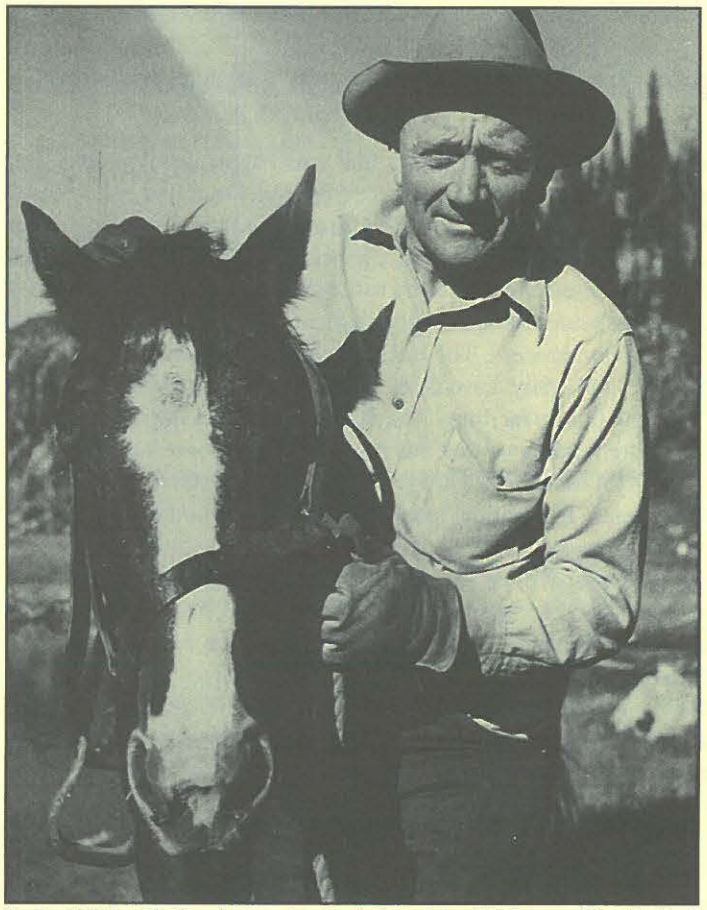
The Society is proud to be a sponsor of this outstanding program. The first institute will take place June 21-27, 1995. It is hoped that this seminar will be only the first of many such programs. A complete report of the institute will appear in a future issue of the *Quarterly*.

S. C. Humor *(continued from page four)*

In the Court itself, Holmes used to disagree with Justice Pierce Butler—now remembered as one of the "Four Horsemen" who invalidated the New Deal legislation. Once, after a lengthy conference debate, Butler's position was adopted with only Holmes dissenting. Butler then turned to Holmes and said, "I am glad we have finally arrived at a just decision." Holmes came back, "Hell is paved with just decisions."

In recent years, there have been complaints about the decline in personal exchanges among the Justices. "When I first went on the Court," writes Chief Justice Rehnquist in his book on the Court, "I was both surprised and dismayed at how little interplay there was between the various justices." Another Holmes anecdote indicates that the situation was similar early in the century. When separate lavatory facilities were provided in the chambers of each Justice, Holmes observed, "The abandonment of a common men's room means that, off the bench, I'll never see my Brethren at all."

The Holmes wit was also displayed in his return to circulated opinions. Holmes's colleague, Justice Louis D. Brandeis, was noted for his weighty opinions. Filled with what Holmes once called "the knowledge and thoroughness with which he gathers together all manner of reports and documents," the Brandeis product was often heavy going. After he had read one such Brandeis draft, Holmes sent it back with the following comment: "This afternoon I was walking on the towpath and saw a cardinal. It seemed to me to be the first sign of spring. By the way, I concur."



Yakima Valley Museum

Justice William O. Douglas was known to be quick with his pen. After the feud between Justices Black and Jackson became public knowledge, Justice Douglas penned a quick verse to highlight his view on the matter.

Chief Justice Hughes, in his *Autobiographical Notes*, writes, "Justice Holmes was wont to comment gaily in returning the proofsheets of opinions." Hughes gives the following as an example:

> How sweet a countenance tyranny endues
> What reverend accents and what tender Hu(gh)es
> Such seeming modesty and justice blent
> Smile at the futile claims of long dissent.
> So I expect to shut up.

The Holmes doggerel brings to mind two more recent specimens, by Justices Douglas and Jackson. The Douglas verse was called forth by the Nuremberg press conference at which Justice Jackson publicly aired his feud with Justice Black. After he heard about it, Douglas composed the following bit of doggerel quoted in Sidney Fine's biography of Justice Murphy:

> There was an upstart called Jackson,
> Who went to Germany for action,
> Not to bring men to justice,
> But to feather his nestice,
> And finally fell flat on his asston.

Justice Jackson also had the Holmes-type sardonic wit. "The black hole of Columbia" was the way he came to call the Court. "Congratulations," Jackson once wrote to Frankfurter, "on your absence from today's session. Only if you have been caught playing the piano in a whorehouse can you appreciate today's level of my self respect."

The same attitude is apparent in some doggerel dashed off by Jackson, "With apology to Kip":

> Come you back to Mandalay
> Where the flying judges play
> And the fog comes up like thunder
> From the Bench decision day.
>
> Come you back to Mandalay
> And hear what the judges say
> As they talk as brave as thunder
> And then run the other way.

Even members of the Court noted for anything but humor have displayed flashes of wit. Thus, the first Justice Harlan was a most serious judge, who, Justice Frankfurter tells us, "wielded a battle-ax;" his opinions were vigorous, often impatient, sometimes bitter. With his colleagues, however, Harlan displayed a sense of humor that belied his gravity on the bench. When Chief Justice Waite sent Harlan a photograph, the Justice responded, "You look natural and life-like as you would look if I were to say that a gallon of old Bourbon was on the way from Kentucky for you."

A few years later, a Harlan letter to the Chief Justice contained a witty sketch of the vacation activities of some of the Justices:

> The last I heard from Bro Woods he was at Newark. Bros

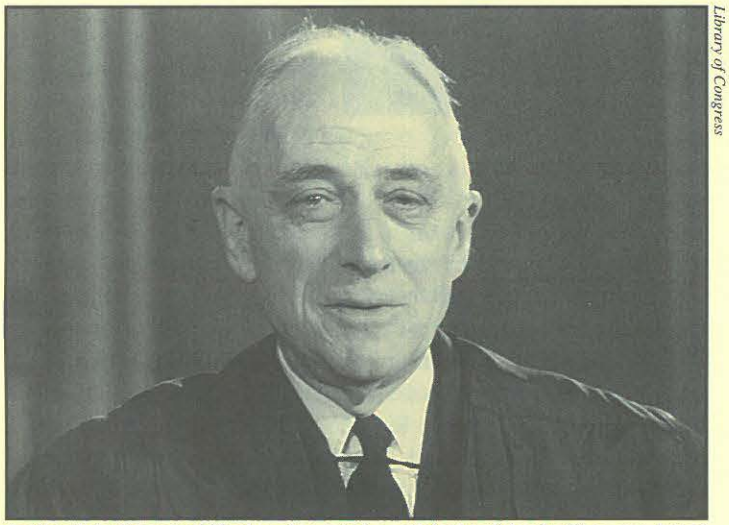
Matthews and Blatchford will, I fear, get such lofty ideas in the Mountains that there will be no holding them down to mother Earth when they return to Washington. Bro Bradley, I take it, is somewhere studying the philosophy of the Northern Lights, while Gray is, at this time, examining into the Precedents in British Columbia. Field, I suppose has his face towards the setting sun, wondering, perhaps, whether the Munn case or the essential principles of right and justice will ultimately prevail.

The second Justice Harlan was probably the most reserved of modern Justices. Yet he, too, could display atypical flashes of wit. In 1958 the Court decided *Cooper v. Aaron*, where the Justices issued an unprecedented opinion—one issued in the name of all the Justices—rebuffing the claim of Governor Orval Faubus of Arkansas that he was not bound by desegregation orders of the federal courts. After the joint opinion was approved, Justice Frankfurter told the conference that he was going to file a concurring opinion. The others were furious; such a separate opinion, they felt, could only detract from the force of the joint opinion. As Justice Douglas described it in an October 8, 1958, memorandum, "Frankfurter's concurring opinion was to several members of the Court pretty much of a bombshell. It left many suggestions and innuendoes which seemed to them to work against the effectiveness of the opinion handed down on September 29. A Conference of the Court was had about the matter. The Chief Justice and Justice Black spoke very strongly, their feeling being that his opinion would do damage."

Frankfurter himself, Douglas wrote, "blew up in Conference saying it was none of the Court's business what he wrote."

Justices Black and Brennan insisted that, if Justice Frankfurter persisted in filing the opinion, they would issue the following statement:

Mr. Justice Black and Mr. Justice Brennan believe that the joint opinion of all the Justices handed down on September 29, 1958 adequately expresses the view of the Court, and they stand by that opinion as delivered. They desire that it be fully understood that the concurring opinion filed this day by Mr. Justice Frankfurter must not be accepted as any dilution or interpretation of the views expressed in the Court's joint opinion.



Library of Congress

Justice John Marshall Harlan circulated a satirical opinion in *Cooper v. Aaron* to defuse tension between the Justices over Justice Frankfurter's proposed concurring opinion.

Chief Justice Warren disapproved of Frankfurter's opinion as strongly as Black and Brennan. But he felt that it would be unwise to issue still another opinion, particularly one that would make public the animosity toward the Frankfurter opinion. The others agreed with the Chief Justice, but they were unable to persuade Justices Black and Brennan. They persisted in refusing to remain silent if Justice Frankfurter went ahead, until Justice Harlan passed around the following satirical opinion:

MR. JUSTICE HARLAN concurring in part, expressing a dubitante in part, and dissenting in part,
I concur in the Court's opinion, filed September 29, 1958, in which I have already concurred. I doubt the wisdom of my Brother FRANKFURTER filing his separate opinion, but since I am unable to find any material difference between that opinion and the Court's opinion—and am confirmed in my reading of the former by my Brother FRANKFURTER'S express reaffirmation of the latter -I am content to leave his course of action to his own good judgment. I dissent from the action of my Brethren in filing their separate opinion, believing that it is always a mistake to make a mountain out of a molehill. Requiescat in pace.

Justice Harlan's droll draft defused the conference tension. Though Justice Frankfurter filed his separate opinion later that day, Justices Black and Brennan withdrew their statement.

This article can close with a mock opinion by Justice Frankfurter that contains a good example of Supreme Court wit. In 1957, Justice Frankfurter circulated the following opinion in a movie censorship case:

No. 372—October Term, 1957.

Times Film Corp.)
Petitioner,)
)
v.)
)
City of Chicago, Richard J.)
Daley and Timothy J. O'Connor)

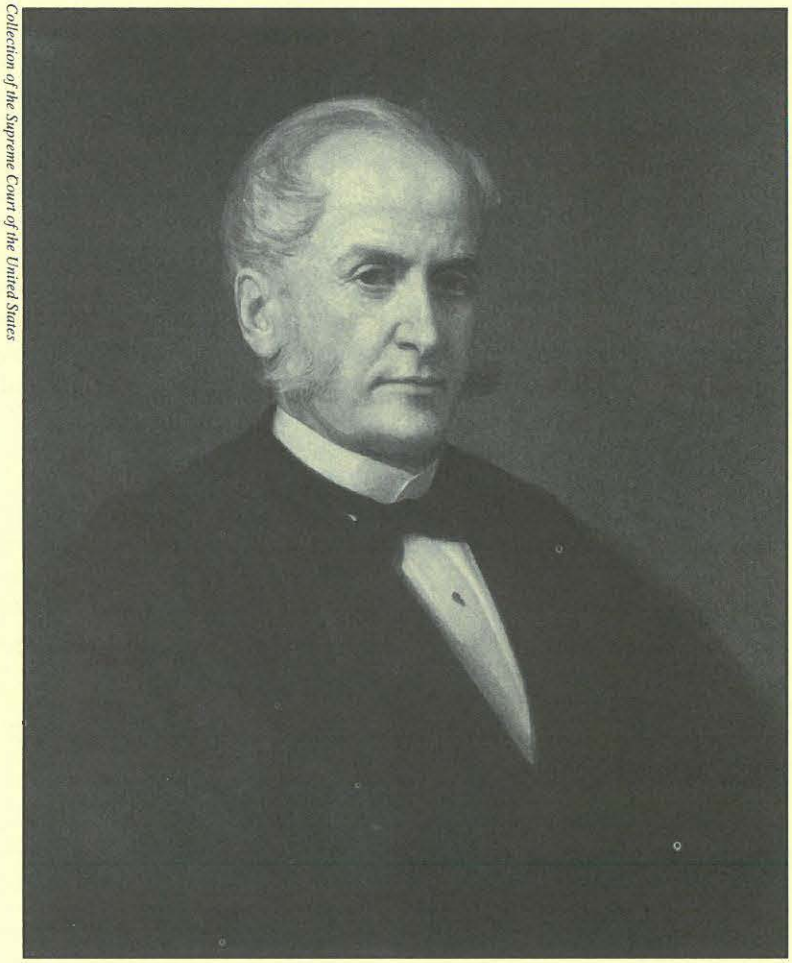
The Court of Appeals in this case sustained the censorship, under an Illinois statute, of a motion picture entitled, "The Game of Love." The theme of the film, so far as it has one, is the same as that in Benjamin Franklin's famous letter to his son, to the effect that the most easing way for an adolescent to learn the facts of life is under the tutelage of an older woman. A judgment that the manner in which this theme was conveyed by this film exceeded the bounds of free expression protected by the fourteenth Amendment can only serve as confirmation of the saying, "Honi soit qui mal y pense."

Ward Hunt

Melissa Hardin

Ward Hunt was born June 14, 1810, in Utica, New York, then a village of 1,600 inhabitants. His parents, Montgomery and Elizabeth Stringham Hunt, were well known within their small community because Ward's father worked as a cashier at the First National Bank of Utica for many years. The Hunts were descended from a New England settler, Thomas Hunt, who lived in Stamford, Connecticut, as early as 1650.

Ward Hunt began his education at the local Oxford and Geneva academies. After attending Hamilton College in Clinton, New York, for one year, he transferred to Union College in nearby Schenectady, where he graduated with honors at the age of eighteen. In 1829 he went to study law at the Tapping Reeve School, a private academy run by Judge James Gould in Litchfield, Connecticut. Supreme Court Justices Henry Baldwin and Levi Woodbury had also attended the school. Hunt returned to Utica to serve as a clerk for a local judge, Hiram Denio, and was admitted to the bar in 1831.



Collection of the Supreme Court of the United States

Ward Hunt
Associate Justice of the Supreme Court 1873-1882

Compelled by poor health to spend a winter in New Orleans, Hunt returned to enter a law partnership with Judge Denio. Hunt established his office in his old family home and soon developed a large and lucrative practice. Once comfortably settled into his profession, Hunt devoted himself to starting a family. In 1837 he married Mary Ann Savage, daughter of a prominent judge. The Hunts had three children, one of whom died in childhood. His wife died in 1845, and Hunt remained a widower for eight years before marrying Marie Taylor, who survived him.

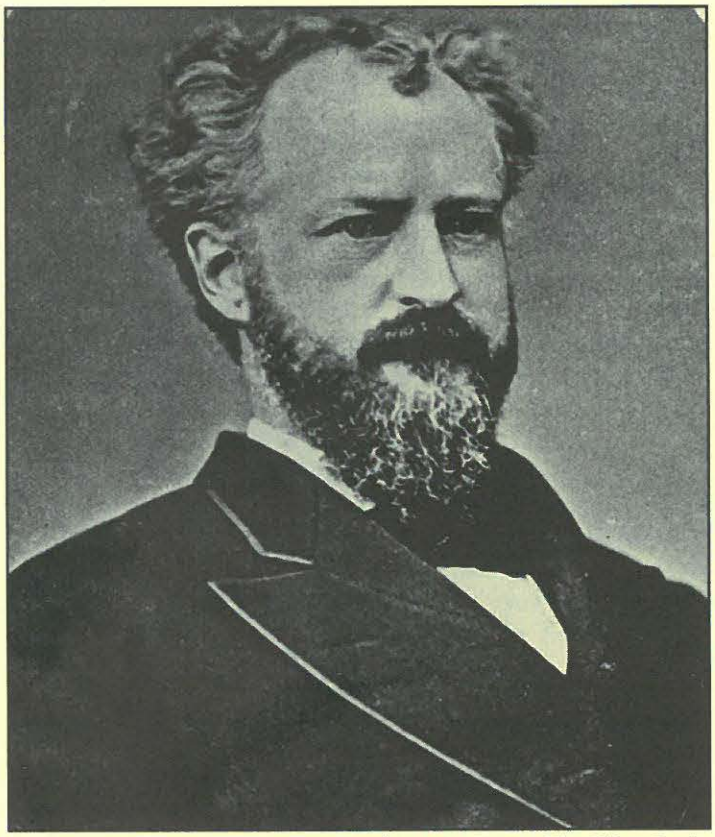
His reputation as a successful lawyer helped Hunt win a seat in 1838 in the New York state legislature, where he served for one term as a representative of Oneida County. In 1844 Hunt was elected mayor of Utica, which had been incorporated as a town in 1832 and had grown to a population of more than 9,000.

Hunt won these positions as a Jacksonian Democrat; however, in the late 1840s his opposition to the extension of slavery and to the annexation of Texas compelled him to loosen his ties with the Democratic party. As the slavery issue became increasingly bitter, Hunt moved away from the Democrats, supporting Martin Van Buren and the Free-Soil party in the presidential campaign of 1848. Hunt completed his break with the Democrats in 1856 when he threw himself into organizing the Republican party in New York State. During this time he formed an alliance with fellow Utica native Roscoe Conkling, who became the boss of New York's Republican political machine and who would ultimately be responsible for Hunt's nomination to the Supreme Court of the United States.

Hunt's zealous support for the Republican party and his vigorous efforts at organizing won him prominence in the ranks of the young organization. In 1857 the Republican caucus in Albany actively considered him as a candidate for the U.S. Senate. Hunt's eventual decision to withdraw from the race was motivated by his desire to preserve harmony within the party as well as his ambivalence about running for political office.

Less interested in politics than jurisprudence, Hunt had early ambitions for judicial office. A few years after he served as mayor, Hunt had sought a position on the New York Court of Appeals. His defeat was allegedly due to Irish hostility inspired by Hunt's successful defense of a policeman who had been charged with the murder of an Irishman. In 1853 he ran for the same office again on the Democratic ticket and lost, probably because of his defection to the Free-Soilers in the presidential election several years earlier.

Hunt's decisive switch to the Republican party and his success within it improved his chances of becoming a judge. During the Civil War, Hunt gained visibility when he served as temporary chairman of the 1863 Republican Union Convention in Syracuse, New York, as it rejoiced over the latest Union army victories at Vicksburg and Gettysburg. In 1865 Hunt was finally elected as a Republican to the New York Court of Appeals, the state's highest court, where he succeeded Judge Denio, his former law partner. Three years later he was elevated to chief justice of the court of appeals. Following a judicial reorganization effected by a constitu-



Senator Roscoe Conkling recommended fellow New Yorker Ward Hunt for the Supreme Court of the United States. In an ironic twist, President Chester A. Arthur nominated Conkling to that same seat after Justice Hunt retired for health reasons.

tional amendment in 1869, he was retained as commissioner of appeals.

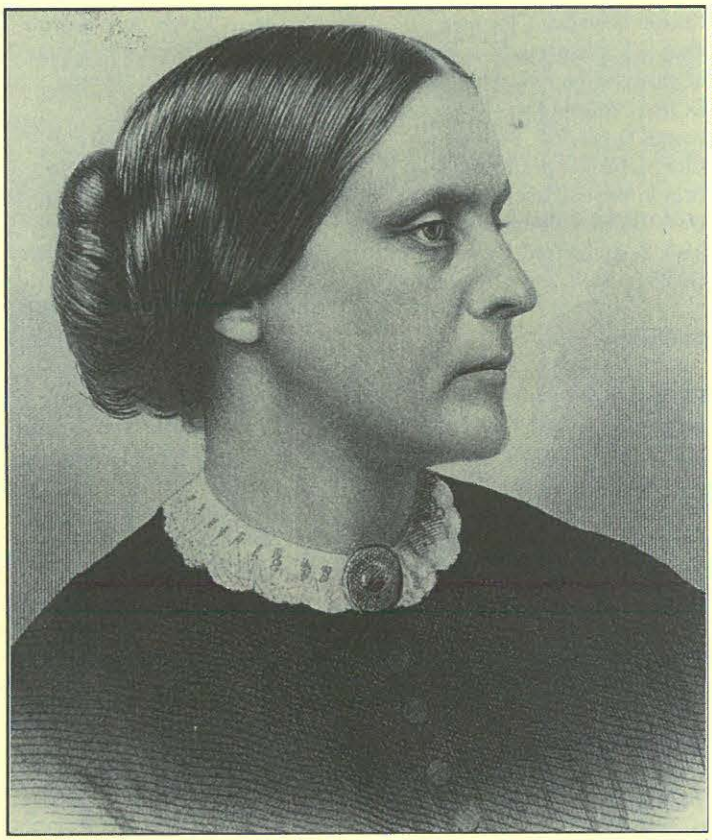
In the fall of 1872 Conkling, who had been elected a senator from New York in 1866, persuaded President Ulysses S. Grant to nominate his old ally to succeed Justice Samuel Nelson on the Supreme Court of the United States. As a result, Hunt was selected over several better known figures who had been considered for the vacancy. He was confirmed by the Senate December 11, by a voice vote, and took his seat January 9, 1873. During his five years of active service on the Court, Justice Hunt would craft few opinions on significant constitutional issues, and would write only seven dissents.

Hunt made his most noteworthy and enduring contribution in his dissent in *United States v. Reese* (1876). By invalidating parts of the Enforcement Act of 1870, the *Reese* decision weakened any chance for the application of the Fifteenth Amendment to protect black voting rights. In response to the outbreak of Ku Klux Klan intimidation of southern blacks, Congress had passed the Enforcement Act, which guaranteed voting rights for black males and imposed severe penalties for interfering with the right to vote. The *Reese* case began when two inspectors at a municipal election in Kentucky were indicted for refusing to accept and count the vote of William Garner, a black. The trial court dismissed the indictment, and the Supreme Court later affirmed the decision by a vote of 8 to 1. Hunt was the lone dissenter.

For the majority, Chief Justice Morrison Waite declared that "the Fifteenth Amendment does not confer the right of suffrage upon anyone:" rather, it merely "prevents the States, or the United States . . . from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude." Furthermore, he found that in the Enforcement Act of 1870 Congress had not limited the penalty provisions to illegal refusals of voters because of their race. In a far-reaching dissent, Hunt argued that "aforesaid" obviously referred to the prohibitions against racial discrimination mentioned in the preceding sections. Despite Hunt's contention, the majority dismissed the indictment, sending the message to Congress that unless it crossed every "t" and dotted every "i," the Court would not sustain its civil rights legislation.

Although he seemed to support black civil rights in the *Reese* case, Hunt was not a progressive when it came to women's rights. In 1872 women's suffrage advocate Susan B. Anthony voted in an election in Rochester, New York. Because the state constitution limited suffrage to males, Anthony acted in violation of Section 19 of the Enforcement Act of 1870 by "knowingly . . . voting without having a lawful right to vote." Anthony was indicted, and Hunt served as circuit judge at her trial in June 1873. He refused to instruct the jury that proof of the defendant's belief in good faith that she had a right to vote would render her not guilty. Hunt reasoned that since the court was supposed to

—continued page thirteen



The Bettmann Archive

Susan B. Anthony devoted her life to many causes including the abolition of slavery and the temperance movement. However, the primary focus of her work was women's suffrage. She organized, along with Elizabeth Cady Stanton, the National Woman Suffrage Association in 1869. Anthony also coauthored the first three volumes of *History of Woman Suffrage* with Stanton and edited the militant magazine *Revolution*.

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—continued on next page

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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.

Hunt *(continued from page eight)*

Collection of the Supreme Court of the United States

The Waite Court: (from left) Joseph P. Bradley, Stephen J. Field, Samuel F. Miller, Nathan Clifford, Morrison R. Waite, Noah Haynes Swayne, David Davis, William Strong and Ward Hunt.

acquit if there was not sufficient evidence to warrant conviction, then likewise, the court should deliver a verdict of guilty when the facts constituting guilt were undisputed. Anthony, Hunt said, "intending to do just what she did . . . had knowingly voted, not having a right to vote, and . . . her belief did not affect the question." He fined Anthony $100. Nine years later, circuit court judge C. J. McCrary overturned the reasoning Hunt had used in *United States v. Anthony*, saying that "the court erred in charging the jury to find the defendant guilty."

Justice Hunt is chiefly remembered for his refusal to resign from the Court for three years after suffering an incapacitating stroke. In 1877 Hunt's health began to fail, and he missed several sessions of the Court because of gout. In January 1879 Hunt had a stroke that left his right side paralyzed. Although he regained some mobility, the minutes record that he sat on the Bench only one more time, on November 29, 1881.

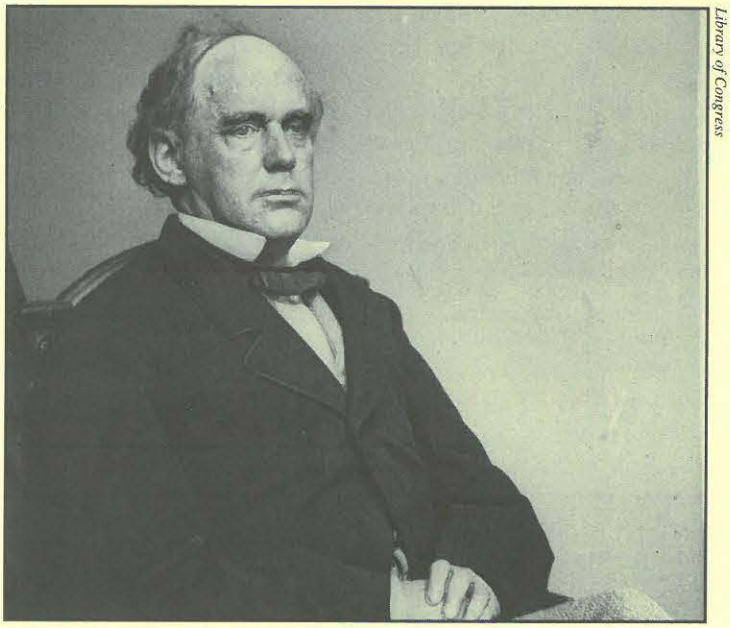
More than three years behind with its docket, the Supreme Court was overwhelmed. In addition to Hunt, Justice Nathan Clifford was also permanently disabled. Despite many gentle hints from Chief Justice Waite, Hunt refused to resign. He had not met the requirement of the Judiciary Act of 1869, which granted a lifetime salary to any judge of any court of the United States who had served ten years and had reached the age of seventy. Furthermore, Senator Conkling, who was feuding with President Rutherford B. Hayes over the president's reform of the "spoils system" of political patronage, urged Hunt not to give Hayes the opportunity to appoint his successor. In January 1882, prompted by Sen. David Davis, Hunt's former colleague on the Court, Congress passed a special retirement bill for Hunt, granting him a pension. He retired the day the bill became law, and, in an unusual twist, President Chester A. Arthur nominated Conkling, who had recommended Hunt for a seat on the Court, as his successor. Conkling was confirmed but declined the seat because he harbored presidential ambitions.

Although obscured by the strong personalities of Justices Samuel F. Miller, Stephen J. Field and Joseph P. Bradley, Hunt was a well-liked and respected member of the bench. He was a hard-working judge who researched carefully and wrote clear decisions. Like most of his colleagues, Hunt averaged about twenty-five majority opinions per year during his five years of active service. Justice Miller, usually critical and sharp, described his colleague as one of the "most agreeable men on the bench." He conceded that while Hunt was "not a very strong man in intellect," he considered him to be a "cultivated lawyer and gentleman." Hunt died in Washington, D.C. on March 24, 1886, four years after his retirement.

Trivia Answers (questions appear on page sixteen)

Library of Congress

1. According to Justice Felix Frankfurter, Chief Justice William Howard Taft once made this remark. This led Justice Frankfurter to write that "he had a very different notion of heaven than any I know anything about." Felix Frankfurter *Reminisces* 86 (1960).



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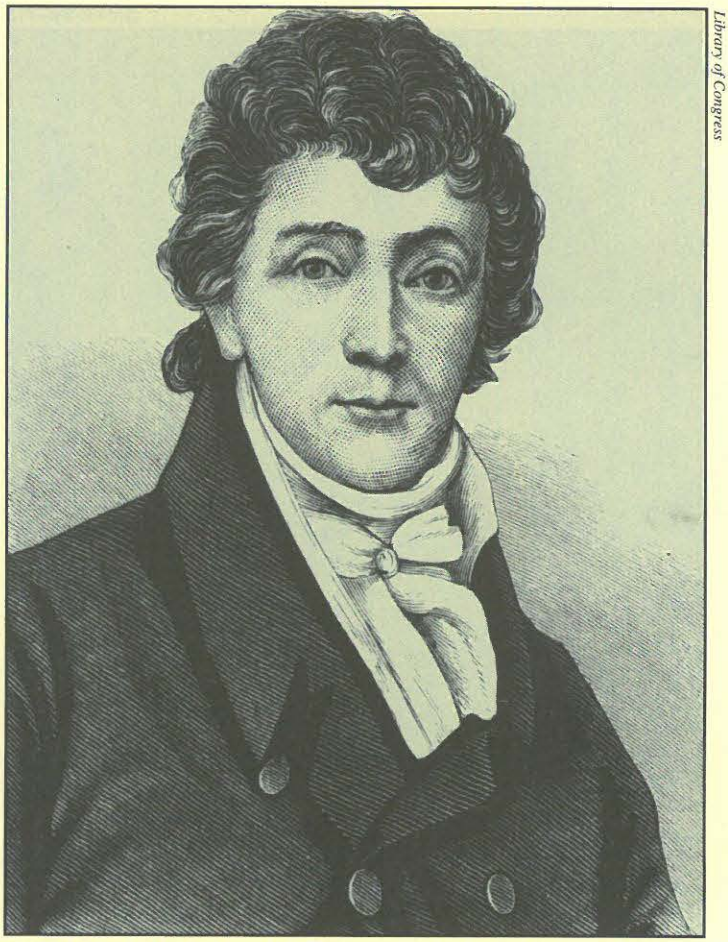
2. Chief Justice (and former Secretary of the Treasury) Salmon P. Chase had his photo on the $10,000 bill, which is no longer printed.



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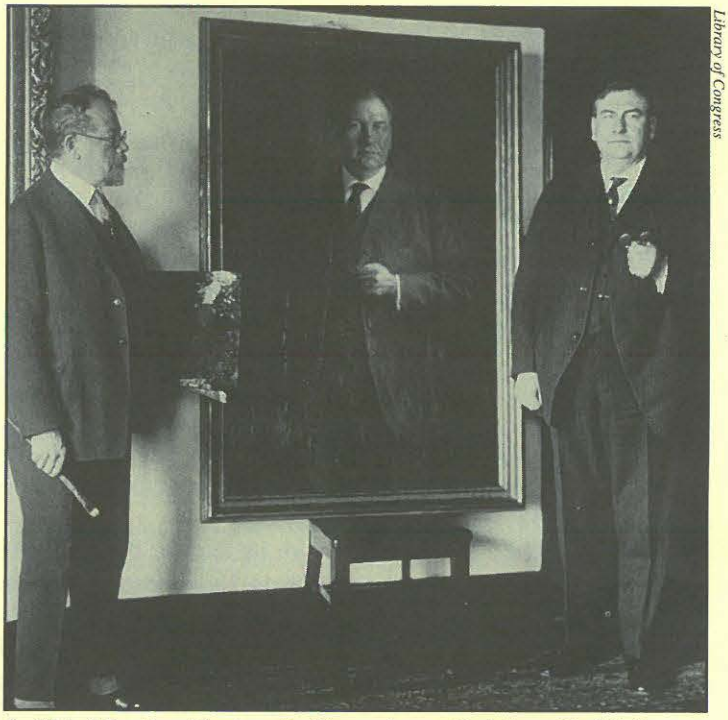
3. Chief Justice Roger B. Taney married the sister of Francis Scott Key (above) in 1806.



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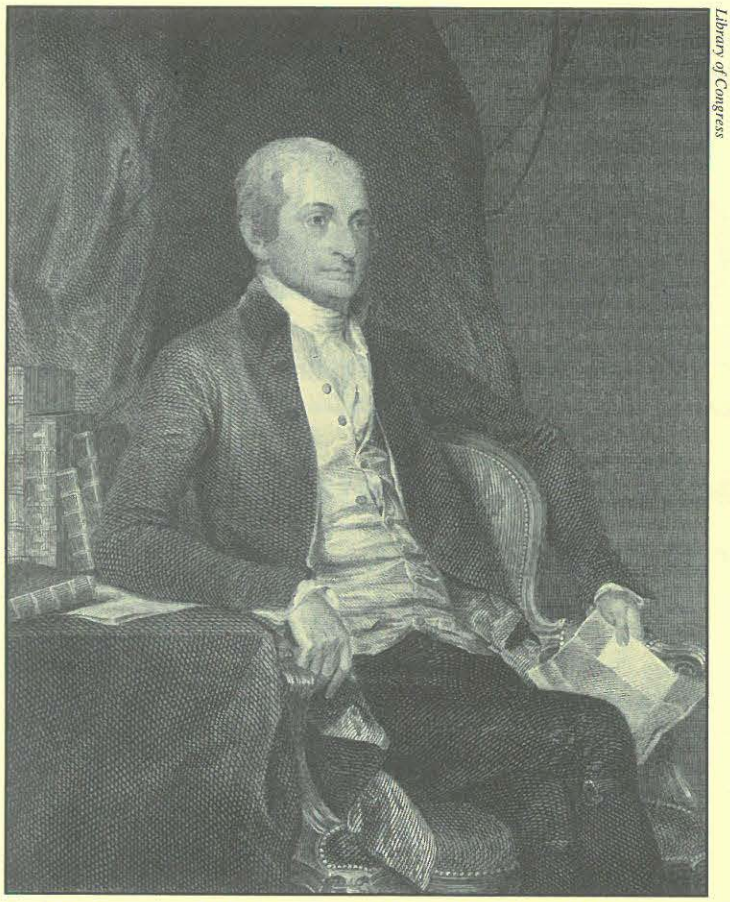
4. Chief Justice Harlan F. Stone, born October 11, 1872, was appointed Chief Justice July 3, 1941.



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5. Chief Justice John Jay, born December 12, 1745, was appointed Chief Justice September 24, 1789.

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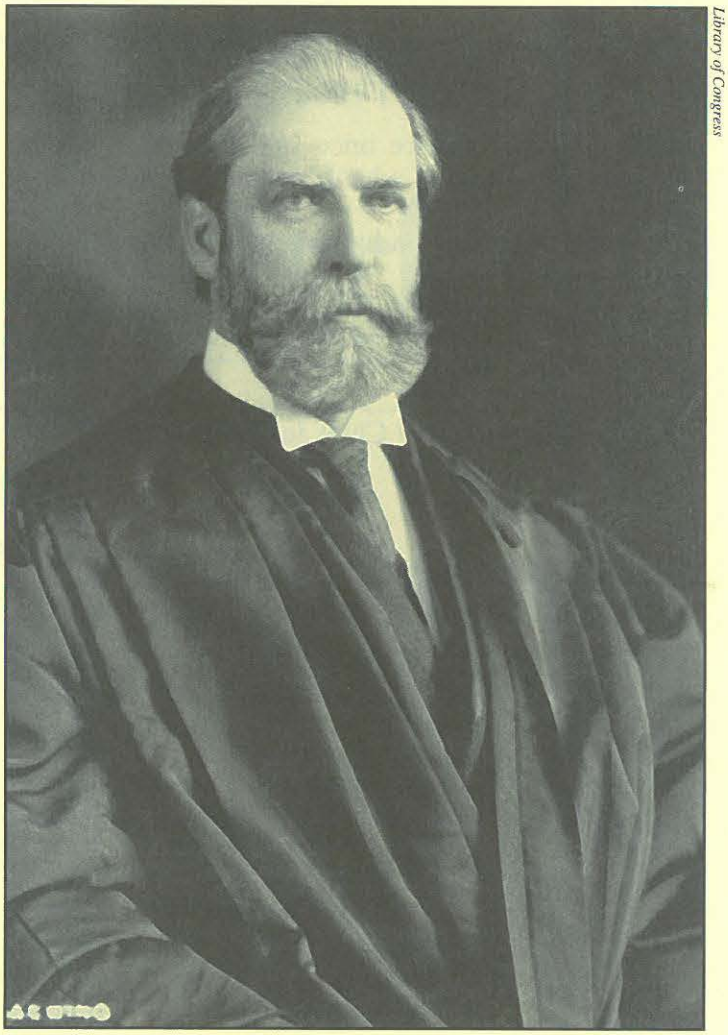
6. Chief Justice Melville W. Fuller attended Harvard Law School for six months. The first Chief Justice to graduate from law school was Chief Justice Taft, who graduated from Cincinnati Law School in 1880.



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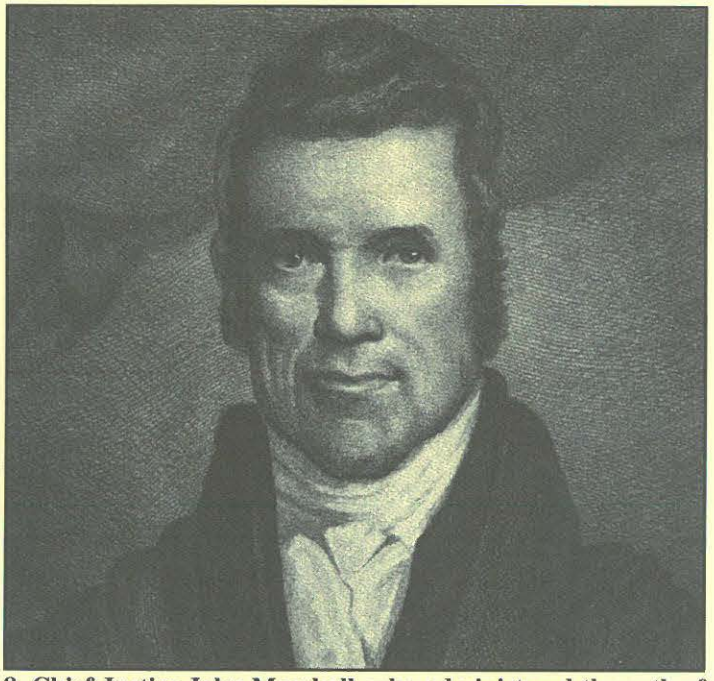
7. Chief Justice Charles Evans Hughes resigned as Associate Justice in 1916 to accept the Republican nomination for the Presidency.



8. Chief Justice John Marshall, who administered the oath of office nine times to five Presidents.

Supreme Court Trivia

Bernard Schwartz

1. What Chief Justice once said that the Supreme Court was his notion of what heaven must be like?

2. What Chief Justice had his picture on U.S. currency?

3. What Chief Justice's brother-in-law wrote *The Star Spangled Banner?*

4. Who was the oldest Chief Justice appointed?

5. Who was the youngest Chief Justice appointed?

6. Who was the first Chief Justice to go to law school?

7. What Chief Justice had resigned from the Court to run for President?

8. What Chief Justice administered the Presidential oath of office the most times?

Answers appear on pages fourteen and fifteen.

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