

## Chief Justice Warren E. Burger Dies Founder and Honorary Chairman of Society

Chief Justice William H. Rehnquist announced from the Bench on June 26, 1995 "with sadness that our friend and colleague Warren Earl Burger, a former Chief Justice of this Court, died yesterday in the early morning, at Sibley Hospital in Washington, D.C.

"Born in St. Paul, Minnesota in 1907, Warren Burger was a self-made man. Not having the finances to attend college full time he sold insurance during the day to pay his way through night school. He spent two years at the University of Minnesota and then graduated with honors four years later from the Mitchell College of Law, formerly the St. Paul College of Law.

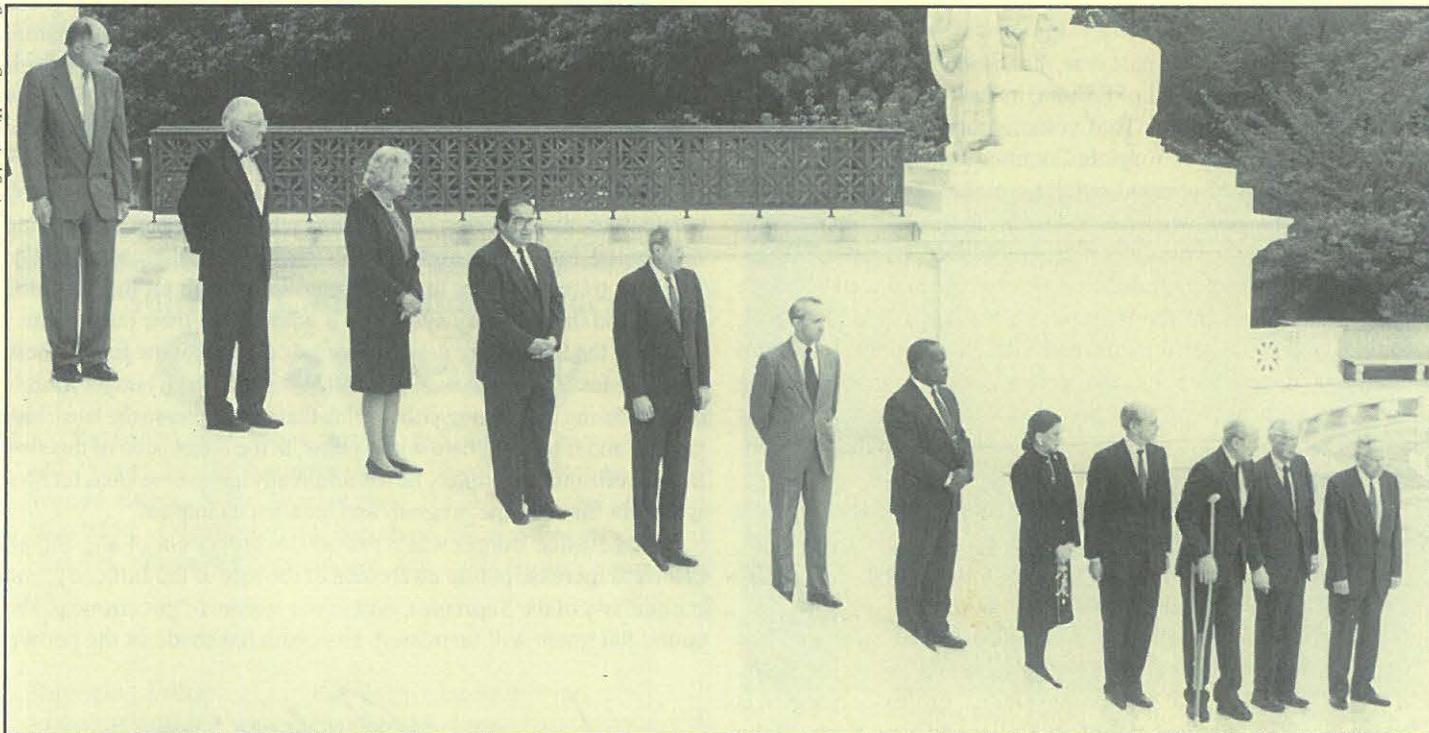
"His remarkable career began with a long tenure at a private law firm in St. Paul, Minnesota (Boyesen, Otis & Faricy) where he specialized in civil and administrative practice. While in private

practice, he made time to be an adjunct professor of contracts and actively participated in local civil and political organizations. In 1953 President Eisenhower appointed him to the Department of Justice as Assistant Attorney General in charge of the Civil Division. A few years later, he was nominated to the United States Court of Appeals for the District of Columbia, where he served for thirteen years until his appointment as Chief Justice of the United States by President Nixon in 1969.

"He served as Chief Justice for seventeen years and will long be remembered as a major contributor to the decisional law of this Court. He was also an innovative reformer of the administration of justice. As an appellate judge he helped establish the

*—continued on page nineteen*

Supreme Court Historical Society



The members of the Supreme Court await the arrival of Chief Justice Warren E. Burger's casket at the front stairs of the Supreme Court building. As is customary, the Justices stood in order of seniority with the Chief Justice at the top of the stairs.

## A Letter From the President



Leon Silverman

When the Society was founded in 1974, its Articles of Incorporation envisioned the lofty goals of historical preservation, funding of major research projects, public education programs, and encouragement of increased scholarship on the Court's history. Those concepts, largely, were the vision of one man, Chief Justice Warren E. Burger who

worked tirelessly to transform the Society from a hope into a reality.

The Society will greatly miss having Warren E. Burger as its Honorary Chair. He faithfully attended our Executive Committee meetings, offering his guidance and encouragement to take on larger and more substantial projects as the Society itself grew.

Only in recent years, as the Society has achieved a sound financial footing, have some of these goals begun to be realized to the extent the Chief Justice and the Society's other founders anticipated in the organization's chartering document.

Among these accomplishments is the establishment of awards to recognize and encourage scholarship on the Court, both within and without the Society. In making such awards, the Society not only cultivates a higher level of research and publication by its members, but it reaches beyond itself to develop a new standard for excellence in the field as a whole.

During the course of the past year, the Society published its latest, and according to our Board of Editors, its best issue of the *Journal of Supreme Court History*. That volume compiled and edited by Professor Mel Urofsky of Virginia Commonwealth University, was entirely composed of original articles—a goal Professor Urofsky imposed upon himself when he took over the helm on the Board of Editors in 1993.

That 1994 *Journal* included two articles deemed worthy of the Hughes-Gossett Award for Historical Excellence. These awards, given only in years when the scholarship of the recipients is deemed outstanding, are divided into two prizes—one for an outstanding submission by a recognized scholar, and the other for a student submission. The student winner is selected from submissions obtained by a national call for papers.

The awards are named for the late Mrs. Elizabeth Hughes Gossett, who served terms as both President and Chair of the Society; her father, Chief Justice Charles Evans Hughes; and her husband, William T. Gossett, a Trustee and major benefactor to the Society.

This year's winning articles were Professor Jill Norgren's "The Cherokee Nations Cases of the 1830s" and Jeannie Rhee's "In Black and White: Chinese in the Mississippi Delta." Professor Norgren is a Professor of Government at the City College of New York—John Jay College and the Graduate Center. Ms Rhee graduated from Yale

University in 1994 and is now attending Yale Law School.

The Hughes-Gossett Awards were presented at the Society's Twentieth Annual Meeting, on June 5, by the Chief Justice who praised the Society's ongoing efforts to encourage scholarship on the Court's history.

Just days following the Annual Meeting, Professor Philip Kurland of the University of Chicago Law School announced that his ad hoc selection committee had completed its three-year review of books for another prestigious award, the Erwin N. Griswold Book Prize. This prize, recently renamed in honor of the Society's late Chairman, recognizes the single most important book-length work published during the preceding three years on a Court-related subject.

When Professor Kurland called to inform the Society of his Committee's unanimous decision, it came as no surprise—the winner, Professor Gerald Gunther, had only days before appeared in the Supreme Court Chamber to deliver the Twentieth Annual Lecture on the subject of his award-winning volume, *Judge Learned Hand*.

Judge Hand has often been called the most qualified man of his era never to have sat on the Supreme Court Bench—a title also conferred upon Professor Gunther, incidentally, by a 1987 poll of scholars. In making its selection, Professor Kurland's Committee acknowledged that Professor Gunther's work, though not specifically a study of Supreme Court history, was intimately related to the subject. Further, Kurland noted, his Committee agreed unanimously that Professor Gunther's book, *Learned Hand: The Man and the Judge*, was clearly the most outstanding judicial biography published in recent years. It is only fitting then that the Society recognize this work, on which Professor Gunther labored for over two decades.

The purpose of encouraging scholarship on the Court, of course, is to increase the breadth and depth of materials from which scholars, and the general public may derive a greater understanding of the Court's history. But publications are hardly the only means by which the Society seeks to improve public education about the Court.

As this issue of the *Quarterly* was going to press, the Society was concluding its participation in the first Supreme Court Summer Institute. This program, cosponsored by the Supreme Court Historical Society, the National Institute for Citizen Education in the Law and Georgetown University Law Center, brings secondary school teachers from across the nation to Washington to study the Court firsthand. Based upon what they learn in their intensive week-long curriculum, they develop lesson plans which will be published and distributed for use in high schools throughout the country. The program trains teachers to incorporate lessons about the Supreme Court, and the judiciary system as a whole, into their curriculum.

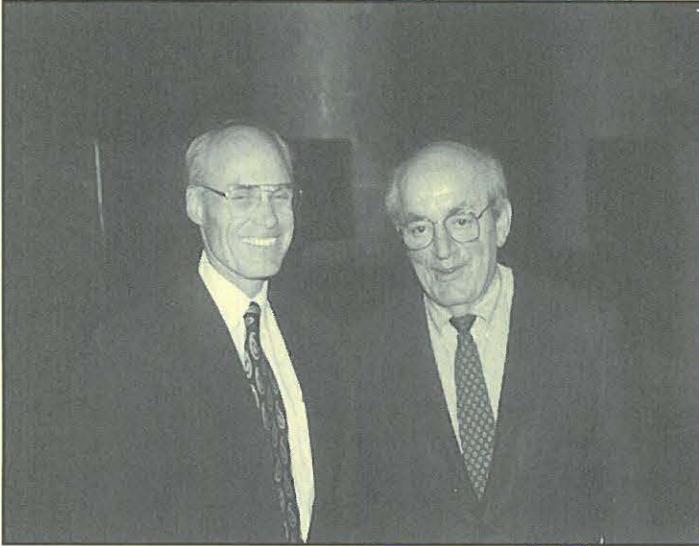
We at the Society are gratified by the outcome of the first of these Summer Institutes, and hope to be able to extend the budget for this project during the coming year. I think that would please the late Chief Justice, and if he were here with us now, at the conclusion of this first Summer Institute, it is likely he would already have some ideas for how we might improve the program and broaden its impact.

Chief Justice Burger was a passionate proponent of any and all efforts to increase public awareness of the role of the Judiciary, and particularly of the Supreme Court in our system of government. His sound judgment will be missed. His death has made us the poorer.

Leon Silverman

# Society Celebrates Twentieth Annual Meeting

June 5, 1995 marked the Twentieth Annual Meeting of the Supreme Court Historical Society. While the format set at the first meeting has remained largely unchanged, a few arrangements have been modified since the first programs. Following a tradition set at the first meeting, the opening event of the day was the Annual Lecture.



William Bradford Reynolds, (left) Chair of the Annual Meeting, visits with Professor Gerald Gunther at the conclusion of the lecture program.

The first annual lecture was delivered in the Restored Supreme Court Chamber in the Capitol Building, a beautiful vaulted room renovated to recreate the original design by Benjamin H. Latrobe. While this room provided a beautiful and unique setting for the early programs, Society membership growth eventually required that the program be held in a room with more seating. For the past seven years, the Supreme Court Chamber has provided a majestic setting for these programs.

The Twentieth Annual Lecture was presented in the Supreme Court Chamber. William Bradford Reynolds, Annual Meeting Chair,



Professor Gerald Gunther, the William Nelson Cromwell Professor of Law at Stanford University, presented a lecture based on his book entitled *Learned Hand: The Man and the Judge*. Judge Hand was one of the outstanding jurists of the twentieth century and although he never obtained a seat on the Supreme Court Bench, his career was intimately related to the Supreme Court.

opened the lecture program and introduced the speaker, Gerald Gunther. Professor Gunther is the William Nelson Cromwell Professor of Law at Stanford University. His topic was the career of Learned Hand, frequently referred to as "the most famous man never to be appointed to the Supreme Court."

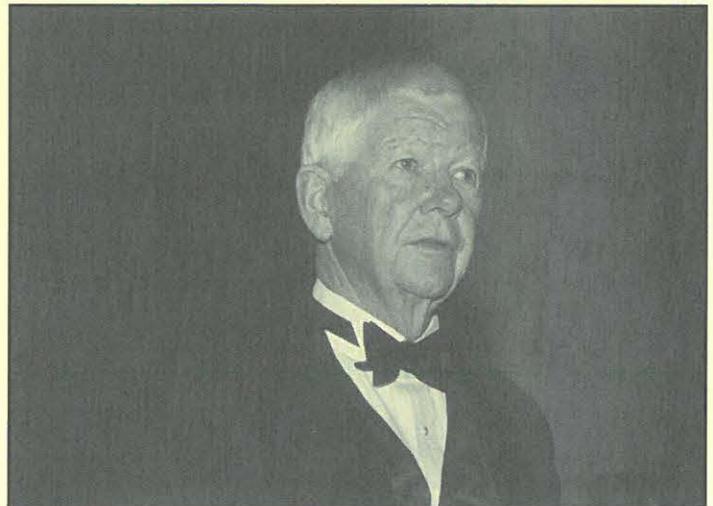
Professor Gunther recently published an important biography entitled *Learned Hand: The Man and the Judge*. Judge Hand's career spanned fifty-two years of service on the federal judiciary where he served on the United States District Court for the Southern District of New York, and then on the Court of Appeals for the Second Circuit where he also served as chief judge. Hand enjoyed a reputation as a brilliant writer and skilled orator and most historians agree that his name was considered by

—continued on page seven

## The Supreme Court Historical Society Quarterly

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



National Membership Chair, Fulton Haight, reported on his efforts and accomplishments for the fiscal year. As National Chair, Mr. Haight was charged with creating and coordinating a state membership network of volunteer chairs.

# Dissenting Opinions - an Addendum to Justice Scalia's Observations

Bennett Boskey\*

The 1994 issue of the *Journal of Supreme Court History* published in full Justice Scalia's observations on the Dissenting Opinion—an address he had delivered on June 13, 1994, as the Society's Annual Lecture.<sup>1</sup> The address sparkled with commentary on both the advantages and the disadvantages of dissenting opinions, which have come to us at many different times and under many different circumstances. Justice Scalia was good enough to include sufficient information about the varied historical settings in which dissenting opinions have either marked or marred the judicial landscape, so that a reader can formulate his or her own conclusions as to when and where they tend to be a benefit or a menace.

In any event, Justice Scalia's comments reminded me of an occasion in the early 1940s, when I was serving as Chief Justice Stone's senior law clerk and we were called upon to do some digging



Collection of the Supreme Court of the United States

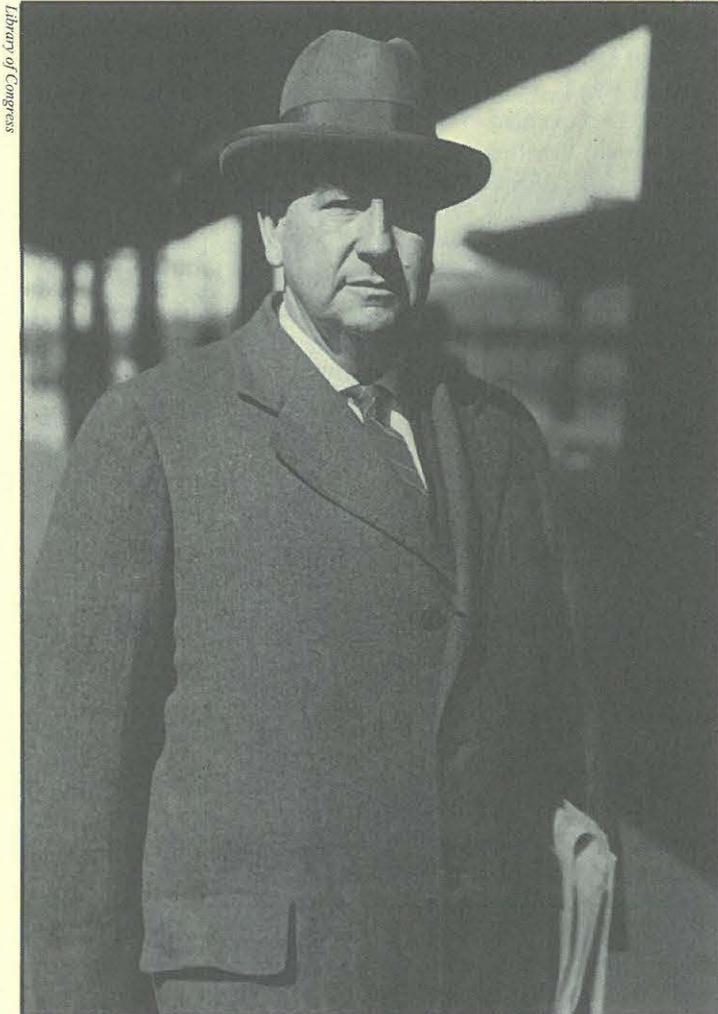
Henry Baldwin joined the Supreme Court in 1830 and served as an Associate Justice until his death in 1844.

into the medium-early history of the Court.

The occasion revolved around a relatively obscure member of the Court, Justice Henry Baldwin, who was appointed by President Andrew Jackson and was a member of the Court from 1830-1844. Baldwin came from Western Pennsylvania and had initially earned the gratitude of the future President when, as a Congressman, Baldwin had defended General Jackson's debatable conduct in the Seminole War. This had been "the beginning of a long friendship" between Jackson and Baldwin,<sup>2</sup> and eventually it led to Baldwin's appointment to the Court.

During the years after World War I, the Court had been trying to amass a collection of portraits of all its Justices but was lacking any portrait of Justice Baldwin. The Bar of Western Pennsylvania (I think it may have been of Allegheny County) was in a position to remedy this deficiency by presenting to the Court a portrait of Baldwin. A day had been scheduled for the presentation, and Chief Justice Stone had agreed to respond at the ceremony. He asked my help in the preparation of a few gracious remarks of acceptance.

I scoured the scant published materials then available which



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Chief Justice Harlan Fiske Stone delivered remarks thanking the Bar of Western Pennsylvania for donating a portrait of Henry Baldwin to the Supreme Court. He noted in his speech that Baldwin broke tradition and delivered some of the first dissenting opinions of the Marshall Court era.

## Amicus Curiae

With the end of the Society's fiscal year, the tally for the Annual Fund is in. A total of \$82,567.28 was raised, which is in excess of the Fund's \$60,000 goal. The Society would like to acknowledge the following contributors:

Anderson Kill Olick & Oshinsky, P.C.  
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The Society wishes to thank all of the above donors for their generous participation in the Society's initial Annual Fund Drive, and invites others to support the Fund in 1996.

related to Justice Baldwin. Through them, I learned that Baldwin's most outstanding characteristics, both as a human being and as a Justice, apparently had been his cantankerousness and eccentricity. He had also been plagued by severe financial distress and by illness. There had been those who thought that, at least toward the end of his life, he had become insane, and to this was added a suggestion that he had been buried in a Potters' Field.<sup>3</sup> From this material it was not easy to distill even the barest of affirmative comments that might gladden the hearts of the lawyers from Western Pennsylvania.

But not all was lost. It turned out that, whatever his motives, Justice Baldwin had been the author of a substantial number of dissenting opinions on a Court which up until then—as Justice Scalia has shown—had worn a mask of unanimity, largely under the forceful influence of Chief Justice Marshall. Whether the Baldwin dissents had, on the whole, been good or bad or indifferent was not of much concern to Chief Justice Stone. What appealed to Stone was the idea of Baldwin's having insisted on expressing dissent. Stone was willing to credit Baldwin with being an initiator—probably the initiator—of a wholesome tradition of published dissent in the work of the Court.

I should add that this was a subject that was indeed close to Stone's heart. He had been the author of many dissenting opinions in important constitutional cases; and as times and the Justices had changed, he had watched a relatively high proportion of these turn into majority views and become the law.<sup>4</sup> Indeed, his law clerks often could detect sprightly manifestations of his satisfaction as he kept a mental box score of earlier decisions which the Court overruled, so as to bring his own dissenting views into the majority position.<sup>5</sup> The Bar of Western Pennsylvania went away from the ceremony feeling handsomely thanked.

## Endnotes

\*Bennett Boskey is a practicing attorney in Washington, D.C., and has written extensively on matters relating to practice before the Supreme Court. He is a member of the Council and the Treasurer of the American Law Institute, and is a member of this Society.

<sup>1</sup> Antonin Scalia, "The Dissenting Opinion" in *1994 Journal of Supreme Court History* 33-44.

<sup>2</sup> Robert D. Ilisevich, "Henry Baldwin," in Clare Cushman (ed.), *The Supreme Court Justices: Illustrated Biographies, 1789-1993*, 106, 108 (1993), which summarizes the factual information concerning Baldwin.

<sup>3</sup> Even Carson, who has almost inexplicable kind words to say about Baldwin, acknowledges that "Towards the close of his life his intellect became deranged, and he was violent and ungovernable in his conduct upon the bench." Hampton L. Carson, *The Supreme Court of the United States: Its History and Its Centennial Celebration* 281 (1891).

<sup>4</sup> As Warner W. Gardner wrote a while ago, "[P]robably no man in the history of any court has lived to see so many of his dissenting opinions become the law of the court." "Mr. Chief Justice Stone," 59 *Harvard Law Review*, 1203, 1208 (1946). Another of his law clerks referred to Stone as "the man who saw more of his dissenting opinions and positions become the law of the Court than any other Justice in history." Allison Dunham, "Mr. Chief Justice Stone" in Dunham and Philip B. Kurland (ed.), *Mr. Justice* 47 (1956). Both offered footnotes carrying a long list of significant cases—but at that, only a partial list. At the Court's memorial proceeding for Harlan Fiske Stone, the Resolutions of the Bar stated: "With the shift in constitutional doctrine which occurred during the service of Chief Justice Hughes, Justice Stone had the satisfaction of seeing one after another of his dissenting opinions in constitutional cases become the law of the Court." 68 S. Ct. CXXXIII, CXXXVI (1947). And Chief Justice Vinson's response reiterated the point: "in the entire history of this Court probably no other member lived to see so many views expressed in dissent subsequently accepted by the majority of the Court as the law of the land." *Id.*, CXLIV.

<sup>5</sup> I have referred to this previously: "Chief Justice Stone took some pride in the number of his dissenting opinions which had later won acceptance by the Court." Bennett Boskey, "Mr. Chief Justice Stone," 59 *Harvard Law Review* 1200, 1201 (1946).

## Arizona Society Members Conduct Program

Arizona members of the Supreme Court Historical Society and their guests were treated to a luncheon and a panel discussion on "Politics and the Supreme Court Nomination Process" at the Phoenix Country Club on March 31, 1995. Organized by the Society's Arizona and Ninth Circuit membership chair, Ed Hendricks, of Meyer, Hendricks, Victor, Ruffner & Bivens, the event drew about sixty participants. Noting that few Arizonans are able to take advantage of the annual meeting and special lectures held by the Society in Washington, Hendricks added that "This was a way to provide some direct benefit for Society members in Arizona, to stimulate their membership, and to encourage others to join the Society. We hope to make this an annual affair."

Among those in attendance were attorneys from Arizona, judges from all levels of the Arizona court system, Arizona federal district court and the Ninth Circuit Court of Appeals.

The topic of the panel discussion was suggested by a book just published by two Arizona State University political science professors, George Watson and John Stookey entitled *Shaping America: The Politics of Supreme Court Appointments*. The theme of how politics has been and continues to be involved in the appointment process was addressed by the four panelists. The panelists were the Honorable Dennis DeConcini, former United States Senator and member of the Senate Judiciary Committee, John Harmon, former Assistant Attorney General in the Office of Legal Counsel during the Carter Administration, Paul Eckstein, managing partner of the law firm of Brown & Bain, and Professor George Watson. Phoenix Society member, Larry Hammond, of Osborn Maledon served as moderator for the panel discussion.

Even though President Carter is the only president to serve a full term without having an opportunity to appoint a Justice to the Court, John Harmon reported that preparations had been made should such an opportunity arise. Among other things, this forced him to identify and assess criteria used by previous presidents in making appointments. Focussing on four—ability, political and legal philosophy, balance on the Court and friendship—Harmon noted how each played a greater or lesser role in particular nominations. While these and other factors—age, for example—may all play a role at one time

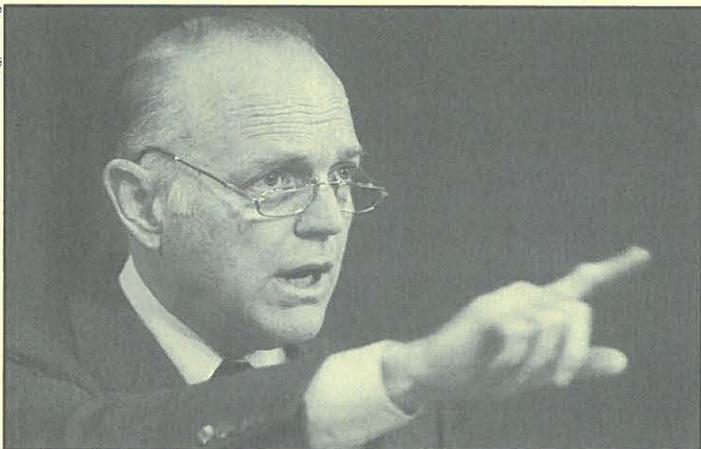
or another, "Let's face it," Harmon said, "each president wants to appoint a Supreme Court Justice in his own image." Some, like Nixon and Franklin Roosevelt, were more successful than others. In the final hour, a president can rarely know for sure whether a person will change when he or she dons that black robe. When Felix Frankfurter was asked that question, he unhesitatingly responded, "If he's any good he will . . ."

Senator DeConcini affirmed the political nature of the process, but stated that it has always been so. However the extraordinary role of the media in covering recent Supreme Court nominations and the hearings have brought it public attention as never before. DeConcini drew a contrast between the Reagan and Bush Administrations on the one hand and the Clinton presidency on the other. The former generated greater political controversy because they were intent on moving the Court in a certain political direction. Those opposed to the political philosophy of the president are naturally ready to do battle on such a nomination. President Clinton, on the other hand, has consulted much more closely with the Senate in an effort to avoid controversy while still selecting competent and experienced candidates.

Professor Watson summarized the evolution of the appointment process into that which we witness today, noting its political nature all the way back to George Washington. He then focused on the role of the American Bar Association and its effort, in his view, to somehow make the process less political. By formulating the criteria of integrity, competence and judicial temperament, the ABA has attempted to establish the criteria by which nominees are evaluated. However, in attempting to take politics out of the process by confining the discourse to a discussion of those three criteria, the ABA has actually embroiled itself in the politics of appointments. Anyone who opposes the nominee on essentially political grounds, such as being too liberal or too conservative, must now couch that opposition in terms of those three criteria. This makes for a less civil and less honest process than if we would simply be more forthright about the political basis of our opinions.

Paul Eckstein closed the panel presentations with an observation of "five truths and a question." First, most presidents strive mightily to discern the judicial philosophy of the candidates they put forward. Many, however, are not particularly successful in doing so. Second, senators profess to decide who is going to be on the Court on other than philosophical grounds, even when in fact those are the grounds. Third, nominees would be well advised to answer nothing directly. Fourth, in this media age, the nominating process increasingly will assume the aspects of an election campaign. Fifth, a strong and popular senator to carry the nomination through the Senate is becoming essential. Finally, the question put was "to what extent should the president seek the advice of the Senate before the nomination?" In trying to pave the way for a smoother nomination and confirmation, does the president give away too much of his appointment prerogative?

The event concluded with a question and answer session. All participants agreed that this was a hopeful beginning to one's state's effort to provide a program for its Society membership. Arizona's members look forward to other educational sessions of this type in the future.



Retired Senator Dennis DeConcini, shown here in 1990 in the Senate, discussed the role the media has played in politicizing the Supreme Court nomination process.

## Annual Dinner (continued from page three)



Lawrence Tafe III of Massachusetts (left) was the recipient of a membership chair award. Justice Blackmun presented the awards at the Annual Meeting of the General Membership. Benjamin White of Rhode Island (right) also received a membership award from Justice Blackmun.



several Presidents for appointment to the Supreme Court. Hand was closely acquainted with several members of the Supreme Court including Benjamin Cardozo who spoke of Hand's "qualities of mind—the keen analysis, the close reasoning, the capacity for deft and incisive phrase." This legal giant, something of a legend and an enigma, was a fascinating topic for the lecture.

While Judge Hand's life was full of notable accomplishments, Professor Gunther's is similarly marked with achievements. A German émigré who came to the United States as an eleven year old boy, Professor Gunther earned degrees from Brooklyn College, Columbia University and Harvard Law School. In addition to his clerkship with Judge Hand, he held a similar position during the Court's 1954-5 Term in the service of Chief Justice Earl Warren. Professor Gunther also engaged in private practice with the firm of Cleary, Gottlieb, Friendly and Hamilton. He has served on the faculties of Columbia University School of Law and Stanford Law School, and as a visiting faculty member of numerous other prestigious institutions, including Harvard Law School. His work has been recognized with a Guggenheim Fellowship, a National Endowment of the Humanities Fellowship, and numerous other awards and prizes.

Professor Gunther's biography of Judge Hand has received much attention recently but Professor Gunther is also the author of an outstanding textbook, *Constitutional Law*, which is now in its twelfth edition. This volume has been the most widely used text in constitutional law in American law schools for the past three decades. The text of Professor Gunther's lecture will be published in the 1995 *Journal of Supreme Court History*. All Society members will receive a copy of the volume as a membership benefit.

At the conclusion of the lecture, many audience members had the opportunity to meet Professor Gunther. Tours of the Supreme Court Building were conducted by tour directors from the Office of the Curator of the Court, who provided informative and interesting presentations about the Building, and some of the day-to-day operating procedures of the Court.

At 6 p.m. the General Meeting of the Membership was convened in the Supreme Court Chamber. Justin A. Stanley, Chairman of the Board of Trustees, conducted the meeting in the absence of Leon Silverman, President of the Society. Mr. Stanley

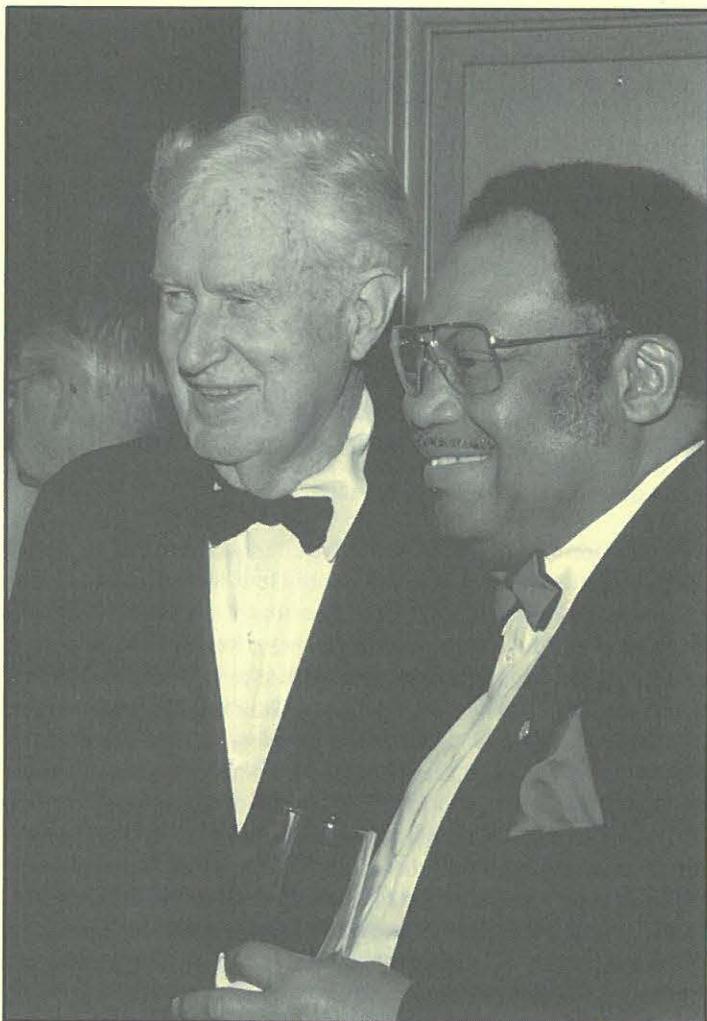
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Retired Associate Justice Harry A. Blackmun presented an award to John Stenger (left) for his outstanding work as a membership chair. Mr. Stenger was state chair for New York. Justice Blackmun also presented Catherine Piersol (right) of South Dakota with an award recognizing her efforts as membership chair in her state.



## Annual Dinner (continued from previous page)



Chairman of the Board of Trustees, Justin A. Stanley is pictured with Judge Benjamin Logan, chair of the Judicial Council of the National Bar Association. Mr. Stanley succeeds Dean Griswold as Chairman of the Board.

commenced his remarks by noting the death of the Society's past Chairman, the late Dean Erwin N. Griswold. Mr. Stanley com-

mented that "Dean Griswold was a personal friend, and a great friend of the Society. The Dean was an incomparable figure in the legal community at large. During the course of his lifetime he was a superb scholar, an outstanding teacher and dean, a devoted and distinguished public servant, and a fine practitioner of the law. He and John W. Davis shared the distinction of having argued more cases before the Supreme Court than any other advocates in the twentieth century. The Dean has also been instrumental in bringing the Society to its current level of maturity." At the conclusion of his remarks, Mr. Stanley called for a moment of silence in honor of Erwin N. Griswold's memory.

Continuing with the business portion of the meeting, Mr. Stanley reported briefly on the activities of the past year, highlighting outstanding achievements. He noted that as a result of the efforts of Membership Chairman Bill Haight and his team of state membership chairs, Society membership has risen to a record level of more than 5,200. Another notable accomplishment was the creation of an Annual Fund which surpassed its goal. Program activities include the six-part lecture series discussing the Supreme Court in World War II which drew over 1,400 guests and which will be broadcast on Court TV and C-Span. Publications continue to be a focal point of Society activities with the 1994 *Journal of Supreme Court History* and the volume on the first five Jewish Justices of the Supreme Court both having been well received.

Retired Associate Justice Harry A. Blackmun presented awards to membership chairs who had met or surpassed their membership goals for the current fiscal year. Present to receive their awards in person were: Catherine Piersol, John Stenger, Lawrence Tafe III, and Benjamin V. White. In addition to these awards, Justice Ginsburg presented many awards at a special dinner held in honor of the Membership Chairs in April (see story on page 13) A number of other Chairs achieved their goals but were unable to travel to Washington to receive the awards in person. These successful chairs were: William J. Brennan III, Mike Carey, Ed Hendricks, and Stuart Shanor.

Peter A. Knowles, Treasurer of the Society, presented a brief overview of the Society's finances. He noted that while the fiscal year does not officially end until June 30, all indications are that it



Ms Jeannie Rhee (left) received a Hughes-Gossett prize for historical excellence in writing from the Chief Justice. Ms Rhee's article appeared in the 1994 issue of the *Journal of Supreme Court History*, and examined the experience of Chinese immigrants in the Mississippi Delta. The Hughes-Gossett award for historical excellence for an established academic writer was awarded to Dr. Jill Norgren (right) a professor of government at the City College of New York—John Jay College and the Graduate Center.



Justice Ginsburg converses with Society Trustee, John R. Risher, Jr., during the Twentieth Annual Dinner.

will be another successful year, with expenses and revenue falling within the budgeted parameters and providing a solid foundation on which to build during the coming year.

Following these reports, Virginia Daly, Chair of the Nominating Committee and Secretary of the Society, presented a slate of candidates for election to the Board of Trustees. The following individuals were elected to an initial three-year term as a member of the Board of Trustees: Andrew W. Coats, Judith Richards Hope, Harvey C. Koch, Stephen W. Nealon, Cathleen Douglas Stone, and Agnes N. Williams. In addition, the following individuals were elected to additional three-year terms as Trustees: George R. Adams, Barbara Black, Vera Brown, Vincent C. Burke, Jr., Patricia Dwinell Butler, F. Elwood Davis, John T. Dolan, Michela English, John D. Gordan, III, Geoffrey C. Hazard, Jr., Philip B. Kurland, Francis J. McNamara, Jr., Phil C. Neal, Dwight D. Opperman, Leon Polsky, Bernard G. Segal and W. Foster Wollen.

At the conclusion of the General Membership Meeting, a meeting of the Board of Trustees commenced with Mr. Stanley presiding. The election of individuals to the Executive Committee was the only matter of business. In due course, the following individuals were elected to the offices as follows: for a first one-year term as an At-large member of the Executive Committee: Vera Brown and Mrs. Thurgood Marshall. In addition, the

following individuals were elected to the offices indicated: Vincent C. Burke, Jr., Sheldon S. Cohen and John R. Risher, Jr., to a an additional one-year term as an At-large member of the Executive Committee; and Dwight D. Opperman to an additional three-year term as Vice President.

Following the business meetings, the next event of the day was the Twentieth Annual Reception and Dinner. Guests adjourned to the East and West Conference Rooms where they enjoyed an hour in which to meet other Society members and honored guests. String quartets of the U.S. Army Strings provided chamber music in each reception room, adding greatly to the enjoyment of the guests.

Dinner was served in the Great Hall of the Court. As in previous years, the hall was draped with state flags and a large flag of the United States was suspended between the pillars near the front entrance of the Hall. Prior to dinner service, the Chief Justice proposed the traditional toast to the President of the United States. After the toast, the Chief Justice presented the Hughes-Gossett prizes for excellence in historical writing. These awards are given to recognize outstanding articles published in the *Journal of Supreme Court History*. The prize winners for articles printed in the 1994 *Journal* were Dr. Jill Norgren, a professor of government at John Jay College of Criminal Justice and at the Graduate Center of City University, and Ms Jeannie Rhee, a second-year student at Yale Law School. Dr. Norgren's article concerned the Cherokee Indian cases of the 1830s, while Ms Rhee's paper dealt with the civil rights experiences of the Chinese in the Mississippi Delta from the late 1800s to the mid-1900s.

Following the presentation of these awards, dinner was served and members dined in the Great Hall by candlelight. At the conclusion of dinner, a short concert was performed by the 100 member choral ensemble, The Alexandria Harmonizers. This group performs barbershop harmony and competes nationally and internationally. They have performed throughout the Washington area and have entertained at the Society's Annual Dinner on two previous occasions. Their program marked the conclusion of the day's events, and brought the Twentieth Annual Meeting to an exuberant and happy conclusion.



Mrs. Justin A. Stanley (left) introduces her daughter, Melinda Douglas to the Chief Justice. Mr. Stanley was elected Chairman of the Board of Trustees earlier in the evening.



A concert provided by The Alexandria Harmonizers completed the evening program at the Annual Dinner. The 100 voice barbershop harmony chorus competes locally and internationally and provided a delightful concert.

# Membership Update

The following members joined the Society between March 16, 1995 and June 15, 1995

## Alabama

Robert W. O'Neill Esq., Birmingham  
Samuel L. Russell, Bessemer  
Teresa Tanner, Birmingham  
J. Mark White Esq., Birmingham

## Arizona

Robert H. Allen, Phoenix  
Howard Ross Cabot, Phoenix  
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## Membership Update *(continued from previous page)*

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## State Membership Dinner Held



Society President Leon Silverman (left) and National Membership Chair Fulton Haight thanked Associate Justice Ruth Bader Ginsburg for hosting the State Membership Chair Dinner.

Justice Ruth Bader Ginsburg hosted the 1995 State Membership Chairs Dinner on Thursday, April 13, 1995. This dinner is held yearly to honor the hard work of the State Membership Chairs on behalf of the Society. The evening commenced with a reception in the West Conference Room that afforded the Chairs an opportunity to meet each other and to view portraits in the Society's collection. Dinner followed in the East Conference Room.

Society President Leon Silverman made brief remarks after dinner, thanking those in attendance for their commitment to the membership program of the Society. He stressed the importance of membership support in the continuing success of the Society in funding educational programs, historical research, acquisitions and preservation efforts. Mr. Silverman noted the unprecedented success of this year's membership campaign—reaching a record 5,209 members by the night of the dinner. He then introduced Bill Haight, Chair of the National Membership Committee.

Mr. Haight thanked Mr. Silverman for his gracious introduction. He then spoke briefly on the Society's continued efforts to preserve the Court's history and the work to secure legislation honoring Thurgood Marshall on a commemorative coin. Mr.

Haight also acknowledged the efforts of the State Chairs who had achieved their membership goals by April 13, 1995 and were unable to attend the dinner. They were: William J. Brennan III, Mike Carey, Ed Hendricks, Cathy Piersol, Stuart Shanor, John Stenger and Lawrence Tafe III.

Mr. Haight then introduced Justice Ruth Bader Ginsburg. Justice Ginsburg thanked Mr. Silverman and Mr. Haight for inviting her to participate in the Society's programs by hosting the State Chairs' dinner. Noting the recent death of Society Chairman Erwin N. Griswold, Justice Ginsburg commented that the Dean had been an important and influential figure in the legal community as a whole, particularly for those engaging in Supreme Court advocacy. The Justice observed that Dean Griswold had been an important influence in her own life, saying that President Clinton had reviewed a copy of remarks made by Dean Griswold on the occasion of the fiftieth anniversary of the Supreme Court Building in which he had praised the advocacy of several members of the Supreme Court Bar, including Ruth Bader Ginsburg. Justice Ginsburg expressed her opinion that Dean Griswold's assessment of her work had been an important factor in President Clinton's decision to nominate her to the Supreme Court. She then read a passage from a letter she had written to the Dean shortly before his death.

November 7, 1994

My dear Dean

I have missed you in Court this Term. But I have been thinking of you, remembering how well the country was served when you were our Solicitor General, how proud I was when you shook my hand after the January 1973 argument in *Frontiero v. Richardson*, and how unlikely it is that I would have this good job absent your good opinion of me.

With appreciation and affection,

Ruth

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Philip Chadsey of Oregon (left) and Andrew Coats of Oklahoma (right) were two of the State Membership Chairs honored on April 13, 1995 for their efforts on behalf of the Society.

## Henry Billings Brown

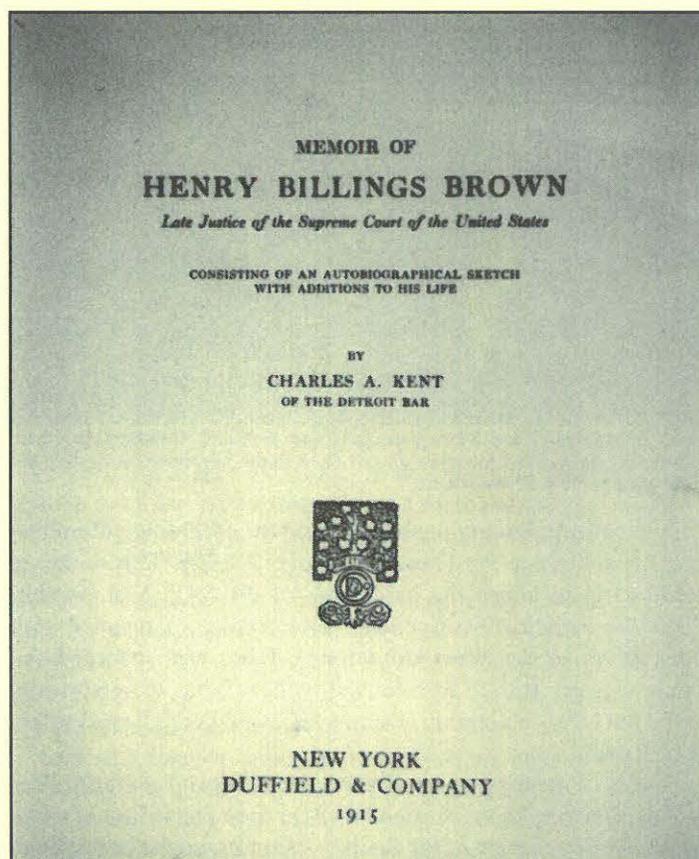
*Editor's Note: In 1913, Charles A. Kent, a member of the Detroit Bar, published a biography of Henry Billings Brown, an Associate Justice of the Supreme Court of the United States from 1891 to 1906. Kent met Brown in the law offices of Walker & Russell, of Detroit, Michigan in December 1859 where they both worked while they were students. As Kent states, "The friendship then begun continued without interruption until his death. . . ." The volume contained notes by Kent, the text of letters written by Brown to Kent, and an autobiographical sketch of Brown written after his retirement. In his memoir, Brown recounted his impressions of many of his associates and colleagues in his earlier career and of his brethren on the Supreme Court Bench. This biographical sketch of Brown is drawn largely from Kent's volume and thus reflects much of Brown's own personality. It also contains Brown's impressions of many of his colleagues and associates in his own words.*

"I was born of a New England Puritan family in which there has been no admixture of alien blood for two hundred and fifty years," Henry Billings Brown commented at the beginning of his autobiography. Brown was born in South Lee, Massachusetts on March 2, 1836, the son of a prosperous merchant, Billings Brown and his wife, Mary Tyler Brown. He was raised in a middle-class Protestant background and spent all of his youth in New England. Brown observed that one of his progenitors, Hopestill Tyler, moved to Preston, Connecticut in 1704. "The reason assigned for his removal was the trial of his wife and daughters for witchcraft. Although they were acquitted, they became disgusted with the ecclesiastical rule in Massachusetts, and joined a somewhat general movement to more congenial surroundings in Connecticut." Through Hopestill, Brown was also related to General John Tyler and Mrs. Theodore Roosevelt.

His parents endeavored to educate him at home in his early years and he showed a great interest in books and reading from a tender age. Brown's memoir quotes an entry from his mother's diary written on the occasion of his fifth birthday: "He has made good proficiency the past year for his advantages. He has not been to school and has nothing to stimulate him but his inclinations. We find it necessary to divert his mind from his books on account of his eyes failing him. I have thoughtlessly indulged him in reading evenings the winter past, but seldom as long as he wished, yet I now see my error and lament it exceedingly." Brown commented that "An inflammation of the eyelids, thus produced, has pursued me through my life, resulting in the complete loss of the sight of one eye, the partial loss of the other, and a threat of total blindness constantly hovering over me."

While still a young boy, Brown's father admonished him to become a lawyer. Brown noted that . . . "I felt that my fate was settled, and had no more idea of questioning it than I should have had in impeaching a decree of Divine Providence. . . . It also had an important effect in directing my studies." When the family moved to Stockbridge in 1845, Brown entered the Academy and began the study of Latin, "which I have always thought and still think, should be the foundation of the intellectual equipment of every educated man. I soon discovered that my strength, as well as my inclination, lay in the direction of languages rather than of mathematics."

In 1849, the Browns moved to Ellington, Connecticut, a small, quiet town where "No disturbance was ever heard in its streets and



the travelling circuses thought it beneath their notice." As the town afforded no appropriate school, Brown was enrolled in an academy at Monson, Massachusetts. Henry completed his schooling there and entered Yale College in 1852 at the age of sixteen. "Though not badly prepared, I made a mistake in entering at sixteen—two years younger than the average of the class. . . . I did not have the rooms or companionship I aspired to, and for the first two years I felt that I was not doing myself justice. At the end of my Sophomore year I resolved upon a reform. . . . I had some prejudices to overcome, but I finally succeeded in graduating, not with a high, but with a highly respectable, standing."

After graduation, Brown spent a year travelling in Europe. "The result justified my expectations, and I have always regarded that year as the most valuable of my life, from an educational point of view." Brown studied French and German during this year and was a keen observer of social and political customs and changes.

In November 1857, "I returned home, this time in a steamship, and at once betook myself to the Squire's office in Ellington, and plunged into that most fascinating of law books—*Blackstone's Commentaries*." The following autumn, Brown returned to New Haven and entered the Law School "and remained until spring, when I went to Cambridge for a course of six months at Harvard Law School. This was really the pleasantest and most profitable experience of my student days."

Brown did not complete the course of study at Harvard, but in the Fall of 1858 went to Detroit and entered the office of Walker & Russell, "to finish my studies and particularly to acquaint myself

with the local practice.” In July 1860, Brown was admitted to the Bar in Detroit. He spent the next few months trying to obtain a practice in law and as work was scant in that period, he spent most of his time “familiarising myself with the Michigan Reports . . .” The following spring he was appointed deputy U.S. Marshal for Detroit. Brown confessed he took the job not because it would advance his professional goals, but because it would put him in touch with people with good connections. The connections did pay off, and shortly thereafter he was appointed assistant U.S. Attorney. In this position Brown “. . . not only attended to a large criminal business arising out of the war, by examining witnesses before the committing magistrate, but also prepared all the indictments, attended the sessions of the grand jury, and tried them frequently in court. . . . This was really the beginning of my professional activity, and by the expiration of the District Attorney’s official term I had built up a practice, principally in the admiralty branch, which justified my taking an office to myself.”

In his personal diaries, Brown revealed that he had himself considered joining the military during the Civil War. He records: “Twice I thought very seriously of participating in the terrible Civil War which has raged the entire year, [1862] but circumstances which I now regard as fortunate prevented my entering the service.” Plagued with difficulties with his eyes and ill health, he determined to stay out of the army. At the end of 1862 he observed that “[t]he condition of the country could hardly be worse, and we are on the verge of a general dissolution. Even politicians are almost silent. We are holding our breath awaiting what may come. President weak, cabinet divided and paralyzed. Generals in conflict, armies de-

feated, we all hope for some great change. Pray God it may result in our permanent good. All hope of extinguishing the rebellion must be laid aside. The people have done more than nobly though.” Perhaps ironically, Brown’s health improved during the last few years of the war, so much so that he knew himself to be “a healthy man and not exempt from draft” in 1864. Indeed, he notes in his diary that the last of August 1864 he “bought a substitute for the war and paid him \$850.”

On July 13, 1864, Brown married Caroline Pitts. Her father was from a distinguished New England family and was a graduate of Harvard College. Mr. Pitts had practiced law for awhile, but later became a successful and wealthy lumber merchant, and the family held a high social position in the community. Kent wrote of the marriage: “Mrs. Brown was fine looking, well educated, intellectual, and sympathetic with all of her husband’s ambitions. The marriage was a very happy one. There were no children. She suffered much from ill health.”

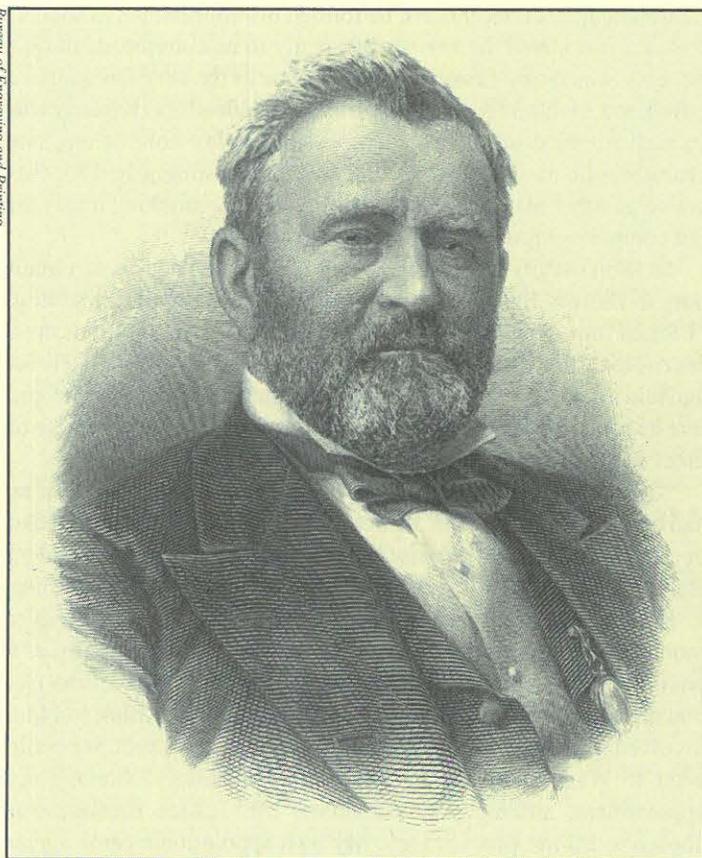
Brown continued in private practice until July 1868 when he received an appointment to a temporary vacancy upon the bench of the Wayne Circuit Court. “But my incumbency was of short duration,” Brown wrote. “As a presidential election was then impending, and Wayne County was strongly Democratic, I was decisively beaten in the November election. . . . But short as my experience was, it gave me a taste for the judicial life which had much to do in fixing my permanent career.”

A new opportunity presented itself when Brown was invited to become a partner with John S. Newberry and Ashley Pond, taking over most of Newberry’s admiralty practice. Detroit was a busy port on the Great Lakes, and Brown’s expertise was in demand. This venture was a successful and profitable one, although it exacted a heavy toll on Brown’s health. In 1872 he made an unsuccessful congressional bid, after which he returned to his practice. Although his career was lucrative and he was well respected, he explained that “. . . I felt my health was giving way under the uncongenial strifes of the Bar, and the constant fear lest by some mistake of my own the interests of my clients might be sacrificed. . . .” A surprise appointment to become a District Judge for the Eastern District of Michigan was offered by President Grant, and marked a turning point in Brown’s life.

Brown expressed that he was “glad to take refuge in the comparative repose of the bench, although it involved the loss of two-thirds of my professional income. . . . I felt quite content to exchange a position where one’s main ambition is to win, for one where one’s sole ambition is to do justice. The difference in the nervous strain involved gave me an incalculable relief.” The first two years in his new role were difficult, but he gradually became more comfortable and stated that his “health continued to improve over the next twenty-five years.”

The office of judge was one which suited Brown, and he enjoyed the corollary aspects of the work as well.

Some of the pleasantest experiences of my district judgeship were connected with sessions of the circuit court held in other States. . . . The first winter after my appointment I was assigned to hold a term of the circuit court in Memphis, where I remained two months. Although it was then less than eleven years since the termination of the Civil War, and the passions that it had aroused were by no means extinct, my wife and I were received with a cordiality which



Bureau of Engraving and Printing

Ulysses S. Grant was President of the United States from 1869 until 1877. He surprised Henry Billings Brown with an appointment to the Eastern District Court of Michigan in 1872, which became a turning point in Brown’s life and career.

—continued on next page

## Brown *(continued from previous page)*

not only disarmed all criticism, but captivated us by its apparent genuineness. Though I was conscious of the fact that the political sympathies of the people must have been with the South, no intimation of that kind was ever made to me. Indeed we found ourselves the favoured recipients of the most refined hospitality. Dinners and receptions were given with prodigality.

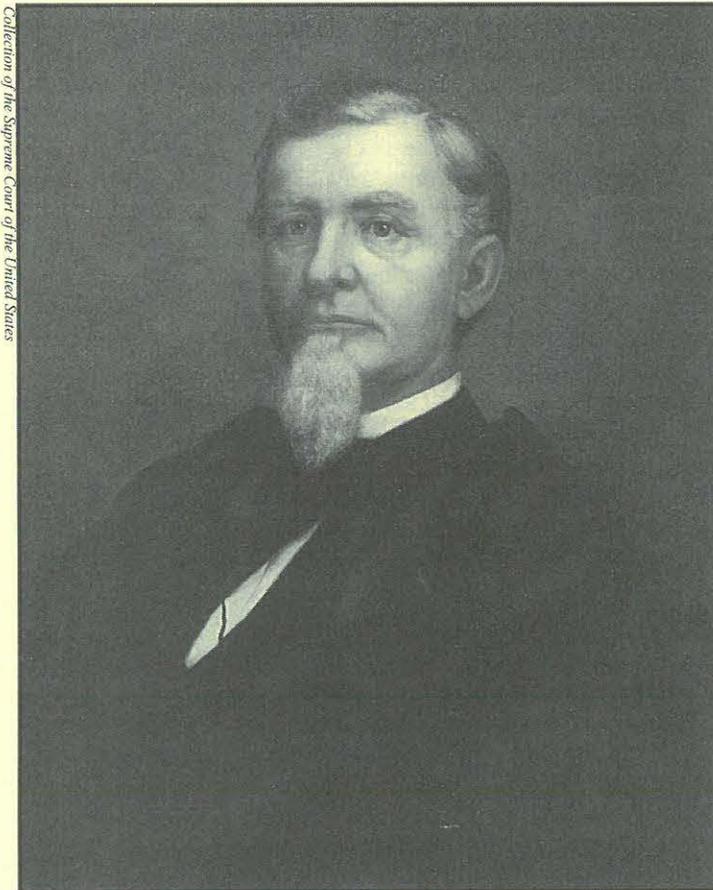
... Learning that Jefferson Davis and his wife were then residents of Memphis, I expressed... a wish to meet him. ... I found Mr. Davis a most courteous and agreeable gentleman of the best Southern type, without a suggestion of arrogance or hauteur. It was difficult for me to realise that ten years before he had been a prisoner of State, immured in one of the casemates of Fort Munroe awaiting a trial for high treason as the recognised head of a great rebellion. I then appreciated for the first time that an honourable, conscientious man, removed as far as possible from the criminal classes, may be guilty of treason—a most flagitious crime when committed by an officer of the army or navy in time of war, but in civil life and in time of a general peace, often involving little more than a radical difference of political opinion. ...

Brown found the work not only meaningful and enjoyable, but the workload lighter and the life-style more desirable. As he described it: “The fifteen and a half years I passed as district judge, though characterised by no event of special importance, were full of pleasurable satisfaction and were not overburdened with work. Indeed I found that I could easily dispose of the business in nine months of the year, and that there was always an opportunity for a summer’s outing. There are doubtless higher offices, but I know of none in the gift of the government which contributes so much to making life worth the living as a district judgeship of the United States. ...” Charles Kent commented that Brown “was very prompt in his decisions and was seldom reversed. He displayed a practical acquaintance with details of navigation and methods of business. His Court not only had the business which naturally belonged to Detroit, but also absorbed considerable from other ports. Cases were frequently brought from other places by consent in order to have the trial before him.” On the negative side, Kent commented that “[p]erhaps his greatest fault was an ambition to understand a case and express his opinion too early in the argument. But against this he had no pride of opinion. He would listen to an argument against his decisions with the greatest patience, and was ready to reverse himself if convinced that he had erred.”

Near the end of his service as a district judge, Brown’s path crossed that of another future Supreme Court Justice, Howell E. Jackson of Tennessee. Jackson was serving as a circuit judge and frequently presided over court in Detroit. Brown described Jackson as “an ideal judge. ... He had ... an instinctive sense of justice, but was always ready to listen to argument. While like most men of alert minds and quick conceptions, he formed his impressions as soon as the case was stated, he was always ready to be convinced, and his patience was rarely exhausted. He was one of the very few judges I have known whom I never heard criticised. Indeed his character was so well rounded out that it is impossible to lay hold of any one characteristic and say that he was specially distinguished for that above all other men. If he were conspicuous for anything it was for the completeness of his intellectual equipment.”

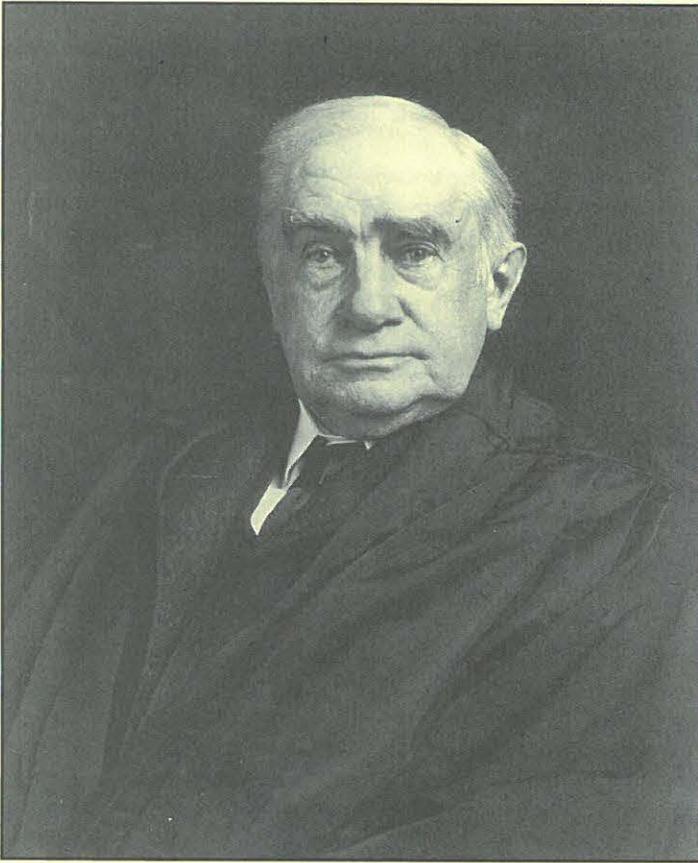
Jackson usually stayed at Brown’s home when he was on circuit duty in Detroit. Brown observed that in the privacy of this setting, “I found him the most delightful of guests. He had a fund of droll anecdotes at his disposal, which he drew upon for our amusement and told in his peculiar Southern accent. I gathered from what he said that he had political enemies in his own State, but he never spoke of them with rancour or bitterness.

“One day as we were returning from court. . . he told me that he had been informed that Mr. Justice Matthews was fatally ill, and that in case of his death he proposed to go to Washington, see President Harrison, a former colleague of his in the Senate, and persuade him to appoint me to fill the vacancy. As my aspirations had never mounted to the Supreme Bench, and I had never dreamed of it as a possibility, I was naturally surprised, especially in view of the fact that the offer came from one who was my superior in rank and that involved a promotion over his head. . . . He made his promise good, went to Washington in my behalf, and ultimately obtained my appointment, although my classmate, Mr. Justice Brewer, was chosen to fill the first vacancy. My own appointment came a year later upon the death of Mr. Justice Miller.” Brown commented that neither he nor Brewer ever considered themselves as competitors for the opening on the Supreme Court Bench and that they main-



Collection of the Supreme Court of the United States

Howell Jackson recommended that President Harrison appoint Henry Billings Brown to the Supreme Court. Two years later Brown returned the favor, urging President Harrison to appoint Jackson to the Court. Jackson and Brown sat together on the Supreme Court for two years.



Library of Congress

Henry Billings Brown served on the Supreme Court for fifteen years. After his retirement in 1906 at age seventy, he lived for another seven years.

tained friendly relations throughout their tenure together in Washington. Brown's nomination as Associate Justice on December 23, 1890, was confirmed on December 29 by a voice vote, and he commenced work on January 5, 1891.

In a reciprocal gesture, Brown was able to return the favor to Jackson. ". . . [U]pon the occurrence of the next vacancy, by the death of Mr. Justice Lamar, I was instrumental in inducing President Harrison to appoint Mr. Justice Jackson in his place."

Brown found life in Washington extremely interesting and commented that "[i]f the duties of the new office were not so congenial to my taste as those of district judge, it was a position of far more dignity, was better paid and was infinitely more gratifying to one's ambition." He observed that Washington attracted some of the brightest and most able people in the country and that it was the social, as well as the political center of the nation. He especially enjoyed the diplomatic corps, "which contains representatives of the most refined society of all the leading countries of the world."

Beyond the wonders of the city, Brown enjoyed his brethren on the Bench.

My colleagues upon the Supreme Bench were all men of distinction and ability in their several specialities. Chief Justice Fuller was specially happy in his executive duties and his assignments of cases to us for the preparation of opinions constantly had in mind our previous experiences in particular branches of the law, the circuits from which the cases arose, as well as any interest a justice may have taken in an individual case. Each member of the Court was

given his share of constitutional cases. To Justices Field, Harlan, Lamar and Brewer were usually consigned the land cases, to Gray most of the commercial cases, to Bradley, Blatchford and myself the patent and admiralty cases, while those turning upon questions of practice were by immemorial custom disposed of by the Chief Justice. Mr. Justice Bradley was by common consent regarded as the most learned and acute lawyer; Justice Field a man of great determination and indomitable courage, though lacking the judicial temperament, as a master of forcible and elegant English; while Justice Gray expressed himself very clearly, usually in short opinions but occasionally in very long ones, for the preparation of which he sent for books from the most remote parts of the country. Though his manners were somewhat brusque, he was an excellent judge, fair minded in his opinions and a kind hearted man. Mr. Justice Harlan was a strong Federalist, with a leaning toward the popular side of cases and a frequent dissenter from the more conservative opinions of his brethren. I have never known partisan considerations to enter into the dispositions of cases. By common consent politics were abjured when taking a seat upon the Supreme Bench. By reason of his previous experience as Secretary of the Interior, Justice Lamar's assignments were chiefly confined to land cases. He had practised law but a few years, and that early in life, and always lamented his lack of special equipment for judicial labour. But he was a man of brilliant talents and one of the most genial and delightful companions I ever knew. Justice Brewer, who had been a classmate of mine in Yale College, shared the conservative views of his uncle, Justice Field, regarding the rights of property, but was by no means his inferior as a judge.

Justice William Rufus Day wrote Charles Kent a letter giving his assessment of Brown as a Supreme Court Justice:

It is hard to comply with your request to portray Judge Brown's weaknesses as well as his strengths. In other words, to paint him as Cromwell would have his portrait, wrinkles and all. Judge Brown had very few wrinkles in his character. As a man you were better acquainted with him than I, and well knew his general characteristics. It always seemed to me that Judge Brown had an admirable judicial style, neither too dry, nor too florid, and clearly expressing the thought he intended to convey. In the inner work of the Court, Judge Brown was one of the most agreeable of colleagues, and absolutely free from all jealousy and bitterness. He always came to the consultation room acquainted with the cases from careful attention to the arguments and full consideration of the records and briefs. He took a personal part in the discussions at the conference table at all times, earnest in the statement of his views, but at the same time good tempered and courteous in their expression. He was particularly helpful in the Court in patent and admiralty cases. . . . Until his eyes became very poor towards the

—continued on next page

**Brown** (continued from previous page)

last of his service here, he did his full share in the work of the Court and in the writing of opinions. . . .

Kent noted that “The Justice had a grim humour, and I can recall an instance of its exercise. A classmate of ours was always getting into money difficulties and quarrelling on that subject with some member of the class, generally with the one from whom he had received loans and expected more. Brown had several times contributed, and when he received notice from one of our classmates of this man’s death and that money was required to pay his hotel bill and funeral expenses, the Justice wrote back: ‘To the object of which you speak I gladly contribute, but before sending a check I wish to receive a burial certificate to be sure that he is dead.’ Kent also commented that Justice Brown loved children and young people and “attracted them to him. He was fond of the society of intelligent women.” He was also loyal and extremely sociable. For years he had belonged to the Washington Monument Association. Even though the monument had been completed many years previously, the Justice held a party every year to celebrate its commissioners as a pretext for a party.

Brown served for fifteen years on the Supreme Court despite an attack of neuritis that blinded him in one eye in late 1890, prior to his joining the Court. Poor eyesight and the threat of blindness made his life more difficult, but he persevered and carried his share of the workload. Tragedy also accompanied his service on the Court when

his wife, Caroline, died in 1901 while the Browns were travelling in Italy. Brown married Josephine E. Tyler, the widow of his cousin, on June 25, 1904, and she assisted him in his work, reading to him when his own vision was inadequate, and occasionally assisting him in drafting documents.

He retired in 1906 after serving for more than fifteen years. As he explained: “On my seventieth birthday, and after a service of fifteen years and a half . . . I tendered my resignation to President Roosevelt to take effect at the end of the term. . . . I had always regarded the Act of Congress permitting a retirement upon a full salary as a most beneficent piece of legislation. . . .” He further indicated that he thought it unfair to continue in his position with his limitations. After tendering his resignation, he suggested William Howard Taft, then Secretary of War, as his possible successor. Roosevelt responded that Taft was presidential timber, and thus he opposed the idea.

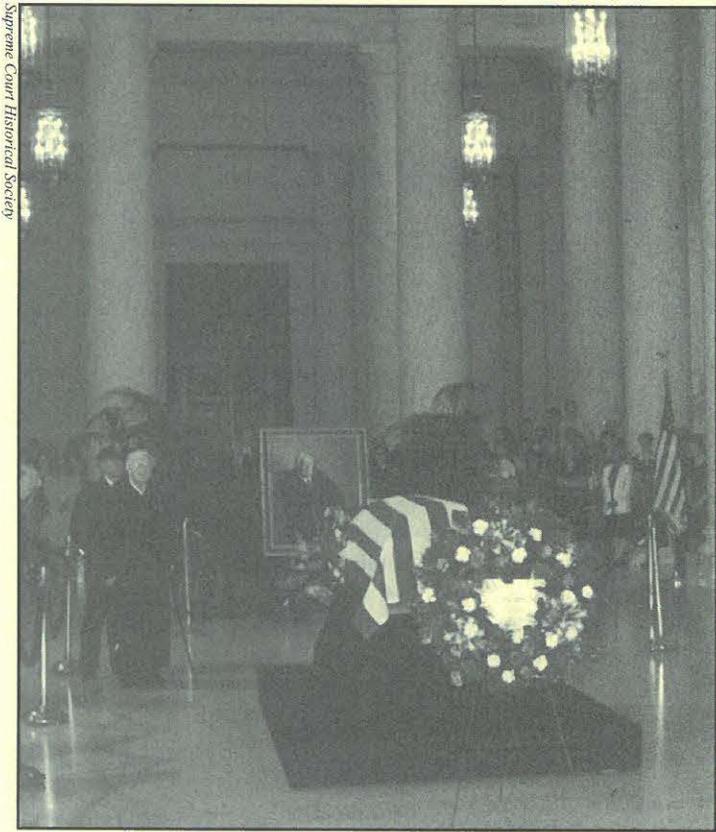
Upon retirement, the Browns travelled abroad again, going to Italy, Austria, Turkey, Greece, England and France in 1906. They were received with “great courtesy by our own representatives abroad, and accumulated a fund of information which has been a never failing source of pleasure.” Following their sojourn abroad, the Browns lived part of the year in their Washington home at 1720 Sixteenth Street which Justice Day described as “one of the most attractive in Washington,” and part of the year in Bronxville, New York. They made another trip to Europe in 1910, which marked Brown’s last major trip. Brown died on September 14, 1913 at the age of seventy-seven, survived by his second wife, Josephine.

Collection of the Supreme Court of the United States



Henry Billings Brown (seated, left) sat on the Bench with Chief Justice Melville Fuller for fifteen and a half years. His colleagues included (standing from left) Oliver Wendell Holmes Jr., Rufus Peckham, Joseph McKenna, William Day, (seated from left) John Marshall Harlan, Chief Justice Fuller, David J. Brewer, and Edward White.

## Burger *(continued from page one)*



Chief Justice Burger's casket rested on the Lincoln bier while he lay in repose in the Great Hall of the Supreme Court.

Appellate Judges' Seminar at New York University and later co-chaired an 8-year study for the ABA on standards for criminal justice. As Chief Justice, he reduced oral arguments in our own Court from two hours to one hour per case, introduced modern technology to the processing of opinions, changed our straight Bench to its current wings, and helped found the Supreme Court Historical Society. For the judicial system as a whole, he helped create or sponsor, a series of institutions to foster more efficient ways to do justice in the nation's courts, including the Institute for Court Management, the National Center for State Courts, the state-federal judicial councils, the expansion of the Federal Judicial Center, and the annual Brookings Seminars at which leaders of the three branches met to discuss judicial reform.

## 1996-97 Judicial Fellows Program

The Judicial Fellows Commission invites applications for the 1996-97 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.

Up to four Fellows will be chosen to spend a calendar year, beginning in late August or early September 1996, in Washington, D.C., at the Supreme Court of the United States, the Federal Judicial Center, the Administrative Office of the United States Court, or the

“Following his retirement from the Court in 1986, Chief Justice Burger continued his commitment to public service and devoted a large amount of his time Chairing the Commission on the Bicentennial of the United States Constitution.

“The members of the Court will greatly miss Chief Justice Burger's energy and warmth, and I speak for them in expressing our profound sympathy to his son Wade, his daughter Margaret Mary, his grandchildren, and to all those whose lives were touched by this remarkable man and his wife, Vera, who died last year. The recess the Court takes today will be in his memory.”

The Supreme Court Historical Society will greatly miss the leadership of Chief Justice Burger. He was the catalyst in the founding of the Society in 1974, noting that the other branches of government had historical societies organized on their behalf. Chief Justice Burger served as honorary chairman of the Society from its founding until his death.

Chief Justice Burger lay in state in the Great Hall of the Supreme Court on June 28, 1995. He lay on the same bier used by President Lincoln in 1865. Funeral services were held in the National Presbyterian Church. Judge J. Michael Luttig of the United States Court of Appeals for the Fourth Circuit, Justice Sandra Day O'Connor and Chief Justice William H. Rehnquist spoke in tribute to Chief Justice Burger. Chief Justice Burger was laid to rest in Arlington National Cemetery on Thursday, June 29, 1995.



Justice Breyer (left), retired Justice Byron R. White (center), and Justice Thomas (right) enter the Supreme Court building after the casket.

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 \$74,426.

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 17, 1995.

# National Heritage Lecture Set for September 18, 1995

The fourth annual National Heritage Lecture will take place on Monday, September 18, 1995 in the Supreme Court Chamber. The lecture is jointly sponsored by the Supreme Court Historical Society, the White House Historical Association and the United States Capitol Historical Society. Since each of the cosponsors serve as the principle host for the series on a rotating basis, the 1995 lecture will be the first time in several years that the National Heritage Lecture will return to the Supreme Court Chamber. The lecture was last delivered at the Court by Justice Anthony M. Kennedy, who spoke on President Roosevelt's 1937 Court-Packing Plan (or FDR's Court Enlargement Plan, as the Editor has been admonished to call it by Society Trustee Hugo L. Black, Jr.). Justice Kennedy will introduce this year's speaker.

This year's speaker will be the Right Honourable The Lord Woolf, a Law Lord in Britain's House of Lords. His address will be entitled "The House of Lords and the Privy Council—British Supreme Courts?"

Lord Woolf is the Baron of Barnes in the London Borough of Richmond. He is one of ten Lords of Appeal in Ordinary who would be the legal equivalent of the British Supreme Court to the extent that the American and British legal systems are comparable—hence the

title and focus of Lord Woolf's upcoming lecture. Lord Woolf earned his LLB from University College, London and was called to the Bar in the Inner Temple in 1954. He became a bencher, or member of the governing council of the Inner Temple in 1976. From 1972-79 Lord Woolf served as a Recorder of the Crown Court. He was First Treasury Junior Counsel (Common Law), 1974-1979. He became a judge on the High Court of Justice, Queen's Bench Division in 1979, where he served until 1986. In 1986 he became a Lord Justice of Appeal, and in 1992 he became a Lord of Appeal in Ordinary.

Lord Woolf was appointed by the Lord Chancellor to conduct a judicial inquiry into access to justice in England. The first volume of his report containing recommendations for improvements to the civil justice system of England has been recently published.

Members and friends of all three sponsoring organizations will be invited to the National Heritage Lecture and invitations will be mailed on or about August 1. As with other events in the Court, seating is limited and members who wish to attend should return their reservations promptly. A reception will follow the lecture where members can meet the program participants.

## State Chairs *(continued from page thirteen)*

Justice Ginsburg added that the Dean had been a constant supporter of the Society's ventures and with his dedication in mind, applauded the efforts of the State Chairs who had devoted countless hours to furthering the Society's development.

Awards were given to those individuals present who had achieved their membership goals for the 1994-95 campaigns. Those receiving awards were: Edward Brodsky, Philip Chadsey, Andrew Coats, W. Michael Cody, James Falk, Samuel Hanson, Richard Rosenbleeth, Richard Schneider, Dennis Shackelford, and Jacob Zeldes.

The marble awards are made from polished marble that was part of the Supreme Court Building at one time, and affixed with the Seal of the Supreme Court.



W. Michael Cody of Tennessee received a marble award from Justice Ginsburg. Mr. Cody had the distinction of being the first Chair to make his goal—before the campaign had officially begun.

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