

## THE SUPREME COURT HISTORICAL SOCIETY

# Quarterly

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## Teachers Unanimous In Praise For Summer Institute Lee Arbetman\*

They came from Washington and Florida, from California and New Hampshire. Together, twenty-five high school social studies teachers representing twenty-one states and the District of Columbia journeyed to the nation's capital to attend the first Summer Institute on the Supreme Court of the United States. The institute was sponsored by the Supreme Court Historical Society and conducted by the National Institute for Citizen Education in the Law (NICEL), in conjunction with Georgetown University Law Center.

The program was advertised at national conferences of social studies teachers and through a national network of statewide law-related education programs. Scores of teachers responded to the announcement. Applicants included teachers of government, U.S. history, and/or law elective courses. Many were involved in high school mock trial programs and in the development of local magnet schools that focused on law and public policy. Many were long-time Court watchers, and a substantial number were involved in teaching advanced placement courses. Ultimately, the participants were chosen using a number of criteria which included the opportunities the individuals had to teach colleagues in their own area; the geographic origin of the candidate; as well as professional recommendations of fellow educators.

One goal of the program was to provide a diverse view of the Court and its work. To this end, the teaching staff was supplemented by experts from the Washington, D.C. community. Special sessions were held in the Senate, the Capitol, and the Supreme Court buildings. All presentations and materials were planned to encourage adaptation for specific classroom needs.

The five-day institute, which ran from Thursday, June 22 through Tuesday, June 27 gave teachers an extended opportunity to study the history and development of the Supreme Court; basic Supreme Court procedure; the process by which the Justices are nominated; the role of the Court in American life; and selected cases from the 1994-95 term. Teachers also received guidance in incorporating this new information into their courses and in preparing workshops to assist them in sharing the institute's curriculum with their colleagues.

The teachers delved directly into substantive matters with John Roberts, former clerk to Chief Justice William H. Rehnquist and former Deputy Solicitor General of the United States under President Bush. Roberts helped participants understand how the Court decides which cases it will hear, as well as how the Court comes to its decision in those cases.

On Friday the session focused on using documentary evidence to teach about the Supreme Court, which was co-presented by the Federal Judicial Center's Training Specialist, Jim Buchanan, and Bruce Ragsdale, Chief Historian for the Federal Judicial History Office. Later, the institute moved to the Senate Judiciary Committee Room where participants worked with staff and other leaders who had been involved in recent Supreme Court nomination hearings. Resource persons for this session included Lee Lieberman-Otis, Chief Judiciary Committee Counsel; Ron Klain, Staff Director of the Democratic Leadership Committee; Nan Aron, Executive Director of the Alliance for Justice; and Thomas L. Jipping, Vice President for Policy and Director of the Center for Law and Democracy at the Free Congress Foundation.

In the afternoon, the institute reconvened in a room in the Capitol for a session on the Court's recent decisions on affirmative action. From there, the teachers visited the Supreme Court for a VIP tour and a discussion with Dr. Barbara Perry, Judicial Fellow.

Saturday was reserved for careful study of selected cases from the 1994-95 term. The morning was spent studying *United States v.*



Courtesy of NICEL

Twenty-five high school educators from around the nation gathered in Washington, D.C. to study how to bring the Supreme Court to the curriculum of their schools.

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## A Letter From the President



Leon Silverman

Last month Law Lord Harry Woolf delivered the fourth annual National Heritage Lecture—a program the Society sponsors annually in cooperation with the White House Historical Association and the United States Capitol Historical Society. The speech was very well received by the sold-out audience in the Supreme Court Chamber, and the

Society is grateful to Justice Kennedy for his fine introduction of the program. (Excerpts from the text of Lord Woolf's talk will appear in the next issue of the *Quarterly*.)

The National Heritage Lecture provides an auspicious beginning for an ambitious calendar of events the Society is developing for the coming year. First, and foremost, members should mark their calendars for Monday, June 3, 1996, when we will be honored to have retired Associate Justice Harry A. Blackmun deliver the Twenty-first Annual Lecture. The Annual Lecture will be held in the Supreme Court Chamber at 2:00 p.m. in conjunction with the Society's Annual Meeting. Due to the anticipated crowd, reservations will be required, and lecture reservation forms will be mailed with the Annual Meeting invitations in late April or early May.

Another program which is in the planning stages will be an educational series contrasting the pre-New Deal and New Deal Courts. The working title for the series, which is now under development by the Society's Program Committee, is the "Four Horsemen v. the New Deal." The series will be presented in conjunction with Roosevelt History Month, scheduled for October 1996.

Another educational program, aimed at a different audience, is the Supreme Court Summer Institute for Teachers, for which the Society provided a start-up grant of \$50,000 to the National Institute for Citizen Education in the Law (NICEL) which ran the Summer Institute. (See story on page one.)

More than fifty applicants sought the twenty-five seats in the first year of the Institute, and among those who were selected to attend, participant reaction was extremely favorable. Equally important, as a result of the Supreme Court Summer Institute, these teachers have developed lesson plans for use in secondary schools to teach about the Court. They are also making presentations to groups of other teachers at professional colloquia, ensuring that these materials will be accessible to hundreds of other teachers across the country and to literally thousands of secondary school students.

As a result of the success of this program, the Society is increasing its funding for the Supreme Court Summer Institute to \$60,000, which will enable the Institute to accommodate thirty-five teachers for its 1996 summer session.

Among other new projects, this fall the Society will fund publication of a handsome new collection of full-color photographic studies of the Supreme Court building which has never before presented in such rich detail. This collection of Supreme Court photographs will be published in a book developed by Fred and Suzy Maroon which will be available for sale through the Society's gift shop, and our annual gift catalog in time for the coming holidays.

Later in November, a revised and updated version of *Supreme Court Justices: Illustrated Biographies* will also be published. The revised edition will include biographies of Justices Ruth Bader Ginsburg and Stephen G. Breyer, who joined the Court since the previous edition was prepared. Also included in the new volume are numerous updates of biographies published in the prior edition.

During the coming fiscal year members can also expect to receive a new publication stemming from the Society's 1994 lecture series on The Supreme Court in the Civil War and the 1995 edition of the *Journal of Supreme Court History*.

The Society is also continuing its funding of an oral history project focusing on the Supreme Court's retired Justices. Professor Harold Koh of Yale Law School is producing the newest addition to this growing collection through his interviews with Justice Harry A. Blackmun. The program is being conducted in cooperation with the Federal Judicial Center's History Office. Already in the collection are interviews with Justices William J. Brennan, Jr., Thurgood Marshall and Lewis F. Powell, Jr.

We continue to be grateful for your generosity in supporting another of the Society's research/publications endeavors, *The Documentary History of the Supreme Court of the United States, 1789-1800*. The Documentary History Project staff, headed by Dr. Maeva Marcus, will send its sixth of eight planned volumes to press later this year—an achievement made possible in large part by members' continuing support of the Project. Each special donation made along with your membership renewal enables the Society to apply for matching funds through a generous grant from the Mellon Foundation. Accordingly, when your dues renewal arrives this year, I hope that each member will include an optional contribution to the Project, by checking the appropriate box on the renewal card. The Project is more comprehensive and more meaningful than it was when first approved by the Society in 1977, and it deserves your support.

We are also grateful for your continuing membership support of the other projects I have mentioned above, as well as the many other programs in which the Society is now engaged. Your generosity enables the Society to accomplish its goal to preserve and disseminate the Court's history.

Leon Silverman



# Some Personal Experiences With Harlan Fiske Stone

## Milton Handler\*

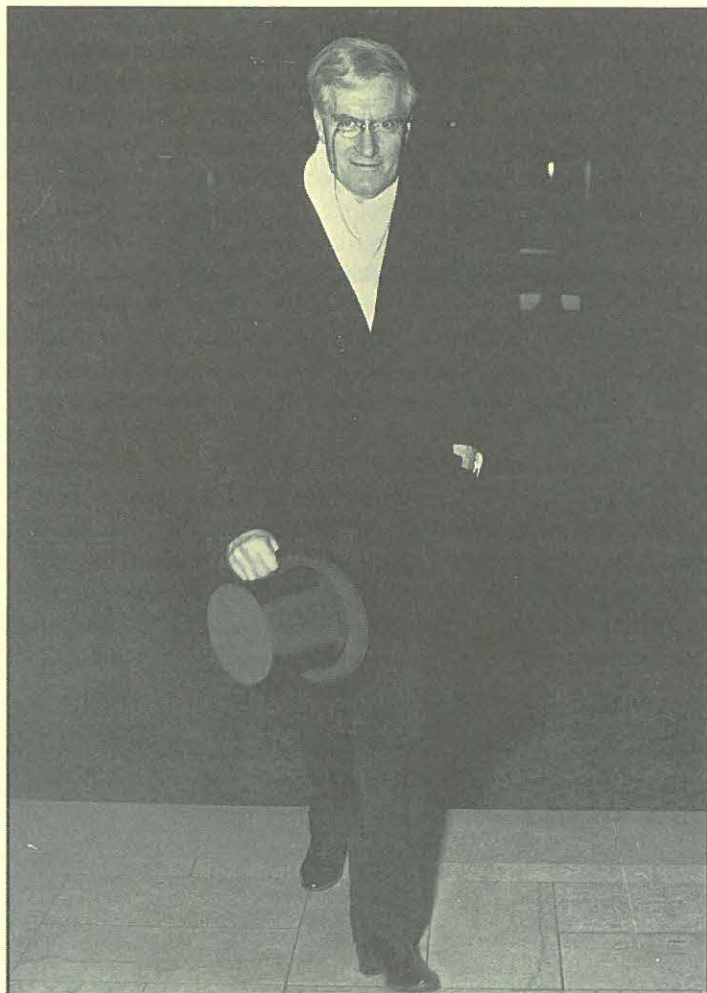
*Editor's Note: Professor Handler has written an article-length piece about his experiences clerking for Justice Stone in 1926. This article will appear in the 1995 Journal of Supreme Court History. These anecdotes are supplemental to that article and reveal something of the personalities of Justices Stone and Cardozo.*

### Dining With The Stones

Justices were in high demand to attend dinner parties given by the elite of Washington's high society. Several years after my clerkship, my wife Marion and I were invited for dinner at the Stones, the main course of which was a large turkey weighing between ten and fifteen pounds. Although Marion and I were small and thin, the Stones were such terrific eaters that the four of us polished off the entire platter.

In due course, Marion called Mrs. Stone and said she would like to have a dinner party for the Stones, Cardozo, and Senator Wagner, who was a widower. "We go to so many formal parties," Mrs. Stone said, "so make it absolutely informal." New to Washington, Marion did not know what informal meant. "Do you mean black tie?" she asked. "No, just business suits," Mrs. Stone replied. We invited Cardozo and Wagner, whose staff called us half a dozen times to confirm how the Senator should be attired. On the night of the party, Marion had on an ordinary dress and I was wearing a business suit. The Stones appeared—he in white tie and she in an evening dress. Cardozo came in a tuxedo. Wagner's staff settled on a funeral suit with striped pants and cutaway for the Senator.

Our apartment at the Westchester, with its rented furniture, was not palatial. It had a small kitchen and foyer, a living room, and a bedroom. We had set up a table in the foyer and Marion had engaged special help, whose loud voices were audible from the nearby kitchen. The meal was inedible. Fortunately, we had some good wine that could assuage our guests' thirst, if not their hunger. To make matters worse, the fire alarms in the building went off during the meal. I stepped out to reconnoiter and ascertain whether there was any danger. After all, we were responsible for the lives of two Supreme Court Justices and a leading member of the Senate. I soon discovered that there was no danger and returned to the table for



Collection of the Supreme Court of the United States

Justice Benjamin Cardozo was a popular, though infrequent, dinner guest during his tenure in Washington.

more unpalatable food.

After the disastrous meal, we repaired to the living room. Stone turned to Wagner at one point and said, "I'm curious to know, Mr. Senator, what is the constitutional theory on which the Administration is proceeding in the development of its comprehensive program of reform and reconstruction?"

The Senator from New York, who had imbibed a good deal, responded brashly, "Mr. Justice, our theory is very simple. If the program doesn't work, we don't care if your Court holds it unconstitutional. If the program does work, you wouldn't dare to declare it unconstitutional."

Breaking in at that point, Cardozo said softly, "If I were you, Mr. Senator, I wouldn't dare two-ninths of the Supreme Court of the United States."

After about half an hour, the Stones and Wagner rose and left together, no doubt with the intention of filling their empty stomachs. Cardozo, noticing that Marion was chagrined and very much upset, remained for several hours to help restore her equanimity. Drawing her out, he discovered that her master's thesis had been on colonial literature, and they discussed the works of John Cotton, Thomas

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### The Supreme Court Historical Society

## Quarterly

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Hooker, Cotton Mather, and other "builders of the Bay Colony," whose writings were just beginning to awaken interest after two centuries of neglect. Cardozo appeared to be fully familiar with that recondite field, as indeed he was with all phases of English and American literature, to say nothing about his prodigious learning in philosophy and related fields. By the time he left, the night that should have been our moment of youthful triumph had been saved from utter catastrophe.

### Stone's Appointment By Coolidge

When Justice McKenna retired in 1924, Coolidge summoned Stone, his Attorney General and former classmate at Amherst, to obtain advice on whom he should appoint as McKenna's successor. According to Stone's account, Coolidge said, "I regard this as an important responsibility of the Presidency and would welcome your suggestions. Think about it for a while."

"Mr. President," Stone said, "I can present my recommendation right now. I don't have to give it any thought."

"Whom do you have in mind?" queried the President.

Stone responded: "Benjamin Nathan Cardozo, the outstanding jurist of our times."



Harlan Fiske Stone served as the second of three Attorneys General in the Coolidge Administration. He left the post in 1926 when he was appointed to the Supreme Court of the United States.

"Isn't he a Hebrew?" the President asked.

"Yes, but in my view, that's irrelevant," replied Stone.

"Well, we have one Hebrew on the Court now, Brandeis, and I don't believe that I would want to be the one to add another," Coolidge concluded. Then Coolidge turned to Stone and said, "What about my appointing you?"

Stone's response was, "Mr. President, I cannot be considered in the same breath as Cardozo. He has every attribute of judicial greatness. I possess nothing comparable. You would be appointing someone much inferior to Cardozo."

Coolidge said nothing and Stone continued: "You know, Mr. President, I've had an academic career. I retired my deanship and went into private practice. Lo and behold, I wasn't in practice for a year when you appointed me Attorney General. At that time, I indicated that I would take it only for a limited period, because I really am anxious to get back to New York."

"Still," Coolidge said, "I want you to consider this. Please take it up with Agnes and let me know your decision."

After discussing it with his wife, Stone, as might be expected, accepted the appointment.

Stone also told me that a few years before McKenna's resignation, while he was serving as Dean of Columbia Law School, he had recommended Cardozo to President Harding, who nominated Pierce Butler to the Supreme Court instead. A few years afterward, Stone recommended Cardozo as President Hoover's first appointment, but that appointment went to Owen J. Roberts. When Hoover was about to make his second appointment, Stone recommended Cardozo for a fourth time. According to Kaufman's article concerning Cardozo's appointment to the Supreme Court, Stone was not among the decision makers at the time, but "his opinion doubtless carried some weight."

*\*Milton Handler, is a partner in the firm of Kaye, Scholer, Fierman, Hays & Handler. He is Professor Emeritus of law at Columbia University School of Law and a long-time member of the Society.*



Senator Robert Wagner of New York served as a justice on the Supreme Court of New York before being elected to the Senate in 1926. He served there until 1949.



# Who Asked Justice Grier to Resign?

David N. Atkinson\*

**Editor's Note:** *The story of Justice Robert Grier's retirement from the Supreme Court has been told and retold many times in the ensuing century. Unfortunately historians have been unable to agree on the exact details leading up to it. Professor David Atkinson, who is at work on a book on Supreme Court resignations, retirements, and deaths, takes another look at the story.*

Problems of credibility abound for the biographer. There is no documentary evidence that Justice Stephen J. Field either led or participated in a delegation charged with urging resignation on an ailing Justice Robert Grier in 1869. The tale of Field's participation comes from Charles Evans Hughes, who repeated a story he said he had heard from John Marshall Harlan. The evidence is based on oral tradition. Hughes reported the following:

I heard Justice Harlan tell of the anxiety which the Court had felt because of the condition of Justice Field. It occurred to the other members of the Court that Justice Field had served on a committee which waited upon Justice Grier to suggest his retirement, and it was thought that recalling that to his memory might aid him to decide to retire. Justice Harlan was deputed to make the suggestion. He went over to Justice Field, who was sitting alone on a settee in the robing room apparently

oblivious of his surroundings, and after arousing him gradually approached the question, asking if he did not recall how anxious the Court had become with respect to Justice Grier's condition and the feeling of the other Justices that in his own interest and in that of the Court he should give up his work. Justice Harlan asked if Field did not remember what had been said to Justice Grier on that occasion. The old man listened, gradually became alert and finally, with his eyes blazing with the old fire of youth, he burst out

"Yes! And a dirtier day's work I never did in my life!"

That was the end of the effort of the Brethren of the Court to induce Justice Field's retirement; he did resign not long after.

Published on pages 75 and 76 of Hughes' 1928 book, *The Supreme Court and the United States*, this famous anecdote has been repeated many times by constitutional scholars. However, an article by Charles Alan Wright has cast doubt on its authenticity, because there is in fact no known documentary evidence suggesting Field participated in any meeting with Grier. There is only the oral tradition. See Wright, "Authenticity of 'A Dirtier Day's Work' Quote in Question," *The Supreme Court Historical Quarterly* Volume 13 Number 4 (Winter, 1990): 6-7.

The available documentary evidence may be found in Charles Fairman's monumental contribution to the Oliver Wendell Holmes Devise History of the Supreme Court, volume VI, part one, *Reconstruction and Reunion, 1864-88* (1971), on pages 725-31.

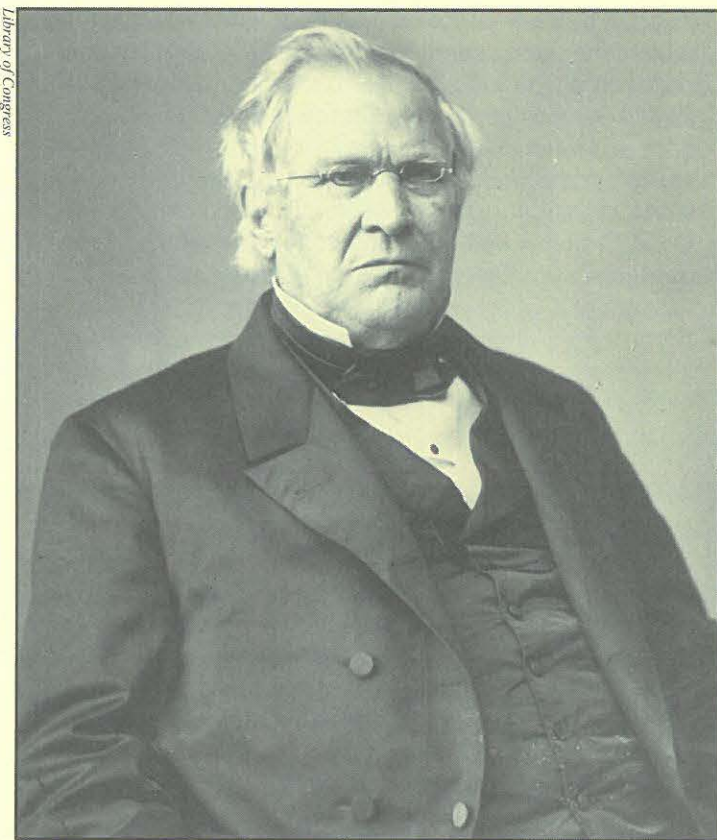
On November 17, George Harding, described as "an able Philadelphia lawyer with excellent political connections. . .," wrote to Joseph Bradley, soon to take a seat on the Court himself:

. . . Called on Judge Grier saw Mrs. Beck [a daughter] & him for an hour. They are moving on to Capitol Hill—He feels his oats & doesn't talk of resigning. I sounded him but he wouldn't respond to my touch. I saw Swayne—Nelson, & Davis—They are greatly exercised at his not resigning—They declared they were going to crowd him about Dec 1 '69. He sleeps on the bench, drops his head down & looks very badly. Congress will also crowd him if he don't resign— . . .

Nelson, Davis & Swayne are loud in calling for you & they mutter at Grier saying how long—how long—

It is supposed that Mrs. Smith [Grier's other daughter] & Mrs. Beck support Grier in his wish to remain on the bench with a view to maintain their social status another winter in Washington—The Court are provoked at this—much of their time being spent in canvassing the subject.

It seems clear enough that Chief Justice Salmon P. Chase and Senior Associate Justice, Samuel Nelson, paid a call upon Grier approximately three weeks later. One of Grier's two married daughters



Justice Robert Cooper Grier retired from the Court in 1870 after twenty-three years on the Bench. Appointed by President Polk in 1846, Justice Grier participated in many cases that shaped America, including *Dred Scott* and the first *Legal Tender Cases*.

—continued on page seven



## NICEL (continued from page one)

*Lopez* (the gun-free school zone case) in which the Court appeared to provide new direction for Commerce Clause cases. Next, *Capitol Square v. Pinnette* (the Ku Klux Klan's application to place an unattended Latin cross on the grounds of a statehouse) was studied. This case concerned the Free Speech and Establishment Clauses of the First Amendment.

The afternoon session considered *Vernonia School District v. Acton* (the random drug testing of student athletes case). Participants worked with attorneys Suzanne Kalfus and Richard Willard (who had written an amicus brief in *Vernonia*) to put on a moot court of this case.

Over the weekend the teachers studied resource materials covering four cases for which opinions were yet to be issued. The teachers worked in teams to gain an understanding of these cases in preparation for a visit to the Court on Monday morning. Following the exercise, teams of teachers determined exactly where the institute's curriculum would fit in their government, history and law courses.

The Sunday evening session refocused the institute away from the specific cases of the term to a larger view of the Supreme Court and its impact on American life and values. Participants interacted with Georgetown Law Professor Susan Bloch, a former clerk to Justice Thurgood Marshall, and Frank J. Murray, who covers the Court for the *Washington Times*. The contrasting philosophical views of these experts lead to a lively discussion of the politics of the Court.

The Monday session of Court included a brief eulogy of Warren E. Burger, delivered by Chief Justice Rehnquist. Following the eulogy, Justice Scalia announced the decision in *Vernonia*. After obtaining slip copies of the opinions in the case, the teachers spent time reading the opinion of the Court written by Justice Scalia, a concurring opinion by Justice Ginsburg and a dissenting opinion authored by Justice O'Connor.

Monday afternoon the teachers received a hands-on briefing on legal research. Later they began to assemble the workshops that they would use to share the institute's information with their colleagues in their home states.

For many teachers, the highlight of the seminar occurred on Monday evening when Justice Sandra Day O'Connor hosted a reception sponsored by the Supreme Court Historical Society in one of the function rooms at the Court. Justice O'Connor and her husband, John O'Connor, visited with the teachers. The Justice told participants how a teacher in Arizona guided her decision to enter the legal profession. She also expressed her view that educational programs were among the most important extrajudicial activities with which the Court was associated.

The closing session gave the teachers an opportunity to hear two nationally known legal commentators discuss the 1994-95 term. Constitutional law experts Jamie Raskin, a law professor at American University, and Clint Bolick, vice president of the Institute for Justice, squared off to evaluate the term.

The impact of this seminar on the individual participants was significant, but perhaps more importantly, the effects will reach out into the classrooms and communities in which these teachers work. The Society has received a number of letters from the participants expressing their appreciation and support of the program. Representative of them was a letter from John Wheeler who explained that

[p]rofessionally, the Supreme Court Summer Institute will have a far-reaching effect. In my capacity as an educa-



Courtesy of NICEL

Society President Leon Silverman discussed the Summer Institute with two participants, Karen Wassman of Maryland (left) and Margaret Reilly of Massachusetts (center).

tional programs coordinator for the Iowa Center for Law & Civic Education, I conduct seminars, in-service training, workshops and symposia throughout the state. Each year, I come in contact with hundreds of social studies teachers, all of whom are eager for new ideas, new teaching strategies, and updated content. Annually, I conduct a workshop on the Supreme Court at the Iowa Council for the Social Studies conference. . . . Last year more than 100 teachers crammed into the room to get an update of recent decisions, a preview of the coming term, and historical and procedural background. In addition to the social studies conference, the Iowa Center conducts an annual Bill of Rights Symposium for approximately seventy-five teachers. . . . Through these events, 175 Iowa teachers (conservatively translated into more than 5,000 students) will directly benefit from my involvement at this year's Supreme Court Summer Institute. I know that the effects of my participation will last beyond a single academic year." . . . I am grateful for the opportunity to have participated, and I hope that other educators will get a chance to experience this incredible conference in the future. I encourage your efforts to make this an ongoing program of the Supreme Court Historical Society.

Similar letters were received from all the participants and many informed us that they would conduct seminars during the summer so that additional students during the current school year would have the benefit of this material.

In response to the success of the Supreme Court Institute, the Society's Program Committee members recommended that increased funding be allocated to provide for an additional ten participants in the 1996 institute. This recommendation was adopted, and funds have been made available to expand the program for 1996. NICEL looks forward to working with the Society in the coming years to make this an annual program.

\* Lee Arbetman is the associate director of NICEL. He has worked for twenty years in this field and is the coauthor of a textbook, *Street Law* which is widely used to teach law-related education to high school students.



## Grier (continued from page five)

ters, Mrs. Sarah Grier Beck, confirmed this meeting in a letter dated December 9, 1869, to George Harding.

The chief & Judge Nelson waited on Pa this mor'g. to ask him to resign saying that the politicians are determined to oust him, & if he don't, they will repeal the law giving the retiring salaries.

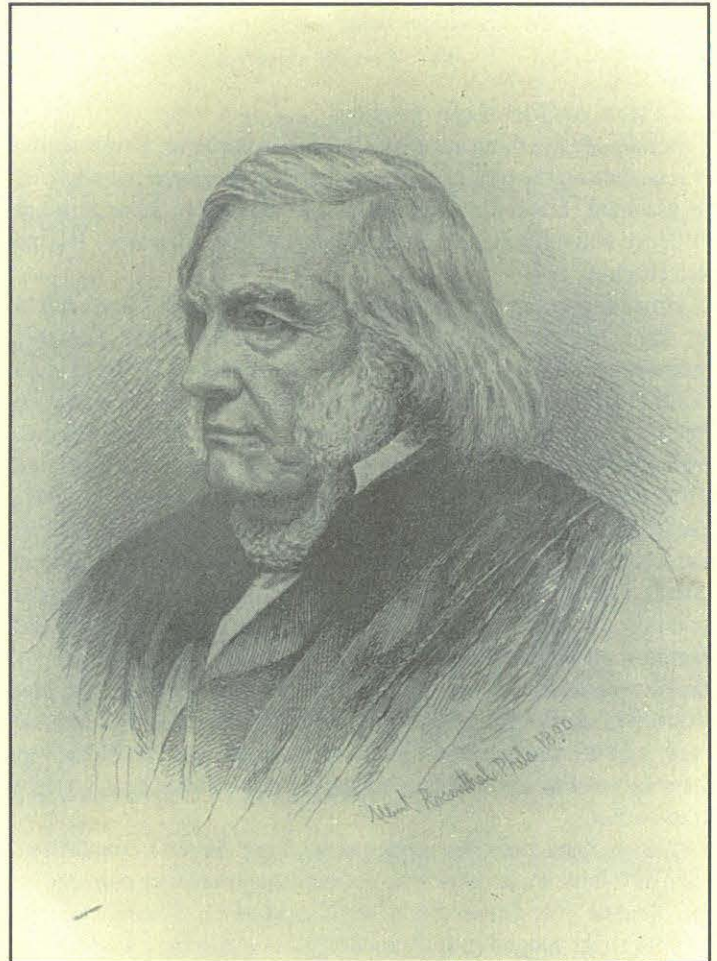
Pa told them if they wished him to resign he would do so, to take effect the 1<sup>st</sup> of Feb.

What do you say to all this? Do you think he ought to do so? Excuse this rapid scribble— . . .

At this time Grier probably lived with his daughter while the Court was in session, returning to Philadelphia when the term was completed. His health was precarious, as was known by all. He could scarcely walk and admitted he could only "write with difficulty, even with a pencil."

Mrs. Beck's letter indicates accurately what happened. Grier did resign in December, effective as of February. However, it cannot be inferred from the letter either that this was the only exchange on the subject of resignation between Grier and members of the Court prior to December 9 or, given Grier's tendency to vacillate, that there were no meetings subsequent to that date. He may again have become uncertain as to the future and may have required further encouragement from his colleagues in order to carry through with his resignation. Or this may not have happened. We have no way of knowing.

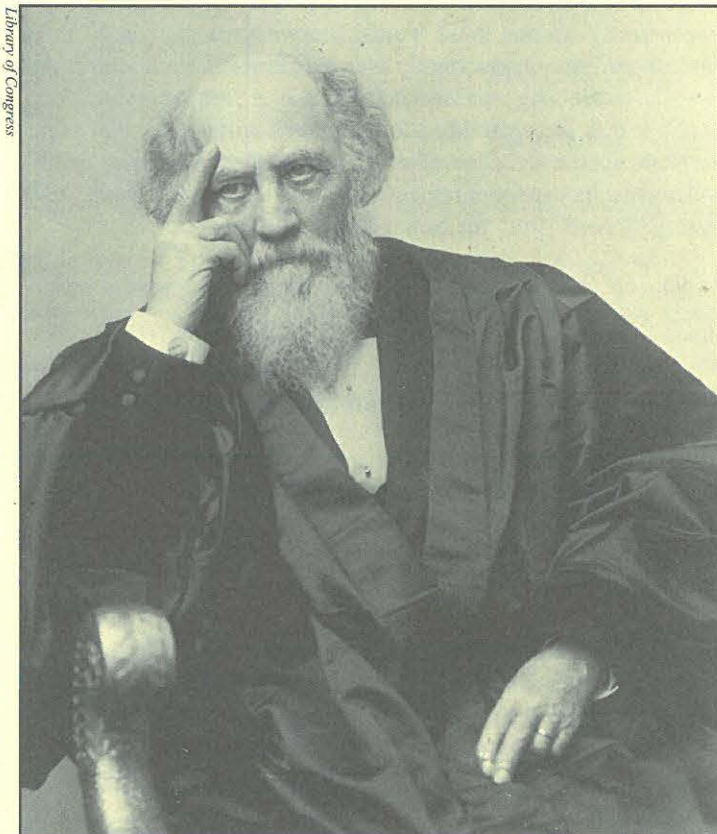
Only Mrs. Beck's letter of December 9 remains to throw light on who actually called on her father. Do we read the letter to mean that



Samuel Nelson served as the Senior Associate Justice for the final five years of his twenty-seven year Supreme Court tenure.

only Chase and Nelson talked with her father on this topic? Although there is the outside possibility there were others there if she was not present herself and she merely repeated what her forgetful father recounted to her about his visitors when she returned home, it is more likely, from the tone of the letter, that she was either at the meeting or acted as the Justice's greeter when Chase and Nelson appeared. Assuming all of this, there are two possibilities left, which the documentary evidence does not foreclose. First, there may have been other calls at the home, either before or after December 9, left unrecorded by correspondence. Second, there may have been words spoken at the Capitol while the Court was about its business (either before or after the formal sessions on the bench) when the matter of Grier's retirement was raised, however informally. Even though he was the Junior Associate, it is inconceivable that Field either was indifferent or unwilling to participate in such conversations as may have taken place. Everything we know about Field would suggest he would be the last man to withdraw from controversy, especially when the Chief Justice, the Senior Associate, David Davis (himself a gifted persuader) and Noah H. Swayne were "greatly exercised" about the need for Grier to leave.

To conclude that only Chase and Nelson spoke to Grier about the desirability of his resignation, though possible, requires one to suppose that because Mrs. Beck mentioned only that one meeting and only those two Justices, nothing else happened, that no one else



Associate Justice Stephen J. Field set a longevity record on the Supreme Court that stood until William O. Douglas broke it in 1973.

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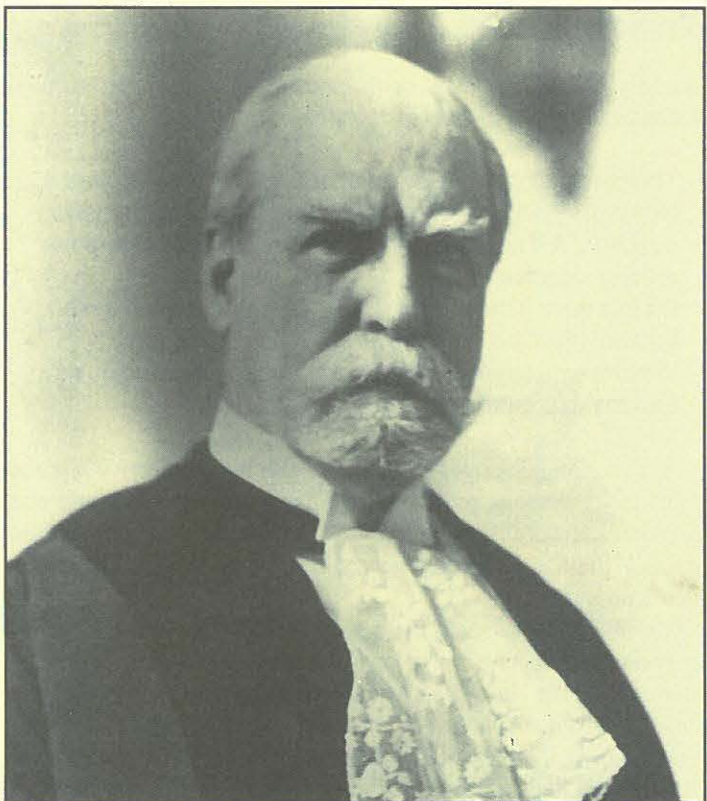
said a word to Grier about resigning.

Perhaps such a thing occurred. But for this to be so, a high degree of reticence on the part of some ordinarily unreserved people must be assumed, rather unrealistically. But of course there is other evidence that must also be considered. And that is the story Harlan told Hughes.

How reliable is the "Yes! And a dirtier day's work I never did in my life!" anecdote? For one thing, it is double hearsay. Harlan's encounter with Field probably occurred sometime in the middle 1890s [Field resigned in April, 1897, effective as of December so that he could establish the Court longevity record] and Hughes probably heard of it from Harlan sometime between when he joined the Court for the first time in 1910 and Harlan's death in 1911. Harlan retained his mental acuity until his sudden death, so there is no reason to doubt his general accuracy. The credibility of Harlan's story is high because of the richness of details it contains. Harlan was recounting institutional history of the sort relished by insiders. Of course, it may have been distorted in small particulars. But here we have to consider Hughes' credibility. Importance should fairly be attached to the fact that Charles Evans Hughes obviously believed the story, and he was no mean judge of men and events. Moreover, knowing what we know of Hughes we can be confident he got it right from Harlan.

Where, then, does the evidence lead us? Several conclusions seem to follow. First, there is no documentary evidence corroborating Hughes' "A dirtier day's work" anecdote. Second, for the anecdote to be judged entirely apocryphal, for it to have no meaning at all, one must assume either Harlan or Hughes falsified it. A motive for this is entirely lacking. There is on the contrary a high circumstantial probability that Field in some manner, perhaps along with others, separately or in a group, expressed to Grier the belief he should step aside. Third, there is no way, unless told by her father, that Mrs. Beck could have known what took place at the Capitol (which is where Harlan later confronted Field). The interaction Field refers to may have been informal and almost incidental in order to spare Grier's feelings. This appears to be what happened when Harlan approached Field who was sitting on a "settee" in the "robing room."

When the documentary evidence and the oral tradition are both



Library of Congress

Charles Evans Hughes passed on the story of Justice Grier's resignation from Justice Harlan in his book, *The Supreme Court and the United States*.

examined, the following scenario seems likely. At some point Field spoke to Grier and to his other colleagues on the Court and at that time expressed the desire that Grier step down. In his old age Field might have regarded those words, those expressions, as a "dirty day's work," thus inadvertently assigning himself (the Junior Associate) an improbable and misleading importance in the whole affair. In short, it is the centrality Field assumes in the story that is the problem, not the recitation of what happened between Grier and his colleagues. Justice Grier remains, after all, the first Justice in Court history "forced" from the bench by his colleagues.

*\*David N. Atkinson, Professor of Political Science, Department of Political Science; and Professor of Political Science and Law, School of Law, University of Missouri-Kansas City.*

## Wanted

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



## Membership Update

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

### Alabama

Fred Gray, Tuskegee  
Ernestine S. Sapp, Tuskegee

### Arkansas

Greg Curry, Phoenix

### California

Steven Abrams, Van Nuys  
Janet Cooper Alexander, Stanford  
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### Kansas

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### Kentucky

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# Trivia Answers

(Questions appear on page sixteen)

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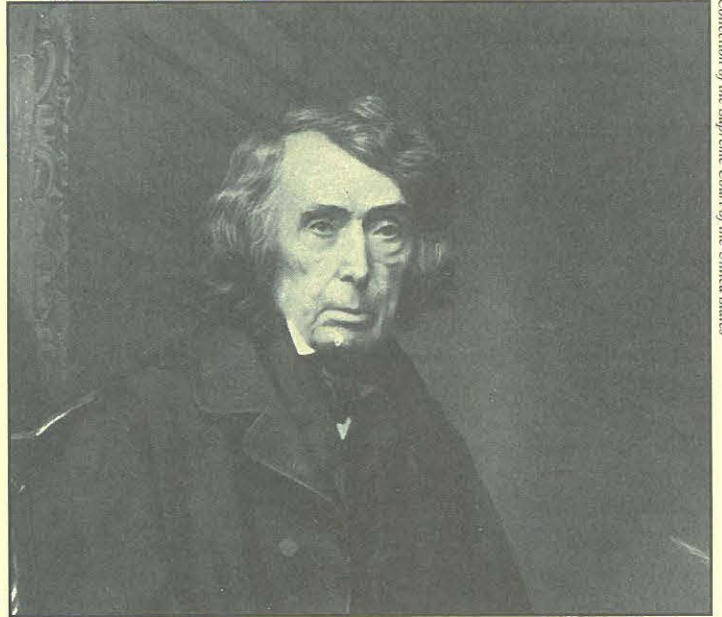
1. Justice William O. Douglas when he appointed Lucille Lomen in 1944.

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2. Justice Felix Frankfurter appointed William T. Coleman (above) in 1948.

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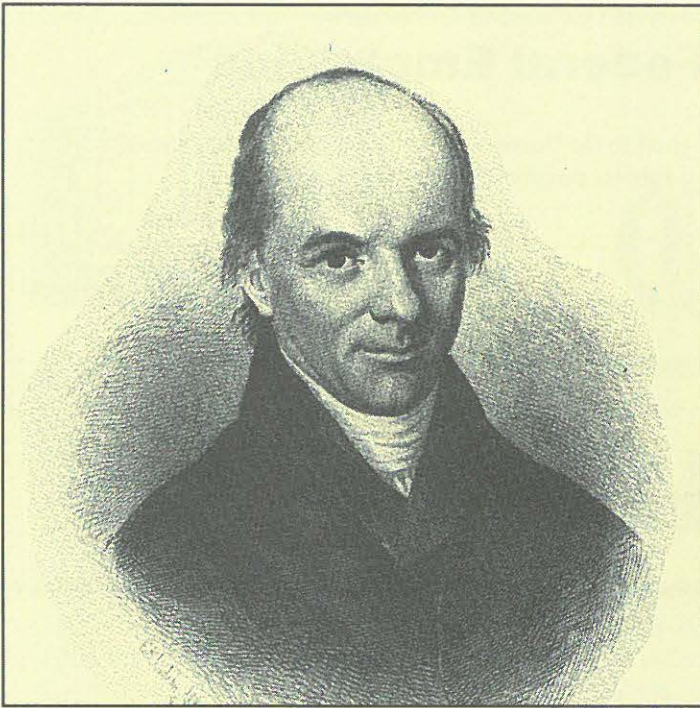
3. Chief Justice Roger B. Taney. *The Supreme Court Justices: Illustrated Biographies, 1789-1993*, p. 118 Cushman ed. (1993).

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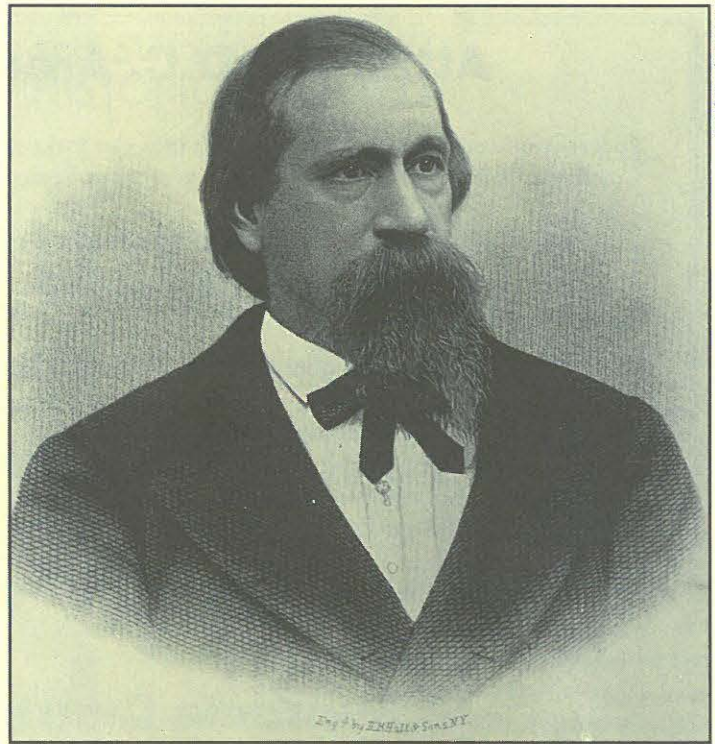


4. Chief Justice William Howard Taft. He stood 6'2" tall and weighed over 300 pounds. When he was President, he got stuck in the White House bathtub and had to have an outsized model brought in for his use. Gregorio, *The Complete Book of U.S. Presidents* 393 (1984).





5. Justice Alfred Moore. Moore was "only four-and-a-half feet tall, and weighed between eighty and ninety pounds." Rehnquist, *The Supreme Court: How It Was, How It Is* 105 (1987).



7. Justice Lucius Quintus Cincinnatus Lamar had served as a Lieutenant Colonel of the Nineteenth Mississippi Regiment, *The Supreme Court Justices: Illustrated Biographies*, p. 243, and his appointment was taken by the country as a welcome symbol of post-Reconstruction reconciliation.



6. Justice Stephen J. Field. He was assaulted by former California Chief Justice David Terry, who was shot by a Federal Marshal assigned to guard the Justice. The incident gave rise to *In Re Neagle*, 135 U.S. 1 (1890), a leading case on executive power. [Two past issues of the Society's *Yearbook* contain articles concerning Stephen Field and David Terry. The first article, "The Justice and the Lady" by Robert Kroninger, appears in *Yearbook* 1977 and gives an account of Justice Field and his involvement with Terry and the Sarah Althea Hill (above) divorce trial, and the incidents leading up to the fateful encounter between David Terry and Marshal Neagle. A response to that article was published in *Yearbook* 1981. Written by Alfred J. Schweppe, "The Justice and the Lady: A Postscript" provides additional information and a reassessment of the case.]



8. Justice Benjamin Nathan Cardozo. During his youth he had a number of tutors, including Horatio Alger, later the famous writer of books in which the hero triumphed over poverty and adversity by courage and hard work. *Id.* at 372.



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**Bernard Schwartz**

1. What Justice appointed the first female law clerk?
2. What Justice appointed the first African-American law clerk?
3. Who was the first Catholic appointed to the Supreme Court?
4. Who was the biggest member of the Court?
5. Who was the smallest member of the Court?
6. What Justice had his life saved by a United States Marshal?
7. Who was the first Confederate veteran appointed to the Court?
8. What Justice had Horatio Alger as a tutor?

*(Answers appear on pages fourteen and fifteen)*

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