The Supreme Court Historical Society sponsored a reception on November 13, 1995 for the unveiling of Justice Byron White’s portrait. This portrait, by noted artist Chris Owen, is the latest addition to the Society’s collection of portraits and busts on display at the Court for the educational enrichment of the more than one million visitors to the Supreme Court building each year.

The unveiling ceremony was held in the West Conference Room of the Court. Chief Justice William H. Rehnquist, Associate Justices Sandra Day O’Connor, Antonin Scalia, David H. Souter, Clarence Thomas and Ruth Bader Ginsburg and Retired Associate Justices Harry A. Blackmun and William J. Brennan, Jr., were present to honor Justice White.

Society President Leon Silverman welcomed guests and thanked Justice White’s law clerks for their generosity in raising funds for the portrait. Mr. Silverman also thanked Justice White for his ongoing enthusiasm and support for the Society.

Mr. Larry Simms of Gibson, Dunn and Crutcher then spoke briefly on behalf of Justice White’s law clerks and presented the portrait to Court. Chief Justice William H. Rehnquist accepted the portrait on behalf of the Court and remarked that Justice White’s career on the Court had begun with a confirmation that took place only eight days after his nomination. The Chief Justice also noted Justice White’s influence on the Court during his career, and the more than 450 majority opinions he wrote for the Court during his tenure.

Justice Byron R. White spoke briefly after his portrait was unveiled, thanking the Society and his clerks for their efforts.

Larry Simms of Gibson, Dunn and Crutcher, represented the former Law Clerks to Justice White, and led the fundraising efforts for the portrait.
A Letter From the President

Today the term has taken on another meaning to some scholars but when it was first attached to four conservative Justices in the 1930s, the appellation “Four Horsemen” was a condemnation of Justices James C. McReynolds, George Sutherland, Pierce Butler and Willis Van Devanter. They had taken a hard look at the policies and programs of the New Deal and determined to challenge those programs’ proponents in the Supreme Court. Their lockstep rejection of change, even in the face of economic catastrophe, led to their depiction as a modern-day Four Horsemen of the Apocalypse.

Time and historical trends that they could not alter eventually led to the defeat of the Four Horsemen’s obstruction of New Deal reforms, but not before they had registered some notable victories against the New Dealers. In their view, these reformers sought to confine them to poverty and continued suffering by legal artifice. These stark contrasts in views on the role and power of the government were not weeks or months in the making. They were not to confine them to poverty and continued suffering by legal artifice. These contrasts are not to confine them to poverty and continued suffering by legal artifice. These stark contrasts in views on the role and power of the government were not weeks or months in the making. They were not.

Conversely, the New Dealers regarded the economic and social catastrophes associated with the Great Depression as changing the very foundation upon which rested any prospect of continued constitutional government in the United States. If the government were hamstrung from responding to cataclysms by archaic constitutional interpretations, then those interpretations must be changed to meet the necessities of the day. Government was meant to serve the governed, not to confine them to poverty and continued suffering by legal artifice.

These stark contrasts in views on the role and power of the government were not weeks or months in the making. They were not simple differences of opinion among the Justices on how or even if the Court should respond to a contemporary crisis. The Four Horsemen, and indeed, at first, a majority of the Court, applied protections to property and freedom of contract which had been forged in cases reaching at least as far back as Lochner. These positions were then tempered in the crucible of the Progressive Era in the early twentieth century and stood ready to be challenged in a contest of ideology and philosophy brought on by the Great Depression and the advent of Franklin Delano Roosevelt’s “New Deal.”

This spring the Society begins its most ambitious educational program to date with a series of presentations entitled, “The Four Horsemen v. The New Deal.” The program will include five lectures covering philosophical shifts on the Court from the late nineteenth century to the late 1940s and an unprecedented case reenactment.

The lectures will examine the development of modern conservative jurisprudence in the late nineteenth century; the influence of the early twentieth century Progressive movement on the Court; the conflict between the Court, as a last bastion of conservatism, and the political floodtide of New Deal reform; as well as a retrospective look at the New Deal’s long-term effects on the Court in the 1940s.

As was the case with prior lecture series, the program includes respected scholars from around the country, each of whom will be introduced by a member of the Supreme Court. Professor Herman Belz of the University of Maryland is serving as the Society’s principal academic advisor for the series. Scholars presenting papers will include Professor Paul Kens of Southwest Texas State University, Professor Benjamin Schmidt of the Edison Project, Professor Hadley Arkes of Amherst College, Professor William Leuchtenburg of the University of North Carolina and Professor David Currie of the University of Chicago. Each lecture will take place in the Supreme Court Chamber and will be followed by a reception where members and guests can meet and talk with the program participants.

The major departure from earlier programs is an experimental reenactment of the Gold Clause Cases. Justice Antonin Scalia has agreed to preside over an historical reenactment of the 1935 case which to many represents a federal abandonment of the sanctity of property rights and a fundamental departure by the Court on various issues related to the contract clause.

Justice James C. McReynolds, not known for his tolerance of change, or for that matter his tolerance of much else—misogyny, racism and anti-semitism being but a few of his biases—was so disturbed by the outcome of the Gold Clause Cases that he penned one of the most caustic dissents ever to emanate from the High Bench, announcing among other things that “the Constitution is dead.” He was joined in vote, if not in temperament, by his fellow “Horsemen”—Van Devanter, Butler and Sutherland.

Following an historical introduction by Professor Kenneth Tollett of Howard University, two experienced members of the Supreme Court Bar will present “compressed” arguments in the Supreme Court Chamber. Elevating the historical reenactment to a previously unattained level of realism, Justice Scalia will represent the Court and conclude the program with excerpts from and commentary on the Court’s majority and minority opinions. The program is designed to provide a near first-hand view of the Court in action over sixty years ago.

The first lecture in “The Four Horsemen v. The New Deal” series will take place in the Supreme Court on April 2, 1996. A subsequent lecture is scheduled for April 9, and the case reenactment will take place on May 23. The series will then take a summer recess and reconvene on October 1, with subsequent lectures on October 10 and October 22 to conclude the series.

The closing three lectures in October are planned to coincide with a national celebration of Roosevelt History Month, a series of programs and events commemorating the FDR presidency. These programs, being prepared by historical groups throughout the country, will culminate in the October opening of the Roosevelt Memorial in Washington.

More information will be available in the invitations which will be mailed to members in early March. I will defer a more detailed report of the Society’s other programs and activities until the next Quarterly. Suffice it to say that we continue to be in good health and look forward to a year of continued service to the Court.
Horace Lurton was a Confederate on the Court
Burnett Anderson

Editor’s Note: This biography was originally published in The Supreme Court Justices: Illustrated Biographies, 1789-1995 Second Edition, Edited by Clare Cushman (Washington: D.C., Congressional Quarterly, Inc.). This volume is available for sale at the Society’s Gift Shop (202-554-8300).

Horace Harmon Lurton, at age sixty-five, was the oldest jurist ever to ascend to the Supreme Court; he was also the first southern Democrat to be appointed to the High Bench by a Republican president. Lurton was born February 26, 1844, in the town of Newport, Kentucky, across the Ohio River from Cincinnati. His ancestors were English, settling in Virginia in the eighteenth century; some members of the family gradually moved west in the great trans-Appalachian migration. Horace was the son of Sarah Ann Harmon Lurton and Lycurgus Leonidas Lurton, a practicing physician and pharmacist who eventually became an Episcopal minister.

During the 1850s Dr. Lurton uprooted his family to cross Kentucky and live in Tennessee. They settled in Clarksville, a town of about 15,000 inhabitants forty miles north of Nashville on the Cumberland River. Young Horace was educated locally until the age of sixteen, when his family moved to Chicago, and he enrolled at the now defunct Douglas University.

In less than two years his education was interrupted by the shots fired at Fort Sumter, heralding the beginning of the Civil War. Eager to find a way to join the Confederate forces, Lurton gave up his studies. “It is my desire to yet strike a blow in defense of the best of causes—Southern Independence. I would go now if my ma would only consent,” he wrote to a friend on June 2, 1861. In later years Lurton recalled that he had received a hoopskirt or two, symbol of shirking from military duty, which may have helped overcome his parents’ reluctance to return to the South from Illinois.

Lurton enlisted in the Fifth Tennessee Infantry Regiment (later the Thirty-fifth) and by the end of the 1861 was a sergeant-major and a seasoned campaigner. A lung infection sidelined him in February 1862, and he returned to Clarksville with a medical discharge and orders to rest. The interruption was very brief; he reenlisted in time to be made prisoner of war with 12,000 other Confederates in General Ulysses S. Grant’s sweep which took Forts Henry and Donelson only a few weeks later. It is unclear whether he escaped or was released, but once free Lurton joined up with the guerrilla band of General John Hunt Morgan, selling a watch his father had given him to buy the required horse. For more than a year Lurton rode with Morgan’s daredevil cavalry in a succession of raids, performing acts of sabotage on Union railroads, bridges, and communications stations. But in July 1863, at the end of a long bold campaign, most of Morgan’s 2,500 irregulars were captured. Lurton was to spend the next eighteen months of the war in a prison camp on an island in Lake Erie, where he came down with tuberculosis.

Fearing for his health, Lurton, according to a “good character” letter written by his fellow prisoners, apparently took the oath of loyalty to the Union to secure his release. Other reports, notably those circulated by Lurton in later years, describe how his mother—continued on page eight
Increasingly as nations cast about for models of judicial independence, it has become important that the legal communities of different nations exchange views in an effort to understand one another. Significantly, as judiciaries begin, or continue the process of finding an institutional role to play in the fragile experiment of democracy, the continental and constitutional common law experiences stand out as possible models.

But not all constitutional common law experiences are equivalent, nor do all lessons easily adapt when transplanted. As the field of comparative law evolves, it has become apparent that certain countries enjoy “elective affinities” that make for easier understandings. In particular, exchanges between India, Canada, Britain, and the United States have been fruitful because of shared experiences and common law traditions. Building on these exchanges helps create a basis for comparison when contrasting different common law histories to each other, or to continental approaches.

In January 1994, Justices Antonin Scalia and Ruth Bader Ginsburg of the Supreme Court of the United States led a delegation of American lawyers and judges on a visit to India to learn more about the Indian legal system. To reciprocate in May 1995, a distinguished Indian delegation, headed by Chief Justice of India A.M. Ahmadi, journeyed to the United States for the Second Indo-U.S. Legal Exchange.

The Indian delegation was composed of A.M. Ahmadi, Chief Justice of India; Justices Kuldip Singh, J.S. Verma, M.M. Punchhi, and K. Ramaswamy of the Supreme Court of India; M.J. Rao, Chief Judge of the Delhi High Court; Dipankar Gupta, Solicitor General of India; K.K. Venugopal, Esq.; Fali S. Nariman, Esq.; P. Vishwanath Shetty, Esq.; and Zia Mody, Esq. The American College of Trial Lawyers, a major sponsor of the exchange, had a delegation including Edward J. Brodsky, Fulton Haight, Charles B. Renfrew, and Richard H. Sinkfield.

The Second Indo-U.S. Legal Exchange began with a non-argument session of the Supreme Court followed by a meeting with the Justices and a tour of the Court building. The delegation then visited the Library of Congress, the Embassy of India, and the residence of Indian Ambassador Siddhartha Shankar Ray.

The next program was held at the Federal Judicial Center and focused on case management, judicial education, judicial ethics, and judicial discipline in the federal courts. Following the program, the Chief Justice hosted a reception at the Supreme Court.

At the Supreme Court, after opening remarks by the Chief Justice, the Chief Justice of India, A.M. Ahmadi, briefly presented the Indian delegation’s perspective on the accomplishments of the first Indo-U.S. Legal Exchange. Charles Renfrew then spoke of the first exchange's accomplishments from the perspective of the U.S. delegation.

For the first discussion, Justice Antonin Scalia presented an address on “The Dissenting Opinion.” Justice Scalia reasoned that the value of dissenting opinions, both outside of and within the Court, far outweigh commonly presented objections to the practice of allowing separate concurring and dissenting opinions.


The second panel discussion involving “Federalism, the Federal Courts, and their Interactions with State Courts” was presented by Dr. Russell Wheeler, the deputy director of the Federal Judicial Center. Wheeler discussed the unique features of American federalism and its historical evolution. The presentation then outlined the development and present structure of the extensive dual court system of the United States. He concluded with a few specific examples of state/federal court interactions and remarks on the general historical vindication of the structural tension built into the multiteried judiciary of the United States. The discussion was moderated by the Chief Justice.

The afternoon discussion of the First Amendment, particularly concerning the separation of church and state, was conducted by
Members of the Indo-American Legal Exchange delegations. Seated: Chief Justice William H. Rehnquist and Chief Justice A. M. Ahmadi. (Standing, second row, from left) Mr. Aurora, Justice Breyer, Justice Ramaswamy, Justice Rao, Ms Mody, Justice Punchhi and Mr. Nariman. (Standing, third row, from left) Mr. Sinkfield, Mr. Renfrew, Justice Singh, Justice Verma, Mr. Reavely, Mr. Venugopal, Solicitor General Gupta, Mr. Brodsky and Mr. Haight.

Fulton Haight. Mr. Haight outlined how traditional justifications for free speech emphasize its importance for the pursuit of truth and/or for the exercise of self-government. Yet he noted a shift in free speech focus in the courts and commentary during the 1970s and 1980s, from self-government to a more general principle of respect for persons as individuals. Chief Justice Ahmadi moderated the discussion.

The final meeting of the day was an Open Forum on “The U.S. Legal System and U.S. Supreme Court Practices” moderated by Justice Ginsburg. Following the forum, closing remarks were delivered and the program was adjourned. One possible outcome of the visit is the recent Indian High Court decision to begin experimenting with limiting the time allowed for oral argument.

While in Washington the Indian delegation also met with Vice President Gore and counsel to the President Abner Mikva, enjoyed a White House reception, and visited the U.S. Court of Appeals for oral arguments and a meeting with Chief Judge Edwards, the Justice Department, the Georgetown University Law Center, the Office of the Federal Public Defender, and the Environmental Protection Agency’s Environmental Appeals Board.

After leaving Washington, the delegation traveled to the National Center for State Courts in Colonial Williamsburg, where the justices had an opportunity to view the courtroom of the 21st century.

Many contributed to the success of this valuable exchange, but certain individuals and groups require specific recognition including: Robb M. Jones and the Federal Judicial Center, the United States Information Agency (which provided support for the exchange), the Embassy of India, the Curator’s Office of the Supreme Court, the American College of Trial Lawyers, and the Supreme Court Historical Society.

As more countries seek models of an independent judiciary, different constitutional developments can offer a rich path of experiences, and exchanges such as these can make contributions that are immeasurable.

Endnotes

1 Administrative Assistant to the Chief Justice.
2 Judicial Intern, Office of the Administrative Assistant to the Chief Justice.

Trivia Questions

Bernard Schwartz

1. What Justice practiced as an M.D. for nine years before giving up medicine for law?

2. What Justice resigned to become a U.S. Senator?

3. What Justice wrote the most opinions?

4. What Justice wrote the fewest opinions?

5. When President Lincoln visited the front lines and climbed a parapet to see the battle (with his tall figure an obvious target), what future Supreme Court Justice shouted, “Get down, you damn fool”?

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

7. What Justice served on the Court with his former law professor?

8. What Justices were members of the Constitutional Convention of 1787?

answers appear on page 14
Two Gentlemen from Virginia

A slender volume, Sketches, Essays and Translations by the late Francis Walker Gilmer of Virginia was printed in Baltimore in 1828. It contained the writings of a young gentleman from Virginia, who in the words of the editor "was cut off very early in life." The "youngest son of Doctor George Gilmer, an eminent physician, of Albemarle county in Virginia," the younger Mr. Gilmer was an accomplished classical scholar and practitioner of the law. Gilmer grew up in close proximity to Monticello, and his father and he enjoyed "the intimacy and friendship of Mr. Jefferson."

Something of a prodigy, he was such an impressive scholar that by the age of seventeen, Gilmer was offered the ushership of the grammar school attached to William and Mary College. He also studied in the office of William Wirt, the future Attorney General of the United States. Upon completing those studies, he commenced the practice of law in Winchester, Virginia and in the Shenandoah Valley. In 1818 he relocated in Richmond to avail himself of increased advantages there. Although he declined his choice of professorships at the University of Virginia, Jefferson persuaded him to travel to England to recruit professors from the universities of Oxford and Cambridge. He did so, but became ill on the voyage home and never fully recovered his health. He died in 1826 at the age of thirty-six.

He left behind him writings which included sketches and impressions of lawyers and orators he had found especially noteworthy and of high caliber. Possessed of impressive intelligence and talents himself, his observations of his contemporaries furnish added insight into the characters of some of the great advocates before the Supreme Court. As he was particularly interested in the skills and attributes of outstanding oratory, he measured his contemporaries by their abilities or inabilities in this field. Below are extracts from his writings describing his impressions of Edmund Randolph, the first Attorney General of the United States, and the Great Chief Justice, John Marshall.

Randolph was fifty-five years of age in 1808, the year Gilmer first recalls hearing him speak. By that time he had resumed the practice of law, but earlier in his career he had been involved in the political workings of the state of Virginia and the emerging nation. "Though vacillating by nature, he was the most popular Virginian next to Patrick Henry, ..." one historian observed. He served as a delegate to the Continental Congress and the Constitutional Convention. He also served as governor of Virginia and as Attorney General of the United States, and briefly as Secretary of State. He resigned from the Cabinet in protest over the false accusations against him that he had solicited bribes from France at the time of the Jay Treaty. In 1807 he served as chief counsel for Aaron Burr in Burr's trial for treason.

"The first time that I ever felt the spell of eloquence was when a boy, standing in the gallery of the capitol in the year of 1808. It was on the floor of that house I saw rise, a gentleman, who in every quality of his person, his voice, his mind, his character, is a phenomenon among men. His figure is tall, spare, and somewhat emaciated: his limbs long, delicate, slow and graceful in all their motions; his countenance with the lineaments of boyhood, but the wrinkles, the faded complexion, the occasional sadness of old age and even of decrepitude: possessing, however, vast compass and force of expression. His voice is small, but of the clearest tone and most flexible modulation I ever heard. In his speech not a breath of air is lost; it is all compressed into round, smooth, liquid sound; and its inflections are so sweet, its emphasis so appropriate and varied, that there is a positive pleasure in hearing him speak any words whatever. His manner of thinking is as peculiar as his person and voice. He has so long spoken parables, that he now thinks in them. Antitheses, jests, beautiful conceits, with a striking turn and point of expression, flow from his lips with the same natural ease, and often with singular felicity of application, as regular series of arguments follow each other in the deductions of logical thinkers. His invective, which is always piquant, is frequently adorned with the beautiful metaphors of Burke, and animated by bursts of passion worthy of Chatham. Popular opinion has ordained MR. RANDOLPH the most eloquent speaker now in America."

"It has often been objected to this gentleman, that his speeches are desultory and unconnected. It is true; but how far that may be a fault, is another question. We are accustomed in America, to look upon the bar as furnishing the best, and nearly the only models of good speaking. In legal discussions, a logical method, an accurate arrangement, and close concatenation of arguments is essential; because the mode of reasoning is altogether artificial, and the principles on which we rely, positive and conventional. Not so in parliamentary
effects can only be produced by successive impulses ... I have seen and heard it [Randolph's voice] a
without concert, he was more successful

The style of his eloquence generally, it must be admitted, is not favorable to the excitement of any deep or permanent passion; such
effects can only be produced by successive impulses. ... [E]very thing in the manner, the mind, the voice of Mr. Randolph is
imperious. His genius too, is fickle, and continues but a short time under the influence of any one emotion. ... His deliberate, graceful,
and commanding delivery, cannot be too much praised; his total want of method cannot be too much condemned.

"Gifted with a fine fancy, a prompt and spirited elocution, and stamped with a character ardent and impetuous; obeying only the
impulse of the moment; speaking without premeditation, and acting without concert, he was more successful in early life than of later years:
the effusions of his youth possess a freshness and glow, which his more recent efforts want. ... I have seen and heard it [Randolph's voice] a
volcano, terrible for its flames, and whose thunders were awful. ..."

John Marshall was the third Chief Justice of the United States, appointed by
President John Adams after retiring as Secretary of State.

John Marshall

"One of the most remarkable speakers who ever appeared at the
American bar, ... [e]very one has heard of the gigantick abilities of
JOHN MARSHALL. As a most able and profound reasoner, he
deserves all the praise which has been lavished upon him. And in
answer to those who would doubt the powers of his mind, from the
tedious and heavy narrative of his history, I would say no more than,

Non omnia possimus omnes."

"A capacity for speaking and writing well, have been so rarely
combined, that the wonder is not to see them apart, but to find them
united. His mind is not very richly stored with knowledge; but it is
so creative, so well organized by nature, or disciplined by early
education, and constant habits of systematic thinking, that he
embraces every subject with the clearness and facility of one
prepared by previous study to comprehend and explain it. So perfect
is his analysis, that he extracts the whole matter, the kernel of
inquiry, unbroken, undivided, clean and entire. In this process, such
is the instinctive neatness and precision of his mind, that no
superfluous thought, or even word, ever presents itself, and still he
eysays every thing that seems appropriate to the subject. This perfect
exemption from any unnecessary encumbrance of matter or ornament,
is in some degree the effect of an aversion from the labour of
thinking. So great a mind, perhaps, like large bodies in the physical
world, is with difficulty set in motion. That this is the case with Mr.
Marshall's is manifest, from his mode of entering on an argument
both in conversation and in publick debate. It is difficult to rouse his
faculties; he begins with reluctance, hesitation, and vacancy of eye;
presently his articulation becomes less broken, his eye more fixed,
until, finally, his voice is full, clear, and rapid, his manner bold, and
his whole face lighted up, with the mingled fires of genius and
passion: and he pours forth the unbroken stream of eloquence, in a
current, deep, majestic, smooth, and strong. He reminds one of
some great bird, which flounders and flounces on the earth for a
while, before it acquires the impetus to sustain its soaring flight.

"The characteristick of his eloquence is an irresistible cogency,
and a luminous simplicity in the order of his reasoning. His
arguments are remarkable for their separate and independent strength,
and for the solid, compact, impenetrable order in which they are
arrayed. He certainly possesses in an eminent degree the power
which has been ascribed to him, of mastering the most complicated
subjects with facility, and when moving with his full momentum,
even without the appearance of resistance.

"The powers of these two gentlemen are strikingly contrasted by
nature. In Mr. Marshall's speeches all is reasoning; in Mr. Randol-
ph's every thing is declamation. The former scarcely uses a figure;
the latter, hardly an abstraction. One is awkward; the other graceful.
One is indifferent as to words, and slovenly in his pronunciation; the
other adapts his phrases to the sense with poetick felicity; his voice to
the sound with musical exactness. There is no breach in the train of Mr.
Marshall's thoughts; little connexion between Mr. Randolph's. ..."

Endnote

1 This has been attributed to Virgil and translates as All things are
not possible for all people.
traveled to Washington and personally persuaded President Abraham Lincoln to let him go. However the release was accomplished, Lurton returned home full of anti-Union sentiment. “We think a foreign war is rapidly approaching,” he wrote to a friend on May 4, 1865, “and if it does then the banner of our invincible Confederacy will again be thrown to the breeze from every house top in our fair Southland. Never despair of so just a cause when supported by such a people.”

As he recuperated, Lurton gave up any thought of further undergraduate study; by autumn he was able to enroll in the law school of Cumberland University, a few miles from Nashville. Two years of hard study, much of it at night with days spent working in his father’s pharmacy, brought Lurton his law degree and admission to the bar in 1867. In September of that year Lurton married Mary Francis Owen, the daughter of a local physician. Their marriage, which lasted until Lurton’s death, produced three sons and two daughters.

Soon after graduation, Lurton became a partner in an influential Clarksville law firm headed by James A. Bailey. A prominent Democratic politician, Bailey would later be appointed to fill the unexpired Senate term of Senator Andrew Johnson, the former president, upon his death.

Lurton’s association with Democratic politics earned him an interim appointment in 1875 as presiding judge of the Sixth Chancery Division (court of equity) of Tennessee. At age thirty-one, Lurton became the youngest chancellor in Tennessee history. A year later his peers on the bench unanimously voted to retain him for a full term.

Financial need drew him back into private practice in 1878, and he entered into a successful eight-year partnership with his predecessor as chancellor, Charles G. Smith. Their association brought Lurton both material rewards and personal prestige. He became president of the largest local bank, a vestryman in the Trinity Episcopal Church, and in 1882, a trustee of the University of the South.

These assets, combined with a capacity to make friends and a vigorous stump campaign, brought him election, at age forty-two, to the Tennessee Supreme Court in 1886. This position marked the beginning of twenty-eight years on the bench. Once on the court, Lurton began to show an approach to jurisprudence that would stamp his entire career. He became known for his gentleness and civility, his energy, his powers of persuasion, and his great capacity to reconcile opposing arguments. Only rarely did he find it necessary to dissent.

When, after seven years, the office of chief justice was vacated, Lurton’s dominant position was so clear that his colleagues voted

**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.
unanimously for him to take the center chair. Four months later, however, Grover Cleveland, the newly elected President, selected Lurton to sit on the United States Court of Appeals for the Sixth Circuit to replace Howell E. Jackson, who had been appointed to the Supreme Court of the United States. Both Jackson and Lurton were loyal Democrats, Confederate army veterans, and graduates of Cumberland Law School. With a background so similar to Jackson’s, Lurton could be expected to continue the existing political and regional balance of the court.

When Lurton arrived in Cincinnati for his new appointment, fate confronted him in the person of the presiding judge of the three-member court of appeals. The judge was William Howard Taft, only thirty-six years old, a term as Solicitor General already behind him, the Presidency and Chief Justiceship of the United States still to come. In 1899, six years after Lurton’s arrival, they were joined by William Day, who, like Taft, was an Ohio Republican. The three became fast friends, the political differences between southern Democrat and two midwestern Republicans giving way to friendship and mutual professional respect. The court was recognized during Lurton’s tenure as the ablest of the eight federal appeals courts. Taft later praised Lurton’s “industry, his sense of responsibility for the court, his profound knowledge of the law, his wonderful power of reconciliation of the differences in the conference room, and his statesmanlike forecast of the principles of the court’s decisions.” When Taft left to become governor general of the Philippines, Lurton took over as presiding judge.

With his gentle paternal manner, Lurton was the image of the courteous southern gentleman. Short in stature, he was relatively stout and, in keeping with the fashion of his day, had an enormous mustache. According to one observer, Lurton issued “steady-going judgements” and did not “attempt to render startling or sensational decisions.” Generally conservative, he used precedent whenever possible to maintain the status quo. Lurton carried his judicial expertise into the classrooms of Vanderbilt University, where he taught constitutional law from 1898 to 1905, before serving as its dean until 1909.

Lurton was nearly appointed to the Supreme Court in 1906 when his friends Taft, now Secretary of War, and Day, who had been named to the Court in 1903, persuaded President Theodore Roosevelt that Lurton should succeed Justice Henry B. Brown. But Roosevelt could not overcome the opposition of his fellow Republican, Senator Henry Cabot Lodge, who pointed out that, with one exception, Lurton had voted against the government in every case involving the Commerce Clause of the Constitution.

The appointment went instead to Attorney General William H. Moody, a Republican of Massachusetts. Lurton’s Confederate past, his Democratic affiliation, and his advanced age were all considered strikes against him. However, on December 13, 1909, Taft, now President, brushed aside questions of political partisanship and age to choose his old friend as his first nominee to the High Bench. Taft later told him, “The only pleasure of my administration, as I have contemplated it in the past, has been to commission you a Justice of the Supreme Court.” The expected partisan opposition in Congress never developed, and Lurton was confirmed a week later.

Lurton felt deeply the historic significance of his appointment. He later wrote of his train journey to Washington to take office, during which he detoured around Cincinnati to take the southern route. “I felt that in appointing me, President Taft, aside from the manifestations of his friendship, had a kindly heart for the South; that he wished to draw the South to him with cords of affection. So, being all a Southerner myself, I determined to go to Washington through the South—every foot of the way.”

During his four short years on the High Bench, Lurton was

---continued on next page---
influenced by his colleagues to become more progressive. Once on the Court he abandoned his earlier conservatism and voted most frequently with Oliver Wendell Holmes, Jr., joining him in eight dissents. Lurton wrote eighty-seven opinions, none of them groundbreaking or landmark cases, all of them based on solid research and argument. Generally, he went along with a substantial majority of the Court in somewhat enlarging the powers of the federal government. He consistently voted with the majority in upholding the Sherman Antitrust Act, particularly in regard to smaller corporations, but at the same time accepted the concept of "reasonable" monopolies for some corporate giants.

In 1911 Justice Lurton served as a member of the Committee to Revise the Equity Rules in Federal Courts and was apparently so interested in the subject that he went to England that summer to make a special study of English equity practices. He became ill late in the October 1912 Term, but, after a Florida vacation, Lurton resumed full activity on the Bench with the October 1913 Term. That summer he went with his wife for a vacation to Atlantic City, where the genial Tennessean died of a heart attack July 12, 1914.
Editor’s Note: Lucius Quintus Cincinnatus Lamar, a former Confederate officer, served as an Associate Justice of the Supreme Court of the United States from 1888 until 1893. Appointed by President Cleveland, he assumed his position on the Bench after having served as the Secretary of the Department of Interior since 1885. Lamar’s biographer, Edward Mayes, detailed the circumstances surrounding his appointment to the Cabinet in his 1895 volume, Lucius Q. C. Lamar: His Life, Times, and Speeches, from which this article is drawn.

One of the first responsibilities facing President-elect Grover Cleveland was the task of identifying suitable individuals to fill his Cabinet. In 1885, Lucius Quintus Cincinnatus Lamar was serving in the United States Senate representing his home state of Mississippi. Cleveland was interested in appointing at least two members to the Cabinet who came from the South. Lamar’s name was mentioned prominently, although Lamar was not particularly interested in becoming a member of the Cabinet, and indeed, tried to entice his friend General Walthall to lobby for such a position. In a letter to Walthall dated February 3, 1885, Lamar indicated that he would “certainly tell him [the President-elect] that he can get more good out of me in the Senate than in the Cabinet, and that I can give him a man my superior in every respect, and better fitted for a Cabinet office than any man in the Democratic party, North or South. If, however, he presses me to become a member of his Cabinet, I shall not give him a definite answer at once, but will take time to consider it. . . .”

Despite Lamar’s reservations, Cleveland did offer him a position in the Cabinet and Lamar wrote to Jefferson Davis on February 28, expressing his feelings about the proffered appointment: “I hope that the step I am about to take will meet your approval. It certainly proceeds from no motive of ambition; but when pressed . . . to take a position in his Cabinet, I have hardly felt at liberty to decline. If, by conducting the affairs of an executive department prudently and honestly and fairly to all sections, I may impress the country with a desire of the South, faithfully to serve the interests of a common country, I may do more good than I have ever yet been able to accomplish.”

Cleveland was inaugurated on the 4th of March. The following day the Senate considered the proposed appointments to the Cabinet. A correspondent from The New York Times reported the events as follows:

Three hours before the time fixed for the opening of today’s session of the Senate people began occupying the seats in the visitors’ galleries. The first comers were rapidly joined by others; and an hour before noon every seat was taken, and the outside corridors were thronged with men and women who grumbled because they had come so late. The Senators began to gather on the floor soon after 11 o’clock. . . . Mr. Pruden, who has carried all the Presidential communications to the Senate since Gen. Grant was President, appeared at the main entrance. He presented Mr. Cleveland’s first message to the Senate in a very large white envelope, and retired. Everybody knew that this message contained the nominations of the men selected by the President for his Cabinet, and the visitors leaned forward as if they expected to hear the names read. Instead of this, they heard Mr. Sherman move that the Senate proceed to the consideration of executive business, and a moment later the Sergeant-at-arms was instructed to clear the galleries. . . . After every outsider had been driven out from the place, and all the doors carefully locked, the big envelope was torn open, and the Executive Clerk read the names of the gentlemen whom President Cleveland had selected . . . .

Secretary of State: Thomas F. Bayard, of Delaware.
Secretary of the Treasury: Daniel Manning, of New York.
Secretary of War: William C. Endicott, of Mass.
Secretary of the Navy: William C. Whitney, of New York.
Secretary of the Interior: L.Q.C. Lamar, of Miss.
Postmaster-General: Augustus H. Garland, of Arkansas.

Then began a very lively scene, which ended with an adjournment twenty-five minutes later without any of the seven nominations having been confirmed. It is the traditional custom of the Senate to confirm without delay any one of its members who has been chosen by the President for any other office. When, therefore, Mr. Cockrell moved that the nominations of Messrs. Bayard, Garland, and Lamar be confirmed, the Senators were nettled at hearing Mr. Riddleberger object to the present

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Membership Update

The following members joined the Society between September 16, 1995 and December 31, 1995.

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1. Justice Samuel F. Miller practiced medicine from 1838 until he was admitted to the bar in 1847.

2. Justice David Davis resigned from the Court in 1877, after the Illinois legislature elected him to the U.S. Senate.


4. Justice Alfred Moore delivered only one opinion, in *Bas v. Tingy*, 4 Dall. 37 (U.S. 1800), though he served on the Court from 1800 to 1804. John Rutledge (above) also delivered just one opinion in *Talbot v. Janson*, 3 Dall. 133 (U.S. 1795) but he served only one year as a Justice and briefly during the August Term 1795 as interim Chief Justice.
5. Oliver Wendell Holmes, Jr. Lincoln replied, "Captain, I am glad you know how to talk to a civilian." Bowen, Yankee from Olympus 194 (1944).

6. Justice Henry Baldwin (above) attended the law school in Litchfield, Connecticut, then the outstanding law school in the country. Justice Benjamin R. Curtis was the first to attend a university law school. He enrolled in Harvard Law School, though he left halfway through the course to work in a law office.

7. Justice William J. Brennan, Jr., who had studied with Professor Felix Frankfurter (above) at Harvard Law School. At the recent Warren Court Conference at the University of Tulsa, Justice Brennan told how Justice Frankfurter had said "at a dinner one night . . . that while he had always encouraged his students to think for themselves, 'Brennan goes too far.'"

8. Chief Justices John Rutledge and Oliver Ellsworth and Justices James Wilson, John Blair (above), and William Paterson.
Lamar (continued from page eleven)

consideration of Mr. Bayard's name. Senators from both
sides of the Chamber listened with stolid indifference
while sharp remarks about his conduct were made [by
several Senators]. . . . Mr. Riddleberger told them to go
on and confirm Messrs. Lamar and Garland and all the
rest if they wished, but he should continue to object to
placing the foreign policy of the government in the hands
of a man who had more sympathy with England than with
the United States. The Senators had no intention of
confirming two of their number and not the third, and they
pointed out to the Virginian the awkward position in which
they would be placed. . . . Mr. Riddleberger was obsti­
nate, and as by the rules of the Senate a single objection
throws a nomination over for a day, the Senators finally
adjourned in disgust, leaving all the Cabinet nominations
to be taken up to-morrow. . . .

The following day, all the Cabinet nominations were confirmed
and the new members assumed their duties on Saturday, March 7.
One of Lamar's first official acts unleashed great criticism from
Republicans. It seemed an innocent enough action at the outset. On
March 24 the former Secretary of the Interior under Buchanan, the
Hon. Jacob Thompson, died. Following established precedent and
custom, Lamar issued an order to close "the department and its
several bureaus" on the 26th out of respect for Mr. Thompson. As
Mayes noted, "[i]f it were not that in politics almost anything is
expectable, it would be amazing, the turmoil which was made over
this incident. The Republican papers abounded in the most violent
editorials about it, and in the most extraordinary vituperation of Mr.
Thompson." Newspaper items appeared on both sides of the issue,
alternatively supporting and attacking Lamar. A correspondent
from the New York Tribune wrote a scathing rebuttal to an article that
had supported Secretary Lamar:

It really begins to look as if the Confederates have
captured the capital at last. The maimed veterans of the
war must wait for their pensions while the officers and
clerks of the Interior Department take a holiday to honor
the memory of a conspirator and traitor, who gloried in
breaking his oath of office and divulging Cabinet secrets
to the South Carolina rebels. Secretary Lamar declares
that he has 'no apology to make,' and expresses artless
surprise because his order is criticised; but he remem­
bers that his eulogy on Charles Sumner also provoked
'adverse criticism,' from which it is fair to infer that in Mr.
Lamar's estimation Jacob Thompson was as pure a
patriot and as honorable a man as Charles Sumner, and
that his memory is equally deserving of honor. Mr. Lamar
can see no difference between the hanging of Thompson's
portrait as an historical memento on the walls of the
Secretary's office and ordering the department to be
closed and the national flag to be lowered in honor of the
traitor's memory.

The furor subsided eventually and Lamar sought to concentrate on
the business of the department. It was not a felicitous situation,
however, even absent the intense press scrutiny. The Democrats had
been out of power in Washington for twenty-four years, and when
Cleveland assumed office, the city was flooded with a "vast assem­
blage of office seekers—clamorous, persistent, exacting, and in gen­
eral resentful of denial or delay. The anterooms of the offices of various
members of the Cabinet were thronged for months. . . ." Lamar had
more than his fair share of office-seekers. "The pressure upon me for
the lowest offices in the department is absolutely greater and more
distressing than for the higher positions. Refined and intelligent
women from the South tell me that they do not know where they will
get their next meal; that they have children, a poor mother, or a
consumptive sister; and that they are willing to go into the paste room,
or to scour the floor, or to take any position that will give them from
twenty to twenty-five dollars per month; and all that I can give them is
something they do not want, and that is my keenest sympathy."

These and numerous other difficulties plagued Lamar during his
service in the Cabinet. It was perhaps, then, with great relief that
Lamar accepted the appointment to the Supreme Court in 1888, and
embarked on a new phase of his professional life.

Grover Cleveland was the only Democrat elected President between 1860 and
1912. He was also the only Chief Executive to serve two nonconsecutive terms.