



VOLUME 45

QUARTERLY

NUMBER 2

## Society Produces New Civics Education Documentary on *Marbury v. Madison*

By Clare Cushman

The Society has produced a third web documentary for classroom use, titled “*Marbury v. Madison: The Empowerment of the Judiciary*,” under our label, Article III Productions. The Society partnered with David Buckhout of InHeritage, an Atlanta-based studio, to design and produce the web-based video. It features archival materials from the

time period to illustrate the story, with a narrator speaking voiceover.

However, due to the paucity of images from 1803, the production team had to get creative. In addition to oil portraits of the justices and presidents, scenes of Washington, and news-

*Continued on page 3...*



*Charles Lee argued William Marbury's case before 4 justices (two were absent due to illness) in Committee Room 2 of the Capitol building.*

# Letter From the President

Dear Friends,

We enter a new Term of the Supreme Court this October with the news that Jeffrey P. Minear, our trusted friend, colleague, and Society Trustee, is retiring from his position as Counselor to the Chief Justice after 16 outstanding years of service to the Court and the Judiciary. The Supreme Court Historical Society is one of many organizations that has benefitted greatly from Jeff's service, friendship, and leadership over the years. He shouldered many responsibilities as Counselor to the Chief Justice, and he did so with civility and tireless work. Among his duties were serving as the Chief of Staff at the Court, working with the Court's officers, supporting the Chief Justice's work as the head of the federal Judiciary, working with leaders in the Judiciary on matters of judicial administration, serving as a liaison for the Judiciary to the executive and legislative branches of government on issues affecting the Court, and assisting the Chief Justice in his role as Chancellor of the Smithsonian Institution.

In the midst of all of these enormous responsibilities, Jeff managed also to work closely with the Supreme Court Historical Society in its mission to educate the public about the history of the Court and the importance of its independence. Jeff has been a particularly engaged and strong leader of the Supreme Court Fellows Program which the Society supports and has taken this program to new heights and achievements that is attracting extraordinarily talented Fellows applicants to the great benefit of the Judiciary as a whole. As Chief Justice Roberts stated in the Court's announcement of Jeff's retirement, "Jeff Minear has exemplified the finest tradition of Court staff, enabling the Supreme Court, and courts across our country, to serve the public efficiently and effectively."

Personally, it has been a great joy to work with Jeff, and it is of some comfort to know that we will continue to work with him on projects and programs for the Society in his future endeavors. In the meantime, we pause to extend our sincere thanks to Jeff for his many contributions to the Society and we are delighted to know that those contributions will continue.

Sincerely,



Chilton Varner, President



Olivia O'Hea

## Hughes-Gossett Student Prize Awarded

By: Marian Hampe

The Society is pleased to announce that Olivia O'Hea has been awarded the 2021 Hughes-Gossett student prize for best article published in the *Journal of Supreme Court History*. Her essay,

"Earl Warren's Last Stand: *Powell v. McCormack*, Race, and the Political Question Doctrine," highlights the conflict between Judicial and Legislative powers during Chief Justice Earl Warren's effort to emphasize the constitutional importance of the *Powell v. McCormack* (1969). When a congressional case was brought against Congressman Adam Clayton Powell of New York's 18<sup>th</sup> district for mismanaging funds, a question of who had the power to unseat a fairly elected congressman was brought before the Supreme Court. O'Hea wrote the article during her third year at Georgetown Law Center. She thanks her Professor Brad Snyder for his "instrumental" help throughout the writing process.

"His feedback was both thoughtful and thought-provoking, and I am confident the piece is better for it."

She also thanks the research librarians at the Library of Congress for their assistance in accessing "original source material from this case during a global pandemic." O'Hea explains that she arrived at the topic by reading an interview with one of Chief Justice Earl Warren's clerks, describing that, "the clerk explained the disconnect between the Chief's great expectations for *Powell v. McCormack* and the ultimate reality that the case was not, in fact, a source of great 'constitutional wisdom.'" Her inspiration was then explored through justices' and clerks' files used in the case alongside congressional reports and documents as well as media sources concerning Congressman Powell.

O'Hea comments that she is "thrilled" to be selected for the award. She is currently an associate attorney in the education practice group at Powell, Pyles, Sutter & Verville PC.



*Continued from page I...*

paper headlines, the documentary features original sketches commissioned by an Atlanta-based illustrator, Trevor Irvin, of key scenes. At right is his rendering of John Adams signing the midnight appointments; he has also drawn Charles Lee arguing the case in cramped committee room 2 in the new Capitol building, the justices deliberating the case in the comfort of their elegant boarding house, and John Marshall delivering the opinion in the front parlor of Stelle's Hotel as lawmakers hurry over from the nearby Capitol to listen to his 4-hour oration. Another new feature is that the thoughts and words of John Adams, Thomas Jefferson, Charles Lee, John Jay and John Marshall are spoken by voice actors, to give emotional intensity to the script.

These efforts combine to make the complex story clear and compelling to students. *Marbury v. Madison* is the foundational case of the judiciary and is required in state social studies standards. While the concept of judicial review is relatively easy to explain, the twists and turns of the case, which hinged on undelivered justices of the peace commissions, make it challenging for educators to teach. Chief Justice Marshall's tactical maneuver to keep the Court above politics



*Outgoing President Adams signing the appointments of judges and justices of the peace.*

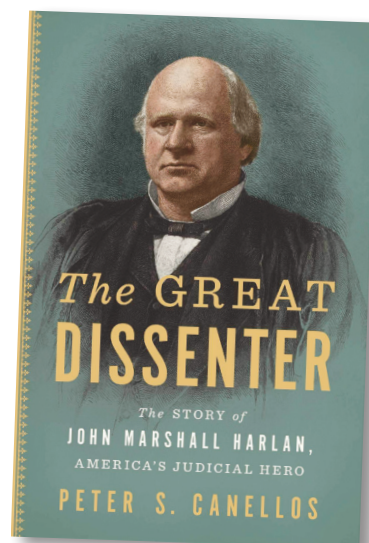
while simultaneously giving it equal power to the other branches was masterful. We hope this new documentary will allow students to gain a deeper understanding of the role of the judiciary and the interplay between the three branches of government. It went live on September 15, 2022 and is available to teachers for classroom use this fall. Lesson plans accompany the documentary on the Society's website.



*Associate Justices Bushrod Washington, William Paterson, and Samuel Chase are depicted deliberating with Chief Justice Marshall (right) over glasses of Madeira in a room at Stelle's Hotel, where they lodged during the February 1803 Term.*

# Peter Canellos Discusses “*The Great Dissenter: The Story of John Marshall Harlan*” with Jim Duff at 6<sup>th</sup> Circuit Judicial Conference

By Martha Meehan-Cohen



The 76th Conference of the U.S. Court of Appeals for the Sixth Circuit, hosted by Chief Judge Jeffrey Sutton, held its banquet dinner on September 1, 2022 in Louisville, Kentucky. The featured speakers were author and journalist Peter Canellos and Jim Duff, Executive Director of the Supreme Court Historical Society. They discussed Mr. Canellos' biography “*The Great Dissenter: The Story of John Marshall Harlan, American Judicial Hero*”. It was a fitting setting for the discussion as Justice Harlan was born and raised in Kentucky, and his upbringing and experiences there prior to, during, and after the Civil War had a profound influence on his jurisprudence and, in turn, his unique impact on American law.

Mr. Canellos and Mr. Duff discussed, among other topics,

the most significant influences on Justice Harlan's life and his evolving views, including his family's connections with Henry Clay, his life-long relationship with Robert Harlan – the son of a slave who led a remarkably successful life in his own right and whom many believed to be Justice Harlan's half brother—and his experience in fighting for the North and the Union in the Civil War. With regard to Justice Harlan's years on the Supreme Court, they compared his confirmation process, which occurred during deeply polarized times, with the current process which was met with some interest by attendees. They also covered the wide range of issues that Justice Harlan addressed in his dissenting opinions that have had enormous influence, remain pertinent to this day, and were in some instances 100 years ahead of his time, ranging from issues of racial equality, voting rights, antitrust, to Constitutional rights of those living in territories of the United States.

Earlier in the day, a panel discussion among Judge Curtis Collier of the Eastern District of Tennessee, Donivan Brown of the Ed Johnson Project in Chattanooga, Tennessee, and Messrs. Canellos and Duff focused on a case involving a mob lynching of Ed Johnson in Chattanooga in which Justice Harlan issued a highly unusual order that was ignored by local authorities and the mob, resulting in the only case in Supreme Court history in which the Supreme Court sat as a trial court. These and other fascinating stories are contained in Mr. Canellos' biography which is available to order from the Society's Gift Shop—[www.supremecourtgifts.org](http://www.supremecourtgifts.org).



*Jim Duff and Peter Canellos*



# The Supreme Court Historical Society Expands Outreach and Welcomes New Director of Civic Education

By Jim Duff

Many have observed that civic education has declined considerably in the United States in recent years. Increased focus on STEM education in our schools has produced benefits, to be sure, but a corresponding reduction or, in many school districts, elimination of civic education has had a measurable adverse impact on students' knowledge of how our three branches of government work.

Our Founders believed that the best way to preserve our liberties is to have an educated public. The decline in a fundamental understanding of the importance of separation of powers in our government, for example, puts our liberties at risk. More recently in that regard, Chief Justice John Roberts, Jr. voiced the need to rejuvenate civic education and he encouraged judicial branch employees to volunteer time and energy to educate the public about our system of government.

The Supreme Court Historical Society's mission is to contribute to the public's understanding of the Supreme Court, the federal courts, and the importance of an independent Judiciary. In fulfillment of its mission, the Society is embarking on several new initiatives to increase its outreach beyond its very successful and on-going partnership with the Street Law program for secondary school teachers. One initiative will include tutoring and mentoring programs that will engage

with students directly. These programs will be localized to teach students about Supreme Court cases that originated in their hometowns and help students understand the Court's work through a local lens. Details of our initiative will be described in the weeks ahead.



As we launch our new programs, we are very pleased to announce the selection of Nicole Carlson Maffei as our new Director of Civic Education. Nicole brings great enthusiasm to her work and an in-depth background in Civics and Social Studies curriculum development from her ten year experience in the Baltimore County Public Schools. She was responsible for ensuring that all social studies curriculum aligned with the National Council for the Social Studies College, Career and Civic Life (C3) framework as well as the MSDE standards. She created partnerships with Street Law, the National

Humanities Center, the New York Historical Society, and the DBQ Project on behalf of Baltimore County Public Schools and was a frequent presenter at various NCSS conferences, among others. Her immediate grasp of our goals and energetic motivation to improve civic education was a perfect fit for the Society. Nicole is a native of Baltimore County, Maryland and graduated from Auburn University, Cum Laude in Political Science and has an advanced Masters degree in Teaching from Towson University. Welcome Nicole!

## QUARTERLY

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# 27th Annual Supreme Court Summer Institute

By Bianca Rizzio, Street Law Program Coordinator

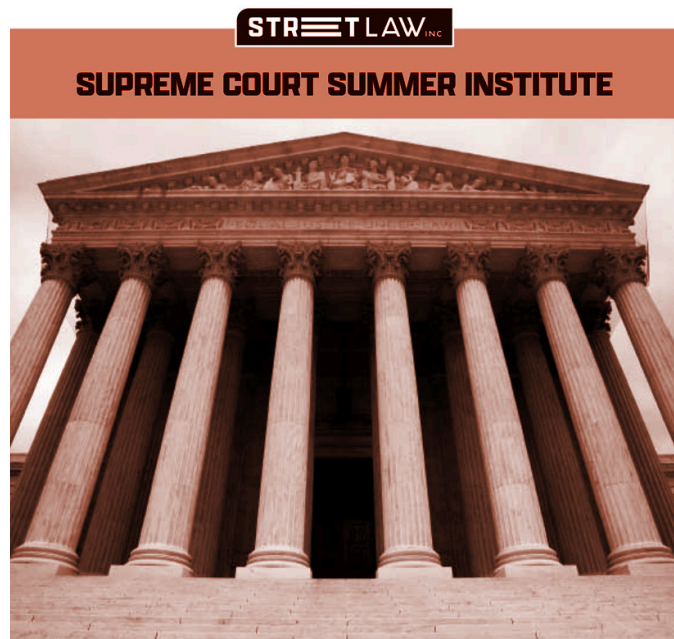
This June, 57 outstanding social studies teachers from 31 states had the unique opportunity to participate in the Supreme Court Summer Institute (SCSI) presented by Street Law, Inc. and the Supreme Court Historical Society. The Institute was co-directed by Cathy Ruffing, Street Law's Senior Director of Teacher Professional Development Programs & Curriculum, and Lee Arbetman, Street Law Senior Fellow.

Since 1995, the Institute has equipped participants with student-focused, interactive pedagogy and materials to effectively educate their students about the Supreme Court. Alongside Street Law staff and leading constitutional law and Supreme Court experts, teachers participate in engaging discussions and activities that will later be used in their classrooms to provide exceptional Supreme Court education.

Over a total of twelve days, two groups of teachers spent their time intensively studying the procedures and culture of the Supreme Court. Our first group was hosted by White & Case and the second group was hosted by Hogan Lovells; both cohorts were hosted by Kirkland & Ellis for their reception and moot court. The Institute would not have been possible without these firms. Participants were immensely grateful for the "top notch facilities" and hosts that were "more than accommodating and spoiled us."

The Institute draws teachers from all over the country, with diverse backgrounds, perspectives, and a range of 2 to over 25 years in the classroom. This summer we were joined by 24 teachers from urban school districts, 22 teachers from suburban districts, and 11 teachers from rural districts. Of these teachers, 37 teach at schools that serve over 50% students of color and 31

*The Supreme Court  
Summer Institute  
equips classroom teachers  
with strategies and content to  
strengthen and expand the way  
they teach about the Supreme  
Court of the United States  
and its cases.*



teach at Title I schools, which have large concentrations of students who qualify for free or reduced meals. Collectively, they will reach over 6,000 students in the coming academic year.

Guided by the expertise of Lindsay Harrison (Jenner & Block), Roman Martinez (Latham & Watkins), Morgan Ratner (Sullivan & Cromwell), and Colleen Sinzduk (Office of the Solicitor General), the teachers had the opportunity to learn about Supreme Court procedure and the process of granting *certiorari*, as well as precedent and *stare decisis*. We also spent time studying this Term's cases of *New York State Rifle & Pistol Association v. Bruen* and *Dobbs v. Jackson Women's Health*, where participants had sessions with attorneys Kimberly Parker (Wilmer Hale) and Katherine Gillespie (Center for Reproductive Rights). One teacher shared how "impressed" they were with the "quality of guests speakers," and appreciated hearing from "individuals who give us more insight than we could ever get from a textbook or from secondary sources."

In the session "Nomination and Confirmation", the participants examined the process behind judicial nominations.



We were joined by Josh Friedman and Gregg Nunziata (Rock Spring Public Policy) (Week 1) and Jennifer McIntyre (Autonomous Systems at Boeing) and Phil Brest (Senate Judiciary Committee) (Week 2). The teachers are eager to bring this conversation back to the classroom to teach civil political discourse, which was exemplified by the professional and lively dialogue among our bipartisan experts who “provided excellent insight into the nomination process.” Teachers continued their learning by studying *voir dire* in relation to *United States v. Tsarnaev* alongside expert Jeff Green (Sidley Austin/National Association of Criminal Defense Lawyers). Other sessions focused on Statutory Interpretation with Erin Murphy (Clement & Murphy PLLC) and the Presidential Commission on the Supreme Court of the United States, with Amy Howe (SCOTUSblog) and Derek Webb (Sidley Austin) respectively. Participants went on to learn from Jen Wheeler, Street Law’s Senior Director of Teacher Professional Development Program & Curriculum, as she guided them through the powerful Deliberation teaching strategy for discussing current and contested issues in the classroom.

Across the board, participants reported that they found the content and classroom applications to be illuminating, valuable, and enjoyable. “I have a renewed excitement for this unit and can’t wait to share the resources and knowledge with my fellow government colleagues in the department. I’ve taken so many notes of new strategies and things I want to try.”

In one of the most impactful experiences of the Institute, educators acted as attorneys for a moot court. They were coached by leading experts close to the case like Richard Katskee and Gabi Hybel (Americans United for Separation of Church and State) and Emily Long and Chad Harper (Kirkland & Ellis), as well as Morgan Ratner (Sullivan & Cromwell), Roy Englert (Robbins Russel, Englert, Orseck & Untereiner), and Beth Brinkmann (Covington & Burling). (Roy Englert and Morgan Ratner deserve extra credit –they both traveled to serve as resources for the Institute, Roy came from his home in Puerto Rico and Morgan from her home in South Carolina.) Teachers took on the roles of petitioners, respondents, and justices to simulate oral arguments in the case of *Kennedy v. Bremerton School District.*, where they were

asked whether a public-school employee’s prayer in view of students immediately following the conclusion of a football game was protected speech and religious exercise, and if so, whether the public-school employer must prohibit it to avoid violating the Establishment Clause. Teachers came out of the experience with many ideas about how to use moot courts in their classroom and were struck by the power of this model. “This was an incredible experience. This was my first time engaging in a moot court and I can’t wait to finally bring this strategy into my classroom.”

This Institute, in its 27<sup>th</sup> year has empowered approximately 1,550 teachers to educate young adults about the Supreme Court and impact the next generation of leaders. As one teacher remarked, “this is the best PD in my 20 years of teaching.”

We would like to express our sincerest gratitude for the generous support of the Supreme Court Historical Society, especially Jennifer Lowe and Jim Duff. A special thank you to teachers who gave us part of their summertime and brought energetic intellectual curiosity after a trying academic year.

## Note from the Society:

The Supreme Court Summer Institute for Teachers is not possible without generous support from individuals and foundations. This year, especially, required more funding to provide for Covid tests, masks and the increased cost of hotels in the DC area.

### *Thank you goes out to:*

- The Park Foundation
- The Hazen Polsky Foundation
- Charles and Debbie Cooper
- The Honorable Seth Waxman
- Douglas Young and Farella Braun



# New Acquisition: Letter from Chief Justice John Jay to Sarah Jay, December 1790

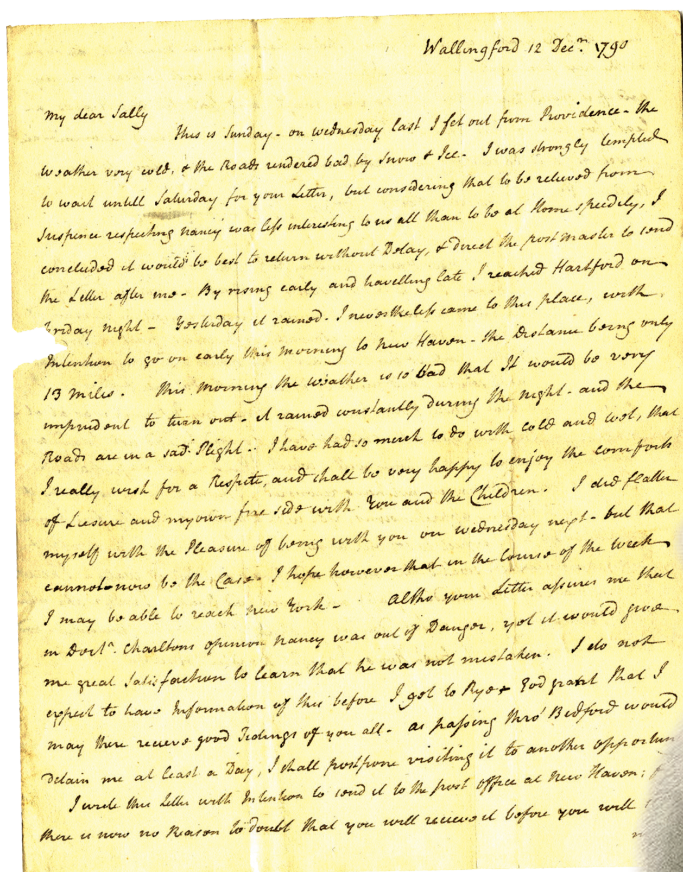
By Elizabeth Killian, Curatorial Assistant, Supreme Court of the United States

In the early years of the Supreme Court, the Chief Justice and Associate Justices traveled across the new nation “riding circuit.” The Judiciary Act of 1789 divided the country into thirteen judicial districts that were then organized into three circuits. The Justices would form circuit courts with the local federal district court judge and were required to hold court twice a year in each district. The circuit courts would hear cases and admit attorneys, counsellors, and jurors. In 1790, Chief Justice John Jay was assigned the Eastern circuit that covered New York, Connecticut, Massachusetts, New Hampshire, and Rhode Island.

The accompanying map shows most of the locations Chief Justice Jay noted in his diary during his journey in the fall of 1790. Traveling over 700 miles twice a year by horse-drawn carriage or coach was taxing on the early Justices. Starting from his home in New York City, this circuit took Jay north to Albany, southeast to Hartford, on to Boston, then north to Exeter, south to Providence and finally south again along the Connecticut shore to return home to New York. Over this circuit trip, the courts admitted 26 attorneys, solicitors, and counsellors and 20 jurors. Jay would hear 29 cases of common law, two cases of chancery, and five criminal cases.

Recently, the Society acquired one of Jay’s letters home to his wife Sarah, whom he affectionately called Sally, written towards the end of his months long trip. It illustrates the concerns on Jay’s mind, as he was traveling, including weather, the condition of his horses, and most importantly, the health of his family. The Chief Justice was responding to Sally’s letters that had reached him in central Connecticut, including one from late November 1790 addressing the health of their fourth child, seven-year-old Ann, called Nancy. Almost two

weeks after Sarah had sent the letter, Jay responded anxiously about Nancy’s sore throat even though there was little he could do. Nancy Jay did recover and would go on to manage Jay’s Bedford House after the passing of her mother in 1802 until John Jay’s death in 1829.



*“This morning the weather is so bad that it would be very imprudent to turn out. It rained constantly during the night and the roads are in sad Plight. I have had so much to do with cold and wet, that I really wish for a Respite, and shall be very happy to enjoy the comforts of Leisure and my own fireside with you and the Children.”—Except from John Jay letter*



Sarah Jay, Engraving after Robert Pine, Collection of the Supreme Court of the United States



# Teachers from Across the Country Participate in Three Branches Institute

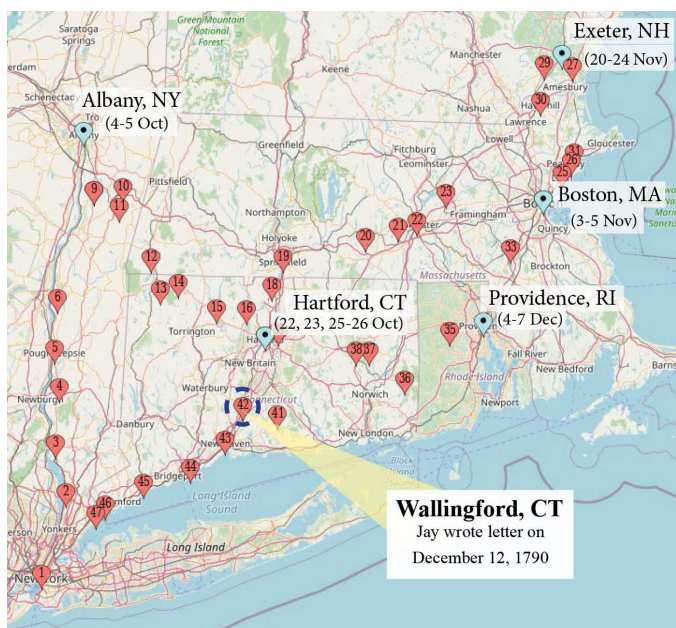
By Jennifer Lowe

The Supreme Court Historical Society joined with the White House Historical Association and the United States Capitol Historical Society in August 2022 to once again present the Three Branches Institute (3BI) for Teachers. The 3BI is a 3-day virtual learning experience for teachers from across the country to learn about the work of each branch of government and to highlight the educational resources available from each organization. The 2022 Institute was enhanced by the addition of Katie Munn from the National Archives, who provided primary sources and lesson plans related to the material in each organization's presentation.

The Society spent our day sharing materials related to the importance of an independent federal judiciary. Jim Duff, the Society's Executive Director, used the Steel Seizure case to frame the conversation about an independent judiciary and checks and balances. Jennifer Lowe, the Society's Director of Programs and Strategic Planning, shared the lesson plans and resources the Society has developed to accompany the newly launched "Civics and American Democracy" lecture series. Teachers can find those lesson plans on the Society's website.

More than 200 teachers registered for the 3BI and attended either live or asynchronously. The attendee survey provided important feedback. Rene Lafayette, a social studies teacher from Massachusetts, wrote, "Day One was incredible, but then again the Supreme Court Historical Society provides so many resources. The role of an independent judiciary cannot be over-stressed. Our rights as citizens are challenged due to dis-information/misinformation. The information provided was clear and spot on."

The Society will continue our work in teacher training and civics education. For more information please visit the Society's website at [www.supremecourthistory.org](http://www.supremecourthistory.org).



**Map: Map of John Jay's Circuit Court riding, 28 September – 15 December 1790, blue pins are where Court was held. Created from: "Circuit Court Diary, 28 September–15 December 1790," Founders Online, National Archives, [Original source: The Selected Papers of John Jay, vol. 5, 1788–1794, ed. Elizabeth M. Nuxoll. Charlottesville: University of Virginia Press, 2017, pp. 277–293.]**

Letters such as this not only provide a peek into the daily lives of the Justices while on the road but also address the heavy burden placed on their spouses handling matters at home. Fourteen letters from Jay to his wife dated between September 28 and December 15, 1790, are documented in Jay's diary (for more details of the diary, see the transcription from the Jay Papers hosted by Columbia University on the National Archives Founders Online, <https://founders.archives.gov/documents/Jay/01-05-02-0151>).

Together with the letters Sally wrote to Jay, the rigors of circuit riding by the early Court are revealed. The justices complained about such travel for decades before the requirement was lifted completely with changes to the structure of the federal judiciary in 1911.

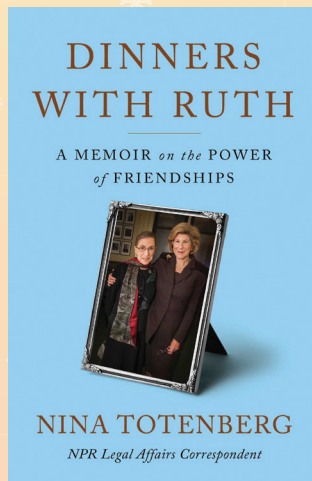
The newly acquired letter, likely one, if not the last, letter sent to his wife on his way home, offers a hint of what kept Jay and the other justices moving forward: thoughts of home.

# HOLIDAY GIFT



2022 Supreme Court Historical Society Collectible Ornament

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Regular price\$24.95



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Regular price \$9.95



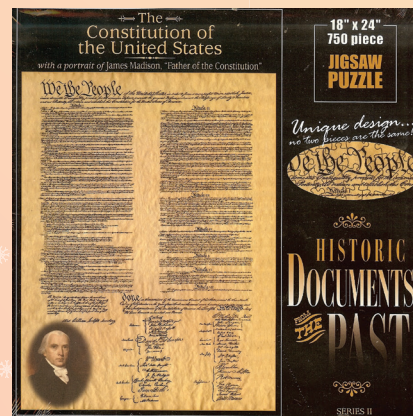
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