Date Set for Eleventh Annual Meeting

The Executive Committee has approved Monday, May 12, 1986 as the date for the Society's eleventh annual meeting. Invitations will be mailed out to members between thirty and forty-five days preceding the meeting. As in previous years, reservations for the black tie reception and dinner held the evening of the annual meeting will be confirmed on a first-come basis upon receipt of a paid reservation request. Each member will be entitled to bring one guest. The Annual Meeting Committee, chaired by J. Roderick Heller, III, has set the ticket cost at $75.00.

Among the scheduled events for the May 12th meeting, will be the annual lecture, to be delivered this year by Professor Daniel Meador of the University of Virginia Law School, and an informal reception at the Society's headquarters building following the lecture. No charge will be made for either of these events. A special exhibit will be on display in the Society's building illustrating some of the work involved in preparing the recently published first volume of the Documentary History of the Supreme Court of the United States, 1789-1800. As an added event, Court Curator Gail Galloway and her staff will conduct a tour of the Court, including some of the private rooms not usually open to the public.

Court Celebrates Fiftieth Anniversary of Building

On Monday, October 7, 1985, the Supreme Court of the United States celebrated the 50th Anniversary of the opening of the Supreme Court Building. The cornerstone of the building had been laid on October 13, 1932, but the building was not completed and occupied until 1935. Completion of this magnificent building represented construction of the first building designed expressly for the use of the Supreme Court.

At a special commemorative session of the Court, held at four o'clock in the Supreme Court Chamber to mark the anniversary of the first session of Court held in the new building, October 7, 1935, the Honorable Erwin Griswold appeared for the Supreme Court Bar, Attorney General Edwin Meese, III appeared on behalf of the Department of Justice and William W. Falsgraf, Esquire appeared on behalf of the American Bar Association. Chief Justice Warren E. Burger made a response from the Bench.

In conjunction with the anniversary celebration, the Office of the Curator of the Court prepared two special exhibits dealing with the construction of the building. The first deals with the physical planning and construction of the building and features photographs of the architect, Cass Gilbert, artisans and sculptors, and shows the building in various stages of completion. It also contains drawings and —continued on page eight
In Memoriam: Associate Justice Potter Stewart

On December 7, 1985, retired Associate Justice Potter Stewart died in New Hampshire after suffering a stroke. He had retired from the Court on July 3, 1981.

Justice Stewart received a reappointment to the Supreme Court from President Eisenhower on October 14, 1958, to replace Justice Harold H. Burton, who had resigned. Stewart was confirmed by the Senate on May 5, 1959, by a 70-17 vote. At the time of his retirement as a justice, he pointed out that when he had received his appointment to the Court he was 39 years old, the youngest federal judge in the country at that time, and he thought he'd better leave before he was the oldest. He said it was “better to go too soon than to stay too long.” His desire was to retire while his health was good and he could enjoy time with his family.

Justice Stewart had become ill while visiting his daughter in Putney, Vermont. He was hospitalized in New Hampshire where he died. Funeral services were held on December 11, 1985, in the National Cathedral in Washington, D.C. At the service, Lloyd N. Cutler eulogized the Justice, a friend whom he had known since their undergraduate days at Yale. Below are excerpts of Mr. Cutler’s remarks.

When we attended Yale College and Yale Law School, most of us thought that Potter’s future would be in national politics. His right or wrong we will never know. In 1954, after he won the election to put him in the Cincinnati City Council, he offered himself to become a Sixth Circuit judge. After a weekend of characteristic deliberation, he took it. Four years later, Potter was a member of Ohio retired at age 80.

His record on the court of appeals had demonstrated a keen analytical mind, an even judicial temperament, a respect for high tradition, and a sensitivity to the rights of the underprivileged.

It was this record that led to the appointment of Potter’s only known problem. Because the October 1958 Term was about to begin, President Eisenhower sent Potter’s nomination to the Senate along with a recess appointment. Potter had written a Sixth Circuit opinion that carried the pronouncement of death to two innocent women, a Democratic Senator of that era could politically accept. He had also once written a dissenting opinion for a black woman because of an unusually busy nighttime trial without opportunity for counsel. This was the kind of justice Potter was to be known for. “Swift justice demands more than just swiftness.” The Southern Senators believed that Potter’s nomination might “assist in the dread dilemma of all appeals benches on the bench — to have to make decisions that could defeat his own nomination.”

Potter survived that predilection, winning confirmation on May 5, 1959, by a 70-17 vote. The only expression to victory was a sense of relief that he had married the next day.

Stewart’s abilities were recognized by the American Bar Association’s certification of the Fourth Amendment. He had served on the court for over 30 years.

The most consistent of the Court was a judicial temperament. He often led in working out the decisions of the Court. The words “Partisan and independent” were a description of him.

Chief Justice Warren Burger also attended the service for Justice Stewart and cited the many judicial contributions of the man with whom he had shared the high bench for over a decade.

Disputes in Conference and over the lunch table showed that he was intimately familiar with the genesis of the Fourth Amendment.

The Supreme Court in Philately

On February 27, the post office issued a new stamp in the Great Americans series honoring Hugo L. Black. This stamp is the latest stamp to be issued relating to the legal profession in general, and the Supreme Court in particular.

The earliest stamps issued connected with the Supreme Court, a stamp issued in the President’s series honoring William Howard Taft, the nation’s 31st president and its 10th Chief Justice. It was a Taft who persuaded Congress to authorize the construction of the present Supreme Court building. The Court building is commemorated on a 3 cent purple stamp in the National Capital Sesquicentennial Series.

Later, when the cornerstone for the Supreme Court building was laid, Chief Justice Charles Evans Hughes said “The Republic is our service and this is the symbol of its faith.” This famous line was used on the first stamp commemorating the American Bar Association, which commemorated the Centenary of the birth of Charles Evans Hughes in 1922.

Hughes served as an Associate Justice from 1910 until 1916 when he resigned to become the President’s Candidate for the Republican Party. In 1920 he returned to the Supreme Court as Chief Justice and served in that capacity until 1941.

Chief Justices John Jay and John Marshall were commemorated in the Liberty series in 1955 and 1958. In 1948, an Annunciation stamp commemorating Chief Justice Harlan Fiske Stone was honored by a 3 cent stamp. The first day of issue for this stamp was in Chesterfield, New Hampshire, Stone’s birthplace.

The widest distribution of any stamp associated with the Supreme Court was achieved by the “Flag over the Supreme Court,” issued in sheets, coils, and two different stamp books. That stamp even exists in counterfeit form.

The “Great Dissenter,” Associate Justice Oliver Wendell Holmes, has the distinction to appear not only on sheet, coil and booklet stamps, but also on the outside of a 1962 stamp booklet selling 24 fifteen cent stamps for $3.60.

The new Hugo L. Black stamp, issued to commemorate the centenary of his birth, February 27, 1866, is a five cent stamp and bears a portrait of Justice. It is the latest stamp to be issued in the Commemorative Series.

Both the court building and the jurists who have distinguished its bench can only be remembered by those privileged to serve with him. He often led in working out a case. His rare ability to be, at the same time, a forceful advocate and a generous colleague.

Justice Stewart is survived by his wife Mary Ann, and his children, Potter, Jr. and David.
Bushrod Washington was a veteran of the Revolutionary War and a prominent advocate of the ratification of the Constitution. At the time of his Supreme Court appointment, he was the youngest man to have received an appointment to the high bench. His death in 1829, ended thirty years of Court service. His death, in 1829, ended thirty years of Court service, his wisdom was the wisdom of the law, chastened, and refined, as Justice Story later described him, his colleague, Associate Justice Joseph Story said, "To him the love of justice was the ruling passion... His wisdom was the wisdom of the law, chastened, and refined, and invigorated by study, guided by experience... constantly enlarging itself by a close survey of principles."

Despite the respect in which he was held by such friends as Justice Story, John Marshall, and his lifelong devotion to public service, Associate Justice Bushrod Washington is little remembered. His career on the Court partly eclipsed by his more famous colleagues and the historical prominence assigned to his family name is now attributed to the fame of his uncle, George Washington.

Bushrod Washington was born on June 5, 1782 in Westmoreland County, Virginia. As a child he was privately tutored, the custom for children of his class, and he graduated from William and Mary College at the age of sixteen in 1778. Upon completion of college, in 1778, Washington volunteered for duty in the Continental Army. He joined a cavalry unit which was under the command of the Marquis de Lafayette. Serving as a private of dragoons, Washington was involved in the final stages of the War of Independence, seeing action at Green Spring and later witnessing the surrender of Cornwallis at Yorktown.

Washington returned to his alma mater in the Spring of 1780 to study law under George Wythe. He shared classes with John Marshall, and the two future justices initiated what became a lifelong friendship. Prior to Marshall's departure in August 1780, he and Washington helped to found the Phi Beta Kappa Society — then a secret fraternity. Though Marshall left the school after only six months, Washington remained at William and Mary through the Fall, obtaining far more extensive formal education at law than was afforded most American law students of the day. He received still more training by studying for two years under a prominent Philadelphia attorney, James Wilson. Wilson himself was later to be named as one of George Washington's first appointments to the Court, and was to be succeeded by Bushrod Washington in 1796.

Washington began his law practice at the age of twenty-one in Westmoreland County. He later moved to Alexandria, Virginia, where he hoped to find "...a wider sphere for the exercise of his talents." In 1787, he joined John Marshall in the Virginia House of Delegates. Both men went on to serve as members of the Virginia Convention for the Ratification of the Constitution. Among the proposed Constitution's advocates, Washington was singled out for comment by James Madison "...as a young gentleman of talents."

Following a victorious effort to secure ratification, Washington moved his law practice to Richmond, the state capital. There, in the years ahead, he sometimes faced his long-standing friend, Marshall, as an adversary before the Court.

However, Washington did possess Marshall's extensive experience as a legal practitioner. Being more a student of the law, his efforts were directed principally at the acquisition of legal knowledge. Apparently, the intensity with which Washington studied the law was widely renowned. One contemporary observer, Thomas Pickering, felt Washington's health had been affected, saying: "...[his] indefatigable pursuit of knowledge and the business of his profession has deprived him of the sight of one eye..."

David Paul Brown, a Philadelphia attorney who, some years later, witnessed Washington's performance as a trial judge riding circuit entitled him as "...perhaps the greatest nisi prius judge that the world has ever known..." Despite this high praise, Brown also found some fault in Justice Washington's singular focus on his profession, noting that "...[his] literary reading was so limited that it is questionable whether he ever knew who was the author of Macbeth."

If Washington's boundless enthusiasm for the law had distracted him from pursuing a broader education, this same enthusiasm, and the in-depth understanding of legal principles which it permitted, made Washington an excellent teacher of the law. Many aspiring attorneys sought to study under him, with Henry Clay being perhaps his most famous student.

In addition to being a dedicated student of the law, Washington maintained a close relationship with his family. He married Julia Ann Blackburn, the daughter of one of his uncle's aides-de-camp, in 1783. The couple had no children, and Mrs. Washington's health proved frail throughout much of her life, but she nevertheless accompanied her husband wherever his duties took him, including the arduous trips required of riding circuit. Devoted to one another, when the Justice died in 1829 his wife survived him by only three days.

Washington also maintained a very close relationship to his Uncle George. The famous General and President, having no children of his own, viewed Bushrod as his favorite nephew. He financed Bushrod's legal apprenticeship under Wilson and, in 1796, also assisted his nephew in obtaining a nomination for a seat in Congress. Prior to the election, however, Justice Wilson's death opened a seat on the high court. President Adams was said to have favored placing either Washington or John Marshall on the Court to re-establish Virginia's representation which hadapsed with the resignation of Justice John Blair in 1795. Both men being eminently qualified, the President first offered the seat to Marshall, noting: "[Marshall] ought to have preference...He is older at the Bar than Mr. Washington, and I know by experience that seniority at the Bar is nearly as much regarded in the army as in the army.

Marshall, however, declined the nomination as he also had intentions of running for Congress. But, in his letter to President Adams, he recommended Washington for the seat. Adams' offer of a nomination to the Court was too great an opportunity for Washington to pass up. He explained his reasons for acceptance in a letter to his uncle dated October 19, 1798:

My dear Uncle

Upon my return to this place I met with a Commission from the President of the United States appointing me one of the Judges of the Supreme Court. This appointment I have accepted, and was induced thereto by the strongest motives.

I was very unwilling to abandon a profession, to which I was much attached, and to the study of which I had devoted the greatest part of my life. A situation which permits me to pursue it, and to improve the knowledge which I have acquired in this science, without endangering my sight (already considerably injured) could not fail to be agreeable to me...

Independent of this consideration, I could not upon a small piece of poor land in Westmoreland have paid the debts which I owe, & supported my family.

Knowing the wish you had, that I should be a candidate for Congress, I have felt much uneasiness lest my acceptance of this appointment should be disagreeable to you. The desire of attempting to serve my Country in that line

Continued on next page
They were being held on a British sloop as prisoners when captured by the British during the American Revolution. Between the two sovereignties for about twenty-five years the two shared the bench. Indeed Justice laid to rest whatever doubts existed as to whether or not the Court would assume its constitutional role as a third pillar of government. He enhanced the Court’s prestige by capably massing the judicial authority was subordinate to federal judicial authority, led Justice in 1802 in a federal court to act as spokesman for a unified States.” When the marshal of the court came to take a stand on an issue, Washington was rarely inclined to draw public attention to himself. Fear of man never fell upon him. Pretense of the state militia to resist any efforts made to carry out the “decrees of the . . judge of the district court of the United States.” When the marshal of the court came to his seat, he was met with markets and baronons. For this act, General Bright and others were indicted and brought to trial before Justice Washington and District Court Judge Richard Peters. Justice Washington and Judge Peters found the defendants guilty of obstructing the process of the federal courts and sentenced them to prison. The decision involved some personal risk for Justice Washington, who continued to ride circuit in Pennsylvania without escort. Washington’s steadfast commitment to his principles, in this case the Federalist principle that state judicial authority was subordinate to federal judicial authority, led Justice Story to comment some years later that: “Justice Washington” was remarkable for an uncomprising firmness. Of him, it may truly be said, that the fear of man never fell upon him.

If Justice Washington had the courage of his convictions, he was rarely inclined to drawing public attention to himself. According to all the evidence, he readily accepted Chief Justice Marshall’s desire to act as spokesman for a unified Court. Washington himself wrote only seventy majority opinions in over thirty years. In addition, he wrote two concurrences, six dissents, and one dissenting opinion. Notably, he expressed his dissatisfaction with the majority opinion in United States v. Peters (1804) through abstention.

If historians have not adequately recognized Justice Washington’s substantial contributions to the Court because of his more famous brethren, Marshall and Story, this obscuring his private life — perhaps unfortunately in this instance.

Particularly damaging to the Justice’s reputation has been an accusation concerning the very sensitive issue of slavery. As executor and principal heir to his Uncle George’s estate at Mount Vernon, Bushrod was instructed in the former President’s will to free Mount Vernon’s slaves upon the death of Martha Washington, the President’s wife. Though many of the slaves had already been freed by the time Martha died in 1802, Bushrod did in fact free the remainder, in accordance with his uncle’s wish. However, he subsequently brought his own slaves to Mount Vernon in an attempt to return the by then dilapidated property to a profitable operation. But, this detail has escaped the notice of some historians, and led them to conclude that the Justice simply ignored his uncle’s last wishes. Worse still, when the Justice did finally conclude in 1821 (as his uncle had determined two decades before) that a large slave contingent could not support themselves “on the produce of their labor” at Mount Vernon, Washington sold over half of his slaves. This evoked considerable criticism by some of Washington’s contemporaries, particularly abolitionists, who felt he should have followed the example of his uncle and freed them.

His public comments defending this course of action cast the Justice in an extremely bad light for today’s readers who have been led to believe Washington was not only trafficking in human beings, but profiting from some sort of ill-gotten gain. Actually Justice Washington did believe that slavery should be gradually eliminated, and as the lifetime president of the American Colonization Society, he supported efforts to encourage voluntary emancipation and relocation of freedmen in Africa. If his ownership of slaves subjects him to censure by today’s moral standards, it should be remembered that both Thomas Jefferson, who penned the words "all men are created equal," and his famous uncle freed their own slaves only posthumously.

When Justice Washington died, on November 26, 1829, he had served longer on the Court than any of his predecessors. His service was crucial to the Court’s development as an equal third branch of government as well as to the development of federal law as an independent entity. Rather than being remembered as a pro-slavery reactionary, he should more accurately be recalled as an appropriate heir to George Washington’s private legacy of Mount Vernon, and his public legacy of a new American democracy.
The two books which comprise Volume 1 of the Documentary History Series are the product of nearly a decade of work from the cover of the programs for the commemorative session. The poster measures 17 x 22 inches and is available for the use of the Court consisted of only twelve rooms, and both office space and storage space had to come out of this limited area. As a result of the chaos, Taft complained that “In our conference room, the shelves have to be so high that it takes an aeroplane to reach them.”

In the 1925 Senate passed a bill authorizing $50,000 for the construction of new public buildings, and Chief Justice Taft lobbied hard to see that some of this money was used for “the purchase of land and the construction of a building for the sole use of the Supreme Court.” Despite divisive comments from outsiders and even from his brethren, Taft continued to press for the construction of a “marble palace” of justice. He encountered stumbling blocks which required additional lobbying and effort to overcome, but eventually money was appropriated “to acquire a site for a building for the use of the Supreme Court of the United States.”

In connection with the Fiftieth Anniversary celebration, the Society issued a special poster in black and silver which is suitable for framing. The poster features the artwork of the cover of the programs for the commemorative session. The poster measures 17 x 22 inches and is available at a cost of $12.50 (the price includes postage), and may be ordered through the office.

Volume One of the Documentary History Released

The first volume of the Documentary History of the Supreme Court of the United States, 1789-1800, has been published by Columbia University Press and is now available. The two books which comprise Volume One, Part 1—Appointments and Proceedings, and Part 2—Commentaries on Appointments and Proceedings, are the product of nearly ten years of research jointly sponsored by the Court, the Society, and The National Historical Publications and Records Commission (NHPRC). Those are the first works published in a multi-volume series covering the Court’s first decade.

In recognition of the release of these two important research materials, the Society and the Columbia University Press co-sponsored a reception on February 7, 1985 at the Supreme Court building. Guests at this reception included Chief Justice Warren E. Burger, members of the Court staff, the Society’s officers, officials from the NHPRC, representatives from Columbia University Press and other members of the legal and historical communities. The Chief Justice paid tribute to the publications noting:

The Documentary History of the Supreme Court of the United States, 1789-1800 is concerned only the Supreme Court, but the wealth of material contained points to how much remains to be investigated in the records of other federal courts. It is my sincere hope that the publication of this unique work will stimulate interest in the history of the Third Branch of government and inspire additional studies of our early federal court system that would provide a great contribution to the forthcoming bicentennial celebration of 1989.

Volume One is available to the general public for $95.00 from Columbia University Press. Society members may order the books through the Society at a 20 percent discount.

1985 Yearbook Goes to Press

The 1985 Yearbook is at the printer and will be mailed to members near the end of March. Articles in the 1985 edition include three papers delivered at the American Bar Association’s 1985 General Practice Session in Washington by Stephen Shapiro of Mayer Brown and Platt, former Solicitor General Renee Lee and William L. Phillips, University of Chicago. The 1985 Yearbook also contains the published version of Judge Antonin Scalia’s lecture on historical anomalies in administrative law delivered at the Society’s 1985 annual meeting and a comparative law treatise by Dr. Karl-Heinz Millgram, comparing the Supreme Court of the United States and the Federal Constitutional Court of the Federal Republic of Germany.
State Chairmen Appointed for Nevada and Wyoming
As Membership Committee Reaches for 4,000 Member Goal

The recent appointment of new state chairmen for Nevada and Wyoming gives the Membership Committee at least one representative in each of the contiguous 48 states as well as Puerto Rico. Just eighteen months ago the Committee had only three members, Chairman Justin A. Stanley of Chicago, J. Roderick Heller, III of Washington, D. C. and Judge Griffin B. Bell of Atlanta. Since then the Committee has expanded to include 63 state and local representatives, and has recruited over 1,000 new Society members.

The Committee's goal is to reach a membership total of 4,000 by year's end, and the addition of two new state chairmen will facilitate that effort. However, because the personal approach the Committee has so effectively employed is highly labor intensive, many state chairmen are appointing assistants in large law firms or towns within their regions to aid their recruitment efforts. Members who would like to support this campaign should contact their state chairman. If you don't know your state chairman, contact David Pride at the Society's headquarters at (202) 543-0400.

In addition to the newly appointed chairmen and assistants which appear below, the Society expresses its gratitude to outgoing chairmen Eugene C. Thomas of Idaho and J. David Andrews of Washington for their strong support over the last year and a half. New state chairmen and their assistants are as follows:

Idaho
Phillip M. Barber, Esq.
Hawley, Troxell, Ennis & Hawley
One Capital Center
Post Office Box 1617
Boise, Idaho 83701

Illinois
John H. Morrison, Esq.
Kirkland & Ellis
Suite 5800
200 East Randolph Drive
Chicago, Illinois 60601

Supreme Court Historical Society
111 Second Street, NE
Washington, D.C. 20002

Nevada
Joseph W. Brown, Esq.
Jones, Jones Close & Brown
Valley Bank Plaza
Suite 700
300 South Fourth Street
Las Vegas, Nevada 89101

Washington
Ronald M. Gould, Esq.
Perkins, Coie Stone Olsen & Williams
1900 Washington Building
Seattle, Washington 98101

Wyoming
Houston G. Williams, Esq.
Williams, Porter, Day & Neville
Durbin Center — Suite 3
145 South Durbin Street
Casper, Wyoming 82601

Michigan
William T. Gossett, Esq.
1276 Covington Road
Birmingham, Michigan 48010

(assistants)
John A. Krsul, Jr., Esq.
800 First National Building
Detroit, Michigan 48226

Peter L. Rossiter, Esq.
Schiff, Hardin & Waite
Suite 7200
233 South Wacker Drive
Chicago, Illinois 60606

H. Blair White, Esq.
Sidley & Austin
One First National Plaza
Chicago, Illinois 60603