Clarence Thomas Takes Oath as Court's 106th Justice

In a ceremony held on the South Lawn of the White House on October 18, 1991, Judge Clarence Thomas took the official oath of a federal government official prior to becoming the 106th member of the Supreme Court of the United States. Justice Byron R. White administered this oath. The judicial oath was administered by Chief Justice William H. Rehnquist at a private ceremony on October 23, 1991 so that he might commence his work on the Court. A more traditional ceremony was held in the Supreme Court Chamber on November 1, 1991 in which Chief Justice Rehnquist readministered the oath to Justice Thomas who then assumed his seat on the Bench.

At a White House ceremony, Judge Clarence Thomas (left foreground) takes the official oath of office required of all government officials. This was administered by Justice Byron R. White (right, foreground). Immediately behind Judge Thomas and Justice White, observing the ceremony, are President Bush and Mrs. Thomas.

The Chief Justice looks on as Justice Thomas signs his judicial oath of office as part of the ceremony held at the Supreme Court on November 1, 1991. Justice Thomas was sworn in at a public ceremony held in the Supreme Court Chamber.

Justice Thomas fills the seat vacated by the retirement of Justice Thurgood Marshall. Justice Thomas was born on June 23, 1948, in Pin Point, Georgia. His early childhood years were spent in Georgia where he attended parochial school much of the time. After briefly attending Immaculate Conception Seminary in Missouri, Justice Thomas entered Holy Cross College in Worcester, Massachusetts. He graduated from Holy Cross with honors, finishing ninth in his class and then entered Yale Law School, graduating in 1974.

His professional life commenced with a position as an assistant attorney general for the state of Missouri from 1974-1977 where --continued on page five
A Letter from the President

I will devote much of my column in this issue of the Quarterly to report on some exciting advances the Society is making in the area of program development and to outline some areas of continuing need.

Although an article elsewhere in this issue describes the first National Heritage Lecture in more detail, I would be remiss not to mention this highly successful event. Justice Anthony M. Kennedy, the inaugural speaker for this annual series, established a very high standard with his presentation on the Roosevelt Court Plan of 1937. Your Society, and those of our two co-sponsors, the White House Historical Association and the U.S. Capitol Historical Society, are deeply in debt. I take this opportunity to thank him once again.

Another program which is progressing well is the oral history project being developed in cooperation with the Federal Judicial Center. The pilot project, which is being funded through a $21,000 grant from the Society, will initially focus upon interviewing the Court's retired Justices. I am delighted to report that all the retired Justices, Chief Justice Warren E. Burger, and Associate Justices William J. Brennan, Jr., Thurgood Marshall and Lewis F. Powell, Jr. have graciously consented to be interviewed.

The Society is also continuing its ambitious publications program. We intend to mail the 1991 Journal of Supreme Court membership revenues. Thanks to the efforts of Membership Chairman Frank Jones, and a large group of motivated volunteers, the Society's membership and associated membership revenues have increased dramatically in the past few years.

One of the milestones of 1991 was the volunteer membership recruitment campaign conducted by Judge John Brown and Mrs. Vera Brown in Houston, Texas. Members of the Society since 1976, Judge and Mrs. Brown determined to help the Society's membership grow in the Houston area. Working with state chairman, Wayne Fisher, the Browns identified current and recent members of the Society. They then asked friends to serve as captains at prominent Houston law firms to recruit members within their firms. With a network in place, the Browns sought and obtained contributions from several local law firms. These contributions enabled them to fund a party in honor of new members, and to further promote the Society.

Stephen Susman, a former law clerk to Justice Hugo Black and a Society member since 1981, and his wife Karen, hosted the party at their home. The evening's program included short speeches by Judge Brown and Wayne Fisher, champagne and hors d'oeuvres were served and entertainment was provided by the Texas Bar, a country and western band comprised of judges and attorneys. A table was set up in the entryway with membership and donations enabled them to fund a party in honor of new members, and to further promote the Society.

I can also report that we have secured commitments from the William Nelson Cromwell Foundation to provide $25,000 grant to the Society by the end of 1991, which will be earmarked to support the Project, and a grant of $50,000 from the Foundation, also for this purpose, which will be paid sometime during the coming year. I am greatly encouraged and gratified by the coming year. I am greatly encouraged and gratified by the willingness of the Justices to support the Project, and a grant of $50,000 from the Foundation, also for this purpose, which will be paid sometime during the coming year. I am greatly encouraged and gratified by the willingness of the Justices to support the Project.

Unfortunately, all the news relating to the Documentary History of 1937. Your Society, and those of our two co-sponsors, the White House Historical Association and the U.S. Capitol Historical Society, are deeply in debt. I take this opportunity to thank him once again.

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Justice Anthony Kennedy Delivers First National Heritage Lecture
200 Guests Attend Post-Lecture Reception

The Supreme Court Chamber was the setting for the First National Heritage Lecture delivered by Justice Anthony M. Kennedy. Justice Kennedy dazzled the audience on the evening of November 7, 1991 with an intriguing lecture entitled, "Roosevelt's Court Plan of 1937: The Executive Check, The Legislative Balance and Judicial Independence".

Speaking without notes for nearly one hour, Justice Kennedy described the story of the political struggle between FDR and the Supreme Court, frequently referred to as the "Court packing" plan. Friction between the President and the Supreme Court was the result of Supreme Court rulings which struck down unconstitutional many of President Roosevelt's New Deal programs. In an effort to counteract this, President Roosevelt proposed to enlarge the Court, adding a new Justice for each member of the Bench 70 years of age or older. This formula would have enabled him to add six Justices to the Bench and hopefully change the voting pattern of the Court.

In describing the difficulties and complexities of the political interests and personalities involved, Justice Kennedy gave a short biographical sketch of each member of the Supreme Court. He also discussed the important Cabinet members and advisors who worked with President Roosevelt to devise the plan, and described the political maneuvering that was involved in trying to obtain support for the plan in Congress. Photographs of the Supreme Court Justices circa 1937 were displayed at the Bench in the appropriate places they occupied at that time. Justice Kennedy's personal interest in and study of the era was apparent in the presentation, which was a virtual tour de force. The audience was delighted with the presentation and gave Justice Kennedy a standing ovation.

After the lecture was concluded, participants attended a reception in the East and West Conference Rooms, where a buffet was served. Guests had the opportunity to mingle with Justices Kennedy, Powell and Souter, as well as Officers and Trustees and members from each of the three historical societies.

The First National Heritage Lecture was indeed a great success and Justice Kennedy has set a high standard for future events.

Next year's program will be under the auspices of the White House Historical Society and will focus on the Bicentennial of the White House. We hope you will plan now to attend this event which will take place next fall.

Justice Thomas (continued from page one)

he worked for Senator John Danforth, who was then Attorney General of Missouri. The Justice's specialty was tax law. After Senator Danforth's election to the Senate in 1977, Justice Thomas went to work for the Monsanto Co. in St. Louis where he worked for 2 1/2 years. In 1979, the Justice went to Washington to work for Senator Danforth as a legislative assistant. His areas of emphasis were energy and environmental issues. He remained on Senator Danforth's staff until 1981 when he became assistant secretary for civil rights in the U.S. Department of Education. In 1982, Justice Thomas became chairman of the Equal Employment Opportunity Commission, a position he held until 1990 when he was nominated to the U.S. Court of Appeals for the District of Columbia Circuit. He served on that Court from March, 1990 until his confirmation to the Supreme Court of the United States.

Appointed at the age of forty-three, Justice Thomas is one of the younger appointees to the bench. In this century, Justice William O. Douglas, appointed at the age of forty, was the youngest but two individuals, Justice Joseph Story and William Johnson, share the record for being the youngest at the time of appointment; each of them was thirty-two years old. Of the current members of the Court, Justice Byron R. White was forty-four at the time of his appointment to the Bench, while Chief Justice Rehnquist was only forty-seven when he was appointed an Associate Justice of the Court.


Justice Thomas is the 106th member of the Supreme Court, and the second African American to serve on the Court. He is the second individual appointed to the Supreme Court by President Bush and the fifth individual born in the state of Georgia to serve on the Court.
Reluctant Justice: Thomas Johnson of Maryland
by James O'Hara

Thomas Johnson was born on November 4, 1732, in Calvert County on the Chesapeake Bay in southern Maryland. His grandfather Johnson had come to America fifty years before from Yarmouth, a port town on the North Sea northeast of London, where his forebears had been successful and politically active for more than a century. Johnson's father—also named Thomas—was a well-to-do farmer and country squire who served in the Maryland Assembly. His mother, Dorcas Sedgwick, was from a Puritan family which had sought refuge in Maryland.

While the Johnson's circumstances were financially comfortable, there were twelve children to support. Thomas' early education therefore was privately conducted at home rather than in the prestigious but very expensive European schools. As a young man, he went to Annapolis, the colonial capital, to take employment as a court clerk and to read law under the supervision of Stephen Bordley, a distinguished former Attorney General of the province. Johnson subsequently began his own legal career in Annapolis and by the age of 29, when he was elected to the Provincial Assembly, he was already a leading member of the Bar.

Even while young, Johnson was involved in land acquisition and development. In 1761 he bought land in Frederick County, Maryland as an investment, and quickly became interested in the potential of the Potomac River as a commercial waterway, not only for transporting mineral and agricultural products to markets on the Atlantic coast, but also as a transportation link between East and West. A decade earlier, the young surveyor George Washington had himself recognized that potential, and he too had seen that the problems—rapids, shoals, and falls—were surmountable if clearing, dredging, and canal construction could be financed and engineered. This shared vision brought the two men together. In 1770 or thereabouts, they began a correspondence about river navigation. Their acquaintance ripened into friendship and respect, becoming a profound influence on Johnson's life. Johnson also established an ironworks foundry at Frederick, giving him a vested interest in obtaining a cheap, convenient mode of transportation for his foundry's products.

The years prior to the Revolution witnessed the young man's continued growth in prestige. His legal practice prospered; he acquired a large country estate, and his reputation as a man of potential to the Potomac River as a commercial waterway, not only for transporting mineral and agricultural products to markets on the Atlantic coast, but also as a transportation link between East and West. A decade earlier, the young surveyor George Washington had himself recognized that potential, and he too had seen that the problems—rapids, shoals, and falls—were surmountable if clearing, dredging, and canal construction could be financed and engineered. This shared vision brought the two men together. In 1770 or thereabouts, they began a correspondence about river navigation. Their acquaintance ripened into friendship and respect, becoming a profound influence on Johnson's life. Johnson also established an ironworks foundry at Frederick, giving him a vested interest in obtaining a cheap, convenient mode of transportation for his foundry's products.

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Thomas Johnson (continued)

credit for blankets, if to be got, for a good many march without them. Indeed I fear that their scanty clothing will subject them to severe puerilities.

In January 1777 Johnson finally arrived at Washington's camp leading his troops who would serve as reinforcements for the campaign. As one author tells the story, he arrived "splattered with mud from the march, and diminutive of stature, Johnson looked anything but a brigadier general of militia." The sentinel told Johnson that Washington had given orders not to be disturbed. "After Johnson's explosion of words, the man reported to General Washington that there was a filthy red-headed little man who demanded to see him and that the general's orders could be damned but he intended to see him. The Commander-in-Chief exclaimed, 'Oh! It is Johnson-of-Maryland! Admit him at once!'"

When the new and independent Maryland state legislature met for the first time in February 1777, its first constitutional task was to choose a governor: Johnson was overwhelmingly elected. Throughout his three-year tenure as governor, Johnson received similar missives from Washington, pleading for help and supplies. Johnson was also concerned with suppressing the activities of Tories within the state. To that end, the Legislature enacted a provision imposing the death penalty upon any person "guilty of burning any Maryland or United States magazine or of destroying or delivering to the enemy any State or United States vessel." The Governor and the Council were also given extensive "war powers" to enable them to contend with the unusual circumstances necessary in governing during perilous conditions.

Maryland's Constitution provided for a one-year gubernatorial term, with no more than three consecutive terms. Johnson was elected unanimously for each of the next two years. He left office at the end of 1779. The war was not yet over, but Yorktown was less than two years away. Johnson decided not to return to Annapolis, but to settle on his Fredericke land. He built "Richfield," a large colonial home, and settled down to what he undoubtedly hoped would be serene retirement. He declined a seat in Congress, but did agree to return to the legislature where he urged Maryland's ratification of the Articles of Confederation. After ratification, Johnson returned to legal practice and began also to pursue his old pre-war interest in the Potomac River. With Washington, he organized the "Potowmack" Company to engage in financing and construction of a canal to skirt the rapids and falls. Their project failed until—at a later date and by someone else—the Chesapeake and Ohio Canal was ultimately built.

Johnson faded from public view for a short time in the late 1780s. He did join in the successful efforts to ratify the Constitution, and after the ratification was a reality, to work for Washington's election as President. Once again in 1790 he attempted to settle down to the private life he truly sought. He had declined to serve again as governor when the office was offered two years before. He declined now to serve in the Electoral College which selected Washington, and he declined to serve when Washington asked him to become the first United States District Judge for Maryland. He did agree to become Chief Justice of the General Court, the highest state court under the Constitution of 1776, perhaps because the duties, while requiring detailed understanding of state law and a willingness to interpret the new Federal Constitution, were not onerous. The court met only briefly each year to consider the few appeals which came before it. Johnson believed, no doubt, that his family and business interests would not suffer.

Once again, however, there was an intrusion, this time from the President. In early 1791, Washington asked Johnson to chair the Board of Commissioners of the Federal City, a body established by Congress to purchase the land and provide the buildings for the new District of Columbia. Johnson agreed. The new capital was not far from home and located on his beloved Potomac. Moreover, Daniel Carroll, an old Maryland friend and signer of the Constitution, was one of the other commissioners. Johnson even looked forward, as a labor of love, to the design of the new city and its principal buildings.

But a few months later on July 14, 1791, Washington wrote again, asking "with frankness, and in the fullness of friendship if the former Governor would agree to an appointment as Associate Justice of the Supreme Court, succeeding John Rutledge who had resigned. Johnson was very reluctant. He was almost 60 and did not want the responsibilities of circuit travel particularly in Rutledge's Southern Circuit. So his initial reply to Washington on July 27 was non-committal, mentioning his concern about the travel. A second response written three days later still did not agree to the appointment; this time he mentioned specifically his concern that he would be assigned circuit duty in the Southern District. Johnson agreed. The new capital was not far from home and located on his beloved Potomac. Moreover, Daniel Carroll, an old Maryland friend and signer of the Constitution, was one of the other commissioners. Johnson even looked forward, as a labor of love, to the design of the new city and its principal buildings.
Thomas Johnson (continued)

Circuit. At that time the southern circuit was comprised of all the territorial area of the United States south of the Potomac River and was by far the largest circuit of the three original circuits created by the Judiciary Act of 1789. Johnson said he supposed "the next Southern Circuit would fail to me; if it would, I neither expect or desire any Alteration to accommodate me but my weak Frame and the Interest my Family have in me forbid my engaging in it. Let this be the one way or the other for my Answer... I feel real Unseasiness that my Embarrassment should occasion delay in your filling up this Office as the Time is now so short; impute it to the true occasion and believe me that whether I receive the Commission or not the Manner in which you have been pleased to offer it is the greater part of it's Value and will with the many other Instances of your Confidence and Friendship be remembered with pleasure."

Besides, he continued, the next Congress would be reviewing "alterations" in the judicial system, "among which this (the circuit for which I was stationed) is included."

Johnson's service on the Court was so brief—only 14 months—from confirmation to resignation—that analysis of his judicial philosophy is impossible. Most of his judicial record involved only routine business. He did sit at a preliminary stage of Ware vs. Hylton, an important British debt case. Ware vs. Hylton. This was a test case in law and which would set a precedent in dealing with other similar cases. Judge Griffm, the Federal Judge for the region. Arguing for the plaintiffs, he sat with Associate Justice John Blair of Virginia, Patrick Henry, John Marshall and Alex Adams. The trial lasted until November 25th, continuing for three days. This trial proved to be an important case as it was an official written opinion until 1792.

But Johnson did not render a final opinion in this case, which might have been for three days. This trial was an important case for the young John Marshall. Johnson seemed to have been moderate, rational, temperate, not unlike Justice Paterson who succeeded him.

September 1793, Johnson resigned from the Board of the Federal Treasury. He was a conscientious man, and would not retain the office if he could not perform its duties. On January 16, 1793, he sent his resignation to the President. He enclosed two letters, the first a personal letter explaining his reasons for his decision to his personal friend, the second a very brief formal letter of resignation.

In his cover letter he explained his concerns rather poignantly:

On my first reading the Judiciary Act it appeared to me rather an Essay and I had no doubt but that there would have been an Alteration as soon as the Attention of Congress could be again drawn to the Subject. The Experience we have had of the little that has been or could be done under the present System though excessively fatiguing to the Judges would I thought have insured their Discharge from Circuit Duty—I am not conscious of being greedy of the Profits of Office and would voluntarily have given up part of the Salary I believe all my Brethren would have done But I am informed the Judges of the supreme Court are still to go to the Circuits with an Increase of power to one eventually.

I have measured Things however and find the Office and the Man do not fit—I cannot resolve to spend six Months in the Year the American may have had a chance to get over his Love of Justice.

Johnson's resignation left a vacancy on the Circuit for which he had been stationed. In January 1793, Mr. John Smith was appointed to fill the vacancy. He was sworn in on January 16, 1793, and served until the following November 25th. His circuit was the Southern Circuit, which included the States of South Carolina, Georgia, and Florida. His commission expired in 1792, and he did not seek reappointment.

Johnson's last years were uneventful. His niece, Louisa Catherinemarried John Quincy Adams. He befriended a young lawyer named Roger Brooke Taney, who had opened a law office in Washington. Taney was a friend of John Marshall and a future chief justice of the United States Supreme Court. Johnson's health deteriorated and he moved to nearby Rose Hill, the estate of his daughter. Aim Johnson died on May 15, 1794, at the age of 60. He was buried in the family vault at All Saints Episcopal Church. He died peacefully at his home on the estate of his daughter, Ann Grace. He became a law partner with John Marshall in 1785 and was later appointed to the United States Supreme Court by President George Washington. He was a member of the Virginia House of Delegates and served as a delegate to the Constitutional Convention of 1787. He was also a successful lawyer and owned a large estate in Virginia. He was a member of the Virginia House of Delegates and served as a delegate to the Constitutional Convention of 1787. He was also a successful lawyer and owned a large estate in Virginia.

Membership Update

The following members have joined the Society between September 1, 1991 and November 30, 1991.

Names and honorifics appear as they do on membership applications.

Arizona

- G.T. Tom Choules Esq., Yuma

- California

- James J. Brosnan Esq., San Francisco
- Stephen A. McEwen, Irvine
- The Honorable Leland C. Nichen, San Diego
- Robert J. Nelsen, Los Angeles
- Maryl Snider Esq., Los Angeles

- Connecticut

- Raymond B. Green Esq., Hartford
- Sally S. King Esq., Hartford
- John Merchant Esq., Fairfield
- Dr. Harold Silver, Westport
- Joseph T. Sweeney Esq., Hartford
- The Honorable Herman H. Tarnoff, Westport

- District of Columbia

- Robert George Adams
- Robert C. Bernius Esq.
- Robert J. Harville Jr.
- John M. Nannes Esq.
- John W. Roche, Wiltshire
- The Honorable S. Jay Plog
- Mr. & Mrs. Stuart Smith

- Delaware

- Thomas S. Lodge, New Castle

- Florida

- Thomas C. MacDonald Jr. Esq., Tampa

- Georgia

- William S. Goodman Esq., Atlanta

- Louisiana

- Harry Case Stambaugh Esq., New Orleans

- Michigan

- John C. Buchanan Esq., Grand Rapids
- John P. Fordyce Esq., Saginaw
- William M. Sastor Esq., Detroit
- Mr. Brian Coldwar
- Mr. Larry C. Willet, Grand Rapids
- Sharon M. Woods Esq., Detroit

- Minnesota

- Mr. G. L. Cafesjian, St. Paul
- Lawrence J. Culligan, St. Paul
- John M. Hassel, St. Paul
- Mr. Ronald J. Owens, St. Paul
- Mr. Michael J. Whitton, St. Paul

- Montana

- Richard Cebull Esq., Billings

- New Hampshire

- Ms Ann Marie Cashman, Nanhua

- New Jersey

- A. Michael Barker Esq., Atlantic City
- John B. Barry Esq., Newark
- Albert G. Beiser Esq., Roseland
- Matthias D. Dolcio Esq., Woodbridge
- Joseph J. Fieschi Esq., Roseland
- Eugenc M. Harig Esq., Newark
- John E. Knight Esq., Atlantic City
- Tom E. Kiyama Esq., Roseland
- William W. Robertson Esq., Roseland
- Edward F. Ryan Esq., Newark
- Agnes J. Rymer Esq., Newark
- James J. Shraga Esq., Roseland
- Ariel Stark Esq., Princeton
- Thomas L. Weisbeck Esq., Roseland

- New Mexico

- Ms Margaret Caffey-Morvan, Albuquerque

- New York

- Myro Beldock Esq., New York
- The Hon. Conrad B. Duberstein, Brooklyn
- Neil H. Cahn, Brooklyn
- Frank W. Ford Jr. Esq., New York
- The Hon. Leo Glaser, Brooklyn

- New York, Long Island

- Elihu Inselbuch Esq., New York
- Charles L. Jaffe Jr. Esq., New York
- Sanford Krieger Esq., New York
- Professor Jeffrey B. Morris, Hyde Park
- Ms Eleanor M. O'Keefe, New York
- Mr. Kenneth A. Payton, Rochester
- Guy Miller Struwe Esq., New York
- David R. Tillinghast Esq., New York
- Mr. John T. Tobin, New York
- The Hon. James D. Zirin Esq., New York

- South Carolina

- Terrell L. Glenn Esq., Columbia

- South Dakota

- Mr. Anthony Peter Fuller, Lead

- Utah

- Ms. Alison Voldt, Salt Lake City

- Virginia

- Donald F. Payne Esq., Knoxville
- Texas
- Mr. J. Michael Fordney, Esq., Saginaw
- Mr. G. L. Cafesjian, St. Paul
- Mr. John M. Nassef, St. Paul
- Mr. John M. Nasses, St. Paul
- Mr. Michael J. Whitton, St. Paul
- Mr. Larry C. Willey, Grand Rapids
- Mr. Mark S. Kluster, Houston
- Ms Marianne Walder Malouf, Dallas
- Kevin R. Michaels Esq., Houston
- Mr. Benjamin H. Schleider Jr. Esq., Houston

- New Mexico

- Ms Albert G. Besser Esq., Roseland
- Matthias D. Dolcio Esq., Woodbridge
- Joseph J. Fieschi Esq., Roseland
- Eugenc M. Harig Esq., Newark
- John E. Knight Esq., Atlantic City
- Tom E. Kiyama Esq., Roseland
- William W. Robertson Esq., Roseland
- Edward F. Ryan Esq., Newark
- Agnes J. Rymer Esq., Newark
- James J. Shraga Esq., Roseland
- Ariel Stark Esq., Princeton
- Thomas L. Weisbeck Esq., Roseland

- New Mexico

- Ms Margaret Caffey-Morvan, Albuquerque

- New York

- Myro Beldock Esq., New York
- The Hon. Conrad B. Duberstein, Brooklyn
- Neil H. Cahn, Brooklyn
- Frank W. Ford Jr. Esq., New York
- The Hon. Leo Glaser, Brooklyn

- Wisconsin

- Mr. Brian T. Stevens, Coldwater
- Mr. Kevin R. Michaels, Esq., Houston
- Mr. Donald R. Campbell, Harrisonburg
- Terrell L. Glenn Esq., Columbia
- Mr. Brian T. Stevens, Coldwater
- Mr. Donald R. Campbell, Harrisonburg
- Mr. Brian T. Stevens, Coldwater
- Mr. Donald R. Campbell, Harrisonburg
- Mr. Brian T. Stevens, Coldwater
- Mr. Donald R. Campbell, Harrisonburg
Justice William J. Brennan, Jr.'s Portrait Presented to Supreme Court

An oil portrait of Retired Associate Justice William J. Brennan, Jr. was presented to the Supreme Court at a special ceremony held in the Supreme Court building on Monday, October 21, 1991. The program was sponsored by the Society in conjunction with the Court and Justice Brennan's law clerks. The Justices, clerks, colleagues, and special guests convened in the Great Hall of the building for a presentation ceremony.

The oil portrait was painted by Paul C. Bums and was completed in 1981. Through the generosity of the Justice's law clerks, donations were collected by the Society to pay for the portrait. The clerks held a small party in 1981 to celebrate the completion of the portrait, but as Justice Brennan was still on the Bench, it was not appropriate to officially present the portrait to the Court at that time.

Leon Silverman, the Society's President, presided at the ceremony, making opening remarks and introducing the participants. He briefly outlined the landmarks of Justice Brennan's distinguished career.

"On behalf of the Chief Justice, the Associate Justices of the Supreme Court and the Supreme Court Historical Society I am delighted to welcome you to this historic event—the presentation of a portrait of Justice William J. Brennan, Jr., to the Chief Justice of the United States on behalf of the Court.

It would not be inappropriate to cullize Justice Brennan on this occasion. However, it would trespass on the Justice's modesty and would in essence be preaching to the converted. I will therefore, content myself with the brief highlights of an extraordinary and rewarding professional and judicial career.

The Justice was born in New Jersey in 1906. He received a B.S. degree from the University of Pennsylvania in 1928 and an LL.B. degree from Harvard in 1931. He also received an LL.D. degree from Notre Dame in 1968. He was admitted to the Bar of New Jersey in 1931. He practiced with the firm of Pitney, Hardin, Ward & Brennan for 18 years from 1931-1949.

His practice was interrupted during the Second World War when he served as a Colonel with the Army's General Staff Corp. He was nominated by President Eisenhower as an Associate Justice of the Supreme Court to succeed Justice Sherman Minton. He was confirmed by the Senate in March of that year. He served on that Court until 1956 when President Eisenhower gave him a recess appointment as an Associate Justice of the Supreme Court to succeed Justice Sherman Minton.

He was nominated by President Eisenhower as an Associate Justice in January, 1957 and was confirmed by a voice vote of the Senate in March of that year. He served on the Court for 44 terms and on July 20, 1990 informed the President of his intention to retire.

The Justice's law clerks commissioned a portrait of the Justice and since he is no longer a sitting Justice, it is fitting that the portrait should now be presented to the Chief Justice and that it be hung with those of his illustrious predecessors which grace the halls of this great building.

To present the portrait to the Chief Justice I will call upon Dennis Lyons who served as Justice Brennan's law clerk during the 1958-1959 terms and who will speak for all of the Justice's law clerks.

Mr. Lyons was graduated from the Harvard Law School in 1955 where he served as President of the Law Review. He then went to the Washington law firm of Arnold & Porter where he has been a partner since 1963. He has served as a Visiting Professor of Law at the University of Virginia and, if you will forgive a more personal self-interested note, has been a member of the Supreme Court Historical Society for at least 10 years.

Mr. Lyons commenced his remarks noting that "almost exactly ten years ago, in this place, his law clerks presented Justice Brennan with the portrait of him which is draped before us today. It is said that he who gives early, gives twice; and following that, his law clerks today are giving that same portrait to the Court. We give the same thing twice as by some suspension of the laws of property, possible only in this place, and only on an occasion like this.

Mr. Lyons continued his remarks noting that "our impression of historical figures—as the Justice is and will be—are shaped only incidentally by the tangible artifacts of representations of their persons. They are formed mainly by their intangible product—by the impressions their thoughts, words and acts have made upon their nations and upon humankind, not by the impressions of their persons recorded in marble, on canvas, or on the photographer's plate. For what could be more intangible than—opinions?" But this physical portrait survives for the rest of the 150 years to be seen on what will be the three hundred and fortieth anniversary of the Bill of Rights, we venture to say that the Justice's intangible artifacts—his opinions and the decisions of the Court that he authored or influenced—will give a much clearer picture of the man.

"As she looks at that picture, the historian of the Twenty-Second Century will see in the Justice's time on the Court the resolution of many paradoxes and contradictions. "When the Justice came to the Court, the historian will note, the guaranteed freedom of the press co-existed uneasily with the principle that "whatever a man publishes"—even about a public official—he publishes at his peril— the unbridled peril of the law of libel. But the Justice's opinion for the Court in New York Times v. Sullivan came, and it made a giant step in the resolution of that paradox, and toward the development of a constitutional law of libel seeking to harmonize those warring principles.

"The historian will note that at the start of the Justice's tenure on the Court, many provisions of the Constitution existed as ideals without sanction or enforcement. Paradoxes abounded: the Constitutional command against unreasonable searches and seizures was hold applicable to the States, but no effective sanction existed for its violation. Grave tension existed between the Equal Protection Clause and legislative malapportionment; but the majority then called it a "political question," and the legislative patent was required to heal himself, although the nature of the disease itself made this unlikely. Official gender discrimination was common and Constitutional jurisprudence to deal with it was undeveloped.

"The Justice's opinions went far in reducing many of these paradoxes. In one opinion Justice Brennan sounded the death-knell of the "political question" election to federal court jurisdiction to enforce the Equal Protection Clause in state legislative apportionment cases. Gender discrimination in state voting, in the states by the Justices, in the State of New York, the name and the policies of the Equal Protection Clause of the Fourteenth Amendment, and by the Federal Government in the face of the Due Process Clause of the Fifth Amendment, had a long history. But the Justice's opinions in Ferebee v. Richmond and in Craig v. Boren taught an entirely different way of approaching gender discrimination without the stereotypes of the past—stereotypes that were there in the flesh as well as in its seeds.

"Resolution of the paradox of Constitutional provisions without sanctions was also sought by the Justice through his belief in the efficacy of process, judicial or administrative. Baker v. Carr was an example of this, as was his recognition of a right to sue for a "constitutional tort" under the Fourteenth Amendment in Byrnes v. Ex. Agents, and his brilliant insistence on the importance of an administrative process, and its timing, in Goldberg v. Kelly.

"The historian of the day we imagine will note the greatest paradox of our Constitution—that for seventy-two years the majority of the Bill of Rights co-existed with the awful, peculiar institution, whose name the Constitution dared not speak, which for some purposes made some people worth three-fifths as much as others, and for most purposes worth not at all.

"The vestiges of that institution were still strong when the Justice came to the Court, only two years after Brown v. Board of Education. To the reduction of those vestiges the Justice contributed in Cooper v. Aaron, signed by the entire Court, but according to some scholars, primarily written by him, through Green v. County School Board, where the Court, 14 years after Brown and 10 years after Cooper, stopped saying "with all deliberate speed and started saying "now." After the Fourteenth Amendment's provision for equal protection for colored people, and the Fifteenth Amendment's provision for equal protection of the colored, the Justice was the leading voice for Civil Rights for his race.

"The taking of human life by the state as a
Brennan Portrait (continued)
punishment has seemed a paradox to philosophers. In the Justice's first years on the Court, his constitutional philosophy toward the death penalty and its consistency with the Bill of Rights was not much distinguishable from that of the rest of the Court. But his position evolved over the years. His opinion in McGautha v. California addressed the process by which the penalty could or could not be imposed by the courts. And at about the midpoint of his service on the Court, in Furman v. Georgia, he embraced the view that the penalty constituted in any and all circumstances cruel and unusual punishment, forbidden by the Eighth and Fourteenth Amendments. He remained steadfast in that position the rest of his tenure. What the historical resolution of this question will be, is not given to us, though I suspect the Justice may himself be confident of the outcome.

"The last paradox the historian at the end of our hundred and fifty year span will find, she will have greater difficulty resolving because of her distance from our scene. There was a Justice who was in fact "the great dissenter" and whose dissenting votes were in number a quantum leap ahead of those of any other Justice ever to sit on the Court. Yet it is recorded that he was a great builder of consensus; a great maker of compromises; and a Justice whose personal relations with his colleagues were unsurpassed. For once, it will be easier for us who have known him and known the force of his personality and his humanity to resolve this paradox than it will be for our historians.

"Here was a Justice who saw that collegiality is the path to our Constitutional destiny. The Chief Justice said that the portrait, which aptly captures both the brilliance and the humanity of our honoree, will soon hang on the ground floor of this building. There it will be placed among the portraits of others who have honorably served this Court over its two hundred year history. It is a great privilege for me, having worked with Justice Brennan for 19 of his nearly 34 years on the Supreme Court, to participate in this dedication ceremony.

Chief Justice Rehnquist further noted that Justice Brennan's tenure on the Court was of considerable duration, and that while it did not set a record, it was close to the record for longevity. He noted, however, that he had never thought that Justice Brennan was trying for a record on length of service, but simply was dedicated to serving as long as he was able to do so effectively.

Coincidentally, the Chief Justice good-naturedly mentioned that Justice Brennan had set a record while serving on the Bench: the record for employing the most clerks. Although we yet have some $220,000 to raise to meet our net goal of $25,500, the principle on deposit in the Endowment is now sufficient to yield an anticipated $100,000 in annual interest income. As this grows, it too will better enable the Society to sustain not only the Documentary History Project, but the Society's many other programs. My best wishes to you all for this holiday season, and for a happy New Year.

President's Letter (continued from page two)

Justice Brennan extending his thanks to all of those who attended the ceremony.

Justice Brennan with his grandchildren Michael Brennan (L) and James Brennan (R) at the reception following the ceremony.

Chief Justice Rehnquist further noted that Justice Brennan's legacy is the many landmark cases he had authored and in which he set forth his personal philosophy of significant contributions to this Court. Justice Brennan, the many landmark opinions he has authored, included Baker v. Carr, New York Times v. Sullivan, Griswold v. Connecticut, School Board, Goldberg v. Kelly and most recently Texas v. Johnson. A common thread connecting these cases and numerous others is Justice Brennan's unwavering commitment to human dignity and individual liberty. For our honoree these concepts are not just abstract maxims, but concrete manifestations of deep personal belief.

"Those of us here at the Court have been the direct beneficiaries of his gifted understanding of the law, his pragmatism, and his personal charm. For that extraordinary contribution and for that great legacy, we are indeed grateful.

The Chief Justice concluded his remarks by offering his heartfelt congratulations and by introducing Justice Brennan. Justice Brennan received a standing ovation after which he made a few brief remarks of thanks. He expressed his appreciation and commented that since his retirement he had added two more clerks to his total: the maximum number he was allowed to have in retirement.

The afternoon was concluded with a reception where guests had the opportunity to greet the Justice personally.

Justice David Seuter (left) poses with Justice Brennan and Mrs. Brennan at the reception following the portrait installation ceremony.