Society Holds Seventeenth Annual Meeting

The Annual Meeting of the Membership of the Historical Society was the first event of the evening portion of the Seventeenth Annual Meeting of the Society held on June 15th. Once again, the Supreme Court chamber was the setting for the Society's business meetings.

Leon Silverman, President of the Society, presided over the meeting during which he presented a report on the status of the Society and its activities. Of special note was his announcement of the successful conclusion of the Endowment Fundraising campaign. He expressed his thanks, and those of all the Officers and Trustees of the Society, to Justin Stanley, Vincent Burke, and the many others who had worked to achieve this goal. He thanked the many Society members who had made personal contributions to the fund as well and noted that following the meeting of the Board of Trustees that evening, Justice O'Connor would present awards in recognition of major leadership donations to the fund.

Mr. Silverman then called upon Mrs. Virginia Daly to present the recommendations of the Nominating Committee for the election of Trustees. The names were presented for consideration, after which the following individuals were elected to a three-year term as Trustee of the Society: George Adams; Vera Brown; John T. Dolan; John D. Gordon, III; Michela English; Philip B. Kurland; Frank McNamara; Leon Polsky and Foster Wollen.

In addition, Mrs. Daly presented the names of the following individuals for re-election to an additional three-year term on the Board of Trustees: Barbara Black; Patricia Dwinell Butler; F. Elwood Davis; Erwin Griswold; Geoffrey Hazard, Jr.; William Barnabas McHenry; Phil C. Neal; Charles Renfrew; Kenneth Rush; Bernard Segal and Obert C. Tanner. All were re-elected to an additional term of office.

Following the election of Trustees, the General Membership meeting was adjourned, and the Annual Meeting of the Board of Trustees was convened. Erwin N. Griswold, Chairman of the Board of Trustees, presided over the meeting. In his opening remarks, Dean Griswold commented that the Society had accom--continued on page six
A Letter From the President

When Frank undertook the chairmanship of that committee in 1988, the Society's membership was slightly over $1 million. He organized a network of State Membership Chairs, which is now in its third incarnation, and set increasingly higher annual goals, culminating in a membership of $2.5 million by the time of the annual meeting. The Society's members now provide approximately one-quarter of a million dollars in revenues per year.

Yet one other remarkable economic success will be posted when the Society publishes its annual audit in the 1992 Annual Report. Although closing balances will not be available for several weeks, the Society's Kiosk, or gift shop, is likely to report a record sales year with gross revenues exceeding $500,000. This is an almost incredible increase of 1100 percent over our 1985 sales figures. It is a credit to both Frank Gilbert's Facilities Committee, which supervises the Kiosk operation, and to our outstanding Kiosk Manager, Jeff Tait, that kiosk revenues have developed into a major source of support to the Society's programs.

Another article appearing in this issue of the Quarterly details the events surrounding the Seventeenth Annual Meeting, and I will not here repeat that summary. But I am delighted to report that the continued support of the Society'sKiosk for Historical Excellence. The Journal itself has gained a reputation as a unique forum for historical scholarship on the Court. An important project during this past fiscal year which did not require substantial financial support from the Society was the recently established National Heritage Lecture. Initiated last November, this lecture series was co-sponsored by the White House Historical Association and the Capitol Historical Society. It featured an address delivered in the Supreme Court Chamber by Justice Anthony Kennedy, to the members and staff of all three organizations. We anticipate this will be part of an ongoing series which in coming years will focus on each of the three branches of government.

Based upon the success of this lecture, the Program Committee has begun exploring additional cooperative projects with other historical societies, and hopes to announce a few of these during the upcoming year. One can only through members' continued dedication to the Society and its mission.

In sum, the Society has continued to expand its activities, has increased its membership, and is well on the road to greater financial stability. Its dedicated staff, headed by David Price and Kathleen Shurtleff, has performed yeoman's service.

The Supreme Court Historical Society Quarterly

Published four times yearly in Spring, Summer, Fall and Winter by the Supreme Court Historical Society, 111 Second Street, N.E., Washington, D.C. 20002. Tel: (202) 454-0800. Distributed to members of the Society, law libraries, interested individuals and professional associations.

Editor
Alice O'Donnell
Managing Editor
Kathleen Shurtleff
Assistant Editor
Jennifer M. Lowe
Consulting Editor
Kenneth S. Gelles
the larger events of history that's always interested me.... This little sidelong on constitutional history I've chosen to tell you about blind".

when making this statement, especially as it applied to the

Education, and in the summer of 1956 he began to discuss with

his new colleague on the bench, John Marshall Harlan (II), the

grandson of the first Justice Harlan, rationale behind the state.

Ms Baker noted in order to understand Frankfurter about Harlan I, and about his approach to civil

relations. "Lynchings and beatings of Negroes by racists helped him to change his mind about a lot of things, including his views about Harlan I, about civil--about his approach to civil rights."

Outlining the background of Plessy, Ms Baker explained some of the peculiarities of the Louisiana laws of the 1890s, noting that an understanding of these laws would give some "idea of the complexities of race relations in the years following Reconstruction and of the infinite pains Southerners took to insure the separation of white and black."

The majority opinion in Plessy shamelessly upheld the racial prejudices inherent in the Louisiana laws. Writing for the Court, Justice Henry Billings Brown of Massachusetts stated that notwithstanding the fourteenth amendment, "[l]aws permitting, even requiring, their separation [black and white races] in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures." In conclusion, he summarized that "[i]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane."

There was one dissent to Plessy--John Marshall Harlan I, "The big Kentuckian, Harlan I, known, among other things, as the last of the tobacco-spitting justices, did not subscribe to the majority's view. By a long shot."

Harlan I seemed an unlikely dissenter to the case as he had been raised in the South and his family had, in fact, been slaveholders. Harlan spoke out boldly against the Emancipation Proclamation, and even though he was appointed to the Supreme Court in 1877 and became a "dedicated supporter of civil rights," he was the only dissenter in the Civil Rights Cases of 1883, and again in 1896 in Plessy. In his dissent in Plessy he wrote eloquently of his feelings, declaring that:

"in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens... There is no caste here. Our Constitution is color blind, and neither knows nor tolerates classes among citizens."

This statement has become a classic in constitutional law. The phrasing was not original with Harlan, however. "He had borrowed it in fact in the brief for Plessy, which argued: "Justice is pictured and her daughter, the Law, ought at least to be color blind.'"

Ms Baker noted that Harlan's ardent protest was penned using the same inkwell that Roger B. Taney had used when authoring the Court's opinion in the Dred Scott case. Harlan had received the inkwell from the Marshal of the Court not long after he joined the Court and Mrs. Harlan "believed he had taken considerable satisfaction in the idea that he was using it to argue, in effect, for reversal of Taney's opinion...." Harlan concluded that the Louisiana statute that justified separate accommodations for black and white travellers was "inconsistent with the personal liberty of citizens, white and black, in that State, and hostile to both the spirit and the letter of the Constitution of the United States."

In his talk, Ms Baker noted that after Harlan's death in 1911, he passed into a kind of obscurity. He had never been the subject of the violent reactions against Brown that were taking place in the Southern states. The other factor that stimulated the conversation was Frankfurter's reading of a case filed in 1897, only one year after Plessy, in which Harlan seemed to reverse his stance on segregation.

The case involved was called Comming and concerned a suit brought by blacks in Richmond, Georgia, against the local board of education, complaining that the segregated schools were being used to build high schools for white children, while no facilities were available to black students beyond grammar school. Frankfurter learned that the local Court judge, E. H. Callaway had supported the blacks' cause and had enjoined the board of education against spending more public funds for white high schools until blacks were provided with equal facilities.

The case was appealed to the Supreme Court of the United States where the lower court ruling was reversed. In reading the opinions on the case, Frankfurter was surprised to learn that Harlan I had not only voted with the majority in this ruling, but had written the opinion for the Court. His eloquent language of only the year before, had disappeared. In an opinion that maintained that maintenance of public schools is a state responsibility, "the Court found that it could not run afoul of the Constitution--and earlier he went out of his way to note the anti-segregation argument--and left it open." Harlan II said that while he could not prove it, his "instinct was that [Harlan I would have been against segregation--voted against it I mean."

Frankfurter determined that further correspondence existed between Frankfurter and Harlan I, but the question never seems to have been answered definitively. Frankfurter seemed to hold to his opinion that Harlan would not have supported school desegregation, while Harlan II seemed to feel he would have. Apparently neither could verify their interpretations, agreed a native Georgian, and supported the blacks' case, and had enjoined the board of education against spending more public funds for white high schools until blacks were provided with equal facilities.

The case was appealed to the Supreme Court of the United States where the lower court ruling was reversed. In reading the opinions on the case, Frankfurter was surprised to learn that Harlan I had not only voted with the majority in this ruling, but had written the opinion for the Court. His eloquent language of only the year before, had disappeared. In an opinion that maintained that maintenance of public schools is a state responsibility, "the Court found that it could not run afoul of the Constitution--and earlier he went out of his way to note the anti-segregation argument--and left it open." Harlan II said that while he could not prove it, his "instinct was that [Harlan I would have been against segregation--voted against it I mean."

Frankfurter determined that further correspondence existed between Frankfurter and Harlan I, but the question never seems to have been answered definitively. Frankfurter seemed to hold to his opinion that Harlan would not have supported school desegregation, while Harlan II seemed to feel he would have. Apparently neither could verify their interpretations, agreed a native Georgian, and supported the blacks' case, and had enjoined the board of education against spending more public funds for white high schools until blacks were provided with equal facilities.
Annual Meeting (continued from page one) finished many worthwhile things during the year. He added that one of the most significant projects was the preparation of the manuscript for the illustrated biographies of the Justices of the Supreme Court.

He noted that within a few days the completed manuscript, which contains biographies of the Court's past and present Justices, will be submitted to the publisher. The 440 page book will be published next year by Congressional Quarterly, Inc. and will include a Foreword by the Chief Justice, along with biographies written by some of the Nation's leading scholars and rare historical photographs. It will be a major contribution to the available reference works on this subject and a significant addition to the Society's list of achievements.

He added his thanks to those who had made completion of the Endowment Fund possible and called upon Virginia Daly for the presentation of the Report of the Nominating Committee. Mrs.

Daly presented the recommendations of the Nominating Committee. A vote was taken and the following individuals were elected unanimously to the positions indicated: Erwin N. Griswold for an additional three-year term as Chairman of the Board of Trustees; Dwight Opperman for a three-year term as Vice President; S. Howard Goldman, Justin A. Stanley and M. Truman Woodward, Jr., each for one-year terms as large members of the Executive Committee.

At the conclusion of the business portion of the meeting, Dean Griswold called upon Justice O'Connor who had graciously consented to make presentations to State Membership Chairs and Endowment Leadership Donors.

Donor award to the Annual Dinner will be published next year by Congressional Quarterly, Inc. and welcomes members and their guests to the dinner and called upon the Chief Justice, who was greeted with a standing ovation. He spoke briefly regarding the Society's important work in assisting the Court with appropriate activities.

At the conclusion of dinner, the guests were serenaded by the Strolling Strings of the U.S. Army Band whose unique performance never fails to delight. Mr. Reynolds then called upon the U.S. Army Chorus under the direction of Major Gary Lamb. The chorus performed a brief program ranging from show tunes to patriotic songs revealing the range and quality of the performers.

At the conclusion of the program, Mr. Reynolds thanked those who had performed, the staff of the Marshall's Office of the Supreme Court who had provided assistance and help during the day and the evening, as well as the staff of the Historical Society for their work in making the event possible. He then adjourned the Meeting until the spring of 1993.
Missouri

Fred E. Arnold, Esq., St. Louis
Millard E. Baggett, Esq., St. Louis
Francis L. Barkholtz, Esq., St. Louis
William R. Bay, Esq., St. Louis
Mary Bonavorsi, Esq., St. Louis
Linda B. Carroll, Esq., St. Louis
Thomas F. Eagleton, Esq., St. Louis
James W. Ewin, Esq., St. Louis
Peter A. Fanch, Esq., St. Louis
Lawrence Friedman, Esq., St. Louis
William G. Guerri, Esq., St. Louis
Thomas R. Jainey, Esq., St. Louis
Kenton E. Kieckhefer, Esq., St. Louis
Michael Lazarruf, Esq., St. Louis
Raymond L. Masey, Esq., St. Louis
Charles Newman, Esq., St. Louis
Joseph J. Raymond, Esq., St. Louis
Gerard K. Sandweg Jr., Esq., St. Louis
Andrew T. Berry, Esq., Newark
Sandra Levy, Esq., New York
Vincent J. Apruzzese, Esq., Cincinnati
Charles Carberry, Esq., New York
Bruce Yannett, Esq., New York
A. Fanchi, Esq., Poplstein, Hanna, Esq., Keene J., Esq., Carson City
Mark G. Farrell, Esq., Buffalo
Ann B. Miller, Esq., South Carolina
Ms. Deborah Lerner, Esq., New York
The Honorable A. F. Brooke, Austin
Mr. A. F. Brooke, Austin

Nebraska

Ronald R. Fluke, Esq., Hastings
Mr. Kurt A. Hostenen, Dakota City

Nevada

Gary A. Owen, Esq., Carson City

New Hampshire

Raymond P. Blanchard, Esq., Portsmouth
Paul Blaisdell, Esq., Portsmouth
George R. Haana, Esq., Keene
Edward J. McFarlane Jr., Esq., Conway
The Honorable James R. Starr, Concord
James J. Tiria, Esq., Salem

New Jersey

Vincent J. Apruzzese, Esq., Libery Corrnr
Andrew T. Berry, Esq., Newark
Thomas F. Campion, Esq., Morristown
Richard Cooper, Esq., Newark
Thomas Daly, Esq., New York
Mr. Robert J. Deftoio, Princeton
Carrie D. Dingle, Esq., Williamsport
Daniel L. Goldstein, Esq., New York
Robert A. Gould, New York
Bernard M. Hartnett Jr., Esq., Jersey City
John J. Kraft, Esq., Newark
Gemech D. Macklin, Esq., Atlantic City
Mr. James H. Martin, Tenafly
John L. McGoohan, Esq., New York
William B. McDermott, Esq., New York
Bernadette M. Pesak, Esq., Hackensack
Deborah L. Pielo, Esq., Fair Lawn
Samuel S. Salier, Esq, Newark
Ronald G. Solins, Verona
The Honorable Anne E. Thompson, Trenton
Paul B. Thompson, Esq., Newark

New Mexico

Ann B. Tallmadge, Esq., Santa Fe

New York

Nicholas Acker, Esq., New York
William Adams, Esq., New York
Bradley J. Andreozzi, Esq., New York
Stanley S. Azei, Esq., New York
Michael Campbell, Esq., New York
Charles Carberry, Esq., New York
John A. Cinccito, Esq., Woodbury
Anne Cohen, Esq., New York
Jay Michael Cohen, Esq., Brooklyn
Kathleen Conley, Esq., New York
Michael D. Cross, Esq., New York
Paul J. Curran, Esq., New York
Brian A. Davis, Esq., New York
Mr. James F. Devlin, Esq., New York
Alexander Ewing, Esq., New York
Mark G. Farrell, Esq., Buffalo
Mr. Victor Futter, Port Washington
L. Stephen Glibsky, Esq., New York
Professor Stephen Gillert, Esq., New York
Daniel Goldstein, Esq., New York
Mark S. Hahn, Esq., New York
John P. Harrington, Esq., Queens Village
L. G. Harris, Esq., New York
Kenneth H. Hart, Esq., New York
Steven Heimstein, Esq., New York
James S. Himan, Esq., Rochester
Thomas W. Jackson, Esq., New York
Mr. Robert L. Kingham, Esq., New York
Gary W. Kubat, Esq., New York
Jonathan J. Lang, Esq., New York
Sandra Levy, Esq., New York
Mr. Steven P. Lieberman, Tarrytown
Lisa Litman, Esq., New York
Reyna Marder, Esq., New York
John E. McDermott Jr., Esq., New York
Susan McFarlane, Esq., New York
Timothy Murphy, Esq., Sag Harbor
Kenneth E. Newman, Esq., New York
Rodney A. Rosen, Esq., New York
Mr. John S. Peloso, Esq., New York
Paul Ponnover, Esq., New York
Anthony J. Pirozzoli, Esq., Esq., Ms. Kisco
Michael Robbins, Esq., New York
Mr. Stanley J. Pronusy, Fresh Meadows
John G. Ranney Jr., Esq., New York
Mr. John R. Robinson, Rye
Ms Irene Ropalewsky, Scarsdale
Elaiu L. Rose, Esq., Roslyn
Thomas Ruben, Esq., New York
Mark E. Sallaccio, Esq., Tonawanda
Laura G. Schofield, Esq., New York
John J. Stahn, Esq., New York
Colby Smith, Esq., New York
Brian S. Sokoloff, Esq., Bayside
Sarah Strauss, Esqs., New York
Daniel J. Thomas, Esq., New York
The Honorable Bruce S. Trachtenberg, Scarsdale
Robert B. Mehl, Esq., New York
H. Elliott Wales, Esq., New York
Stewart Weinman, Esq., Syosset
Kent Wolf, Esq., New York
Bruce Yanett, Esq., New York

North Carolina

Allison R. Barnhill, Esq., Charlotte
Gary W. Barnhill, Esq., Charlotte
Jimmy H. Barhill, Esq., Winston-Salem
Stephen D. Barhill, Esq., Lebanon
Kenneth P. Carlson Jr., Esq., Winston-Salem
Mr. Paul Collins, Pfafftown
William R. Davis, Esq., Winston-Salem
Daniel C. Draughn III, Esq., Franklin
J. Matthew Martin, Esq., Hillsborough
Mark W. Moores Jr., Esq., Charlotte
Mrs. Carol B. Ogletree, Cary
Larry B. Sitts, Esq., Greencboro
Keith W. Vaughan, Esq., Winston-Salem

Ohio

James M. Anderson, Esq., Cincinnati
Lawrence J. Barty, Esq., Cincinnati
James R. Bridgeland Jr., Esq., Cincinnati
John J. Catt, Esq., Columbus
Brian J. Dornette, Esq., Columbus
Mr. Stanley B. Drutz, Columbus

South Carolina

Robert T. Heckman, Esq., Columbia
Chilton DaSauasseur Jr., Esq., Charleston
David J. Fleischer, Esq., Georgetown
Mr. M. Gris, Esq., Columbia
Jawson Hackle, Esq., Greenville

Tennessee

Professor Fran Amley, Knoxville
Thomas A. Bickers, Esq., Knoxville
Steven K. Bowling, Esq., Bowling Green
Gillie Campbell, Esq., Nashville
Luther E. Cantrell Jr., Esq., Nashville
Professor Neil Cohen, Knoxville
Dean Joseph Cook, Knoxville
Dr. Thomas Davis, Virginia
Wynne Hall, Esq., Knoxville
Gary Hunt, Esq., Nashville
Robin King, Esq., Knoxville
Professor Fred LeClerq, Knoxville
Ms. Robin Longmire, Knoxville
Gail Mathes, Esq., Memphis
Ms. Jennifer Morton, Knoxville
Professor Jerry Phillips, Knoxville
Professor Carl Pierce, Knoxville
Mr. Todd Pressnell, Knoxville
Professor Glenn Reynolds, Knoxville
Sara A. Shepperd, Esq., Nashville
John J. Smarti, Esq., Knoxville
Professor John Sobieski, Knoxville
Dwayne E. Tarwater, Esq., Knoxville
Andy Tillman, Esq., Knoxville
Dean Richard Wirtz, Knoxville

Texas

Jack Ayres Jr., Esq., Dallas
Roy L. Barrett, Esq., Waco
Parker Bond Binion, Esq., Houston
Mr. A. F. Brooke, Austin
Mr. Anthony B. Carver, Esq., The Honorable John Corrny, Austin
The Honorable Harold R. DeMoss Jr., Houston
Dwain Den, Esq., Fort Worth
Paul E. Gabin, Esq., Dallas
Richard Grainger, Esq., Tyler
Robert L. Lipset, Esq., Houston
Ms Patricia Louise Makin, Houston
Robert L. Myers III, Esq., Dallas
William S. Montgomery, Esq., Houston
Andrew J. Mytelka, Esq., Galveston
Morton L. Suman, Esq., Houston
Carl Waldman, Esq., Beaumont
Mr. John Wildenhaus, Houston

Virginia

James S. Brock, Esq., Montpelier

West Virginia

Richard J. Bolen, Esq., Huntington
Rudolph L. Di Trapano, Esq., Charleston
John H. McNab, Esq., St. Louis
Mr. John L. McClaugherty, Esq., Charleston
Mr. Kurt A. Hohnstein, Dakota City

Wisconsin

Dorothee H. Dey, Esq., Milwaukee
Eugene J. Dylvy, Esq., Milwaukee
Joseph E. Tierney Jr., Esq., Milwaukee
Donald R. Zuidmulder, Esq., Green Bay
Chief Justice Warren Honored On New Stamp

The Greater Hall of the Supreme Court building was the setting on March 9, 1992 for the unveiling of a new postage stamp honoring past Chief Justice Earl Warren and his long career of public service to the American people. The ceremony was held on the anniversary of Warren's 101st birthday and was conducted by the U.S. Postal Service in cooperation with the Supreme Court of the United States. The honored guests for this occasion were three of Chief Justice Warren's childhood friends: Virginia Warren Daly, Secretary of the Supreme Court Historical Society; Nina "Honeybear" Brien, and Robert Warren, Mrs. Earl Warren was unable to attend the ceremony, but her presence was videocast for her. Chief Justice William H. Rehnquist delivered remarks commemorating the occasion in which he briefly outlined Chief Justice Warren's career, as well as outlining the history of postage stamps depicting Supreme Court Justices. The text of his speech appears below:

I am happy to participate in this ceremony honoring Chief Justice Earl Warren through the issuance of a United States postage stamp bearing his likeness. This year marks the 101st anniversary of the birth of Earl Warren. Reasonable people may ask, why issue a stamp and schedule a ceremony such as this one hundred and one years after he was born? The answer is simple: both the stamp and the ceremony were originally scheduled for the centennial of his birth, but due to problems with the design the date of issue was postponed. We now have a very fine stamp, for which it was worth waiting an extra year. Earl Warren was really "on the run" during the first two decades of his life. He was just 29 years old when he was named Chief Justice of the United States in 1953 to 1969, and it is most fitting that our country pay tribute to his numerous accomplishments in this way.

Mr. Postmaster General, at a ceremony similar to this held in this building two years ago, I complained bitterly to you about the spartan representation afforded to Justices of this Court on our country's postage stamps. Today you have taken a step towards giving the Third Branch its rightful recognition. Earl Warren now joins John Jay, John Marshall, William Howard Taft, Charles Evans Hughes, and Harlan Fiske Stone to make six Chief Justices who have appeared on stamps.

It is interesting to speculate as to the philatelic future of the Earl Warren stamp, as contrasted to the first two John Marshall stamps. The Warren stamp is being issued in a twenty-nine cent denomination, which was the current first class postal rate at the time of his birth. It is clear that means that it will have wide circulation and wide use, making its imposing features familiar to many who do not know them. But it also means that the stamp will probably never attain any great value as a collector's item because of the huge numbers that will be issued to fulfill the need for first class postage. The first two Marshall stamps, on the other hand, were as I have noted in a five dollar denomination. Around the turn of the century, when these stamps were issued, five dollar stamps were used only to send heavy packages overseas by parcel post, and there was little demand for them. The result was that many fewer of the five dollar denomination were issued than of the two cent denomination—and as a result both of those Marshall stamps are today worth several thousand dollars apiece in fine mint condition. The Earl Warren stamp will never attain that value, but it will serve many more postal users; I think Earl Warren would be pleased to see his stamp used that way, rather than having a much smaller number of copies repose largely in the albums of collectors.

In addition to the six Chief Justices, two Associate Justices have appeared on United States stamps. In 1986 a stamp was issued in honor of Associate Justice Hugo L. Black on the twenty-nine cent denomination of the "Great Americans" series. Associate Justice Oliver Wendell Holmes, Jr., appears on the fifteen cent maroon denomination of the "prominent Americans" issue of 1986. By happenstance, a later version of this Holmes stamp is the most extensively used of all stamps depicting the Justices. Ten years after the original commemorative Holmes stamp was issued, the postal rates were raised from thirty-seven cents to fifty-five cents. The Post Office faced an emergency need for fifteen-cent stamps, having only a two-month supply of the "A" nondenominational stamps that are used in such situations. The new fifteen-cent commemorative stamp was designed by Connecticut artist, Christopher Calle, who also designed the Warren stamp. The Black stamp is a fine five cent denomination of the "Great Americans" series.

Chief Justice Warren's stamp will never attain that value, but it will serve many more postal users; I think Earl Warren would be pleased to see his stamp used that way, rather than having a much smaller number of copies repose largely in the albums of collectors.

The Earl Warren stamp was issued by the United States postal service on the anniversary of his 101st birthday, March 9, 1992.
Utah's Horsemast: George Sutherland

by Jay S. Bybee

George Sutherland was born March 25, 1862 in Stoney Stratford in Buckinghamshire, England. One of only six justices born outside the United States, his father, Alexander George Sutherland, was of Scottish descent; his mother, Frances Slater, was English. By baptism, Sutherland was Episcopalian, but sometime around 1862 his father became a convert of The Church of Jesus Christ of Latter-day Saints (the Mormon Church), and in the summer of 1863 the Sutherlands left England to join the body of the Mormon Church in Utah. Although the family settled first in Springville, Utah, shortly after their arrival Alexander Sutherland renounced his newfound faith and moved to Montana. In 1869 the Sutherlands returned to Utah and settled in Provo. The elder Sutherland labored at various jobs, including a mining prospector, mining recorder, justice of the peace, postmaster and, ultimately, attorney.

Life in Utah Territory was frugal. Sutherland later recalled that:

"[t]he average boy of ten ... worked very hard. . . . He milked, cut and carried the night's wood, carried swill to the pigs, carried the horses, hosed the corn, guided the plow, or, if not, followed the trail of picking up potatoes which had been set upturned, until his young vertebrae approached dislocation and he was ready to consider a bid to surrender his hopes of salvation in exchange for the comfort of a hinge in the small of his back."

At age twelve young Sutherland became a clerk in a clothing store in Salt Lake City. In 1879, when Sutherland was 17, he entered Brigham Young Academy (now Brigham Young University), where he came under the influence of his strong-willed headmaster, a German immigrant named Karl Maeser. Maeser, himself a convert of Mormonism, discussed the Constitution with his students and inculcated in them the idea that Providence had guided its framers.

After two years study at the Academy, Sutherland entered law school at the University of Michigan in the fall of 1882. At Michigan, Sutherland studied under one of the greatest constitutional scholars of the day, Dean Thaddeus C. Cooley. Sutherland did not remain at Michigan to obtain his degree. He was admitted to the Michigan bar in March of 1883, and returned to Utah to join his father's law practice and to marry Rosamond Lee, a classmate from Brigham Young Academy.

The Sutherlands were married nearly 60 years. They had three children: Edith, Emma and Philip.

Sutherland practiced law in Provo for ten years, first with his father and later with Samuel Thurman, who would serve as Chief Justice of Utah, and William H. King, who would become Utah's political opponent. Although not a Mormon, Sutherland maintained good relations with members of that church, even at a time when, politically, Sutherland believed he must oppose the Mormon practice of polygamy. Sutherland joined the Liberal Party in Utah, which had as its goal denying the admission of Utah to the Union until the Mormon Church ceased its practice of polygamy. In 1890 Sutherland ran his first campaign for public office, as the Liberal candidate for Mayor of Provo. He was soundly defeated. That same year the Mormon Church officially renounced its practice of polygamy. The Liberal Party disbanded and Sutherland declared himself a Republican.

In 1892, Sutherland sought the Republican nomination for Congressional Delegate. He lost that vote, although more narrowly than in his first electoral attempt. The following year he moved his practice to Salt Lake City, where he joined a prominent firm and helped organize the Utah State Bar Association. Even at this relatively young stage in his career, Sutherland's views on the role of the judiciary were well developed. In a speech to the Utah Bar in 1895, Sutherland told them that "[i]t judges do not make laws, but declare them; the rules which govern their deliberations and decisions are to a large extent fixed and permanent, in no wise controlled by temporary considerations or policies."

Sutherland declared that the judge's call was to "stand as a shield to prevent the exercise of oppressive and arbitrary power on the part of the government."

By 1896, at age 34, George Sutherland was a successful lawyer in Utah State, where he served as chairman of the Judiciary Committee. Four years later Sutherland was elected to Congress, narrowly defeating his former law partner, William King. Sutherland served a single term in the House of Representatives, preferring to return to law practice in Utah and to prepare for a run for a Senate seat. At that time, the U.S. Constitution still provided for selection of U.S. Senators by state legislatures. In 1905, Sutherland prevailed in the legislative election over the incumbent Senator and returned to Washington.

During the two terms he served as Senator, Sutherland soon attained a national reputation for his knowledge of the Constitution and for his abilities as an orator, both on and off the Senate floor. He vigorously supported workman's compensation, improvements in the working conditions of seamen, and women's suffrage. Although the Nineteenth Amendment, extending the right to vote to women, was not ratified until after Sutherland left the Senate, he was an early proponent of the amendment. Any argument which I may use to justify my own right to vote justifies...the right of my wife, sister, mother, and daughter to exercise the same right."

Sutherland was equally vigorous in opposing what he regarded as regulatory interference by the federal government in the affairs of individuals and businesses, and he opposed the Federal Revenue Act (1913), the Clayton Antitrust Act (1914), and the Federal Trade Commission Act (1914). Sutherland also voted against statehood for Arizona and New Mexico in 1912.

The Utah legislature returned Sutherland for a second Senate term. In 1913, with Senate support, the U.S. Constitution was amended to provide for direct election of U.S. Senators (Amendment XVII). In 1916, Sutherland had to stand for popular election to the Senate. This time his former law partner William King defeated him. Sutherland chose not to return to Utah, but remained in Washington to practice law. In 1916, he was elected President of the American Bar Association, succeeding his former Senate colleague, Elizu Root.

The election of Warren Harding as President in 1920 again boosted Sutherland into the public eye. Sutherland and Harding had served in the Senate together, and Sutherland had selected Harding as an advisor to Harding during his presidential campaign. In 1921, Sutherland served as Chairman of the Advisory Committee of the U.S. delegation to the International Conference on the Limitation of Naval Armaments. The following year he was counsel for the United States in the Norwegian Shipping case before the Permanent Court of Arbitration at The Hague. His lectures at Columbia University during this period were published as Power and World Affairs.

In May 1921, President Harding had his first opportunity to make an appointment to the Supreme Court. The vacancy, however, was occasioned by the death of the Chief Justice, Edward Douglass White. The appointment was complicated by the fact that the position of Chief Justice had been sought, quietly, but deliberately, by former President William Howard Taft. Although the President appointed Taft as Chief Justice, Sutherland did not have to wait long. In September 1922, Associate Justice John Clarke unexpectedly resigned from the bench to pursue the cause of world peace. Sutherland was nominated by President Harding on September 5th and confirmed that same day by the Senate without reference to committee - - an honor usually reserved only for sitting Senators.

Sutherland was well acquainted with the Court and its justices. He had known Chief Justice Taft and Justice Willis Van Devanter for several years. Although he frequently disagreed with Oliver Wendell Holmes and Louis Brandeis, the latter whom Sutherland had opposed in the Senate when Brandeis was nominated for the Court, his relations with his fellow Justices were warm and congenial. Justice Owen J. Roberts recalled that at the beginning of conferences, Justice Holmes would approach Sutherland and say, "Sutherland, I tell you a story." On one occasion, Justice Brandeis, upon reviewing Sutherland's strenuous dissents in cases in which the majority upheld Minnesota's post-Depression mortgage moratorium law, returned the dissent to Sutherland inscribed: "Majority Sutherland: That is perhaps the finest opinion in the history of American constitutional law. Personally, I adhere to your error - - Brandeis."

Just as Senator Sutherland had been regarded as thoughtful and well-spoken in the Senate, Justice Sutherland was an articulate and forceful voice on the Court - - as Judge Harold Stephens of the U.S. Court of Appeals in Washington stated - - "always Lincolnian in directness and simplicity."

He quickly formed an intellectual alliance with Justice Willis Van Devanter, James McReynolds, and Pierce Butler. Together, the "Four Horsemen" - - frequently joined by Chief Justice Taft or Justice Edward Sanford - - sought to strike down much regulatory and social legislation. During the nearly sixteen years Justice Sutherland served, the Court struck down some eighteen Acts of Congress, Sutherland voted with the majority in all but one of these. During the same period, the Court ruled more than 185 state statutes or local ordinances unconstitutional, Justice Sutherland was in dissent only nine times. All told, Justice Sutherland authored 302 opinions. Remarkably, only 24 of his opinions were written in dissent. Continued on next page...
For Justice Sutherland, there was no inconsistency in the fact that the Court had so often disagreed with the political branches of government. The Constitution was law, and if it "stood" in the way of desirable legislation, the blame must rest upon that instrument, and not upon the Court for enforcing it according to its terms. 26 To Sutherland there was a "degree of elasticity" in the application but not the meaning of the Constitution and precisely that "application must expand or contract to meet the new and different conditions." 27 In one of his last dissents, Justice Sutherland warned of the cost of the Court approving the social reforms of the New Deal era infringed upon the rights of contract -- in violation of the Fifth and Fourteenth Amendments. 28 In one of Sutherland's opinions, particularly those dealing with the Fifth and Fourteenth Amendments, have since been overruled or allowed to fall into disuse. On the other hand, others, particularly those dealing with the separation of powers, are as articulate and current as when they were penned. In his day, according to Alpheus Mason, Sutherland was "far significant as Hox. 29

Two generations later, Sutherland's influence on the Court cannot be overlooked. At a Memorial Service held at the Court in December 1944, Chief Justice Harlan Stone, his voice full of emotion, praised Justice Sutherland:

the so-called conservative temper of [Sutherland's] opinions was not inspired by any antagonism to progress in the law, but rather by the emphasis which Justice Sutherland placed on the constitutional protection of the few from the tyranny of the many. Indeed, these opinions were but steps in the process of finding solutions of what perhaps has had the greatest problem of constitutional interpretation throughout the twentieth century, the need to bring into proper balance the competing demands, on the one hand that constitutional sanctions shall safeguard the individual from the abuse of power by the majorities, and on the other that the Constitution not be so interpreted as to clothe the individual with power to restrict unduly the welfare and progress of the community as a whole.

Chief Justice Stone suggested that the Court was "perhaps still too close to the smoke of battle to see clearly or to say with confidence precisely how the great constitutional issues of that period should have been decided," but "[i]f any event wise men will not doubt that the viewpoint which [Sutherland] so ably represented must be reckoned with in the formulation of constitutional principles by a tribunal which must determine the boundaries and distribution of power under a federal constitutional system."

End Notes

1. This brief biography was prepared in connection with a forthcoming publication of The Supreme Court: Historical Society and Congressional Quarterly on the lives of the justices. 2. The others were James Wilson (Scotland), James Iredell (England), William Paterson (born at sea while his parents were on their way from England to the United States), David Brearly (born an American citizen, but in Aisla Minor), and Felix Frankfurter (Austria). J. Paschal, Mr. Justice Sutherland: A Man Against the State 3 (1951). 3. G. Sutherland, "The Spirit of Brigham Young University," The Messenger (No. 10) at 3-4 (address read at Brigham Young University on June 4, 1941) (quoted in Paschal, supra note 2, at 4). 4. Paschal, supra note 2, at 7 & n.6; F. Kirkham, "Intimations on Justice George Sutherland, A Good Man," Clark Memorandum (June 17, 1944) (address given November 1965 by the J. Reuben Clark Law School, Brigham Young University). 5. "Rosamond" is the spelling found in Paschal and in H. Stepan, "Theulings of the Bar and Officers of the Supreme Court of the United States in Memory of George Sutherland, December 18, 1944," in IV Memorial of the Justices of the Supreme Court of the United States 601 (1981). "Rosamond" is the spelling preferred by Congressional Quarterly's The Supreme Court at Work and D. Burner, "George Sutherland" in III The Justices of the United States Supreme Court: Their Lives and Major Opinions 2314 (L. Friedman & F. Israel eds. 1969). 6. 2 Rep. Utah Bar Ass'n 47, 57 (1893) (also quoted in Paschal, supra note 2, at 27). 7. Id. at 47 (also quoted in Paschal, supra note 2, at 28). 8. 53 Cong. Rec. 11318 (1916) (also quoted in Paschal, supra note 2, at 92). 9. H. Stone, "Proceedings of the Bar and Officers of the Supreme Court of the United States in Memory of George Sutherland, December 18, 1944," in IV Memorial of the Justices of the Supreme Court of the United States 461 (1981).
Evans Hughes, but he did make an important contribution to the development of insulin through his association with Dr. William D. Sansum. Sansum also provided a link between Hughes and the "revenuers" who enforced the Prohibition laws.

The initial link between Sansum, Hughes and the "revenuers" was through insulin. The discovery of insulin is credited to two Canadian doctors, Frederick Banting and J.J.R. McLeod, of Toronto, Canada. While Banting is credited with the original discovery of insulin from animal pancreases. In fact, Drs. Banting and McLeod shared the Nobel prize for the discovery of insulin.

The work in Toronto was soon made known to the medical community throughout the world. Dr. William D. Sansum, "following Banting's paper and advice, had used alcohol extraction to make the first insulin in the United States, treating his first patient May 31, 1922."

Initially, Dr. Sansum found all the materials he needed in the Santa Barbara area, but by late 1922, the local slaughterhouse could not provide enough animal pancreases to meet the needs, so Sansum began to purchase additional material from a packing company in the Los Angeles area. The trip to Los Angeles was approximately 300 miles round trip. Transportation of the glands required some kind of preservative, and Dr. Sansum used large amounts of grain alcohol to preserve the pancreases.

Perhaps inevitably, one winter night, as Dr. Sansum was returning to Santa Barbara with a load of tin milk cans filled with alcohol and animal pancreases, he met a prohibition officer. When queried about the contents of the milk cans, Dr. Sansum told the officer that they contained animal glands, explaining that he was taking them to a hospital in Santa Barbara where the insulin would be extracted. The officer was not impressed and demanded that the cans be opened for inspection. The smell of alcohol was overwhelming, and despite his assurances that the alcohol was being used for scientific purposes, the load of pancreases was impounded and Sansum was ticketed for violation of the prohibition laws.

While awaiting his appearance before a federal judge, Dr. Sansum read an article in a Chicago newspaper which fired his interest. The news item had originated in Toronto and reported: "Miss Elizabeth Hughes, fifteen-year-old daughter of the American Secretary of State Charles Evans Hughes, has seemingly been cured of severe diabetes and has returned to her parental home in Washington, D.C. after undergoing treatment here for the past five months under the personal care of Dr. Frederick G. Banting of the University of Toronto." Acting on impulse, Dr. Sansum wrote the Secretary of State outlining his problems and soliciting help.

Sansum found a sympathetic audience in Hughes, Elizabeth, his third daughter and youngest of four children, had contracted diabetes at the age of 11. The common treatment for diabetes at that time was to restrict the diabetic's diet to starvation. By the age of 15, this treatment had taken a severe toll

Given his daughter's experiences, it is probably not surprising that Secretary Hughes did respond to Dr. Sansum's request. Soundedly within the hour of receiving the letter, he telephoned the Secretary of the Treasury, whose department enforced the Prohibition laws. Dr. Sansum subsequently received a telegram signed by the Secretary of the Treasury himself, reporting that the Treasury Department had authorized Sansum to purchase and transport as much alcohol as was needful for his work. Hughes also reported in the telegram that the recent charges against Sansum would be dropped.

The next step was for Dr. Sansum and his associate to went to the federal building in Los Angeles to obtain their alcohol permit. There they "found a figurative red carpet spread for them." Dr. Sansum later wrote the parent of one of his young patients explaining his reception. Prohibition authorities were much impressed with so generous and unusual an offer coming from high in the federal government.

Dr. Sansum was treated with great respect and was able to continue his work without interference.
Chief Justice Rehnquist Presents the Society’s Triennial Book Prize
To University of Chicago Professor David Currie

The Society is pleased to announce the presentation of its first Triennial Book Prize. The award recognizes outstanding booklength scholarship on the Supreme Court published during the previous three year period and is aimed at stimulating the publication of scholarly works about the Court. David P. Currie received the award for his work, The Constitution in the Supreme Court: The Second Century, 1888-1986.

A special presentation ceremony was held in the Chambers of Chief Justice Rehnquist, during which Chief Justice Rehnquist presented the award to Professor Currie. Also attending the gathering were Mrs. Currie, Leon Silverman, President of the Society, Kenneth S. Geller, Chairman of the Publications Committee, Michael Cardozo, Chairman of the Board of Editors for the Journal of Supreme Court History, David T. Pride, Executive Director of the Society, and Clare Cushman, Director of Publications for the Society.

Professor Currie’s book discusses constitutional cases, some easily recognized and others long forgotten, thus tracing the development and changes in judicial philosophy in the last 100 years. Published by The University of Chicago Press, this book is a sequel volume to his 1985 book, The Constitution in the Supreme Court: The First Hundred Years, 1789-1888. The Constitution in the Supreme Court: The Second Century, 1888-1986 was the unanimous choice of the Triennial Book Prize Committee chaired by Professor Philip Kurland of the University of Chicago. Other members of the Committee were Judge David Levi of the U.S. District Court for the Eastern District of California, Professor John Mansfield of Harvard, and Anthony Lewis of The New York Times.

Both of Professor Currie’s volumes have been highly acclaimed and well received within the academic community. Currie was commended for taking highly emotional issues, like Griswold v. Connecticut and Bowers v. Hardwick and arguing them cautiously and with reason. Robert Stevens, in his review of the second volume described it as "a book that should be read by all those who care about the Supreme Court." The Society is pleased to award this, the first Triennial Book Prize, to Professor Currie for his outstanding work.

The Supreme Court Historical Society
111 Second Street, N.E.
Washington, D.C. 20002