Brennan Memorials

The career and contributions of Associate Justice William Joseph Brennan, Jr. were memorialized in a special session of the Supreme Court Bar held in the Supreme Court of the United States on May 22, 1998. As is customary, the Bar of the Supreme Court of the United States met to review the life of Justice Brennan and to consider a formal tribute to the Justice. The Resolutions Committee was charged with researching and writing an appropriate tribute to the Justice to be presented to the members of the Supreme Court Bar for adoption later in the day. The Committee was comprised of Floyd Abrams, Norman Dorsen, Owen Fiss, Gerard E. Lynch, Frank I. Michelman, Robert C. Post, Geoffrey R. Stone and Peter L. Strauss.

The opening paragraph of the resolution set the tone for the tribute: “William Joseph Brennan, Jr., graced the Supreme Court of the United States for thirty-four extraordinary years. Appointed to the Court on October 15, 1956, by President Dwight D. Eisenhower, Justice Brennan’s years of Supreme Court service spanned eight Presidencies, seventeen Congresses, and one hundred forty-six volumes of the United States Reports. Ill-health forced Justice Brennan to retire from the Court on July 20, 1990, but not before his unique qualities of mind and heart had touched the lives of twenty-two Supreme Court colleagues—one-fifth of the Justices to have served on the Supreme Court; one hundred-twelve law clerks, each of whom became part of Justice

Teachers Attend Supreme Court Summer School

by Jen Fordyce

The fourth annual Supreme Court Summer Institute took place in Washington, DC from June 18 through June 30. The Institute, cosponsored by the Supreme Court Historical Society and Street Law, Inc., took place at the Georgetown University Law Center.

Participants came from all over the continental U.S., as well as one American high school in Germany. With only sixty spots available and applications pouring in from high school teachers around the country, the selection process was quite difficult this year. Applicants wrote essays or short answers to questions regarding their teaching experience, extracurricular activities, opportunities to train other teachers, and included written recommendations from their colleagues.

continued on page ten
A Letter From the President

Recently Judge Damon Keith of the Sixth Circuit sent me a touching memorial which he had delivered on the occasion of William T. Gossett's funeral on July 27th of this year. It reminded me what a giant in the law Bill Gossett was, and caused me to reflect upon where the Society might be had he not been so devoted to the Society's success.

Bill’s first wife, Elizabeth, was of course, a former President and Chair of the Society—a fitting role for the daughter of former Chief Justice Charles Evans Hughes. But Elizabeth’s interest in the Society transcended her familial relationship with the Court’s history. In that she mirrored Bill’s devotion to improving the public weal.

About the time I became actively involved in the Society, then President Justice Stanley was working with Bill to establish the Society’s endowment. Bill eventually founded the endowment with a personal seed grant of Ford Motor Company stock that I suspect he yet held from his days as Ford’s General Counsel and Vice President.

That Bill was a lawyer’s lawyer is an assessment that is inescapable upon even the best-of-overviews of his career. As Judge Damon noted in his memorial, Bill Gossett served as General Counsel and Vice President for the Bendix Corporation, as well as for Ford. He was Chairman of 20th Century Fox. He was a name partner in the renowned Detroit firm of Dykema, Gossett. He also served as President of the American Bar Association and National Chairman of the United Negro College Fund.

Following his first wife’s death, Bill remarried in 1984 and new wife Kathryyn lent her vigor to Bill’s devotion to the law, and to serving the Supreme Court. As Bill’s health began to fail, the Society was determined that he should be honored for his work on its behalf. Ultimately it was decided that the Society would name its annual scholarly prizes for contributions to the Journal of Supreme Court History after Bill, Kathryyn and Elizabeth, and the Hughes-Gossett Prize for Historical Excellence was born.

Now that Bill has passed away, there is some consolation to be found in knowing that the Society honored him while he was still alive, and that the legacy he built by ensuring the Society’s future will live on for many years to come.

Indeed, by nearly every measure the Society is forging ahead with marked success. The endowment, which Bill founded with his initial gift now exceeds $3,000,000 including accrued interest. The Journal of Supreme Court History, from whose contributors the Hughes-Gossett Prize-winners are selected is about to be expanded to three issues a year. Our recent lecture series on African-American Civil Rights was among the most successful the Society has ever sponsored. Some of the lectures drew nearly 300 guests, and all were televised on CSPAN.

The Documentary History Project, long the gem in the Society’s historical research crown, has just published its sixth of eight anticipated volumes—a milestone in the development of that project and the Society. Yet, despite the demands this accomplishment has placed on the Project’s staff, DHP Director Maeva Marcus has been devoting additional hours to a pilot program examining the potential and the need to create a graduate school consortium focusing on constitutional history.

The Society is also moving ahead with its web-site, which can be located at www.supremecourthistory.org. Our goal is to add 10 to 20 new full-text books to our on-line digital library during the coming year. Members who visit the site will notice a number of our past Journals have already been posted, as has the first increment of the Society’s popular gift shop catalogue.

Plans to occupy the Society’s new headquarters are also proceeding apace. While we yet have before us a considerable funding gap between gifts on hand and pledged and the overall budget, we have several promising possibilities to bridge that gap. In the meantime, our need for additional space has become so critical as to be impacting on the Society’s programs. Accordingly, the Executive Committee has authorized construction to begin in late November of this year, with a completion date projected for mid-summer 1999.

The new building will enable the Society to more properly house and display items in its collection in addition to those on display in the Court itself. It will also serve as home to the Society’s growing library. And, I would be remiss if I did not mention in this connection the continuing efforts of Professor James O’Hara, the product of whose labor as unofficial acquisitions librarian has so increased this valuable resource.

Professor O’Hara is indicative of a cadre of contemporary volunteer supporters who are ushering the Society forward from one success to the next. Until his death last July, Bill Gossett was another. The Society is thankful for its past and current friends whose efforts ensure its bright future.

Leon Pitzker

As Pure in Style as I Can Make It

A special exhibit prepared by the Office of the Curator recently opened in New York City, “As Pure In Style as I Can Make It: Cass Gilbert’s Supreme Court Building.” The exhibit is located in the building that houses the Smithsonian’s National Museum of the American Indian in lower Manhattan. Originally New York’s Custom House, it was built at the turn of the century by Gilbert, and was his first major building on the east coast.

This exhibit on the Court is one of five celebrating Cass Gilbert’s contributions to American architecture currently on view in New York. The Curator was invited to be a member of the Committee on Cass Gilbert Projects (a sub-committee of the U.S. Court of Appeals for the Second Circuit’s Committee on History and Commemorative Events), which sponsored these exhibits and other events. Franz Jantzen in the Curator’s Office wrote and assembled the exhibit, which traces in detail the Court’s evolving design from its earliest stages. Some fascinating details were discovered while researching Gilbert’s own papers, inaccessible until recently, including Gilbert’s first plans that called for a very different building from the one that would be built.

The Museum is next to Battery Park and Bowling Green at the foot of Broadway in Manhattan, and is open every day except December 25. Hours are Sunday - Wednesday - Friday - Saturday, from 10:00 AM to 5:00 PM, and Thursday from 10:00 AM to 8:00 PM. The exhibit runs through February 7, 1999.

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Managing Editor Kathleen Shurtleff
Assistant Editor Christopher Mcgrahan

Attention Federal Employees!

Once again, the Supreme Court Historical Society is a participant in the Combined Federal Campaign (CFC) of the National Capital Area. The Society’s 1998 designation number is 7656. Gifts made through the CFC support the Society’s work in preserving and disseminating the history of the Supreme Court through public programs, workshops for teachers, publications, and our website. Please consider the Society when you review the list of Local Voluntary Agencies in the campaign catalog.

West and South facades of the Supreme Court of the United States as drawn by Schell Lewis from the offices of Cass Gilbert.
The Flags at Nuremberg
A Memoir by Alan Y. Cole

In 1949, I had the privilege of serving a one-year term as a law clerk to Supreme Court Justice Robert H. Jackson who had been the American (and chief) prosecutor at the War Crimes Trial in Nuremberg, Germany after World War II. This was the trial of the major Nazis when the war was over. The trial itself was held in the Palace of Justice in Nuremberg from which flew the flags of the four nations who were participating in the trial: The United States, England, France and the Soviet Union.

One day I was chatting casually with the Justice in his chambers at the Court and mentioned in passing, “when the flags at Nuremberg were at half staff.” Justice Jackson interrupted and said flatly, “The flags at Nuremberg never flew at half staff!” I explained that they had been so flown to mark the untimely death of General George S. Patton. The Justice was not persuaded. The flags at Nuremberg never flew at half staff,” he repeated. “The Russians would never have lowered their flag to honor an American general,” he asserted. I was certain he was incorrect. Indeed, I had a vague recollection that somewhere I had a photograph of the Palace of Justice with the flags at half staff.

I commenced a search at my home through hundreds of wartime photographs. After World War II had ended and while I was still in the Army, I had been stationed at Nuremberg during much of the trial. I had taken many photographs and these had been thrown together helter-skelter in old shoe boxes when I returned home. My search was finally rewarded when I came across a negative showing a photograph of the Justice at Nuremberg with the four flags unmistakably flying at half staff. I took the negative to a professional photo shop and ordered a larger salon print. Then I had it framed. I took one day the framed picture in to Justice Jackson and said, “Here is a photograph of the Palace of Justice at Nuremberg with the flags at half staff.” I tried hard to keep the triumph out of my voice. He was silent, said absolutely nothing. But a short time later I noticed that the framed photograph had been hung on the wall above his shoulder, near his desk, in his personal office at the Court. I later learned from his secretary that he had hung the picture as a reminder to himself that he was not always correct, and that even he—a Supreme Court Justice and Nuremberg prosecutor—was fallible and could make a mistake like anyone else.

After awhile I became accustomed to the print on the wall in his chambers. When my clerkship was over, I left the Court and opened my own law office in downtown Washington and forgot all about the salon print. I had many other things on my mind.

Sometime after Justice Jackson’s death in 1954, a messenger from the Supreme Court appeared at my office with a package for me. It was the Nuremberg photograph. The Justice had left instructions, that upon his death, the picture was to be returned to me. I have hung the photograph on my law office wall, above my shoulder, near my desk, where it is hanging now.

In 1953, in the case of *Brown v. Allen*, Justice Jackson pungently wrote: “We are not final because we are infallible, but we are infallible because we are final.” Justice Jackson had a way with words. This was a cogent way to say the Supreme Court was not the highest court because it was always right, but rather because there was no higher court to say that it had made a mistake. I have always thought that when the Justice wrote those marvelous words, he was looking at the picture on his wall of the Palace of Justice at Nuremberg with the flags at half staff.

*The flags at Nuremberg never flew at half staff,* stated Justice Jackson. “The Russians would never have lowered their flag to honor an American general.” Alan Y. Cole had been there as well and was certain that they had. He searched for and found the negative to the photograph above showing the allies honoring the untimely death of General George S. Patton.

In 1953, in the case of *Brown v. Allen*, Justice Jackson pungently wrote: “We are not final because we are infallible, but we are infallible because we are final.” Justice Jackson had a way with words. This was a cogent way to say the Supreme Court was not the highest court because it was always right, but rather because there was no higher court to say that it had made a mistake. I have always thought that when the Justice wrote those marvelous words, he was looking at the picture on his wall of the Palace of Justice at Nuremberg with the flags at half staff.

Alan Y. Cole, was a name partner of the firm Cole and Groner, P.C. in Washington, D.C. He clerked for Justice Jackson for one year before commencing private practice. A graduate of Yale Law School, Mr. Cole served as chairman of the Criminal Justice Section of the ABA. He died on September 25, 1984.

Five significant volumes on the Supreme Court have been published recently, all of special interest to members of the Society.

Books by Chief Justices are not rare. John Jay was one of the authors of *The Federalist Papers* and John Marshall wrote his five volume life of George Washington. Taft and Hughes wrote books before assuming the center chair, and Earl Warren and Warren Burger both wrote several books while in retirement. What is rare is a book on the work of the Court by a sitting Chief Justice.

Chief Justice William H. Rehnquist had already written two books about judicial history before his latest offering, *All the Laws But One: Civil Liberties in Wartime* (Knopf, 1998). The title is descriptively accurate; the Chief Justice traces the tension between the American tradition of civil liberties and the exigencies of wartime. Much of the book centers on the greatest challenge of all: The Civil War. Lincoln’s suspension of habeas corpus occurred in the early days of the War without Congressional authority. Constitutional authority to suspend the writ seemed to suggest that Congress alone had the power to do so (and indeed Congress later expressly gave the power to the President), but Lincoln’s action was tested in the Courts, and Chief Justice Roger Taney ruled against the President. The Chief Justice also held that civilians—even civilians suspected or charged with treason—could not be tried in military courts. Lincoln ignored Taney’s order. A constitutional crisis might have ensued in ordinary times, but the impasse between the executive and judicial branches was lost in the overwhelmingly more pressing issue of the War itself.

Similar issues were raised in the course of the War as Union forces occupied territory formerly under Confederate control, or which were hotbeds of Southern sympathy. Free speech issues were raised whenever some expression of support for the rebel cause was uttered. Northern generals invariably, and not without cause, saw treason everywhere. At issue once again was the trial of civilians before military courts, essentially with military judges and procedures. Ultimately, after the war, in *Ex Parte Milligan*, the Supreme Court unanimously condemned the conviction of Milligan, a civilian, by military courts, and rejected the government’s argument that civil war suspended the Bill of Rights.

Chief Justice Rehnquist then turns to the legal issues surrounding the trials of the ex-conspirators of John Wilkes Booth in the assassination of Lincoln, and the free speech issues continued on page six.

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**Trivia Quiz: Famous Children**

*by Prof. James B. O’Hara*

Many Justices have been fathers of sons and daughters who themselves achieved distinction or notoriety. Can you identify the jurists and their progeny?

1. This Justice’s son was a distinguished photographer of birds and wildlife.
2. This Justice’s daughter was a well known economist.
3. This Justice resigned from the Court when his son was appointed Attorney General of the United States.
4. This Justice’s son was the sculptor of the massive statue of John Marshall which is now displayed in the Supreme Court Building.
5. This Justice had a son who was a prominent Senator and Presidential candidate.
6. This Justice was father of a well known abolitionist author.
7. This Justice’s son was Governor of North Carolina.
8. This Justice’s son was Solicitor General.
9. This Justice’s son was a reform candidate for Mayor of Chicago.
10. This Justice’s daughter was the scandalous trendsetter of her day.

Answers on page fourteen.
Unfortunately, Cardozo came to the Supreme Court at the age of 61 and he lived only six more years. Despite failing health, his impact was far from limited. Early on, he joined the conservative majority of the Court and often dissented as the New Deal’s liberal agenda ran into the obstacle of the “Four Horsemens” of opposition—Van Devanter, McReynolds, Sutherland and Butler. Cardozo also anticipated the later debate, led by Black, about the incorporation of the Bill of Rights by the Fourteenth Amendment and the abrogation of those guarantees to the States. In *Palko v. Connecticut*, Cardozo concluded that some of the provisions of the Bill of Rights were “of the very essence of a scheme of ordered liberty,” a theme later replayed and extended by the Warren Court.

Cardozo’s gentle and courtly manner, his simplicity of spirit, his subtlety of expression, present grave problems to the biographer. Cardozo has been depicted by some of his admirers as a secular saint, but the biographer must make critical judgments sometimes even harsh. Kaufman’s Cardozo is no saint; the author knows how to separate reality from fantasy. While obviously admiring Cardozo deeply, and even loving him, Professor Kaufman dares to criticize, and he knows the difference between biography and hagiography. Cardozo is wonderfully written, and a great Justice now has a “life” of his own. It is no surprise that the Supreme Court Historical Society has bestowed the Erwin N. Griswold Prize on Professor Kaufman for this work.

A secondary judgment, very different in scope and style, is Dennis J. Hutchinson’s *The Man Who Once Was Whizzer White: A Portrait of Justice Byron R. White* (Free Press, 1998). The author, a former clerk to the Justice, makes it clear that this is no “authorized” biography in the sense of *Seriatim*. This carefully selected and edited collection of White’s opinions and writings, concurrences and dissents, and voted in thousands of cases are devoted to World War II and to the controversies surrounding the internment of Japanese citizens and non-citizens as they were raised before the Court in the *Hirabayashi and Korematsu* cases. *All the Laws But One* is balanced, clearly focused, wonderfully written book. It is based on the latest research, yet directed to a popular audience, and is completely devoid of technical legal language. It is, as booksellers might say, “a good read.”

For years, both scholars and the interested reading public have complained about the absence of a definitive biography of Justice Benjamin N. Cardozo. For many years, beginning with the appointment of New York’s then chief judge, of New York’s highest court. New York’s Supreme Court in its first three years of existence, the Court was a cypher prior to the appointment of John Marshall in 1801, and this may in part account for the difficulty of trying to understand the nature of the Court during the attack on Washington in the War of 1812. The Supreme Court Historical Society has provided a service of enormous importance in its ongoing *Documentary History of the Supreme Court of the United States, 1789-1800*. A wonderful new book challenges the idea that the Court did nothing of importance prior to Marshall’s appointment. *Seriatim: The Supreme Court Before John Marshall* (New York University Press, 1998) is edited by Scott Douglas Gerber of Florida Coastal School of Law and consists of eleven interpretive essays, ten of which treat of individual Justices who were active on the Court before 1800. *Seriatim* is a Latin word meaning “serially,” and is a term of art to describe the practice of the early Court, following English procedure, where each Justice wrote a brief opinion in each case. This practice, as is well known, was abandoned during the Marshall era in favor of an “opinion of the Court” written by one Justice in the name of all of the Justices in the majority. (The practice lingered in the occasional concurrences still used in modern times.)
Brennan Memorial (continued)

Brennan's extended family; the full complement of the Supreme Court's support personnel—from guards to gardeners—all of whom Justice Brennan regarded, and treated, as valued friends; and countless members of the Supreme Court bar who recall with pride and affection their interaction with Justice Brennan in search for justice.

"... The sweep and power of Justice Brennan's contributions to American law challenges our collective imaginations. As Justice Souter has noted, the sheer mass of the Brennan legal legacy extents an intense gravitational pull on our jurisprudence. In the course of a remarkable tenure that fell short of Chief Justice Marshall's by a matter of months, Justice Brennan authored 1,573 opinions: 533 opinions for the Court, 694 dissents, and 346 concurrences. Justice Brennan's opinions shaped our nation. ... Our ideal of democracy flows from Justice Brennan's historic opinion for the Court in Baker v. Carr. The ability of all Americans to participate equally in the democratic process was safeguarded and advanced by Justice Brennan's opinions in Katzenbach v. Morgan and Thornburgh v. Gingles. Our modern conception of free speech was articulated and defended by Justice Brennan's opinions in New York Times v. Sullivan and Texas v. Johnson.


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Court Summer School (continued)

When the selection process was completed, Street Law extended invitations to sixty outstanding teachers from different locales, backgrounds, and levels of seniority, creating a group of teachers with enough diversity of experience that they would learn from one another as well as the presenters. Participants included high school teachers of law, history, government, advanced placement teachers, mock trial coaches, and teen court advisors.

The institute was conducted in two consecutive five-day (Thursday to Tuesday) sessions with a group of thirty teachers participating each week. The goal of the program was twofold: to give teachers in-depth knowledge about the workings of the Court, and to provide innovative methods for the teachers to convey this information to both their students and fellow educators. Street Law and the Supreme Court Historical Society ask participants to conduct workshops for other teachers when they return to their home states, ensuring that the program has an ongoing impact on both their students and fellow educators. Street Law’s headquarters, 111 Second Street N.E., Washington, D.C. 20002, or call (202) 543-0400. www.supremecourthistory.org

Presenter Lori Arne of the Associated Press with Justice Ginsburg.

Participants included: Alex Acosta, from The Project on the Judiciary; Laura Flegel, Director of Legal Services for the Whitman-Walker Clinic; Peter未经，Alex Acosta, from The Project on the Judiciary; Laura Flegel, Director of Legal Services for the Whitman-Walker Clinic; Theresa Gantousof Ohio, new to teaching about the law; Nan Aron, executive director of the Alliance for Justice; and Rosemarie Kuntz, a high school teacher from Indiana, noted, “I was impressed by the intellectual level of partnership between the legal community and the educators.” She said that the sessions inspired her to develop contacts with legal resource people for her own classes.

For yet another angle on the Court and its role in America, the teachers took part in an informal Sunday evening discussion with a member of the press who covers the Court. Frank Murray of the <em>Washington Times</em> and Laurie Asseo of the <em>Associated Press</em> each took the time to discuss “The Supreme Court, Values, and American Life” and how the press fits into the equation. Murray, who has addressed the institute each year, said that he enjoyed doing the session because, “It’s one of the few times I get to talk over the Court with people from around the country, ordinary people. It helps me do my job.” Their questions give me perspective [on what people want to know when they read the newspaper].”

The culmination of the week’s work and studying took place on Monday, when the groups went to the Supreme Court to hear decisions announced, including some of the cases they studied during the institute. Undoubtedly, the highlight of the day was the evening reception with the Supreme Court Justices. At the first reception, Justice O’Connor spoke enthusiastically about the cooperation between the Supreme Court Historical Society and Street Law, Inc., and encouraged the teachers with a few words about their ability to inspire their students. “As a lawyer, I see these bright lay people begin to understand in just two hours what I’ve been working on for years. It was very humbling.” The efforts of these resource people did not go unnoticed. Rosemarie Kuntz, a high school teacher from Indiana, noted, “I was impressed by the intellectual level of partnership between the legal community and the educators.” She said that the sessions inspired her to develop contacts with legal resource people for her own classes.

The final session and wrap-up on Tuesday gave participants a chance to reflect upon the experiences of the week and to consider how the institute will help prepare them to teach students and other teachers about the U.S. Supreme Court. Martha Henderson of Maryland, said, “The more I learn about the Supreme Court, the more confidence and respect I gain for democracy. This institute did an outstanding job of making me feel like I am an important part of [the process] by—teaching about the Supreme Court.”

Theresa Gantousof Ohio, new to teaching about the law, said that the institute with a fresh perspective. “When I came to the Supreme Institute, I had only taught government for one year and needed content information and teaching techniques,” remarked Gantousof Ohio. Street Law succeeded in giving me a wealth of information and techniques that I will be able to use with various class levels.”

Letters continue to arrive at Street Law thanking the program staff and the Supreme Court Historical Society for providing teachers with this educational opportunity. But the effects of these efforts will be far-reaching. Students and teachers all over the country will learn from this group effort and benefit from their firsthand experience at the U.S. Supreme Court. As Jeanette Douglas of Michigan put it, “This institute was an educational experience of a lifetime!”

In the interest of preserving the valuable history of our highest court, the Supreme Court Historical Society would like to locate personal who might be able to assist the Society’s Acquisitions Committee. The Society is endeavoring to acquire artifacts, memorabilia, literature or any other materials related to the history of the Court and its members. These items are often used in exhibits by the Curator’s Office. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at the Society’s headquarters, 111 Second Street N.E., Washington, D.C. 20002, or call (202) 543-0400. www.supremecourthistory.org
Brennan Memorial (continued)

that the retired Justice often described as the high-point of his day. Justice Brennan particularly favored his nineteenth birthday celebration in the Supreme Court chamber, the first such celebration since Oliver Wendell Holmes, Jr., held a similar birthday celebration in 1931. In his parting conversations with friends and admirers that day, Justice Brennan recalled his love for the Court, and his gratitude for a life well lived. Justice Brennan died peacefully in his ninety-second year.

"The Brennan personal traits that will be most remembered were the Justice’s love of people and his ability to put himself into their shoes. Virtually everyone who encountered Justice Brennan has a story of his kindness. The bus driver who rear-ended his car in Georgetown on a drizzly day and did not realize that the gentle victim—who assured him that this kind of thing ‘happens every time there’s a rain, and it’s nobody’s fault at all’—was a Supreme Court Justice. The police officer who took Brennan and his son, Bill III, into custody when they found him in the predawn hours, hopelessly lost, wandering on the streets, and was treated to a hearty breakfast of bacon and eggs when they finally convinced him they were who they said they were. Every law clerk, each of whom can tell countless stories of how Brennan could reassure with the characteristic grip on the arm, twinkling eyes, and the word, ‘Okay, pal,’ and how Brennan always asked about the clerk’s spouse or latest romance. Every colleague and friend who, in Justice Souter’s words, cherished ‘the man who made us out to be better people who were as good as we thought ourselves to be’—witnesses the Justice’s love of people and his ability to put himself into the shoes of others.

The Justice’s many contributions to the development of the Court’s jurisprudence were discussed in four subsections labeled Justice Brennan and the First Amendment, Justice Brennan and Equality, Justice Brennan and Procedure and Fairness, and Justice Brennan and the Federal Courts. These sections cited numerous important opinions of the Court written by Justice Brennan on such principles as free speech protection, religious freedom and equality under the law. Minority opinions wherein the Justice expressed a profoundly held personal view differing from those of his Associates on the Bench were also discussed.

The underlying principle evidenced in all his decisions was Justice Brennan’s fundamental belief in the rights of the individual. "At the heart of Justice Brennan’s jurisprudence is a profound commitment to the law’s obligation to treat each person equally. . . . Justice Brennan’s lifetime of passionate effort to deploy a modern, purposive reading of the Bill of Rights in defense of the innate dignity of the individual, not as an alienated island, but as a participant in a democracy of equals, has immensely enhanced the conception of judging. If Justice Holmes reminds us of our duty to democracy, Justice Brennan reminds us that true democracy requires us to fulfill our duty to the individual. Healthy debate will continue over the precise role of a constitutional judge in a vibrant democracy. But time and healthy debate can only enhance Justice Brennan’s status as the archetype of a Justice passionately devoted to the enforcement of individual constitutional rights. He taught us that constitutional law, brilliantly conceived and courageously enforced, can lift the human spirit."

The final paragraphs of the resolution also reflect the devotion and respect of the Brennan clerks and colleagues who drafted them. They call not only for an expression of sadness at the death of Justice Brennan, but also express "profound admiration for Justice Brennan’s matchless contributions to the cause of human dignity. . . ."

At the conclusion of the special meeting of the Supreme Court Bar, a vote was taken and the resolutions were adopted with a request that the "Solicitor General be asked to present the resolutions to the Supreme Court, and that the Attorney General be asked to move that they be inscribed on the Court’s permanent record."

A special session of the Supreme Court was convened immediately following the meeting of the Supreme Court Bar, at which time Solicitor General Waxman presented the adopted resolutions. After his presentation, Attorney General Reno presented an additional tribute to the Court commemorating the career and contributions of Justice Brennan. On behalf of the Court, the Chief Justice accepted the tributes and directed that they be made part of the Court’s permanent record.

New Literature (continued)

Both were experienced judges with long experience on state tribunals when George Washington appointed them to the first Supreme Court, and both served with great distinction at a time when Supreme Court Justices spent most of their time on circuit, hearing cases. Seriatim is a readable and very useful book; it seems destined to become a staple source for the Court’s first decade. Finally, a new book from Bernard Schwartz has been published posthumously: The Burger Court: Counter-Revolution or Confirmation (Oxford University Press, 1998). Professor Schwartz, of the University of Tulsa College of Law, was killed in a traffic accident in December, 1997. At the time of his death, this book was substantially complete. All the essays had been written, and he had finished editing.

The Burger Court is a series of essays, by judges, historians and legal scholars, on the work of the Court during Warren Burger’s tenure as Chief Justice. Schwartz as editor scrupulously avoided partisanship in his choice of contributors, some are liberal, some conservative, some of no recognizable point of view or doctrinal bias. All are well informed, with real insight into the jurisprudence of the era. This volume arises from a conference on the Court held in Tulsa in October, 1996. Readers of the Quarterly may recall a full report written at the time.

It is always difficult to single out individual contributions in a book of essays, but three do stand out. "The Players and the Play," an opening chapter by Judge Robert Henry, is especially penetrating both for its depth of scholarship (247 footnotes) and for its lively wit. Pulitzer Prize historian David J. Garrow brings his usual penetrating analysis and encyclopedic knowledge to his essay on "Liberty and Sexuality," and Chief Justice Shirely Abrahamson of the Supreme Court of Wisconsin has written (with the assistance of Thomas N. Hibink) a spiritedly, well-constructed piece on "Federalism."

In his lifetime, Bernard Schwartz wrote or edited more than sixty books. The Burger Court is a worthy addition. 

Whitmer White, number 24 in the photo above, is the subject of a biography by Dennis Hutchinson. White is shown above during a University of Colorado football game against Texas A&M. While a student at Colorado, White won a Rhodes Scholarship.
1. Justice George Shiras, Jr., had a son, George Shiras III, whose radically new method of lighting for night photography made him one of the outstanding nature photographers of his day. His books, published by National Geographic Society, are still collector's items.

2. Justice Louis Brandeis's daughter, Elizabeth Raushenbush, was a member of the economics faculty at the University of Wisconsin. Her particular area of competence was unemployment compensation and employment economics.

3. Justice Tom C. Clark resigned from the Court in 1967 when his son Ramsey was named Attorney General by President Lyndon Johnson. The Justice himself had served as Attorney General from 1945 to 1949 under President Truman.

4. Justice Joseph Story's son, William Wetmore Story, was a distinguished artist and poet. His Marshall sculpture was displayed for many years on the grounds of the Capitol before being moved inside the Supreme Court building during the Reagan Administration.


6. Chief Justice John Jay's son, William, was a persistent advocate of abolition, whose anti-slavery writings continued until his death in 1858, just before the Civil War.

7. Justice James Iredell's son, also named James, was Governor of North Carolina in the early 1800s. Iredell County in North Carolina is named after the Justice, not his son.

8. When Charles Evans Hughes became Chief Justice in 1930, his son, Charles, Jr., resigned as Solicitor General, a position he had held for less than a year.

9. John Marshall Harlan I had a son John Maynard Harlan, who was a reform candidate for Mayor of Chicago in 1905. John Maynard was the father of Justice John M. Harlan II.

10. Chief Justice Salmon Chase's daughter was constantly in the Washington limelight. A fashionable hostess, Kate Chase Sprague became involved in scandal when she divorced her alcoholic millionaire husband, Senator William Sprague of Rhode Island. The scandal intensified when she was linked romantically with New York Senator Roscoe Conkling, a married man.
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