Associate Justice Tom C. Clark: A Centennial Celebration

by Mimi Clark Gronlund

O may I join the choir invisible
Of those immortal dead who live again
In minds made better by their presence
-- George Eliot

A day rarely goes by that I do not think of my father Tom C. Clark whose one hundredth birthday we celebrate this year. Tom Clark died more than twenty-two years ago at the age of seventy-seven, yet he lives on in the memories of those whose lives he touched and through the accomplishments of his long life in public service. Perhaps as we face the death of a loved one, or contemplate our own mortality, one of the greatest comforts is that we will be remembered and that our lives have meaning which, at least in some small way, will transcend the grave. Tom Clark's life of exceptional dedication and purpose clearly fulfills this goal.

Life for Tom Clark began in Dallas, Texas on September 23, 1899. His parents William H. Clark and Virginia Maxey Falls were both from Mississippi, growing up at a time when that state was still suffering from the aftermath of the Civil War. William Clark moved to Texas in search of opportunity and

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A Letter From the President

While the Society is pressing forward with a variety of programs, the focus of attention this month undoubtedly will be the opening of the new headquarters at 224 East Capitol Street, N.E. I refer to it in the future tense by necessity at this writing, as the new headquarters is not yet complete. But owing to the lead time in publishing the Quarterly by the time you read this the Society should be securely ensconced. I am equally confident that by next issue there will be photographs available of some of the rooms.

The new building will be named Opperman House, in honor of our Chairman, Dwight D. Opperman, whose extraordinary support has made this project possible. Those who know Dwight know that his modesty allows him to accept this sort of recognition with great reluctance. In deference to Dwight, I will say no more.

A number of other major contributions also helped to make the headquarters project a reality. The Clark-Winchcole Foundation, chaired by Society Vice President Vincent C. Burke, Jr. deserves the Society’s warm thanks. We are also deeply indebted to another of our Vice Presidents, Dorothy Tapper Goldman, and Society Trustee Agnes Williams for major contributions to the headquarters fund. Indeed it gives me great pleasure to note that the library in the new building will be named in honor of Dorothy and her late husband S. Howard Goldman, whose generosity to the Society has touched almost all areas of its endeavors. Trustee Ruth Insel also contributed to the Headquarters fund, and the Society is grateful for that gift as well.

Speaking of the library, I should note that it is a major attribute of the new headquarters, not only in terms of its attractive architecture, but also as a consequence of the rare book collection it will house. Professor James O’Hara of Loyola College in Baltimore has donated to the Society a lifelong collection of books relating to Supreme Court history—many of which are rare first-edition biographies of past Justices. The collection is priceless, not only in terms of its monetary worth, but also as a valuable resource to support the Society’s historical research and publications projects. Members visiting Washington are encouraged to make use of it. Members are also encouraged to avail themselves of a members’ lounge located on the third floor of the new building. Though perhaps not appointed with the accoutrements of a traditional private club, it is a large comfortably furnished room overlooking the Folger Shakespeare Library and the Library of Congress, a convenient half-block walk from the Court.

In addition to these facilities, the new headquarters provides much-needed office space for the Society’s staff. Opperman House affords the Society a modern electrical system, computer networking and handicapped accessibility for its members who are mobility challenged.

Turning briefly to programs, I should note that this issue of the Quarterly includes a report the Society commissioned by an independent firm to analyze the effectiveness of the Supreme Court Summer Institute for Teachers (see page nine). The Society has been funding this program, which brings second-year law school teachers to Washington to study the Court, for several years now, and the Program Committee thought a sufficient time had passed to examine its long-term benefits. The results, I think you will see, are quite encouraging and confirm the wisdom of the Society’s investment in this important program.

I hope that you will find time to read some of the report’s findings as I think they also reflect the membership’s wisdom in making a continuing commitment to the Society.

Fortuitously, the move to the new headquarters building will coincide almost precisely with the twenty-fifth anniversary of the incorporation of the Society. As we move forward into a new era and new location, we look forward to continuing our commitment to programs, symposia, publications and other activities that will increase awareness and understanding of the Supreme Court’s role in American life.

The fifth annual Supreme Court Summer Institute took place at Georgetown University Law Center from June 17 through June 29 of this year. The event was cosponsored by the Supreme Court Historical Society and Street Law, an organization dedicated to educating citizens generally about law, democracy and human rights. Again, the Institute blended the experience of visiting Washington, DC with the knowledge of some of the nation’s foremost experts on constitutional law to create the experience of a lifetime.

High school law and government teachers from around the country competed for the thirty spaces available at each of the two institutes. The fifty total selected participants arrived from as far away as Hawaii and as near as Maryland for five days of intensive training, site visits, guest speakers, and the opportunity to learn effective methods of teaching the Supreme Court to high school students.

Conference participants thoroughly enjoyed the “human side” of the Supreme Court—receptive to programs, informal and engaging. Personal stories shared by guest speakers Robert Roberts, of Hogan and Hartson law firm and Clerk of the Supreme Court William Suter were highly lauded. “The Institute humanizes our Judicial Branch of Government,” remarked Susie Martin of California. “It will help my students to relate to government in a more personal way.” The participants also enjoyed Sunday evening presentations by guest speakers on “The Supreme Court, Values, and American Life” and “The Supreme Court: Values, and American Life” that will help the teachers to know that the Justices are nine friends. “The Justices are nine teachers, not Justices,” said Justice O’Connor the second. Each of the Justices had words of encouragement and inspiration for the teachers. The Justices also had words of encouragement and inspiration for the teachers. The Justices also had words of encouragement and inspiration for the teachers.

The benefits of the Institute will train co-workers using the knowledge they have gathered at this Institute in the hopes of conveying in-depth information about the Court to as many students as possible. Additionally, they will bring a new dynamic to their own classrooms and the students they teach every day. “This conference has sharpened my ability to wield my intellectual sword with a more learned hand,” remarked Rebecca Bouchard of Massachusetts, and that is something that can only benefit her students.

Thanks to Jovette Gadson for her help with this article and with the entire Institute.
sent for his nineteen year old bride soon after he established himself in the legal practice. Bill McCraw was successful, as did the family—ten children, seven of whom survived to adulthood. Tom was the seventh child and third son. The family seemed to thrive on work, and the children contributed to the maintenance of their home and lifestyle from the time they were able to walk—the boys doing outdoor chores in the large vegetable garden and tending the few farm animals kept on the property, the girls sewing, cooking and helping their mother with other household tasks. Hard work was viewed as a responsibility and source of satisfaction, not as a burden. There was also time for fun, and one of my father’s favorite activities was his membership in the Boy Scouts. He joined shortly after the first Boy Scout troop was established in this country, and in 1913, at the age of 14, became one of the first Eagle Scouts in the United States.

According to family lore, my grandfather wanted his son Tom to become a general and sent him to the Virginia Military Institute, considering “the West Point of the South.” It was the first time my father had ever been away from his family—and outside the state of Texas—and the “rat” system at VMI was a harsh introduction to the world beyond. Tom was the seventh child and third son. The family—ten children, seven of whom survived to adulthood. The family seemed to thrive on work, and the children contributed to the maintenance of their home and lifestyle from the time they were able to walk—the boys doing outdoor chores in the large vegetable garden and tending the few farm animals kept on the property, the girls sewing, cooking and helping their mother with other household tasks. Hard work was viewed as a responsibility and source of satisfaction, not as a burden. There was also a time for fun, and one of my father’s favorite activities was his membership in the Boy Scouts. He joined shortly after the first Boy Scout troop was established in this country, and in 1913, at the age of 14, became one of the first Eagle Scouts in the United States.

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greatest judicial legacy was the endorsement of civil rights. He consistently supported civil rights and the principle of equal justice for all. He was not an ideologue but, as described by former law clerk Robert Hamilton, "Tom Clark wrote decisions that continue to be debated in antitrust cases. He tended to come down on the side of the government when national security was an issue. His great distinction as a justice was the ability to see the human side of the law. He inspired others to do the best job possible at whatever he undertook, and to serve his legacy. Following his death in 1977, Tom Clark's former law clerks established the Tom Clark Judicial Fellows Program. The Program provides an opportunity for outstanding individuals to contribute to the improvement of judicial administration. Each year one of the Judicial Fellows is selected as the Tom C. Clark Fellow and given a framed bow tie—the Tom Clark trademark—from his father's extensive bow tie collection.

Tom Clark would not have been concerned about being remembered, but for those of us who knew and loved him. His memory is a source of strength and comfort. For others, both those who knew him and those who did not, my father clearly serves as a role model for public service. Never motivated by material wealth, he was driven by the desire to make a difference, to do the best job possible at whatever he undertook, and to serve others in both the public and private arenas of his life.

Tom Clark, as we reflect upon his life on the 100th anniversary of his birth, is worthy of emulation, for he gave of himself unselfishly and strove to make our country a better place for all its citizens.
Celebration of the Twenty-fourth Annual Meeting
June 7, 1999

Members and officers of the Society gathered on Monday, June 7, 1999 to celebrate the Twenty-fourth Annual Meeting. Justice Ruth Bader Ginsburg addressed a capacity audience at 2 PM in the Supreme Court Chamber. Speaking on the topic of Supreme Court spousal and committee appointments and contributions, Justice Ginsburg provided fascinating information about the changing role of Supreme Court spouses by focusing on four individuals: Polly Marshall, Sarah Story, Malvina Harlan and Helen Taft. The text of her complete remarks will be printed in a future issue of the Journal of Supreme Court History.

Following tradition, the Annual Meeting of the General Membership of the Society was held at 6 PM in the Supreme Court Chamber. At the meeting, President Leon Silverman gave a brief overview of the year. Mr. Silverman observed that membership was at a record high of 5,530, with the organization "conducting more programs, underwriting more research, publishing more books and supporting more educational programs than it has under in any of the past quarters of a century of its existence."

Volunteer contributions of members have been an essential element of these accomplishments. Mr. Silverman noted that during the past year over 200 members have served on committees, over 100 have qualified as life or sustaining members, and another 300 have given contributions over and above membership dues to support the programs.

After Mr. Silverman's remarks, Virginia Warren Daly, Secretary of the Society and Chair of the Nominating Committee, presented a slate of candidates for election to the Board of Trustees. Elections were held and the following individuals were elected to serve an initial three-year term on the Board of Trustees: Osborne Ayscue, Edward Brodsky, Robert Juceam and Gene Lafitte. Voting upon a second set of nominations resulted in the following individuals being elected to serve an additional three-year term on the Board of Trustees: Wade Burger, Vincent C. Burke, Jr., Sheldon S. Cohen, Virginia Warren Daly, William Edlund, Charles O. Galvin, Kenneth S. Geller, William E. Jackson, Frank C. Jones, Peter A. Knowles, Mrs. Thurgood Marshall, Vincent L. McKusick, Joseph Marks will be printed in a future issue of the Journal of Supreme Court History.

Associate Justice Ruth Bader Ginsburg delivered the Twenty-fourth Annual Lecture. The topic of her lecture was the spouses of Supreme Court Justices.
Institute Assessment continued from page nine

About 55 percent of respondents had participated in LRE workshops and conferences prior to their Institute experience. Most wrote that the Institute was superior to these.

The real difference is the focus on a single institution with the ability to go into great depth on the topic. The Institute was superior in content and atmosphere. Its resources and setting were especially important.

The Institute was very focused because the instructors were competent and well-prepared, the size and composition of the group were just right, and time was used appropriately.

Seventy percent of respondents wrote that the Institute experience had heightened their interest in teaching about the Supreme Court. Interviewed teachers confirmed that the Institute provided valuable new knowledge about the inner workings of the Court (e.g., its operations and the way the Justices make decisions) and the personalities of the Justices and other Court personnel.

A teacher said the Institute added to her understanding of the Supreme Court in a way that could only be obtained by actually being there and studying with experts.

Being in the Supreme Court and attending a reception with Justice O'Connor were interesting experiences to relate to students. They gave one teacher "authority" on the subject because he was able to provide authentic descriptions of the process, the people, and the institution.

One teacher relayed to students "war stories" shared by attorneys who had argued before the Court.

Teachers praised the Institute for capitalizing on Washington D.C. assets (e.g., the capital buildings, monuments, and museums) and introducing them to the Court's people and processes. These elements created a unique, stimulating experience for teachers with an enriched and more hands-on, student-centered instruction.

The case study method and mood court would have universal application in most social studies courses. For example, world history class students tried Charles I for abuse of office; another class held a mock trial for a local lawyer adopting one class and having field trips to the county courthouse, where students observed court proceedings and met court personnel.

In the future, the Institute might consider including such experiences with the judge from the trial they observed.

Teachers also use Institute materials and instructional strategies in such courses as world history, sociology, geography, and economics courses. Thirty-six percent of respondents changed how they taught these other courses, using Institute materials for curriculum enrichment and more hands-on, student-centered instruction.

Three-fourths of respondents commented that the Institute was superior in content and atmosphere. Its resources and setting were especially important.

For a Law and Youth course, one teacher emphasized the role of the Court in everyday lives by looking at cases on school searches, police conduct, school segregation, and privacy on the Internet.

About 15 percent of respondents stated that their teaching did not change as a result of the Institute although they believed it had been influenced. A few teachers said the Institute had reinforced the approaches they were already using in their classrooms.

2. Do students respond differently to Institute instructional approaches than they do to more traditional approaches of teaching law to other teachers, for example? Eighty percent of respondents believed the students were more engaged in the classroom when they used Institute-proposed strategies to teach about the Supreme Court: half of these respondents reported using more critical thinking and analytical skills with these strategies; 39 percent reported that their students had increased understanding of the Court.

For a Law and Youth course, a teacher commented that its operations and the way the Justices make decisions) and the personal qualities of the Justices and other Court personnel. These qualities were relevant.

"There is no denying the power of a teacher turned on to a subject." The following topics, according to teachers, were most engaging for students:

- examining actual Supreme Court cases (85 percent);
- process used by Supreme Court to make decisions (77 percent);
- deciding which cases will be heard by the Supreme Court (68 percent); and
- role of the Supreme Court in American life (62 percent).

Teachers reported that students were most interested in specific cases on the 4th Amendment (i.e., search and seizure) and 14th Amendment (i.e., freedom of speech, religion, assembly) interesting. They also were interested in cases on the 4th Amendment (i.e., search and seizure) and 14th Amendment (due process and equal protection).

3. How have participants trained other teachers using the Institute's materials and instructional approaches?

Over 84 percent of respondents had shared material on Court topics and instructional approaches with other teachers. Half of these respondents made presentations or conducted workshops at statewide conferences. About one-third conducted workshops within their department, school, or district. Some shared informally or gave no description of the setting in which they shared.

About one-third more than the required number of times to earn a stipend from State Law, holding two to four workshops at the local and/or state level. Institute applicants must agree to conduct at least two workshops for ten teachers each during the school year following their Institute experience, receiving a $200 stipend for these workshops.

One teacher held a three-hour workshop with civics and government teachers in her county: she also presented a workshop at the State Social Studies Conference to more than 50 teachers, sharing Institute materials and lessons she had developed.

A teacher presented a pre-service social studies methods students (18 to 30 per class) at a local university. She has also held workshops for several years at a statewide LRE conference sponsored by the Minnesota Center for Community Legal Education.

One teacher updated a curriculum guide with case studies for the Texas State Bar Association. She also uses its in her government and LRE courses.

A LRE teacher developed curriculum guides for each term of the Supreme Court for use in a program presented to over 4,500 students in her state. She also produced a demonstration videotape for local judges and attorneys to view in preparation for their work with law-related topics.

The Institute has benefited from feedback from teachers who have shared their colleagues' workshops with other teachers.

Half of the teachers who shared their colleagues' workshops had a positive or excellent response to Court topics and strategies. One-third reported that other teachers were using the strategies and material in other courses. Others did not know how colleagues had responded because they had not made any follow-up efforts after the training session/workshop.

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4. How have participants been able to influence law-related course development in their schools or districts?

Fifty-nine percent of respondents reported that they were involved in related curriculum development. Most of the group wrote LRE curriculum and/or served on LRE curriculum committees for their school or district. A few gave examples of other curriculum-related projects including writing curriculum guidelines or preparing curriculum materials for distribution at a conference.

Related to curriculum development, 72 percent of respondents believed the Institute's curriculum helped them meet state and/or district social studies curriculum standards.

About one-third cited U.S. History courses as examples of courses influenced by participation in the Institute.

Table 3. Social Studies Courses Taught and Estimated Number of Students

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<thead>
<tr>
<th>Course</th>
<th>Number of Students</th>
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<tbody>
<tr>
<td>AP Government</td>
<td>202</td>
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<td>AP Government</td>
<td>202</td>
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<tr>
<td>AP U.S. History</td>
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<td>Total</td>
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The following recommendations are derived from an analysis of teachers' survey responses and interviews during the spring, 1999.

- Continue to use current Institute format because it successfully integrates new Supreme Court content, instructional approaches, and classroom applications which are critically important to participants.
- Continue to recruit a core of experienced teachers as Institute participants while emphasizing each cohort's diversity (i.e., years of teaching, race/ethnicity, gender, and geography).
- Keep the Institute in D.C. and incorporate time to visit the Library of Congress and the Georgetown University Law Library.
- Continue to require Institute participants to train other teachers and explore how additional stipends and materials may be made available for participants who wish to expand their training activities with local judges and lawyers.
- Explore with Street Law how a follow-up Institute could be structured and supported. (One-third of survey respondents are interested in a follow-up Institute.)
- Explore more deeply how to provide post-Institute networking opportunities: teachers value the collegial and intellectual support they receive from fellow Institute participants.
- Provide assistance in getting access to and advising participants how to "use" local resource persons in their classrooms.

Conclusions and Recommendations

The Institute is an outstanding professional development opportunity for experienced social studies teachers and LRE instructors. Former Institute participants overwhelmingly believe it was a "first-class" experience on both personal and professional levels. Participants believe the Institute was "collaborative," "intellectual," and "inspiring."

Teachers enjoyed the "D.C. experience" and the opportunity to examine various aspects of how the session worked for them in the role of teachers as students and (2) how they will implement the workshop in their role as teachers.

5. How have participants used the Institute as an information and networking resource?

Twenty-eight percent of respondents stayed in touch with colleagues from their Institutes, for example, at state and regional LRE or social studies conferences. Many established relationships or worked more frequently with local judges and lawyers. Teachers recommended the following ways to increase networking between participants, state LRE-resources, and local attorneys and judges.

- Organize state-level mini-institutes to expand existing LRE networks and establish new ones in states where former Institute participants reside.
- Organize a state-level lawyer/teacher institute for local attorneys and judges.
- Compile a guest-speaker list of former Supreme Court clerks.
- Design a current resources newsletter.
- Design a webpage and listserv for participants to use for networking.

Annual Dinner continued from page eight


The Annual Meeting of the Board of Trustees followed the meeting of the General Membership. Dwight D. Opperman, Chairman of the Board, presided over that meeting and opened it giving general comments on the activities and accomplishments of the Society during the past year. Prior to giving an update on the accomplishments of the Society during the year, Mr. Opperman commented on the outstanding and tireless efforts of Leon Silverman as President of the Society. He pointed out that in the past year the Society had sponsored nearly a dozen lectures, including one given by the Lord Chancellor of Great Britain, published three books, and provided support for four educational colloquia and a number of important historical research and preservation initiatives. Plans for the new year, the 25th year of the Institute, were presented. 

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American Constitutional History in Colleges

by Herbert A. Johnson

American constitutional history has become an endangered species in the curricula of our undergraduate colleges, as fewer and fewer history departments offer the course that once was a “must take” subject for students planning to enter law school. The decline in undergraduate course offerings has, in turn, threatened to reduce sharply the number of graduate students entering the field. Although no careful statistical study has been made, the lack of job openings in constitutional history has become a matter of considerable concern within the historical profession, as well as among law professors who teach constitutional law subjects.

On March 19-21, 1999 the Supreme Court Historical Society, in association with the University of South Carolina School of Law, held a highly successful teaching conference designed for historians, political scientists, and others who teach undergraduate courses in United States constitutional history. Forty-four scholars, ranging from graduate students completing their doctoral degrees to seasoned veterans of the classroom, met at the University of Maryland’s Inn and Conference Center at College Park. Some taught in junior colleges which included constitutional history among their degree requirements, others were law professors who taught undergraduate courses as well as their professional school offerings.

A series of short papers sparked discussion on teaching methods, bibliography, and new approaches to the subject. Michael Les Benedict (Ohio State University) traced the evolution of constitutional history study from the 1890s. He pointed out that at the beginning of the twentieth century constitutional studies were treated as an important aspect of the general political history of the American people. However, as U. S. Supreme Court decisions began to play a larger role in constitutional understanding, the course of study perceptively shifted to a more narrow emphasis upon the institutional and doctrinal foundations for the Supreme Court’s constitutional opinions. The resulting divergence between constitutional history and mainstream history has been accelerated by the rise of a new professional interest in “living history,” which stresses economic and social aspects of American life. Professor Benedict urged that constitutional history should once more broaden its approach, and accept the challenge of showing how state and public policy decisions have had a profound effect upon the life experiences of ordinary Americans. This would provide students with a view of the Constitution in action, and hence present a much more attractive course offering.

Sandra F. VanBurkleo (Wayne State University) echoed Benedict’s view that constitutional history needed a broader perspective, but stressed the view that constitutionalism was layered rather than one-dimensional, and discordant rather than unitary. A “constitution of aspiration” demanded that historians consider the ways in which society creates and generates the rules that constitute a legal system. While scholars must focus initially upon the work of courts and legislatures, a more comprehensive picture demands attention to the exciting conflicts within society that shape and continue to impact upon the Constitution and its development.

Using private law historical materials in conjunction with a constitutional history course, was the subject of Herbert A. Johnson’s paper. Suggesting that private law issues bring social developments closer to a student’s life experiences, Johnson pointed out that combining these two branches of historical study facilitates a more comprehensive understanding of major constitutional history events. He noted that some additional class time may be required to train undergraduates in legal analysis, but felt that this time was well spent.

Political theorist Robert L. Clinton (Southern Illinois University) suggested that ancient and medieval political theory can provide a more perceptive understanding of the United States Constitution. Characterizing modern philosophical approaches to constitutionalism as the product of Hobbemian materialism and individualism, he suggested that there is an unfortunate tendency toward positivism in current constitutional studies. Constitutional scholars limit their inquiry to the text of the Constitution, and to Supreme Court opinions construing the document. This leads to an undue emphasis upon the internal consistency of the Constitution’s text and the Court’s decisions construing it. It also minimizes concerns about the way in which constitutional law shapes society and is formed by social forces.

Law professor Mark Tushnet suggested that students might benefit from the introduction of a comparative element into their constitutional history courses. This would counter a natural tendency to assume that the American approach to a governmental problem is not just the best solution, but the only solution. For example, while legislators lack standing to challenge a constitutional provision under American law, the practice is freely available in Germany and elsewhere. The New Deal constitutional revolution gains a new perspective when students consider the contemporaneous upheavals that occurred in Australia, Canada, Argentina, and the Weimar Republic. All students can benefit from comparing differing constitutional solutions to similar governmental problems; among other things it helps them avoid the danger of ethnocentrism.

Dean Kermit Hall, at that time from Ohio State University, provided an exhaustive review of the textbooks and other materials that are available for teaching U. S. constitutional history, and Herman Belz of the University of Maryland provided suggestions concerning classroom teaching methods. During brief interludes, Jonathan Lurie (Rutgers University–Newark) challenged the group to identify which part of the Constitution cannot be amended. He provided an outstanding example of how students’ constitutional knowledge can be enhanced by innovative teaching methods. William Wiecek (Syracuse University School of Law) demonstrated his electronic casebook and time line.

Prior to a Friday night dinner at the Supreme Court building hosted by Justice David Souter, the Conference participants enjoyed a witty, albeit learned, keynote address by Professor Elon Urofsky of Virginia Commonwealth University. Urofsky described his experiences as a law student, noting the tendency of law professors to ignore both history and the biographical background of judges. He cited one example where a professor asserted that the existence of the Great Depression had nothing to do with New Deal legislation declared unconstitutional in United States v. Butler, 297 U. S. 1 (1936). At another time, a prominent federal judge told him that judicial biography was not particularly helpful in understanding the decision a judge might render in a given case. On a more positive note, Urofsky pointed out that today’s constitutional history teachers have a treasure trove of materials upon which to draw: judicial biographies, case studies, video tapes of cases, studies of the Supreme Court as an institution, doctrinal studies that can be used by undergraduates, and close and continuing media attention to the Court and its activities. These new resources make it possible to “put flesh” into the discussion of a key constitutional principle. Urofsky stressed the central role of the U. S. Supreme Court in our constitutional system, and noted that it is the envy of many other nations. The Court, the Constitution it construes, and new insights into mainstream economic and social history, provide more source material for study than ever before. As a consequence, American constitutional history can be better taught today than in the past.

Papers delivered at the Conference can be located on the World Wide Web at www.h-net.msu.edu/~law/
On September 16, 1959 the U.S. District Court for the Eastern District of Pennsylvania decided unanimously for the Schempps. In his opinion Chief Judge John Biggs, Jr. stated:

In our view, inasmuch as the Bible deals with man's relationship to God and the Pennsylvania statute may require a daily reminder of that relationship, that statute aids all religions. Inasmuch as the 'Holy Bible' is a Christian document, the practice aids and proffers the Christian religion... thus strikingly has the Commonwealth of Pennsylvania supported the establishment of religion...

We conclude also, that the reading of the Bible as required by the Pennsylvania statute prohibits the free exercise of religion... The right of the parent to teach his own faith to his child, or to teach him no religion at all is one of the foundations of our way of life and enjoys full constitutional protection.

The School Board promptly appealed to the Supreme Court, and the District Court allowed the Bible reading to continue until the Supreme Court could rule on the case.

The immediate public reaction was negative. In the Pennsylvania State Legislature Representative Woods and Eshelman introduced an amendment to the Bible reading law, which passed easily and became effective on December 17, 1959. It stated:

At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon written request of his parent or guardian.

The purpose of the amendment was to make the law more permissive. Furthermore, there was no mention of any penalty for teachers who chose not to conduct the Bible readings in their classes.

Because of the amendment, the Supreme Court sent the case back to the District Court to be reheard on October 24, 1960, and the new trial took place on October 17, 1961. On January 4th the Schempps filed a supplemental complaint against the new method of Bible reading. It held that the morning devotions started at 8:15 with each pupil seated at attention, and then all would stand for the Lord's Prayer. Mr. Schempp did not seek to have his children excused this time because he did not wish to have his children singled out as "oddballs." He also felt they would miss important announcements which followed the morning devotions. This reasoning was stressed by Sawyer in the new trial, whereas Ward countered it was a matter of one person who does not want to share in a customary practice preventing the rest of the state from participating simply because that practice had religious connotations.

On February 1, 1962, the District Court, once again unanimously found for the Schempps. This time the decision was more heavily based on the Establishment Clause: "We hold the statute, as amended, unconstitutional, on the ground that it violates that establishment of religion... the constitutional clause of the First Amendment made applicable to the Commonwealth of Pennsylvania, by the Fourteenth Amendment..."

The decision thus stated that the Bible reading law was unconstitutional. The Supreme Court agreed and affirmed the decision of the District Court.

The purpose of the amendment was to make the law more permissive. Furthermore, there was no mention of any penalty for teachers who chose not to conduct the Bible readings in their classes.
Abington v. Schempp (continued from page seventeen)

There is nothing in the Constitution nor in the decisions of the Supreme Court nor in the writings of the Founding Fathers nor in what we know today that says government must be hostile to religion, that says the government requires the Court to rip out of our public life every custom, however voluntary, that in some way reflects the religious tradition and origin of our country.

Brennan then asked Sawyer: "What, of the fact that this is, after all, a traditional practice in Pennsylvania?" The latter answered by stating:

- Really, the fact that it is traditional is not sufficient to save its constitutionality. One should be hesitant to overturn a practice long established, but if the traditional argument were to prevail, this Court would never have overturned school segregation in the South.

He also stated that he realized how our system uniquely places the hands of nine men not only extraordinary power, but extraordinary responsibility and requires of them extraordinary discretion and courage.

After the oral arguments, the Court took almost four months before announcing its decision in both the Schempp cases. Brennan in his concurring opinion stated that the Pennsylvania law was to be used as an alternative, and amended the law to permit nonattendance at the exercises. This non-compulsion did not save the Bible reading from violating the Establishment Clause, for "that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause." Neither did the fact that it was a minor encroachment on the First Amendment, for "a trickling stream may all too soon become a raging torrent."

Clark next showed how the Court was not opposed to a study of the Bible or of religion when presented objectively as part of a secular program. He said that the Free Exercise Clause did not permit a majority to use the machinery of the state to practice its beliefs. He said:

- The place of religion in our society is an exalted one, achieved through the voluntary action of the individual

- The church and the inviolate individual of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that individual, whether its purpose or effect be to aid or to restrain. In the relationship between man and religion, the State is firmly committed to a position of neutrality.

Justice Douglas' brief concurring opinion warned against the attractiveness of either alternative—either by restricting the liberty of the private schools to inculcate whatever values they wish, or by jeopardizing the freedom of the public schools from private or sectarian pressures.

Brennan then went on to a summary of Supreme Court religious cases, with emphasis on those dealing with the Establishment Clause. When reaching the present cases, he illustrated the history of the use of prayers and Bible reading at the opening of the school day, noting there had always been a great deal of controversy concerning this. Thus decisions such as those in Schempp and Engel could hardly be thought to be radical or novel.

As for saying that Bible reading served secular ends, Brennan declared:

- While I do not question the judgment of experienced educators that the challenged practices may well achieve valuable secular ends, it seems to me that the State acts along the lines of a decision about to be made by the Court which determines indirectly religious ends by religious means, or if it uses religious means to serve secular ends where secular means would suffice.

He dismissed the argument that no specific denomination or religious group are favored or endorsed in Bible reading, saying:

- While Bible reading is almost universally required to be without comment, since only by such a prohibition can sectarian interpretation be excluded from the classroom, the rule breaks down at the point at which rudimentary definitions of Biblical terms are necessary for comprehension if the exercise is to be meaningful at all.

Finally, Brennan refuted the idea that there was no compulsion, Bible reading should be allowed, stating:

- Even devout children may well avoid claiming their right and simply continue to participate in exercises distasteful to them because of an understandable reluctance to be stigmatized as atheists or nonconformists simply on the basis of their request. Such reluctance to seek exemption seems all the more likely in view of the fact that children are disinclined at this age to step out of line or to flout 'peer-group norms.'

In concluding his opinion, Justice Brennan denied that the Court's decision would declare unconstitutional any cooperation between religion and government, and he listed those forms of accommodation already considered by the lower federal and state courts, in the hope that they "will reveal that the First Amendment commands not official hostility toward religion, but only a strict neutrality in matters of religion."

Justice Goldberg's brief concurring opinion warned against taking the neutrality principle too far, saying:

- Untutored devotion to the concept of neutrality can lead to invocation or approval of results which partake not simply of noninterference, but of a broadening and pervasive delusion to the secular and a passive, or even active, hostility to the religious.

Justice Potter Stewart was the lone dissenter in Abington v. Schempp. He argued that the only "establishing" effect of the Pennsylvania law was to withhold state hostility to religion.
Abington v. Schempp (continued from page nineteen)

sure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow.

Finally there came Justice Stewart's dissent. He felt it a "futile oversimplification" to regard the two religion clauses of the First Amendment as establishing the standard of separation between church and state. That the Court gave an insensate interpretation of the Establishment Clause. He believed the Court should have undertaken an analysis of "neutrality," and stated that the only "establishing" that was done by the Pennsylvania law was to uphold state hostility from religion — "a simple acknowledgment on the part of secular authorities that the Constitution does not require extermination of all expressions of religious belief." He went on to say:

What is involved is not state action based on impermissible categories, but rather an attempt by the State to accommodate those differences which the existence in our society of a variety of religious beliefs makes inevitable. The Constitution requires that such efforts be struck down only if they are proven to entail the use of the secular authority of government to coerce a preference among such beliefs.

Stewart chided the Court for deciding the case upon a supposed majority of the majority, and for not recognizing that the two Schempp cases have their parents requested that they be excused from the morning devotions, arguing:

What our Constitution indispensably protects is the freedom of each of us, be he Jew or Agnostic, Christian or Atheist, Buddhist or Freethinker, to believe or disbelieve, to worship or not worship, to pray or keep silent, according to his own conscience, uncoerced and unrestrained by government. It is conceivable that these school boards, or even all school boards, might eventually find it impossible to administer a system of religious exercise during school hours in such a way as to meet this constitutional standard — in such a way as to completely free from any kind of official coercion those who do not affirmatively want to participate. But I think we must not assume that school boards so lack the qualities of inventiveness and good will as to make impossible the achievement of that goal.

When analyzing the Schempp opinions, it is plain that Justice Clark wrote the majority opinion mindful of the adverse public reaction to the Engel decision. He agreed with Justice Brennan's concurring opinion in Abington v. Schempp turned out to be longer than the majority opinion in Engel. Justice Clark used the Establishment Clause to overturn the Bible reading, holding that a government sanction of any kind of religious practice for children in public schools amounts to an Establishment of Religion. Also, because state involvement gave the exercises an authoritative force, the fact that participation was voluntary was immaterial. What made the Schempp decision distinctive was the emphasis upon "neutrality." Some of the religious practices mentioned by Clark, such as the prayers in Congress and the Chaplains in the military, do not seem to involve strict neutrality, but they remain in force. Thus, the Court's concept of neutrality is one which balances Free Exercise against Establishment and is weighted in favor of Free Exercise.

Justice Brennan's opinion was noteworthy in that he discussed in great detail the problems raised under the Establishment and Free Exercise Clauses. He also expressed an attitude toward education as an area where the government may accommodate religion.

Justice Stewart argued that such exercises were constitutionally permissible. He saw neutrality in a different light than his fellow Justices, as something that required equal treatment and respect. He stated that neutrality was "neutral" if it was neutral for the state to authorize opportunities for religious practice in public schools only as long as there were no preferences and so long as there was full freedom of nonparticipation. For him, the use of the sweeping term "no-aid to religion" in the case of "a wall of separation" and a "wall of separation" were sterile approaches to the First Amendment.

The reaction of the individual states ranged from passive acceptance to active defiance. Pennsylvania interpreted the decision as eliminating religious services and ritual but permitting the retention of God and religion in its school system.

The religious reaction to the Schempp decision was more voluminous and intense. In general, liberal Protestant groups backed the Court, as did Jewish groups, whereas Catholic and conservative Protestant churches were opposed. While the organized religious reactions were numerous, they were also, for the most part, well thought-out and articulate, as opposed to the venomous responses to the Engel decision. Those forces opposed to the Schempp decision had a number of courses available to them. They could comply with the decision; they could ignore it as if it had never been handed down; or they could fight to overturn it. Politicians were very active in this regard. One hundred and forty-seven proposals were introduced in Congress calling for a constitutional amendment to overturn the decision. One proposed amendment combining most of the suggestions contained in other proposals was introduced by Representative Frank Becker, R., N.Y.

This amendment had support within the House and with outside groups such as Project Prayer and some state legislatures, but was generally opposed by religious leaders. The Becker amendment was never enacted by Congress, nor has any other amendment attempting to allow prayer in school as a devotional exercise by way of amending the Constitution.

Those who agree with the Schempp decision usually sympathize with those who would like their children to pray and read from the Bible each school day. They also believe, however, that public school is not the proper place. This position generally favors the study of religions and their place in history, but it considers engaging in religious devotion as inappropriate since too many are likely to be offended.

The question then arises as to the rights of the parents who favor the Bible reading. Do they not have rights equal in every respect to the rights of the former group? And are not those who would welcome reading of the Bible in the majority? The answer to both questions is clearly in the affirmative. Therefore the Court had to weigh the merits of both arguments, and decided to nullify the law of Pennsylvania.

The case exemplifies our political processes in action by showing how one family can question a prevailing practice, and demonstrate it as an infringement of basic constitutional rights. The Court's concept of neutrality is one which balances Free Exercise against Establishment and is weighted in favor of Free Exercise.

The case also reflected the effects of regional or sectional differences, and the local reaction may well be the deciding factor in determining how particular persons will respond to a decision, especially if religious and political feelings described above pull in opposite directions.

In his concurring opinion Justice Douglas focused on the dangers involved in a violation of the Establishment Clause. "In the relationship between man and religion, the State is firmly committed to a position of neutrality." Those forces opposed to the Schempp decision had a number of courses available to them. They could comply with the decision; they could ignore it as if it had never been handed down; or they could fight to overturn it. Politicians were very active in this regard. One hundred and forty-seven proposals were introduced in Congress calling for a constitutional amendment to overturn the decision. One proposed amendment combining most of the suggestions contained in other proposals was introduced by Representative Frank Becker, R., N.Y.

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