The Society Moves into Opperman House

An Open House was held on November 18, 1999 honoring the completion of Opperman House, the Society's new headquarters building located on Capitol Hill. The ceremony coincided almost perfectly with the twenty-fifth anniversary of the Society's incorporation on November 24, 1974.

As a special honor, most of the members of the Supreme Court were present for the occasion. The Chief Justice and Associate Justices Sandra Day O'Connor, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg and Stephen G. Breyer were present for the occasion along with Society Officers and Trustees and other individuals who have provided assistance with the work of the Society.

Chief Justice William H. Rehnquist offered remarks that afternoon and the text follows:

It is a pleasure to be here with you today to celebrate this milestone in the Society's history. Opperman House is surely a handsome new home for the Historical Society, and one that I am sure will serve it well for many years to come.

In one of Sir Walter Scott's novels, he says that "A lawyer without history or literature is a mechanic, a mere working mason..." So too, in a sense, is a Court. In the law, of course, we are bound to history by precedent—in the course of writing opinions in current cases, we constantly pull volumes off the shelves in order to read an opinion that was handed down 25-50—perhaps 100 years ago. And of course, the fountainhead of all American constitutional law is the opinion of Chief Justice John Marshall in Marbury v. Madison, decided 196 years ago.

But this is not the only kind of history that is important to a Court, and to those who would try to understand the Court. These opinions of 25, 50 and 100 years ago were written by human beings who preceded us on the Court, with all the strengths and weaknesses that such human beings have. Knowing something about them, and about their lives, greatly advances our understanding of their jurisprudence and of the era in which they lived.

continued on page fifteen
A Letter From the President

One of the Society’s primary missions is to broaden public understanding of Supreme Court history. This magnitude requires a vast array of programs. The Society sponsors lectures in the Supreme Court. It funds innovative programs to improve public education about the history. It supports colleagues for scholars to meet and discuss means of expanding understanding of the Court’s history. The Society is currently exploring the possibility of establishing a graduate-studies program in constitutional history to increase the number of scholars in the field where the number of active academics is surprisingly small. That gives us a great opportunity to reach these students.

One of the most implacable audiences the Society has tried to reach over the years, however, is that of the public school students who have been desegregated to a lesser extent in the higher education. The Society seeks to reach this audience with teacher training in constitutional history that better prepares instructors to include the subject in secondary school curricula.

One such program is the Society’s Summer Institute for Teachers. It sponsors lectures in the Supreme Court. It funds teacher-training credits in the Summer Institute, and is expected to go to press in the Spring of 2000. The program features examinations of Supreme Court and constitutional history in the District of Columbia. The program’s goal is to eventually provide training for history instructors at every secondary school in the District. Through sharing of resources developed in the Summer Institute, this field where the number of active academics is surprisingly small, that gives us a great opportunity to reach these students.

One of the pioneers discussed in the volume is Myra Bradwell, who, despite her law degree and status as publisher of one of her era’s most respected legal publications struggled much of her life to gain admission to the Illinois State and Supreme Court Bars. The book also examines early women suffragists, like Susan B. Anthony, whose arrest for voting illegally brought her before Circuit-riding Justice West Hazen in 1873. Hunt’s role in finding Anthony guilty was perhaps the most memorable act in the career of one of the Court’s least remembered justices.

The story reveals that even well into the twentieth century, these inequalities persisted. Women were largely denied voting rights. Married women required their husbands’ permission to enter into contracts. Women routinely precipitated by serving on juries, holding a wide variety of jobs, and were denied a plethora of other rights that in many cases, have only recently been secured.

Aimed at high school and undergraduate readers, the book delves into issues that will appeal to non-lawyers as well as students of the law. For example, how was it that a widower could not collect survivor benefits under Social Security to allow him to stay home and care for his child when a widow was entitled to such benefits? What was the Court’s rationale when it eliminated height and weight requirements for prison guards? Why, in this climate of expanding opportunities were women still exempt from draft registration, yet deemed eligible to attend a previously all-male military academy?

These and other issues are discussed in a cogent and detailed approach to the subject that both intrigues and informs. As such, the Society hopes that the volume will gain broad academic use and contribute substantially to informing the general public of this important facet of the Court’s history.

The public at large will have to wait until an anticipated Fall publication date to enjoy this scholarly endeavor. Members, however, can enjoy a sample of some of the extensive research that the manuscript encompasses in this issue of the Quarterly by reading the article Women Advocates Before the Bar, which appears on page 8. I hope that you enjoy it, and would be grateful to receive any comments you may have regarding this latest of the Society’s publications efforts.

Christopher McGranahan
Managing Editor

Memorial to the Honorable Harry A. Blackmun

Under the direction of the Honorable Seth P. Warmolts, Solicitor General of the United States, members of the Supreme Court Bar met on the afternoon of Wednesday, October 27, 1999 to commemorate the career and legacy of the late Harry A. Blackmun. Speakers for the afternoon were drawn primarily from individuals who had clerked for the Justice. The Honorable Harold Hongk Koh, Chairman of the Meeting, introduced the speakers which included the Honorable Drew S. Days III, The Honorable Richard K. Willard, Alice H. Kensinger, Esq., and Professor Karen Nelson Moore, and Professor Pamela S. Karlan, as well as Mr. Koh.

Relating experiences and memorable moments with Justice Blackmun, the speakers explored the personal, as well as the public side of the Justice. At the conclusion of the program, a motion was made to adopt written Resolutions prepared to memorialize the career of the late Justice. These resolutions were prepared by a special committee chaired by Pamela S. Karlan. Upon a motion from the Solicitor General, the resolutions were submitted to the justices for their approval. The resolutions were presented for inclusion in the permanent records of the Supreme Court.

Excerpts from the resolutions follow:

Justice Harry A. Blackmun often joked that he came to the Supreme Court as “Old Number Three,” having been the third nominee proposed by President Richard M. Nixon for the country after age 70. So much depends on the individual, as well as the public side of the Justice. At the conclusion of the program, a motion was made to adopt written Resolutions prepared to memorialize the career of the late Justice. These resolutions were prepared by a special committee chaired by Pamela S. Karlan. Upon a motion from the Solicitor General, the resolutions were submitted to the justices for their approval. The resolutions were presented for inclusion in the permanent records of the Supreme Court.

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After graduation, Blackmun returned to Minnesota to clerk for Judge John B. Sanborn of the United States Court of Appeals for the Eighth Circuit. His year and a half with Judge Sanborn gave him a model for his own career as an appellate judge, and also gave him exposure to some of the problems that occupied his judicial career.

In 1934, Blackmun joined the prestigious firm of Dorsey, Colman, Barker, Scott & Barber in Minneapolis. Fortuitously, the new associate was assigned to the firm’s tax department, where he would soon find his niche and had his first brush with the institution where he would spend more than a quarter century.

On October 14, 1935, this Court convened for the first time to hear oral argument in the magnificent building where it now sits. The first case on the docket was Douglas v. Willcuts. . . . Down in the lower left-hand corner of the taxpayer’s reply brief was the name of a new associate, who had apparently joined the litigation team after the opening merits brief had been filed. It was Harry Blackmun. Less than a month after the argument—and on the day before the future Justice’s twenty-seventh birthday—Chief Justice Hughes delivered a unanimous opinion rejecting the position taken by Blackmun’s client.

On Midsummer’s Day 1941, Blackmun married “Miss Clark,” his beloved wife Dottie. They had three daughters: Nancy, Sally, and Susie. Blackmun’s sixteen years at the Colman, Barker, Scott & Barber firm ended when he was named the first resident counsel of the famed Mayo Clinic in Rochester, Minnesota. He remembers his time there as the happiest decade of his life.

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In 1959, when Judge Sanborn decided to take senior status, he decided that his former law clerk, Harry Blackmun, should succeed him. He then wrote to Deputy Attorney General Lawrence E. Walsh, saying, “I sincerely hope, as I know you do, that political considerations will not offensively enter into the selection of a successor. If they should, there might be no vacancy to fill.” According to Judge Richard S. Arnold of the Eighth Circuit, “[t]he story is that Judge Sanborn really meant this: ‘Appoint Harry Blackmun, or there will be no appointment to make.’” The hint worked and President Eisenhower appointed Blackmun to fill Judge Sanborn’s seat. Judge Blackmun took office on November 4, 1959.

Judge Blackmun wrote over 200 signed opinions during his time on the Eighth Circuit. In light of his experience in practice, it is hardly surprising that over a quarter were tax-related; his taste for, and expertise in, intricate questions involving the Internal Revenue Code were well known. But the opinion he later described as the one of which he was the proudest, Jackson v. Bishop, reflected a very different side of the judge’s temperament. The case harkened back to his time clerking, . . . when he brought a petition from an inmate protesting cruel prison conditions to his judge’s attention. “I know, Harry,” Judge Sanborn said, “but we can’t do anything about it.”

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Lessons from Lincoln (continued from page five)

The first lesson was that it was "vitally important for a president to have one intimate trusted friend in whom he can confide freely." Dr. Donald believed that many of our presidents had such trusted advisors, citing the examples of Woodrow Wilson and Colonel Edward M. House, Franklin D. Roosevelt and Harry Hopkins, Dwight Eisenhower and his brother Milton, and John F. Kennedy and his brother Robert. He also noted that those presidents that did not have these alter egos, such as Richard Nixon or Jimmy Carter, after Bert Lance left Washington, suffered in their deliberations.

Lincoln had hoped to bring close friend Joshua Speed with him to Washington, but arrived in the capital for his inauguration without a single, trusted intimate in whom to confide. Soon the pressures of office, shared with no one, brought on debilitating migraine headaches. In the summer of 1861 the Lincolns welcomed the arrival of Orville Hickman Browning, appointed to fill a Senate seat left vacant by the death of Stephen A. Douglas. Friends and political allies since Lincoln had known Brown in the Illinois State legislature in the 1830s, two more dissimilar men would have been hard to find. Browning, vain and a dandy, was the son of a wealthy Kentucky planter with a privileged childhood and a strong formal education. Self-educated, in speech, manner and looks with his friend. Dr. Donald explained that Lincoln by temperament was a melancholy man, but he was never incapacitated—a key to the diagnosis of a clinical depression or the genetic disorder Marfan's Syndrome. He cited the lack of evidence to support these theories.

Dr. Donald explained that for the next eighteen months, Browning became the president's confidante and an almost daily visitor at the White House with access to the President at any hour of the day or night. The senator insisted that Lincoln take breaks for carriage rides in the open air. Dr. Donald said, "They talked about everything: about Lincoln's decision to resupply Fort Sumter, about his role in mediating General Winfield Scott against his better judgment to fight the disastrous battle at First Bull Run, about the danger of war with Great Britain over the Trent Affair, about George B. McClellan's incarca

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Women Advocates Before the Supreme Court

This is an excerpt from the forthcoming publication on Women and the Supreme Court. (See page 2 for further information.)

by Clare Cushman

Legend has it that when Dolley Madison and a group of the First Lady’s friends arrived one day at the Supreme Court in the middle of an oral argument, the great advocate Daniel Webster stopped his oration, bowed to the ladies, and started again from the beginning. Although such excessive gallantry was not standard practice in the early 19th century, it was customary for wives of Washington dignitaries to dress up in the latest fashions and come to the Supreme Court to observe oral arguments.

The passive, decorative role women then played in the life of the Court contrasts sharply with the professional one they assume today. This gradual transformation did not begin until 1880, ninety-one years after the Court’s inception, when a woman was finally permitted to leave the spectator ranks and join the show.

That was the year that Belva A. Lockwood became the first female attorney to argue a case before the Supreme Court. The previous year she had forced the Court, through congressional intervention, to admit her to practice before it. She was taken from Africa as a child in 1730 and eventually sold to a Deerfield, Massachusetts, innkeeper named Ebenezer Wells. She purchased her freedom in 1756 after her marriage to Abijah Prince. In 1762, a wealthy Deerfield landowner deeded Mr. Prince 100 acres of land in the newly-opened territory of Guilford, Vermont. The Prince and his six children took up residence there in the 1780s. Hungry for land, Mr. Prince had also obtained a grant of 300 acres of wilderness tract in nearby Sunderland.

The predatory behavior of a wealthy Sunderland neighbor, Colonel Eli Bronson, is the basis for the legendary suit. He set up a claim to the Princes’ property and, according to Sunderland historian Giles B. Bacon, by repeated legal suits obtained about one-half of the home lot, and had not the town interposed they would have lost the whole.” A prominent citizen, Bronson allegedly hired Royall Tyler, a future chief justice of the Vermont Supreme Court, and Stephen R. Bradley, a future Vermont Senator, as his counsel. The Princes were said to have engaged Isaac Tichenor, a future governor of the state, to defend their claim.

In his article, Sheldon wrote that Prince argued before “the Supreme Court of the United States,” although there is no evidence to suggest that she made the trip to Philadelphia where the Court was then lodged, to do so. Sheldon based his assumption on a letter written by a Guilford historian named Rodney Field—who was neither an eyewitness to the event nor a contemporary of the Princes—that simply stated that she appeared before a “United States Court.”

A more likely scenario, given Chase’s favorable comparison of Prince to other Vermont lawyers, would be that she argued before Justice Chase when he was riding circuit in Vermont. In those days Circuit Courts were presided over by one Supreme Court Justice and one District Court Judge. Justice Chase did sit at one session of court in Vermont while on circuit, at Bennington in May 1796, which coincides with the time Prince would have had to appear. But the court records simply show no cases in which Prince or Bronson were associated. Perhaps she was a principal or witness in a federal District Court or the state superior or supreme court. There is no doubt that Prince, an eloquent storyteller renowned for her keen memory, must have been an effective oral advocate before whatever court she did appear. In fact, she merits a place in history regardless of whether or not she argued before Justice Chase. Her lyrical thirty-line doggerel, “The Bars Fight,” which accurately recounts the dramatic events surrounding an Indian raid on Deerfield that she witnessed in 1746, was printed in 1855. This accomplishment distinguishes her as one of the first published African-American poets.

Myra Clark Gaines (1803-1885)

The other woman mistakenly reported to have pleaded her case before the Supreme Court is perpetual litigant Myra Clark Gaines. The gallant orator Daniel Webster is alleged to have been the opposing advocate.

This myth probably arose because Gaines brought her land claim case before the Supreme Court an astonishing twenty-one times (her heirs pursued it thrice posthumously) between 1836 and 1891, and before some thirty different Justices. Passionate and dogged in her pursuit of her inheritance claim to valuable New Orleans properties, Gaines was wealthy and shrewd enough to employ the most seasoned oral advocates including Webster, to argue on her behalf. Over a period of five decades she employed more than thirty lawyers, seventeen of whom died in her service. There is no evidence, however, that she pleaded her own case against Webster or any other advocate. But she did present her own argument in a state court trial, stepping in after her counsel, infuriated by the judge’s bias, stormed out. Gaines was also active in helping her lawyers prepare briefs.

At issue was the mysterious disappearance of a will drafted by her Irish immigrant father, Daniel Clark, when he died in 1813. In the will, Clark named Myra his legitimate daughter and heir to the large fortune he had accumulated. Her Creole mother, Zoline Carriere, held no record of her marriage to Clark, which they had kept secret because she had not obtained an annulment from her first husband, a French wine merchant and bigamist. Upon Clark’s death the will disappeared, and his sisters and business partners claimed that Myra was illegitimate and therefore ineligible to inherit from her father under Louisiana’s unique code civil. Because hundreds of New Orleans residents stood to lose their land if she won her claim, she was forced to keep appealing to federal courts to obtain the fair trial that hostile local courts did not always provide. Although the Supreme Court agreed to hear the case on technicalities arising from friction between federal and Louisiana law, it also passed judgment on the merits of the case. Myra Clark Gaines was pronounced her father’s legitimate heir shortly before she died in 1885, deeply in debt from a lifetime of legal expenses. It took a few more lawsuits for her grandchildren to force the city of New Orleans to pay them their due.

Pioneers of the Bar

Lockwood thus remains unchallenged as the first woman either to file a brief or present oral argument at the Supreme Court. Yet subsequent female advocates also qualify as pioneers in various ways.

Opposing the proposed sale by Congress of her tribe’s sacred burial ground in Kansas City, Lyda Burton Conley (1874-1891) continued on page ten...
Women Advocates (continued from page nine)

Women of the Office of Solicitor General

The first women to argue against each other in the Supreme Court were Elizabeth R. Rindskopf and Dorothy Toth in 1974. Ms. Rindskopf, representing the United States, succeeded in persuading the Court to strike down a Georgia law that allowed only residents of the state to obtain abortion. Ms. Toth, the attorneys in Paul J. Bell, Jr. v. R.H. Burson, Department of Revenue & Education v. Theresa Harris (1975), argued on behalf of a resident of Georgia who was denied the abortion. Ms. Toth also argued James Meredith's suit for admission to the University of Mississippi, and Charline Hunter Gault's case for the right of women to be the first black woman federal judge.

The first female African-American lawyer to join the Supreme Court bar until 1915. A companion case. Jay Floyd, who defended the Texas anti-abortion statute in Row v. Hrades, argued against Sarah Weddington and her co-counsel, Linda N. Coffee. "It's an old joke," chided Floyd when he began his Roe presentation, "but when a man argues against two beautiful ladies like this, they are going to have the last word." His misplaced humor did not go over well. Hames remembers finding Floyd's comment "very chauvinistic." He "thought [Chief Justice] Burger was going to come right off the bench at him. He glared him down. He got the point right away that this was not appropriate in court."

The reason he got the assignment is revealing. When Robert Ginnane, an associate in the OSG who had been assigned to the case, was called suddenly out of town, Andretta's husband, Assistant Attorney General Sal Andretta, prevailed on Solicitor General Philip Preblun to select his wife to step in and argue the government's case. Andretta (now Patricia Dwinnell Butler) recalls that the bailiff of the Supreme Court complemented her on her performance: "with that [stentorian] voice of yours, you can come back any time." But Justice Felix Frankfurter's needling did not compel her to request to be assigned further oral arguments.

Twenty-three years after that episode, Harriet Shapiro joined the staff as an assistant solicitor general and paved the way for other women attorneys at OSG. In 1995, five out of twenty lawyers on the staff were women. Now more than 70, Shapiro is a seasoned advocate who holds the record—among women staffers for most arguments. In terms of gender law cases, Shapiro argued the government's position in Schlesinger v. Ballard (1975) and Newport News Shipbuilding & Drydock Co. v. Equal Employment Opportunity Commission (1988). Shapiro's record puts her just ahead of Amy L. Wax, who argued 15 cases for the government, when she was at the OSG from 1987 to 1994 and is now a law professor. They may both soon be overtaken by assistant solicitor general Beth S. Brinkmann, who, as of 1999 had argued 13 cases since joining OSG in 1993.
A few former OSG staffers continue to practice appellate work and appear before the Supreme Court. Kathryn A. Oberly, who argued 10 cases in her four year stint at OSG from 1982 to 1986, specializes in representing tax accounting firms. In 1989 she argued Price Waterhouse's high profile case in the Supreme Court against Ann Hopkins, who successfully claimed she had been denied partnership because of her gender. Maureen E. Mahoney argued eight times when she served as a deputy solicitor general; she has returned to argue two more cases before the Supreme Court since leaving OSG in 1993 to join a private practice.

Mahoney had also argued one case before joining OSG, having been invited by the Supreme Court through a special appointment to present argument. She was probably the first woman invited by the Court to appear as an advocate.

There has yet to be a solicitor general from Mississippi, but the first female Attorney General, Janet Reno, has argued once before the Supreme Court. In 1996 she chose to present the government's case herself in Maryland v. Jerry Lee Wilson, three years after being appointed to the top job at the Justice Department.

Most Appearances Before the Court

But these contemporary women advocates do not compete, in terms of numbers of cases argued, with a handful of pioneers who worked as appellate lawyers for various branches of the federal government. The earliest of these professional advocates was Mabel Walker Willebrandt (1889-1963), who served as assistant attorney general in the 1920s, and prosecuted scores of violators of the National Prohibition Act. "Prohibition Portia," as she was nicknamed, argued 21 cases before the Supreme Court. In 1996 she chose to present the bare bones of the Fair Labor Standards Act and make an appellate statutory scheme.

The women's all-time record for arguing the most frequently before the Supreme Court belongs to Beatrice Rosenberg (1908-1989), a low-profile but brilliant government attorney who, as an authority on search and seizure, argued more than thirty cases before the high court. (The men's all-time record belongs to Walter Jones, with 317 oral arguments, with 169 appearances in 1815-1835 alone.) In his autobiography, Douglas remembers Rosenberg as being superior to many bettaknow appellate lawyers with grand reputations. "[L]ess Jasper Mays and Lessie Jordan than Washington lawyer Rosenberg, brought greatest of all the legal citation to advocacy at the appellate level," he wrote. "Oscar Davis (later to serve on the Court of Claims), Daniel Friedman and Beatrice Rosenberg (all of the Department of Justice) made more enduring contributions to the art of advocacy before us than most of the big-name 'lawyers.'"

The daughter of Russian Jewish immigrants, Margolin was born in New York City but grew up in New Orleans after her mother died in the 1920s. She attended Tulane University and graduated from its law school. She then pursued a doctorate in law at Yale University.

Margolin started her career working on the legal staff at the Tennessee Valley Authority, a New Deal project intended to bring electricity to rural communities. In The Court Years, Justice William O. Douglas remembered Margolin as "one of the great beauties of the Court, a prodigy, a high-wattage, quick-witted..." She was another of the advocates who argued cases with a deep background of public service.

"I argued the first case in the Supreme Court that involved constitutional, gender-related issues," she said in 1972. "The issue was the right of the lessor of oil and gas land to the depletion allowance where the lessee is a woman. I argued that the right of the lessee was a constitutional right."..."When we argued the first case that involved sex discrimination, I argued that the right of the lessee was a constitutional right."..."But when we argued the first case that involved sex discrimination, I argued that the right of the lessee was a constitutional right."..."And when we argued the first case that involved sex discrimination, I argued that the right of the lessee was a constitutional right."

Women Advocates (continued from page thirteen)

who specialize in appellate work—where the number of women is traditionally low—and ask questions about how each candidate would handle the case and how experienced that attorney is at arguing before the Justices. The prestige of argu-
ing a case before the Supreme Court, and the reduction over the past decade in the number of cases the Court agrees to hear each term, make the competition for assignments correspondingly stiff.

However, many women (and men) simply want to argue before the Supreme Court because not only are they selected to jump in at the appeals level and lend their expertise, but because they have ridden the case from the local level. In other words, clients often stick with the attorney who filed their original suit regardless of whether he or she is an experienced appellate lawyer. These advocates generally do not return a second time unless they are lucky enough to be hired by another client whose case is reviewed by the Supreme Court.

How many women argue before the Supreme Court each term? Only 14% of the lawyers who argued before the Supreme Court in the 1996 Term, and 10% in the 1986 Term, were women. This is a big improvement from the 1966 Term, when that figure was barely 1%, and from the 1976 Term, when it was a mere 5%. But these figures do not keep pace with the increasing numbers of women entering the legal profession or joining the Supreme Court bar.

Admission to the bar requires being proposed by two non-
related members of the Supreme Court Bar who swear that the applicant has been a member in good standing of the bar of the highest court in the state for at least three years. Once admitted, members are qualified to file motions and briefs and to argue before the bench, although most join simply for the prestige of being a member of the Supreme Court bar. In 1996, nearly a quarter of the attorneys admitted to the Supreme Court bar were women. That figure is up from 18% in 1986 and 5% in 1976. Perhaps a good indicator of the swelling female ranks of the Supreme Court bar occurred on March 2, 1998. On that day Susan Orr Henderson, Karen Orr McClure, and Joanna Orr, attorneys from Indiana, became the first three sisters to be sworn in simultaneously.

Do women advocates have a harder time getting clients? Legal experts, and the advocates themselves, generally say the answer is no. Former Deputy Solicitor General Mahoney, who is now carving out her own practice specializing in Supreme Court work, told the Washington Post in 1997: "I've always been convinced that when I lost a client, I lost for a ... legitimate reason," not because of gender. "There are credentials you need," she emphasized, "and right now a lot more men have those credentials."

Like Mahoney, who clerked for Chief Justice William H. Rehnquist, those credentials often include a clerkship for a Justice and a stint at the OSG arguing government cases.

One way to get regular appellate work in the Supreme Court is to specialize in a particular area of law. Betty Jo Christian, a partner at the Washington Firm of Steptoe & Johnson is the best example of this tactic. Having served as Commissioner of the Interstate Commerce Commission in the 1970s, she is considered a top expert on transportation and railroad law. Combining this expertise with appellate skills has made her an attractive choice for railroad companies in suits interpreting the government's transportation and interstate commerce laws, many of which Christian helped formulate. She has argued four times before the Supreme Court and has prepared regular and amicus briefs for countless other cases.

Academic jobs at prestigious law schools are also steppingstones to landing a Supreme Court case. Kathleen M. Sullivan, a professor at Stanford Law School, is perhaps the most high-profile woman in this category. She has written briefs for several Supreme Court cases and has filed numerous amicus curiae briefs. Notably, Professor Sullivan prepared the brief challenging Georgia's anti-sodomy statute in Bowers v. Hardwick (1986), and was on the briefs representing abortion clinics in Rust v. Sullivan (1991).

A good indication that women advocates are making progress and becoming true contenders was the selection in 1996 of Mahoney, over stiff competition from leading male advocates, to represent the House of Representatives in a suit against the Commerce Department challenging the Census Bureau's proposal to use a new method for conducting the population count. This action marked the first time that the House had ever brought a case in the U.S. courts and was probably the most highly prized assignment for the Supreme Court bar that term.

Women Advocates (continued from page thirteen)

Opperman House (continued from page one)

This is why the work of the Supreme Court Historical So-
ociety is so valuable, first of all to the public, second and not at all far behind, to the members of the Court itself. The Society has sponsored at least a dozen lectures on the Court's history, well attended and generally well done. These have thrown light on the Justices on the times which they covered, and helped us to understand that constitutional law is not a series of discrete decisions, but an ever-flowing stream fed by new waters so that the old waters do not become stagnant. These are major contributions to our understanding of the Court and its role in our history. Of similar importance is the Society's effort to acquire portraits and other historical memo-
rabilia for the Court's permanent collection. I am a great portrait fan, myself. I looked through the work of perhaps a dozen portrait painters before choosing one to paint my own portrait and if I find a biography at the library which I think I would like to read, I first examine it to see whether it has pictures in it; if it doesn't, I tend to put it aside.

That is why I think it is important for our Court to have portra-
its of as many past Justices as possible—it enhances one's understanding of a person to know what that person looked like. And so I commend the Society for its efforts in this regard.

On still another front the Society has funded and organ-
ized a summer educational program for secondary school

...
prison conditions (rather than simply to the types of punishment for crime), Judge Blackmun declared that the prisoners were entitled to an injunction barring further use of corporal punishment. His scholarly and measured opinion powerfully conveyed Judge Blackmun's commitment to the inherent dignity of all people.

At the same time, although he was prepared for bold doctrinal innovation when he saw support in the existing Supreme Court precedent, Judge Blackmun understood the constrained role of court of appeals judges. At the 1968 investiture of his colleague, Judge Myron H. Bright, Judge Blackmun reflected: "The concern of a judge is with what is proper law and with what is the proper result for each case. . . . There's always some uncertainty in the law and for you, . . . there will be period of uncertainty in your work. But there will be moments of struggle in trying to attain the correct from the incorrect . . . . There will be the awareness of the awfulness of judicial power, and although you will be on a multiple-judge court, you will experience the loneliness of decision. . . . But there also will be—and I say this genuinely and sincerely—the inner satisfaction and the inner reward which one possesses in being permitted to work on matters of real substance, in feeling one's decision, at least in one's own conscience, is right, and in knowing that hard work and hard thought and practical and positive scholarship are about all and about the best that anyone can offer. I am certain that no part of the legal field is capable of providing any higher sense of satisfaction in its work and in its spirit than is the federal bench."

This most striking thing about the future Justice's confirmation hearings—which lasted only one day and at which he was the only witness—was the virtual absence of pointed consideration of any of the issues with which he would become most closely identified during his time on the Court. At the Senate confirmation hearings—which lasted only one day and at which he was the only witness—was the virtual absence of pointed consideration of any of the issues with which he would become most closely identified during his time on the Court.

The meticulousness and modesty of Judge Blackmun's opinions . . . was a hallmark of the Justice's thinking. In the Justice's first Term on the Court, he wrote the pathbreaking opinion for the Court was the first to invoke the now-famous "powerful and influential, but then obscure, "footnote four" from Carotene Products Co., to explain the reason for heightened judicial scrutiny of discrete and insular groups. But just as significant as the Justice's recognition of aliens' need for judicial protection was his elaboration of the special contributions aliens can make to American life . . . .

Similarly, the Justice's many opinions regarding the rights of Native Americans illustrate his view that judgment requires both knowledge and experience. Perhaps in no other area did "totalizing and perpetuating prejudices". . . .

In United States v. Sioux Nation of Indians . . . he set out in scrupulous detail how the Sioux had been stripped of their land in the Black Hills of South Dakota and of their way of life. Strictly speaking, the detail might have been unnecessary to resolving the theoretical issues . . . . But it was critical to the Justice's central mission: grounding the judgment for the Sioux in the "moral debt" arising out of dependence to which the United States had reduced a proud and self-reliant people. . . .

The Justices of the Supreme Court continue along the path on which he first set out as law clerk and then as a judge on the court of appeals. . . . The Justice's jurisprudential sense of connection with and responsibility towards prisoners was accompanied . . . by a personal sense of connection as well. He regularly received, and read a prison newspaper—"the Sti Iv., Minn. Prison Mirror . . . ."

Finally, the Justice was a pioneer in thinking about the constitutional rights of the mentally ill and mentally disabled. In Jackson v. Indiana, his opinion for the Court advanced the proposition that "[a]t the least, due process requires that the nature and duration of an involuntary commitment [to a mental institution] must bear some reasonable relation to the purpose for which the individual is committed. . . ."

One of the Justice's most widely quoted images evoked the presence of "another world out there," that an overly comfortable Court might either "ignore or feel [its] obligation to escape.

Standard behavior problems are his in his dissents in abortion rights cases, it reflects a broader commitment to learning about, and facing, facts in the world. For example, in his separate opinion in Regents of the Univ. of California v. Bakke, the Justice expressed his support for race-conscious affirmative action in higher education with these words: "The sooner we get down the road toward accepting and being a part of the real world, and not shutting it out and away from us, the sooner will these difficulties vanish from the scene. . . ."

The Justice had a special wisdom and sensitivity about the relationship among history, race and gender. He knew when the law ought to take account of race or gender . . . . He also knew when the continued use of race or gender would serve only to "totalize" the nation —to establish, perpetuate and sustain racial, ethnic, and conflicted feelings about the relative abilities of men and women. . . .

No account of the Justice's time on the Supreme Court would be complete without a discussion of his tax opinions.
The Society has been blessed by selfless commitment and devotion on the part of dedicated Trustee members and supporters. One of these is the late John R. Risher, who chaired the Society's Headquarters Search Committee. This Committee was tasked to survey Capitol Hill for potential sites for a new location, eventually identifying this as the building we should acquire. That survey was exceptionally thorough and John made it a personal mission. He followed up his initial efforts by negotiating the purchase of the building at a very favorable price, and further by pursuing the necessary zoning changes over a year of public hearings and neighborhood meetings. Throughout this process he was the Society's front-line advocate giving tirelessly and careful attention to every detail.

When it was time to select an architect John displayed equally strong convictions, and it was largely at his insistence that the firm of Alan Greenberg was selected from a host of qualified candidates. I think the elegance of Mr. Greenberg's design speaks for itself as a testament to John's advocacy. We shall always be grateful to Mr. Risher for his vision, commitment and service.

The architectural firm of Alan Greenberg has produced a beautiful and elegant product. While this project is not on the scale of most of Mr. Greenberg's projects, he took the job in deference to the Society's unique mission and purpose. The elements of design of the building took into account features that relate to the scale of the building itself, and sometimes more directly, to the mission of the institution the building serves. In the front parlor on the first floor the fireplace design incorporates marble from the Supreme Court building. Large paneled doors and extensive dental moldings grace both the front parlor and the library, lending an air of elegance and dignity to these rooms reminiscent of the Court, and the front brick facades were created to incorporate full handicapped accessibility and such modern conveniences as climate control and a modern kitchen in this well integrated space.

The firm of Gibson and Associates served as contractors for the project, and it is difficult to adequately extol their virtues. Throughout the project their craftsmen have anticipated problems before they are encountered, avoiding needless work stoppages and saving the cost of duplicative construction to address the many hidden conditions that present themselves in refurbishing a century-old building.

Equally professional and successful in their various commissions were Associate Justices John Frankessen and Ruth Ginsburg, who incorporated an innovative system of recessed lighting with more traditional forms to create an even and adjustable source of light that is also extremely attractive. The interior design created by John Peters Irelan provided the finishing touch to pull all the elements of the interior of the building together into a beautiful whole. Landscape Designer Michael Bartlett provided landscaping that both complements, and completes the exterior design.

To all who have given of their time, means and talents to make this building a reality, we salute you for your commitment and generosity. Working together we are all committed to a new quarter century of service and excellence.

Associate Justice David Souter, Ruth Bader Ginsburg and Stephen Breyer and other guests look on as Chief Justice Rehnquist speaks.

Associate Justice David Souter, Ruth Bader Ginsburg and Stephen Breyer and other guests look on as Chief Justice Rehnquist speaks.

Opperman House (continued from page fifteen)

Other generous benefactors to the completion of the house include Dorothy Tapper Goldman, who along with her late husband, Howard Goldman, have generously supported almost every program and activity the Society has undertaken in the last decade. To acknowledge this continuing generosity, the Society has named its library on the first floor in Howard and Dorothy's honor. Professor James O'Hara of Loyola College in Baltimore made a valuable and unique contribution by donating his personal collection of rare books to the Society. This library is now housed in the beautiful new facility. The collection includes a wide variety of biographical studies of the Justices as well as books written by Justices on varying subjects. Many of the volumes are out of print, and some are copies of unpublished theses that would be very difficult to obtain in any other setting. This collection is the culmination of a life-long effort by Professor O'Hara and represents a unique and virtually irreplaceable contribution.

Another of our substantial donors is Agnes Williams. She not only made a generous contribution to the building fund, but has also served with Dorothy on what we have come to term the 'Committee of Two' which was responsible for developing and implementing the interior design and landscaping plan for the building. Those are detailed, time-consuming tasks Agnes and Dorothy have carried out with elan, patience and grace.

Support from concerned foundations and individuals have been essential on the funding of the building. A Washington area foundation which prefers anonymity, also made a substantial and generous contribution to the building fund. We hope to be able to persuade this organization to let us give them some recognition in the future, but for now, we reluctantly honor their request. Society Trustee Ruth Insel also contributed to the building fund. Mrs. Insel has been a loyal supporter of Society programs, often traveling back to Washington from Florida to attend educational programs.
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Blackmun Memorial (continued from page four)

Many observers, including the Justice himself, remarked on the large number of tax cases he was assigned. The Justice sometimes joked that these opinions were the result of his being "in the doghouse with the Chief," but in fact he retained both an interest and an expertise in taxation throughout his judicial tenure.

One recent study concluded that during his time on the Court Justice Blackmun wrote majority opinions in thirty-three federal tax cases and concurring or dissenting opinions in an additional twenty-six federal tax cases. . . . His opinions reflected a pragmatic, yet economically sophisticated, approach to the issues and drew on a broad range of sources: the text of the Code provisions involved, their legislative history, the broader legislative purpose of the Code, post-enactment developments, including the Internal Revenue Service's interpretations, and the practical effects different decisions would have. . . . The approach to tax law was beautifully summarized in the eulogy delivered at his memorial service by his former colleague, the Reverend William Holmes: . . .

Harry Blackmun excelled at math, and he knew the difference between mathematics and the law. What he brought to both the law and Scripture was neither an absolute subjectivism nor an absolute relativism, but creative fidelity. Justice Blackmun had a deep and abiding passion for American history. Above all, he was a great and generous man.

Associate Justice David Souter, Ruth Bader Ginsburg and Stephen Breyer and other guests look on as Chief Justice Rehnquist speaks.

If I were to try to read, much less answer, all the attacks made on me, this shop might as well be closed for any other business. I do the very best I know how—the very best I can; and I mean to keep doing so until the end. If the end brings me out right, ten angels swearing I was right would make no difference. Through his commitment to a living Constitution and to careful interpretation of the law, Justice Blackmun gave voice to what Lincoln called, in his First Inaugural Address, "the better angels of our nature." We will miss him.

Opperman House (continued from page fifteen)

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The Society has been blessed by selfless commitment and dedication on the part of dedicated Trustees, members and supporters. One of these is the late John R. Inquirer, who chaired the Society's Headquarters Search Committee. This Committee was tasked to survey Capitol Hill for potential sites for a new location; satisfying this, the building we should acquire. That survey was exceptionally thorough and John made it a personal mission. He followed up his initial efforts by negotiating the purchase of the building at a very favorable price, and further by pursuing the necessary zoning changes over a year of public hearings and neighborhood meetings. Throughout this process he was the Society's front-line advocate giving tireless service and careful attention to every detail.

When it was time to select an architect John displayed equally strong convictions, and it was largely at his insistence that the firm of Alan Greenberg was selected from a host of qualified candidates. I think the elegance of Mr. Greenberg's design speaks for itself as a testament to John's advocacy. We shall always be grateful to Mr. Risser for his vision, commitment and service.

The architectural firm of Alan Greenberg has produced a beautiful and elegant product. While this project is not on the scale of most of Mr. Greenberg's project, he took the job in deference to the Society's unique nature and mission. The elements of design of the building took into account features that relate the building sometimes subtly, and sometimes more directly, to the institution the Society serves. In the front parlor on the first floor the fireplace design incorporates marble from the Supreme Court building. Large paneled doors and extensive dental moldings grace both the front parlors and the library, lending an air of elegance and dignity to these rooms reminiscent of the Court, and the front brick face includes vertical elements that hint at the columns on the facade of the Supreme Court Building. While achieving a classical design, Mr. Greenberg has also successfully incorporated full handicapped accessibility and such modernities as climate control and a modern kitchen into this well integrated space.

The firm of Gibson and Associates served as contractors for the project, and it is difficult to adequately extol their virtues. Throughout the project their craftsmen have anticipated problems before they arise, on numerous occasions, avoiding needless work stoppages and saving the cost of duplicative construction to address the many hidden conditions that presented themselves in refurbishing a century-old building.

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To all who have given of their time, means and talents to make this building a reality, we salute you for your commitment into the pages of the United States Reports. For example, in his opinion for the Court in Flood v. Kuhn, the Justice took his readers for a tour through his beloved game of baseball, complete with a list of notable players—he apparently forgot to include Mel Ott, for which his clerks repeatedly teased him. But the twinkle was especially familiar to the many people whose lives he touched personally: his colleagues on the Eighth Circuit, . . . his law clerks, who became members of his family and whose professional lives were forever changed by their year with the Justice; the police officers, staff in the office, and other Court personnel, . . . his secretaries and messengers, who became close professional and personal companions, and, most of all, his family—Justice Blackmun had a deep and abiding passion for American history. Above all, he was a great and generous man.

If I were to try to read, much less answer, all the attacks made on me, this shop might as well be closed for any other business. I do the very best I know how—the very best I can; and I mean to keep doing so until the end. If the end brings me out right, ten angels swearing I was right would make no difference. Through his commitment to a living Constitution and to careful interpretation of the law, Justice Blackmun gave voice to what Lincoln called, in his First Inaugural Address, "the better angels of our nature." We will miss him.

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