Announcement of Summer Seminar 2001 For the Institute for Constitutional Studies

The Supreme Court Historical Society is pleased to announce the third annual seminar for college teachers and advanced doctoral students, a program associated with the Institute for Constitutional Studies (see Quarterly #2, 2000). This year the topic for discussion will be “The Modern American Presidency and its Constitutional Transformation.” The seminar will be led by William E. Leuchtenburg of the University of North Carolina and Richard Pious of Barnard College of Columbia University. Professor Leuchtenburg is the author of, among many other books, In the Shadow of F.D.R. and The Supreme Court Reborn. Professor Pious is the author of several works on the chief executive, including The Presidency.

The seminar will focus broadly on constitutional issues regarding the transformation of the American presidency from Franklin D. Roosevelt through Bill Clinton. Seminar leaders will guide discussion around assigned readings, topics of participants’ interest, share their own research, and organize guest lectures and other activities to take advantage of the unique riches of the Washington area for research on these subjects. They will also advise the participants regarding archival research and use of other primary resources.

Participants will be required to identify their topics of research interests in advance and provide a short bibliography of reading materials for other seminar members to read. Each regular meeting will concentrate on one of these research topics. Times outside the scheduled meetings will be reserved for special events as well as for individual consultation with seminar leaders. Participants will be expected, as a result of the seminar, to produce a draft of some significant part of their projects.

The seminar will meet in Washington, DC for three weeks, June 11-29, 2001, and daily sessions will be held at Opperman House, the new headquarters building of the Supreme Court Historical Society, near the Supreme Court and the Library of Congress. Participants may be housed in near-by university residence halls or make other arrangements.

Enrollment will be limited to fifteen participants, each of whom will be awarded a stipend adequate to cover costs of travel, room, and board.

Applicants for the seminar should send a copy of the curriculum vitae, a brief description (three to five pages) of the research project to be pursued in the seminar, and a short statement of how this seminar will be useful to them in their research, teaching, or professional development.

Requests for information and materials may be sent either by regular mail or electronically. CONTACT INFORMATION can be found on inside (pg. 3).
A Letter from the President

During the latter half of 2000 the Society took a reflective look at itself, initially with the aid of an independent consultant, and subsequently by holding a retreat to which we invited a number of Board members, major donors, long-time members and scholars.

Some of the conclusions we arrived at as a result of these reviews were startling. While the organization, by most accounts, was seen as flourishing, and far more productive than it was just a decade ago in terms of programs, publications and nearly every other measure of its success, the Society was yet far short of realizing its full potential. The primary reason for this was that, beyond a couple of hundred members who have consistently played an active role in the Society's various standing committees, we have not effectively engaged the skills and resources of a vast majority of the remaining 5,000+ members for the betterment of what is, after all, a membership organization. We have not been sufficiently proactive in asking our member scholars to contribute articles for the Journal and the Quarterly. We have made no thorough effort to ask members with corporate or foundation contacts to identify potential donors-corporate, foundation or private? Of course, if there are any questions you would rather not answer, simply leave them blank. We will be grateful for whatever information you feel comfortable volunteering.

There may also be some issues that you would care to address that are not contemplated in the survey form you will receive. Please do not stand on ceremony waiting for us to ask the right questions. You can call the Society anytime at (202)543-0400, or fax us at (202)543-7730. We want to hear from you, and I hope you will take the opportunity to tell us what's on your mind. After all, it is your Society.

Before I close this letter, I should like to thank all of you who participated in making gifts to the Annual Fund this Winter. For the first time in the history of the Society, a letter was sent to each member requesting support for this vital fund. Many of you responded to this request, giving generously above and beyond any membership obligations. The response was most gratifying and the next issue of the Quarterly will contain more information about this campaign.

Frankly, we were a bit unprepared for the strong response as we had no previous experience with such a campaign. Your generosity and enthusiasm were very reassuring, and with your help, the Annual Fund goal for the year is close to being realized. Such support indicates your strong commitment to the Society and its important educational objectives.

In addition to monetary gifts, we also received many comments and suggestions made by individuals who took the opportunity to fill out the comment portion on the return form. These comments ranged from brief to several paragraphs in length. The information is being reviewed, and your suggestions will be given to the appropriate Committees for consideration and/or implementation.

Kathleen Shurtleff
Managing Editor

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Many of your provided email addresses on that form as well, or address change information. All of that information was passed on the Membership Department so that our records could be amended.

As I noted earlier in this letter, much of the past success of the Society can be attributed to the dedication and participation of volunteers. While some of these "volunteers" are Officers or members of the Board of Trustees, many are "rank and file" members, with commitment to and enthusiasm for the Supreme Court of the United States. We hope that by providing an easy way to convey directly your suggestions and concerns, the number of individual members involved in the actual work of the Society will increase dramatically.

So it is with great anticipation that we prepare this survey to provide a vehicle for better communication with you. Working together we have achieved much. With your continued involvement, we can achieve even more.

Leon D. Silverman
Civil War Veterans on the Supreme Court

By Charles A. Earp*

Editors’ Note: When the Supreme Court sat for a group photograph in 1910 and 1911, four of its members were veterans of the Civil War. Two, Justices John Marshall Harlan and Oliver Wendell Holmes, Jr., fought for the North; Justice Horace Harmon Lurton and Chief Justice Edward Douglass White fought for the South. In 1861, the oldest, Harlan was 28; the youngest, White, was just 16. All were officers, holding ranks from second lieutenant to colonel. The profiles of the four individuals were originally published in the Washington Times in two parts. “From solid-

A picture of reconciliation, the Supreme Court of 1910 brought together four veterans of the Civil War. Ironically, three of the veterans are pictured side by side on the front row of the picture. Front row from left: Oliver Wendell Holmes, Jr., John Marshall Harlan, Horace Harmon Lurton, Charles Evans Hughes, and Joseph Rucker Lamar.

ners to justices” and “Former Adversaries serve side by side on Court.” The previous issue of the Quarterly contained the profiles of Justice Oliver Wendell Holmes, while the remaining three Justice’s profiles appear in this issue. The articles originally appeared on October 28 and November 4, 2000, and are reprinted here with permission.

Horace Harmon Lurton was a 17-year-old student at the University of Chicago when the Civil War began. Born in Kentucky, the son of a physician turned clergyman, he was filled with patriotic ardor. Lurton returned home to Clarksville, Tenn., enlisted in the Confederate 5th Tennessee Infantry on April 20, 1861, and rose to the rank of sergeant major.

In early February 1862, he was discharged for a disability, but promptly re-enlisted in the 2nd Kentucky Infantry as a first-lieutenant, just in time to be present at the Union assaults on forts Henry and Donelson.

The Confederate forts on the Tennessee and Cumberland rivers were the objectives of a joint Union Army-navy campaign under Gen. Ulysses S. Grant and Adm. Andrew Foote to open vital waterways as invasion routes into the South and to force the Confederates from their position in Kentucky. Fort Henry was attacked first and easily taken. Confederate reinforcements were sent to Fort Donelson, but Grant invested it in turn with his larger force. About 3,000 Rebel troops escaped, leaving Gen. Simon Buckner in command. Grant issued his famous unconditional surrender ultimatum and Buckner surrendered the remaining Donelson forces on Feb. 16, 1862. (Gen. Nathan Bedford Forrest escaped with his cavalry and some infantry and, like Grant, came to the public’s attention for the first time.) The 2nd Kentucky, to which Lurton belonged, was in Buckner’s division, now among the prisoners.

Lurton wrote to his mother, telling her that he was fine except for a minor leg wound and that he expected to be sent to Illinois. On Feb. 25, he wrote to Union authorities on board the steamer Nebraska, asking for parole. The request was not granted. He was sent to the military prison at Camp Chase near Columbus, Ohio.

According to secondary sources, Lurton escaped. Records show that on Aug. 25, 1862, he enlisted at Keysburg, Ky., in the 7th Kentucky Cavalry, in the brigade of the legendary Gen. John Hunt Morgan. Lurton was with the cavalry unit for about a year, during which Morgan made frequent raids.

In October, Morgan captured Lexington, Ky., and several other places and destroyed a number of bridges. A year’s end, Morgan raided the Union’s line of communications in Kentucky, took nearly 2,000 prisoners and did $2 million in property damage—with the loss of only 25 men.

In May 1863, Morgan and his command received the thanks of the Confederate Congress for heroic and invaluable service. During a July 1863 raid, however, Morgan’s luck ran out. On July 15, in a fight at Buffington Island, where he had intended to withdraw from Ohio, he suffered a major defeat and 700 of his men were captured—including Lurton, who was again sent to Camp Chase. A week later, Morgan surrendered with the remnant of his command.

Counting Lurton’s time as a prisoner of war after his capture at Fort Donelson, he was imprisoned about two years at Camp Chase and Johnson’s Island in Lake Erie near Sandusky, Ohio. He suffered increasing periods of poor health. Initially, he was without clothing or money. Still, he had a relatively easy time of it. He worked for a time in the hospital pharmacy at Camp Chase and was allowed money and packages from home. Lurton gave Camp Chase good marks in July 1864, describing the prisoner’s opportunities to engage in various activities such as glee clubs, debating societies and religious gatherings.

Surprisingly, there was a restaurant where a prisoner with money could get a good meal. There also was a store selling musical instruments. A library was available, and Lurton urged patriotic Southerners to supply books. He did note that many prisoners without money or friends suffered during the winter, and he pleaded for donations of clothing for them.

Throughout his confinement, Lurton frequently complained about his health, suffering from chronic respiratory problems. As his health worsened during the severe winter of 1864-65, it was believed he had tuberculosis. His family urged him to take the oath of allegiance and leave home, but he hesitated. His mother finally took matters in her own hands. A letter to Secretary of War Edwin Stanton brought no results. So she went to Washington and was granted an interview with the president, Abraham Lincoln.

He listened sympathetically to her story about the boy’s health, then cut the red tape and wrote a note, “Let the boy go home with his mother.”

About 40 officers, mostly of Morgan’s command, signed a testimonial to his character and to the high esteem in which he was held, approving his release on the advice of an attending physician. On Feb. 11, 1865, Lurton took the oath, was released and regained his health at home.

After the war, he pursued a legal career, served on the Tennessee Supreme Bench and as chief justice of the state. He also served as a federal judge, the presiding officer of the Sixth Judicial District. In addition, he taught constitutional law at Vanderbilt University in Nashville, Tenn.

A Democrat, he was appointed to the Supreme Court by President William Howard Taft, a Republican with whom he had served on the federal bench. Lurton served on the high court from 1909 until his death in 1914.

John Marshall Harlan: Loyal to the Union

John Marshall Harlan was born in 1833 into a prominent Kentucky family. His father was a successful lawyer and politician who served as Kentucky secretary of state, attorney general and a state legislator. Young Harlan attended Centre College and Transylvania University, then entered the practice of law. Although a slave owner who voted twice against Abraham Lincoln, Harlan was a staunch Unionist in the sharply divided state. During the turbulent months before the war, he saved the Louisville Journal from
After his escape from a Union prison camp, Lurton joined General John Hunt Morgan's dashing marauders. On July 19, 1863, Morgan's unit suffered a major defeat resulting in 700 men being captured by the Union Army.

The Civil War service of Louisiana's Edward Douglass White is the most difficult of the Supreme Court's Civil War veterans to describe because of a lack of records. His name does not appear in either the Confederate files or the roster of Louisiana soldiers compiled by the state. Both list an Edward D. White, but the details of that man's service make it clear he is not the Chief Justice. Nor do the Civil War records of the parish (Louisiana's equivalent of a county) where he lived bear his name.

Thus, the account of his military service is based on oral history, most of which probably was supplied by White himself and never questioned.

He was born in 1845 in LaFourche Parish, the son of a wealthy plantation owner who served in Congress and as governor of Louisiana.

Young White received a Jesuit education at Mount St. Mary's College in Emmitsburg, Md., and at Georgetown College near Washington, where he was a member of the cadet corps. His education in the North was interrupted by the war, although he briefly continued his studies in New Orleans before joining the Confederate army.

Commissioned a second lieutenant, White served on the staff of Gen. William Beall, who commanded the post of Port Hudson, La. Beall was succeeded by Gen. Franklin Gardner in early 1863 but retained command of a brigade at Port Hudson. Accounts differ on White's staff assignment.

Port Hudson and Vicksburg were two key bastions on the Mississippi, denying the North full use of the river and thwarting its efforts to split the Confederacy.

Port Hudson near Baton Rouge also protected the entrance to the Red River, which was a vital waterway into Texas. Morgan's units operated in and out of that area, protected by forts and forts-in-factories, subject to strenuous efforts by Federal forces to reduce it in 1863. In the first such effort, Adm. David Farragut's fleet, the first time a Union force at Hartsville, about 10 miles distant.

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White served on the court for nearly 34 years, one of the Court's longest tenures. His grandson, another John Marshall Harlan, also became a member of the Supreme Court.

Records Sparse on Edward White

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were bombarded and silenced. Then three unsuccessful attempts were made by the army to take Port Hudson. A siege of about six weeks, longer than the siege of Vicksburg, followed, and the post finally surrendered on July 9, 1863, five days after the fall of Vicksburg. As a staff officer, White undoubtedly suffered hardship during the attacks and siege, during which the garrison was reduced to eating mules, dogs and rats.

Taken prisoner, White related the circumstances of his release on parole: He was called from confinement in his shirt sleeves by a Federal officer who told White to get his coat and come with him. When White replied that he had no coat, the officer lent his own, and White left wearing Yankee blue. Apparently his mother had managed to arrange his release; he returned home on parole and took no further part in the war. He was only 17 when paroled.

Long after the war, an interesting comment on White’s Port Hudson service came to light. Adm. John Dewey of Manila Bay fame in the Spanish-American war was an officer on the USS Mississippi, which was destroyed by a Confederate battery during Farragut’s passage of Port Hudson in 1863. In his biography, Dewey said, “One of my Washington friends, Chief Justice White, was a boyish aide[e] to the commanding general of the Port Hudson defenses. He tells me that the Confederates got the better of us that night, and I must say that I have to agree with him.”

After the war, White studied law and developed a prosperous practice. Like his father, he entered Louisiana politics. He served in the state Senate and, while still in his early 30s, was appointed to the Louisiana Supreme Court. In 1893, while serving in the U.S. Senate, he was appointed to the Supreme Court by President Grover Cleveland. President William Howard Taft elevated him to Chief Justice in 1910, making him the first Associate Justice to be so promoted in the history of the Court. Taft succeeded White as Chief Justice when White died in 1921.

Justice Oliver Wendell Holmes was a prolific writer. In addition to 2,000 judicial opinions in the U.S. Supreme Court and the Massachusetts Supreme Judicial Court, Justice Holmes wrote a book The Common Law, and over 100 articles, speeches and notes. On top of this he wrote thousands of letters. Justice Holmes’ correspondence is interesting because it reveals the working of a first-class mind. He did not confine his interest in legal topics but wrote as a philosopher, art, literature, famous people and on life in general. He did not write just to lawyers or only to people who agreed with his point of view. Indeed, the published volumes of his letters reveal that he wrote on a regular basis to a wide range of people including: the socialist intellectual Harold Laski; the Irish cleric, Patrick Sheehan; the young Felix Frankfurter; the English jurist Sir Fredrick Pollack; the American diplomat, Lewis Einstein; and to a rather obscure idealist named Franklin Ford. The letters are eloquent and reflect Holmes’ joy in writing. It is small wonder that so many of them have been preserved.

Justice Holmes’ Civil War correspondence and diaries were for many years thought lost. However, a decade after his death in 1926 a number of letters to his parents were discovered at the bottom of a box in which the Justice’s personal papers had been kept. The gaps in the correspondence and Justice Holmes’ notations on the envelopes indicate that he destroyed an appreciable number as well as all but a few loose pages of the first volume of his diary. The surviving materials have recently been reissued by Fordham University Press along with an excellent introductory essay by David H. Burton.

Following his graduation from Harvard College in 1861, Holmes was commissioned First Lieutenant in the 20th Regiment Massachusetts Volunteers. He spent the next three years in the various unsuccessful campaigns in which the Union forces attempted to capture the Confederate capital at Richmond, Va. The bulk of this time was as a captain in the front lines. Later, Justice Holmes was appointed an aide to one of the division commanders and given the rank of brevet major.

Justice Holmes did not have to fight in the Civil War. He was from an upper class Boston family and while many of his Harvard classmates volunteered, many did not. However, to the young Holmes, the war was a noble “crusade” to end slavery. His old New England sense of duty propelled him to volunteer.

Once he experienced combat, Justice Holmes began to lose his boyish romanticism. While he never showed “any waverin in my belief in the right of our cause,” he bristled at the jingoistic reporting and sentimental expressed in Northern newspapers. “I was glad to see that cheerful sheet didn’t regard the late attempt in light of a reverse,” he wrote sarcastically about one newspaper account of a battle. “It was an infamous butchery in a ridiculous attempt in which I’ve no doubt our loss doubled or tripled that of the Reb.”

He went on to despair that “if we represent civilization...and if civilization and progress are better things...they will conquer in the long run and will stand a better chance in their proper province—peace—than in war, the brother of slavery.”

He was severely wounded three times during the war. Naturally, his letters and diaries speak of his thoughts and the peculiar circumstances of war. At the battle of Antietam, he was shot through the neck and left in a small shack with several other wounded men. The shack was overrun by the Confederates. A rebel soldier put his head through the window and asked “Wounded? Yankees? Want water?” Receiving positive answers to each of his questions, the rebel tossed his canteen through the window and returned to shooting at the retreating Unionforces. Shortly thereafter, the Union forces counterattacked forcing the rebel to retreat. The same scene played at the window: “Can I have my canteen back?” The Union soldiers tossed their friendly enemy his canteen and he disappeared.

Later in the war, the young Holmes was entrusted with...
During the Battle of Antietam hundreds of Confederate died along the Hagerstown Pike. Oliver Wendell Holmes was wounded at Antietam, but recovered to rejoin his unit. Holmes’ memoirs reflected the horror, boredom and confusion he experienced in the war.

carrying an important order to another unit. Riding on a road through a wood, he came upon a boy who told him that there was rebel cavalry further up the road. Holmes recruited three Union cavalry men he found foraging nearby and the small band proceeded up the road. Coming upon a clearing, they were fired upon by 20 mounted men in dark uniforms. At first, Holmes thought that it must be a mistake and tried to signal that they were friends. Then he realized that their uniforms were not faded blue but rather dirt-covered gray uniforms. He spurred his horse onward with the rebels in pursuit. Eventually, Holmes and his men were cornered and the rebel leader approached ordering them to surrender. As the rebel raised his carbine, Holmes drew a pistol and pressed it to the man’s chest. It misfired. However, the rebels were startled enough to allow Holmes and two of his men to ride past “Comanche-style” hanging onto the sides of their horses as the rebels fired.

By 1864, the young Holmes had had enough. He refused further promotion and decided to leave the army. As he told a reunion of the 20th Massachusetts in 1897: “As I look into your eyes, I feel as I always do that a great trial in your youth made you different—made all of us different from what we could have been without it. It makes us feel the brotherhood of man. It made us citizens of the world and not of a little town. And best of all it made us believe in something besides doing the best for ourselves and getting all the loaves and the fishes we could.”

On January 24, 1991, the Deans from the nine Texas law schools met with the Professionalism Committee of the State Bar of Texas to discuss our concerns about the deteriorating nature of lawyer conduct. We believed that the law schools could help in the effort to reverse the trend. I made the initial presentation by explaining that our profession faced problems best described by five “M” words. In no particular order, the five “M” words were and continue to be mechanics, money, mentoring, morality and mass.

First, the mechanics of the practice have greatly impacted how we relate to each other. Things are much more impersonal and move much faster today because of fax machines, e-mail, word processors, video conferencing and the like. Second, money has changed the face of the practice. First year lawyers now make more money than the Chief Justice of the Texas Supreme Court. Third, mentoring, once performed by all lawyers, almost as a matter of course, is becoming a thing of the past, even in the large firms. Fourth, all practice was once local. It is now at least regional, if not national and international, changing the morality of how we react to each other. And, fifth, the sheer mass or number of lawyers both in America and in Texas creates difficult problems for self-discipline and self-regulation.

I explained to the Deans that it was our view on the Committee that these 5 “M” word problems were seeping across the face of our profession, causing upheavals of historic proportions, uprooting our traditions and adversely affecting our conduct. I concluded by expressing our hope that the law schools could help. A silence fell over the room. Eventually, one Dean broke the stillness. There was a long pause before she finally appeared. When she did, I asked her if she knew where the following sentences came from:

1. “When in the course of human events, it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth, the separate and equal station to which the laws of nature and of nature’s God entitle them, a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation.”

2. “We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defence, promote the general welfare, and secure the blessing of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States.”

Whether it can be reinforced in law school remains in doubt.

For three-plus years I have reflected on the “die is cast” comment. It was used at the time to explain the reason for inaction. Tonight I propose that it be used as a reason to promote action. Let me share a recent event in my court.

Not long ago, a young woman refused to report before me for jury duty. I entered an order for her to show cause why she should not be fined or put in jail, as provided by federal law. It took several orders, served by summons, before she finally appeared. When she did, I asked her if she knew where the following sentences came from:

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The Die is Cast
Texas Disciplinary System:
Lawyer Regulation in Texas—2000 Style
Austin, Texas—November 16, 2000
By Judge Royal Ferguson*
Linda Brown, aged nine in 1954, was the Brown in the landmark case Brown v. the Board of Education. Judge Ferguson suggests that in reviewing and teaching about pivotal events such as this, members of the Bar will be able to "renew our commitment not merely to be successful lawyers and judges, but to be upright and decent lawyers and judges.

3. "Four score and seven years ago our fathers brought forth upon this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."

My recalcitrant juror paused for the longest time. Finally, she said that she had no idea where any of the sentences came from. I was not totally surprised by her response. After all, it took several orders to force her to do her Constitutional duty. But, the incident made one thing finally clear to me: it is time to cast some die.

Now, we are not starting from scratch here. Good lawyers and judges throughout this state, individually and in association with others, are doing remarkable things to cast die across a wide spectrum of our people, from the youngest to the oldest. Those efforts should and must continue. My concern, however, is with focus, especially with the young people, who are our future.

I purchased the book and read it. I was impressed. Finally, something had been done in Washington, D.C. that we could all agree with.

So how does this fit together? Our democracy depends upon assent to some fundamental principles. If that assent frays, we have an enormous problem.

Assent works best when it is built on a foundation of reason and voluntary acceptance. Such a foundation can best be secured through insightful instruction. We now have a text, We the Students, that can provide such instruction. All we then need to do is get started. And how does this happen?

Since I am this year's chair of the Judicial Relations Committee of the State Bar of Texas, I thought I should ask the Committee to brainstorm possibilities. We have done just that. Now, to quote a famous Texan, here's the deal.

To begin with, our Committee has scheduled a meeting (most appropriately for January 25, 2001, four years and one day after the fateful moments in the (D)ears) to join with other State Bar organizations to map out a plan for the coordination and implementation of a program to put We the Students in Texas High Schools. Those invited include the Texas Young Lawyers, the Texas Center for Legal Ethics, the Committee on Law Related Education and the Law Students Division of the State Bar.

We envision that, as a part of this program, local bar associations will provide every Social Studies, Government and History teacher in their community high schools (both public and private) with a copy of We the Students. We also envision coordination and cooperation with the Texas Education Agency, in order to keep everyone on the same page.

In addition, we believe that it will be very important to create a pool of volunteer lawyers and judges at the local level to work with each individual teacher as a resource and partner. Law students should also be enlisted in this effort all over the state.

I Our plan is to present this program to the Board of Directors of the State Bar of Texas at their April meeting for approval. With luck we can kick it off in the 2001-2002 school year. To do so appropriately, we would hope to convince the Chief Justice of the Texas Supreme Court, the Chief Judge of the Fifth Circuit, the President of the State Bar of Texas and the President of the Texas Young Lawyers to appear in a video setting on the cover of the Texas Bar Journal in September or October of 2001 to announce the beginning of the program.

We also plan to apprise the Supreme Court Society of our efforts to be the first State to propose such an ambitious program. Moreover, as soon as we put things into place, we hope that they might announce our effort as one of their lead stories in their Quarterly newsletter, to encourage others to follow suit. Preliminary indications are that they would be interested to hear from us.

One last thing. That I began this speech talking about professionalism. Is there any connection between the proposal from our Committee and the concept or professionalism? I submit that there is.

Profession can be pursued in many ways, both directly and indirectly.

Stay tuned.

Twenty-sixth Annual Meeting
To be held on June 4, 2001

The twenty-sixth Annual Meeting of the Supreme Court Historical Society will take place on Monday, June 4, 2001. The day's events are outlined below:

Annual Lecture—delivered by Chief Justice William H. Rehnquist in the Supreme Court Chamber.

Tours of the Supreme Court Building—given immediately following the lecture.

Annual Reception and Dinner — The reception will start at 7 PM, with dinner to be served at 8 PM. These events are by reservation only and are the only events of the day requiring payment.

Invitations will be mailed to all active members of the Society between thirty and forty-five days before the meeting. Attendance is limited at the Annual Reception and Dinner, but every effort will be made to accommodate requests.
Symposium to examine Role of Women in the Legal Community

Coordinating with the recent publication of the Society's book _Supreme Court Decisions and Women's Rights_, a symposium cosponsored by the Supreme Court Historical Society, the South Carolina Supreme Court Historical Society and the South Carolina Bar Association will examine the entry of women into the legal profession in the 20th century. The symposium will be held in Columbia, South Carolina and members of the state bars of North and South Carolina as well as Georgia qualify to receive CLE credits for the symposium (see notice of the meeting below for details.) Through a special agreement between state bar associations, members of the New York state bar are also eligible to receive CLE credits for attendance at the symposium. Other state bar associations may be willing to provide credit for the symposium and should be contacted directly by individuals interested in attending the symposium.

The Great Sea Change:
Women and the Law in the Twentieth Century
April 19-20, Adam's Mark Hotel, Columbia

The South Carolina Supreme Court Historical Society and the South Carolina Women Lawyers Association will present a two-day program entitled "The Great Sea Change: Women and the Law in the Twentieth Century" April 19-20 in Columbia. This special event features renowned scholars in the development of women's rights and gender justice from both national and local perspectives.

The conference will begin on Thursday, April 19 with a cocktail reception at the Columbia Museum of Art. The reception will include the presentation of the Jean Galloway Bissell Award to a lawyer who has excelled in opening doors for women lawyers.

Immediately following the reception, participants will gather at the Adam’s Mark Hotel for the conference dinner program, featuring a keynote speaker by Dr. Jane M. Friedman, professor of law at Wayne State University Law School and author of America's First Woman Lawyer: The Biography of Myra Bradwell.

Friday’s Continuing Legal Education seminar will examine the changing status of women in society and in the law, as well as the rise of women to the bar and bench in South Carolina and the nation. The seminar will be held at the Adam’s Mark Hotel and has been certified for 6.0 hours of MCLE credit.

Seminar highlights include:
• "The Rise of Women in Politics and in the Legal and Other Professions" by one of America’s preeminent women’s historians, Dr. Carol Ellen DuBois. State Supreme Court Chief Justice Jean H. Toal and Richard M. Gergel will serve as moderators.
• A discussion on the rise of women to the bar and bench led by Professor Jane M. Friedman.
• An examination of "The Rise of African-American Female Attorneys" from Howard University School of Law Professor J. Clay Smith Jr.

The seminar registration fee includes the seminar only is $175 for Bar members and $35 for those not seeking CLE credit.

The seminar will also feature a book sale along with book signings by the distinguished faculty.

The seminar registration fee includes the South Carolina Women Lawyers Networking Luncheon on Friday at the Adam's Mark Hotel. Package registration, including the reception, dinner and seminar with lunch, is $200. The Friday seminar only is $175 for Bar members and $35 for those not seeking CLE credit.

For additional information, please contact
Beth Baldauf
beth.baldauf@scbar.org
(803)771-0333 or 1-800-768-7787

Erwin N. Griswold Prize Lecture

On Wednesday, May 23, 2001 Professor Edward Purcell will deliver a lecture based on his recent publication _Brandeis and the Progressive Constitution: Erie, the Judicial Power, and the Politics of the Federal Courts in 20th Century America_. This book was chosen by a special committee to receive the Society's Erwin N. Griswold Prize, a prize given in recognition of the most outstanding recent book-length work published in the field of Supreme Court History. The award was named for the late Dean Erwin N. Griswold, and carries a cash award, as well as recognition by the Society. By custom, the Society's prize Committee is chaired by the past recipient of the prize, in this case Professor Andrew L. Kaufman who received recognition for his book _Cardozo_.

Professor Purcell teaches at the New York Law School. His lecture will take place at 6 PM on Wednesday, May 23, 2001 in the Supreme Court Chamber. A Justice of the Supreme Court of the United States will introduce Professor Purcell. A reception will be held immediately following the lecture program to which all present for the lecture will be invited. Members of the Society will receive an invitation to the event in the mail. Queries about the event should be directed to Marianne Harding, Program Director of the Society. Additional information will be posted on the Society's website, www.supremecourthistory.org.
Fred Vinson takes Centre Chair at the Vice Presidential Debates

Editor's Note: The portrait of Fred Vinson joined the audience for the Vice Presidential debate between Joe Lieberman and Dick Cheney held on October 5, 2000 at Centre College. Logistical requirements for the event included 545 feet of temporary carpet, 648 work stations in the media center, 650 or more student, alumni and community volunteers, 900 rented office chairs, 1,100 linear feet of "pipe and drape" to build temporary offices, 1,500 temporary phone lines, 9,700 feet of temporary fencing, and 300,000 feet of wiring for phones, computers, television and electricity. Formidable tasks under any circumstances, but with a student body of only 1,050 the requirements seem even greater. 1,800 members of the media converged upon the community of 17,000 for the historic debate.

This article was published in the magazine "Centrepiece" a publication of Centre College at Danville, Kentucky under the title "Dead Fred goes to the Debate" and is republished here with permission. Diane Johnson, editor of the magazine, noted that members of the national and international press picked up on the story and reported the presence of Chief Justice Vinson in the "Centre" chair for this unique occasion.

A second famous alumna of Centre College was John Marshall Harlan, the first of that name to serve on the Supreme Court. A short article about his Civil War experiences appears in this issue of the Quarterly.

He had to take his own chair, but Dead Fred made it to the vice presidential debate.

With 600 seats removed from the 1,500-seat Newlin Hall to make room for the TV cameras, tickets to the debate were the hottest commodity in town. Most of Centre's 200 tickets went to students, with a few reserved for major debate donors and community members who helped bring the debate to Danville.

Yet as a regular at football and basketball games since 1953, it would have been a shame if Dead Fred had missed the biggest thing to happen to Centre since C6-H0.

Thus, the brothers of Phi Delta Theta escorted their portrait of Supreme Court Justice Fred Vinson '09 (law '11)—known affectionately as Dead Fred—to the debate hall a couple of days before the debate and placed him out of the way on a ledge. (Little did they know then that the Supreme Court would end up ruling on the 2000 election.)

Fred Vinson, the man, was perhaps the most famous Phi Delt in 150 years of the fraternity at Centre. A brilliant student who could have had a career in professional baseball, Vinson went on to serve in all three branches of the Federal government. President Truman appointed him Chief Justice of the Supreme Court in 1946, a position he held until his death in 1953.

Kansas
Deanell R. Tacha, Lawrence

Massachusetts
Stan Zoll, Stoughton

Maryland
Carter Phillip Ferrington, Boonsboro

Michigan
Noreene Redmond, East Point

Mississippi
Mark Alcorn, Avon
Donald L. Hoefl, Eagan

Missouri
Joseph F. Benson, Jefferson City

North Carolina
Lance P. Martin, Greenville

New Jersey
Mike Cronin, Colts Neck

New York
Rudolph Carmenaty, Brooklyn
David J. Dominick, West Point
Kevin M. Dowd, Sherburn
Robert D. Schultz, Chappaqua
Philip Snyder, Sea Cliff

Oregon
Ron Johnson, Lake Oswego
Diane L. Polsker, Portland

Pennsylvania
Neil W. Bohnert, Meadville

South Carolina
John F. and Susan Quinn, Columbia

Tennessee
Mark Arnold, Nashville
Price Carney, Nashville

Utah
Michael D. Murphy, Salt Lake City

Virginia
Anna Maria Farías, Alexandria
Hunter Olds Ferguson, Arlington
Mary Hartnett, Arlington
Edward McLaughlin, Arlington
David E. Nagle, Richmond
Emily E. Tuck, Fairfax

California
Mary Mack Adu, Alameda
John S. Cramer, Carlsbad
David J. Forras, Riverside
Hirbod Radhidi, Los Angeles
Susan Smith, Walnut Creek

Connecticut
Austin J. McGuigan, Hartford

District of Columbia
Noel Brennan
Edward Timothy Keable
Dwight D. Murray
Kannon Shanmugam
Tony Stanco

Florida
Frank Finizia, Palm Beach Gardens
Noel Flasterstein, Tampa

Georgia
Constance Foro Ootenrod, Atlanta
Ben F. Easterlin, IV Atlanta
Tracy L. Harris Abbott, Atlanta
John W. Hinchev, Atlanta
William A. Holby, Atlanta
Joseph Shaw, Atlanta

Illinois
Michael M. Milhm, Peoria
Debra A. Seaton, South Holland

Indiana
Suzanne L. Abram, New Albany
Aaron D. Spurling, New Albany

New Membership
Founding Members Celebrate 25th Year of Membership

The year 2000 marked the Society's twenty-fifth full year of operation. While incorporation papers were filed on November 24, 1974, it was early in the following year before the membership program was implemented. Therefore, the first memberships date to 1975. According to membership records, a number of individuals who joined as Founding Members in 1975 have maintained active membership for the duration of the twenty-five year period. We would like to pay tribute to these stellar members:

Russell G. Allen
The Honorable James E. Barrett
Patricia A. Behlar
The Honorable James A. Belson
Eugene L. Bernard
The Honorable
Dudley B. Bonsal
Joseph M. Bristow
Myron J. Bromberg
Vincent C. Burke, Jr.
Patricia Dewitt Butler

John D. Butzner
Richard P. Claude
Edward S. Cohen
Reginald S. Cohen
Sherman L. Cohn
Charles D. Cole
Larry A. Costlon
Richard C. Corriner
Kenneth W. Dam
Jane P. Donlon
G. B. Dutton
Timothy B. Dyk
Thomas E. Fairchild
Oscar Ferrinde
Andrew L. Frey
Daniel M. Friedman
William M. Furnich
Barry Garfinhel
Gerhard A. Gesell
Alfred Leand Gleghorn
Daniel L. Griffin
Judge Charles Gunther
M. Shad Hanna
Don V. Harris
The Honorable Andrew Hauk
Edward R. Hatfield
Paul T. Haffon
Douglas B. Henderson
Charles Helen

The Honorable Linwood Hutton
J. Woodford Howard
Mrs. Marjory Hughes Johnson
Hugh E. Jones
The Honorable Shiro Kashiw
The Honorable
Cornelia G. Kennedy
John F. Kozelekt
The Honorable Arthur S. Lane
Professor Robert W. Langran
Edward J. Lawler
A. Leo Levin
David M. Levitan
Sol M. Linowitz
The Honorable Pierce Lively
Francis J. Lorson
Dennis G. Lyons
Robert MacCrane
Donald M. Malone
Abraham E. Margolin
The Honorable Howard T. Markey
James M. Marsh
Alan J. Martin
The Honorable
Vincent L. McKusick
Mary McMahan
The Honorable
Robert R. Merthig, Jr.
Professor Roy M. Mersky
Jaan T. Miller
Samuel H. Moerman
Marvin C. Mood
The Honorable John D. Morgan
Joseph W. Morris
Professor Earl Finbar Murphy
Sara Najar-Willson
The Honorable James Noel
Stert Pedell
Charles E. Parker
The Honorable Lawrence W. Pierce

Stephen W. Pigson
Dudley Porter
E. Barrett Prettyman, Jr.
Bruce Rea
Harry M. Reaasoner
Robert Newton Reid
The Honorable
William Bradford Reynolds
Charles A. Robinson
Nicholas A. Robinson
Ronald S. Rolle
Sidney S. Rosdeitcher
Sol Rosen
Stuart Philip Ross
Carlos L. Roy
Ernst F. Rubenstein
The Honorable F. S. Ruddy
Henry S. Ruth, Jr.
John T. Sapulanza
Jacques Schlesinger
Connor F. Schmid
Professor Robert G. Sellig
Ashley Sellers
Chesterfield Smith
Daniel C. Smith
The Honorable Arthur J. Stanley
Ildardo C. Thomas
Robert H. Stevenson
McNeill Stokes
The Honorable W. C. Stuart
Homer Surfbeck
R. B. Throckmorton
Randolph W. Thrower
Professor Kenneth S. Tollott
Lyman M. Tonge
Herbert Wechsler
Melvin C. Williams
William E. Wills
J. Philip Zand
The Justice did give me the job, and I have always felt that this exchange was the clincher. Of course that is not all there was to it—there was the night circuit, the Roosevelt factor, the Roosevelt factor, and the all-important Nuremberg factor. I had gotten my first interview shortly after the Justice returned from Nuremberg because of my interest in the prosecution of the international war criminals. As an editor of the Temple University Law School review, I had written to the Justice at Nuremberg and told him that I thought most American legal publications were not paying enough attention to the Nuremberg trial and that if he would make the material available to us we would publish the pleadings and speeches before the Tribunal. He readily agreed and as a result we published the Indictment, its opening speech, his speech against the Nazi organizations, his closing address, and the judgment of the Tribunal. So the Nuremberg factor had produced my opportunity to sell myself.

The Justice was apparently satisfied with my performance, because he asked me to stay for a second term. As I have written in other places, that clerkship was the most satisfying and productive of my life, both personally and professionally. That I was also demanding and sometimes hectic. The financial aspects of his clear, concise and understandable writing was so good because he worked at it day and night. Certainly he had a gift, he knew the law, and he had a wealth of experience both in and out of government; but one of the principal ingredients of his clear, concise and understandable opinions was plain hard work. For example, when the Justice gave me a draft of an opinion to critique, I gave it back to him with my suggestions at the end of the day. I knew that the next day would be back on my desk as soon as he arrived at the office the next morning. He did not waste any time; he just burned down constantly to produce clear language and compelling reason. I doubt that there is any opinion reported during those two terms that matches his opinions for clarity in the reasoning under-lying the conclusion. See, for example, Cohen v. Beneficial Industrial Loan Corporation, 337 U.S. 541, a decision of continuing practical importance to lawyers and judges alike, and Interstate Natural Gas Company v. Utah, United States, 332 U.S. 593.

So, although the Justice often said that he was the last vestige of the system under which a person could qualify for admission to the Bar by "reading law," no one could seriously say that his lack of formal interest in the procedure of his judicial opinions. His keen intellect, his deep insight into human nature, his lifelong study of the classics, his thirst for real justice, and his working habits, were reflected in those opinions and in other writings as well. Indeed, his opening and closing speeches at Nuremberg are universally recognized as classics. In that dramatic situation, his passion for justice, his revolution for the ideals of the Nazi regime, and his experience in expanding both, stirred not only the Tribunal but any fortunate enough to hear them or become familiar with them. Who would not be stirred by the first paragraph of his opening:

The privilege of opening the first trial in history for crimes against the peace of the world imposes grave responsibility. The wrongs which we seek to condemn and punish have been so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored because it cannot survive their being repeated. That four great nations, flushed with victory and stung with injury, stand by the body of the slain king. He begged the widow, as they beg of you, "Say I slew them not." And the Queen replied "Then say they were slain. But dead they are..." If you were to say to these men that they are not guilty, it would be as true to say there has been no war, there are no slain, there has been no crime.

All this, and more, from the Justice without a college degree.

*James M. Marsh clerked two terms for Justice Jackson. He then practiced law in Philadelphia until his retirement a few years ago.

Supreme Court Justice Without a College Degree
By James M. Marsh*
Celebration of Daniel Webster

The year 2001 marks the 200th anniversary of the graduation of Daniel Webster from Dartmouth College. In addition to his service as a United States Senator from Massachusetts, Webster argued hundreds of cases before the Supreme Court of the United States and participated in many of the major constitutional debates of his time. One of his most famous cases involved his alma mater, Dartmouth College.

Webster presented a four-hour argument in this important case, styled Trustees of Dartmouth College v. Woodward. Webster challenged a New Hampshire statute which altered the charter and governance of the College. Perhaps the most memorable line from his tour-de-force presentation was "It is Sir, as I have said, a small college. And yet there are those who love it..."

Members of the Supreme Court Historical Society along with members of alumni groups will have the opportunity to attend a lecture commemorating Webster's graduation from Dartmouth. The lecture/luncheon program will be held on Friday, April 27, 2001, at the law offices of Hale and Dorr, 60 State Street in Boston. The group will meet from 12:30 to 2 p.m. and will hear a lecture presented by Kenneth Shewmaker, Professor of History at Dartmouth College, the editor of Daniel Webster: "The Completest Man."

Members of the Supreme Court Historical Society residing in the New England area should have already received a letter of invitation to this event. Others interested in the event may contact Salome Fung at Hale and Dorr at (617) 526-6848 for further information.

Sometimes referred to as "Black Dan," Daniel Webster (above) was an accomplished orator, on the floor of the U.S. Senate and the Supreme Court of the United States.